

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

TAYLOR CITY COUNCIL,

Plaintiff-Appellee,

v

JEFFREY LAMARAND,

Defendant-Appellant,

and

CHERYL BURKE,

Defendant.

---

UNPUBLISHED

June 21, 2011

No. 297052

Wayne Circuit Court

LC No. 10-001113-AS

---

CITY OF TAYLOR,

Plaintiff-Appellee/Cross-Appellee,

v

EDWARD D. PLATO,

Defendant-Appellant/Cross-  
Appellee,

and

TAYLOR CITY COUNCIL,

Intervening Defendant-  
Appellee/Cross-Appellant.

---

No. 297226

Wayne Circuit Court

LC No. 09-030552-CZ

Before: FORT HOOD, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

In Docket No. 297052, defendant, City of Taylor Mayor Jeffrey Lamarand (“the Mayor”), appeals as of right the trial court’s order directing the Mayor to cease and desist from interfering with the employment of the Confidential Secretary, Susan Riddle, whom the Taylor City Council rehired pursuant to a resolution after the Mayor terminated her for fiscal reasons. The Mayor failed to veto the resolution reinstating the Confidential Secretary within the time period set forth in the city charter. In Docket No. 297226, defendant, Edward D. Plato, appeals as of right the trial court’s order declaring that the Mayor had the unilateral authority to remove Plato as Corporation Counsel for plaintiff, the city of Taylor. Also in Docket No. 297226, intervening defendant, the Council, cross-appeals as of right. This Court ordered the two cases consolidated for the purpose of appellate review.<sup>1</sup> Because the trial court did not err in concluding that the Mayor’s failure to veto the Council’s resolution reinstating the Confidential Secretary precluded him from interfering with her continued employment, and because the trial court did not err in concluding that the Mayor has the right to unilaterally terminate the Corporation Counsel pursuant to the city charter, we affirm.

The issue presented in Docket No. 297052 is whether the trial court erred in ordering the Mayor to cease and desist from interfering with the continued employment of the Confidential Secretary. We review questions regarding the application and interpretation of a city charter de novo. *Buchanan v City Council of Flint*, 231 Mich App 536, 544; 586 NW2d 573 (1998). To the extent that this issue also involves statutory interpretation or other questions of law, de novo is the appropriate standard of review. *O’Neal v St John Hosp & Med Ctr*, 487 Mich 485, 493; 791 NW2d 853 (2010).

The Mayor argues that the trial court’s order impermissibly enjoins him from exercising his executive authority to fire the Confidential Secretary based on his determination that her services are unnecessary and because of budget constraints. The issue before us, however, is not whether the Mayor had the initial authority to fire the Confidential Secretary, but whether, as the trial court found, “any authority to reject her rehire by Council was lost when the Mayor failed to veto Council’s Resolution rehiring her.”

Here, although the city charter does not explicitly require the approval and consent of the Council before the Mayor may fire an employee that he deems unnecessary for fiscal reasons, section 7.13 of the city charter does require the Mayor to exercise his veto power, if at all, within 72 hours of the Council’s adoption of a resolution. The trial court declined to decide whether the Mayor had the initial authority to fire the Confidential Secretary because it found the issue unnecessary for the disposition of the case.

Section 3.2 of the city charter gives the Council the right to pass a resolution regarding the Mayor’s rights under the city charter. Section 3.2 of the city charter specifically states that “The City and its officers shall have power . . . to pass and enforce all laws, ordinances, and resolutions relating to its municipal concerns . . .” The Council passed Resolution No. 11.693-

---

<sup>1</sup> *Taylor City Council v Jeffrey Lamarand; City of Taylor v Edward D Plato*, unpublished order of the Court of Appeals, entered April 21, 2010 (Docket Nos. 297052, 297226).

09 on November 17, 2009, providing, in pertinent part: “the Council members . . . do hereby exercise their right to hire Susan M. Riddle and return her to her former employment status . . . as Confidential Secretary . . . effective immediately.” The Mayor does not dispute that he failed to timely veto the resolution as required by section 7.13 of the city charter. Rather than address the fact that he failed to veto the Council’s resolution, which is dispositive of the resolution of this issue, the Mayor provides a litany of arguments for why he has the authority to fire the Confidential Secretary. We decline to address those inapplicable arguments in this appeal because we conclude that the plain language of the city charter compels us to hold that the Mayor’s failure to timely veto the Council’s resolution reinstating the Confidential Secretary precludes him from interfering with her continued employment.

The issue presented in Docket No. 297226 is whether the trial court erred in holding that the Mayor had the unilateral authority to remove Plato from his position as Corporation Counsel. Again, we review questions regarding the application and interpretation of a city charter de novo. *Buchanan*, 231 Mich App at 544. In addition, “[a] trial court’s ruling in a declaratory action is reviewed de novo.” *Toll Northville Ltd v Twp of Northville*, 480 Mich 6, 10; 743 NW2d 902 (2008).

As an initial matter, we conclude that the issue is not moot despite the City of Taylor’s assertion that the issue is moot because the Mayor and the Council have agreed on a successor Corporation Counsel. We are aware that the Council and the Mayor have agreed on a replacement Corporation Counsel since the trial court’s ruling, but this situation is likely to recur in the future in all cases in which the Mayor wishes to unilaterally terminate a Corporation Counsel whom the Council desires to retain. *Mead v Batchlor*, 435 Mich 480, 487; 460 NW2d 493 (1990). Further, a court should be wary of finding an issue moot in cases where the party seeking to moot the issue prevailed in the lower court, the reason being that a litigant should not be permitted to manipulate the court’s jurisdiction to insulate a favorable decision from appellate review. *Anglers of the AuSable, Inc v Dep’t of Env’tl Quality*, 486 Mich 982, 983; 783 NW2d 502 (2010) (Cavanagh, J., concurring).

Turning to the issue at hand, section 5.3(b) of the city charter provides that, “[e]xcept as otherwise provided in this Charter, the Mayor shall have the powers of appointment and removal over all directors, department heads, commissions and boards . . . .” However, the Corporation Counsel is not a department head within the meaning of the provision. Rather, a separate provision pertains to the Corporation Counsel. Section 5.11 provides that “[t]here shall be a Corporation Counsel who shall be appointed by the Mayor, subject however, to the approval and consent of the Council . . . .” Based on the section’s plain language, the Council must approve of and consent to the Mayor’s appointment of a Corporation Counsel. Though the city charter fails to provide any indication regarding whether removal also requires the approval and consent of the Council.

Finding no Michigan authority on point, the trial court relied on authority from other states providing that the appointing power has removal power unless otherwise provided by law. E.g., *Carlson v Bratton*, 681 P2d 1333, 1336-1337 (Wy, 1984). The trial court stated, “[t]he fact that appointments of persons to office require the approval or confirmation of another office or tribunal does not mean that the latter must concur when the power of removal is exercised by the appointing authority.” In reaching this conclusion, the trial court relied on *La Peters v Cedar*

*Rapids*, 263 NW2d 734, 737 (Iowa, 1978), citing 4 McQuillin, Municipal Corporations, § 12.233c at 238 (1968) (“the fact that appointments of persons to office require the approval or confirmation of another officer or tribunal does not mean that the latter must concur when the power of removal is exercised by the appointing authority”).

Plato and the Council argue that *Carlson* and *La Peters* are distinguishable from the case at bar. In *La Peters*, the Iowa Supreme Court held that the city’s public safety commission could discharge the chief of police without the consent of the city council. *La Peters*, 263 NW2d at 737. The Iowa Supreme Court relied, in part, on the statutory language that an appointee “may be removed by the officer or body making the appointment[.]” *Id.* at 736. There is no parallel statutory language in this case. But, the Iowa Supreme Court also relied on the established principal that the confirmation of an appointment is distinguishable from the appointment itself, and that, although the removal power generally follows the appointment power, a confirmation requirement for appointment does not mean that confirmation is required for removal if not specified. *Id.* at 737. It is this portion of the Iowa Supreme Court’s ruling that is persuasive and applicable here, and the trial court did not err in relying on this authority.

In *Carlson*, the Wyoming Supreme Court held that, although the Mayor’s power to appoint the chief of police was subject to confirmation by the city council, he had the power to remove the chief of police without confirmation by the city council, precisely as the trial court held in this case. *Carlson*, 681 P2d at 1337. In reaching this conclusion, the Wyoming Supreme Court relied on common law principles and cited approvingly to *La Peters*. *Id.*

Plato and the Council argue that this case is distinguishable from *Carlson* because chiefs of police and city attorneys have different allegiances:

The position of chief of police is clearly recognized as different than that of any other position in the police department for the obvious reason that the chief of police is in a position of making and carrying out policy for the mayor. The mayor is entitled to have someone in that position who concurs in the mayor’s policies, and with whom the mayor can work towards the goal of implementing those policies. [*Carlson*, 681 P2d at 1335.]

According to Plato and the Council, *Carlson* should not be applied here because, as opposed to chiefs of police, city attorneys should be independent and unbiased, and should not be beholden to any single elected official, such as the Mayor. Although we acknowledge this distinction, the Wyoming Supreme Court in *Carlson*, did not rest its decision on this distinction, but instead relied on common law principles providing that confirmation is a separate aspect of the appointment power and does not extend to the removal power unless specified. *Carlson*, 681 P2d at 1337. We conclude that *La Peters* and *Carlson* aptly support the trial court’s decision.

Plato and the Council next assert that section 5.11 of the city charter requires that there always be a Corporation Counsel, such that Plato must continue with his duties until a new Corporation Counsel is appointed with the Council’s approval and consent. Under section 5.11(1), “[t]here shall be a Corporation Counsel who shall be appointed by the Mayor, subject

however, to the approval and consent of the Council . . . .” The charter obligates the position, not the person. Lapses may naturally occur. The trial court acknowledged that the term “shall” is unambiguously mandatory, requiring that the city have a Corporation Counsel at all times. Equally true, however, is that the city charter gives the Mayor the authority to remove the Corporation Counsel unilaterally. Therefore, the suggestion that Plato should remain as Corporation Counsel would also violate the city charter.

After reviewing the record, we conclude that the trial court’s resolution of the apparent dilemma—that is, that “the Mayor and City Council must work together to appoint and confirm new Corporation Counsel with all due haste”—will result in compliance with the city charter as expeditiously as possible. In ordering declaratory relief and invoking its equitable powers, the trial court ordered the parties to abide by the following schedule:

1. Within 14 days, the Mayor shall nominate new Corporation Counsel.
2. Within seven days of that appointment nomination, City Council shall vote whether to approve and consent to the new nomination.
3. If the nomination is not confirmed, the Mayor shall nominate a new and different Corporation Counsel within seven days.
4. Within seven days of that nomination, City Council shall vote whether to approve and consent the new nomination.
5. This process shall be repeated until a new Corporation Counsel is confirmed by City Council.

Until new Corporation Counsel is appointed and confirmed pursuant to section 5.11(a), special counsel may be employed as needed in order to protect the interest of the City on a case by case basis.

We conclude that the trial court acted within its authority in ordering this schedule. No order could have resulted in immediate compliance with the city charter that the city shall always have a Corporation Counsel because the Mayor may unilaterally terminate the Corporation Counsel. The fact that the Council and the Mayor have since agreed on a new Corporation Council confirms that the trial court’s order offered a viable and expedient solution.

Affirmed. No costs.

/s/ Karen M. Fort Hood  
/s/ Kathleen Jansen  
/s/ Pat M. Donofrio