STATE OF MICHIGAN

COURT OF APPEALS

JOHN COUMOUNDOUROS,

Plaintiff-Appellant,

v

WATERFORD TOWNSHIP and WATERFORD TOWNSHIP CIVIL SERVICE COMMISSION,

Defendants-Appellees.

UNPUBLISHED
October 29, 1996

No. 184905
LC No. 91-411194

Before: Taylor, P.J. and Markey and N. O. Holowka,* JJ.

PER CURIAM.

In this case involving plaintiff's effort to attain the rank of police sergeant, plaintiff appeals as of right from an order directing that he be eligible to sit for the next promotional test to be offered by the township. We affirm.

In 1976, plaintiff was hired as a police officer in Waterford Township and was promoted to sergeant in 1987. In January 1988, he left his position to pursue other endeavors until he applied for reinstatement in October 1989. In December 1989, plaintiff returned to the force as a police officer, but he was not given the rank of sergeant, pursuant to the Civil Service Act, MCL 38.511 *et seq*.; MSA 5.3361 *et seq*. Because plaintiff desired immediate promotion to attain his previous rank, he sought and received an opinion from defendant commission regarding his promotional status. The commission opined that plaintiff would not be allowed to test for promotion for another four years less one day. In May 1991, after plaintiff filed a petition for superintending control, the circuit court held that defendants were not required to test plaintiff because plaintiff had consented to be bound by the commission's decision as part of the terms of his reemployment. The court also ruled that the police department could fill the vacant position of police sergeant if it desired.

* Circuit judge, sitting on the Court of Appeals by assignment.

On May 25, 1994, a panel of this Court reversed the trial court's decision that plaintiff was not entitled to test for the rank of sergeant. This Court held that the commission's decision was erroneous for the reason that MCL 38.512(2); MSA 5.3362, which provides that promotions may be filled by applicants who have served five years in the department, did not require that those years be continuous. The case was remanded to the circuit court "to fashion an appropriate remedy in accordance with the plain language of the statute." On remand, plaintiff filed a petition asking the court to restrain defendants from engaging in promotional testing without his involvement. Plaintiff also moved for summary disposition requesting that he be immediately promoted to the rank of sergeant since vacancies existed. Defendants also filed a motion for summary disposition. After hearing the competing motions, the circuit court ruled that plaintiff was entitled to an order directing that he be eligible to test for the rank of sergeant at the township's next available testing period.

Plaintiff contends that the trial court's ruling that he be "eligible to test for the position of sergeant at the next test offered by the Township" is not an "appropriate" remedy because he was already entitled to such testing. We disagree. We review a trial court's decision to grant or deny equitable relief de novo as a question of law. *Olsen v Porter*, 213 Mich App 25, 28; 539 NW2d 523 (1995). However, we will disturb the trial court's factual findings in rendering such decisions only for clear error. *Webb v Smith*, 204 Mich App 564, 568; 516 NW2d 124 (1994).

In general, the power of the trial court upon remand is to take such action as law and justice may require so long as it is not inconsistent with the judgment of this Court. *People v Fisher*, 449 Mich 441, 446-447; 537 NW2d 577 (1995); *VanderWall v Midkiff*, 186 Mich App 191, 196; 463 NW2d 219 (1990). In order to determine whether the trial court fashioned an appropriate remedy as ordered by this Court we must first examine the language of the statute and construe it according to the generally accepted meaning of the words used by the Legislature. *Lorenz v Ford Motor Co*, 439 Mich 370, 376; 483 NW2d 844 (1992).

MCL 38.512(2); MSA 5.3362(2) provides in pertinent part:

> Vacancies in positions in the fire and police departments above the rank of fire fighter and police officer shall be competitive and shall be filled by promotions from among persons holding positions in the next lower rank in the departments who have completed 2 years in the rank and who have at least 5 years in the department. If there are more vacancies than there are persons with 5 years in the department, the commission may lower the requirement to 3 years in the department. If no person or persons have completed 2 years in the next lower rank, the commission may hold examinations among persons in such rank as to all intent and purposes as though two years of service had been completed by those persons. *Promotions shall be based upon merit to be ascertained by tests to be provided by the civil service commission and upon the superior qualifications of the persons promoted as shown by his or her previous service and experience.* [Emphasis added.]

We hold that the trial court's remedy was appropriate. The record reveals that in plaintiff's original complaint for superintending control, he requested an order that he be "eligible to test for promotion to the rank of sergeant and that the commission permit him to take any such test prospectively." In May 1991, the trial court denied this request. On appeal, the trial court's ruling was reversed and upon remand, the trial court granted plaintiff's originally requested relief. Unsatisfied with this result, plaintiff now contends that the trial court should have ordered relief in the form of "promotion to the rank of Sergeant effective the date the first promotion from the then effective eligibility list was [sic] made (January 1992)." However, we believe that the statute does not permit such relief. The emphasized portion of the statute set forth above requires promotion only when the applicant has qualified for the position pursuant to a test. The right to take the test is what plaintiff originally requested and plaintiff has met the time requirement. The trial court ordered this relief, and the plain language of the statute dictates that result.

Further, plaintiff argues that when the "next" test will be administered should not be left to defendants' discretion. However, in neither his complaint nor his petition has plaintiff alleged that defendants will act in bad faith regarding the time frame of the administration of the next promotional examination. Therefore, we will not consider this contention for the first time on appeal. *Garavaglia v Centra, Inc*, 211 Mich App 625, 628; 536 NW2d 805 (1995).

Affirmed.

/s/ Clifford W. Taylor
/s/ Jane E. Markey
/s/ Nick O. Holowka