

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

REGINA HOOD,	:	APPEAL NO. C-060707
	:	TRIAL NO. A-0410354
Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
CITY OF CINCINNATI	:	
	:	
and	:	
	:	
CIVIL SERVICE COMMISSION OF	:	
THE CITY OF CINCINNATI,	:	
	:	
Appellants.	:	
	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Appellants, the city of Cincinnati and the Cincinnati Civil Service Commission (collectively, “the commission”), appeal a judgment of the Hamilton County Court of Common Pleas. That court reversed the commission’s decision denying appellee Regina Hood’s application for reclassification from an administrative technician to an administrative specialist. We affirm the common pleas court’s judgment.

In its sole assignment of error, the commission contends that the common pleas court erred when it reversed the commission’s decision and allowed Hood’s reclassification. It argues that the evidence showed that Hood was working within the

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

proper classification. It also argues that it had implemented new job specifications and that the common pleas court applied the outdated specifications in its decision. This assignment of error is not well taken.

A decision of a municipal civil service commission is appealable under R.C. Chapter 2506.² When reviewing administrative appeals under this chapter, common pleas courts and courts of appeals have differing standards of review.³ The common pleas court must weigh the evidence in the record and determine whether the order or decision at issue is “unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probable evidence.”⁴ The court has the power to reverse, vacate, modify, or remand the case before it.⁵

The standard of review for the courts of appeals is limited to questions of law and “does not include the same extensive power to weigh ‘the preponderance of substantial, reliable and probative evidence’ as is granted to the common pleas court.”⁶ An appellate court cannot substitute its judgment for that of the common pleas court except within its limited statutory scope of review. It determines, with respect to the assessment of evidence, only if the common pleas court abused its discretion.⁷

A public employee who seeks to be reclassified must show that she meets the requirements of her current classification, but also substantially performs the functions of a higher classification.⁸ Hood sought reclassification following this court’s decision in

² *Nuspl v. Akron* (1991), 61 Ohio St.3d 511, 575 N.E.2d 447; *State ex rel. Stockelman v. Cincinnati Civil Serv. Comm.* (Feb. 23, 2001), 1st Dist. No. C-000252.

³ *Henley v. Youngtown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 2000-Ohio-493, 735 N.E.2d 433; *Saeed v. Cincinnati*, 1st Dist. No. C-030584, 2004-Ohio-3747.

⁴ R.C. 2506.04; *Groppe v. Cincinnati*, 1st Dist. No. C-050385, 2005-Ohio-6390.

⁵ *State ex rel. Chagrin Falls v. Geauga Cty. Bd. of Commrs.*, 96 Ohio St.3d 400, 2002-Ohio-4906, 775 N.E.2d 512; *Groppe*, supra.

⁶ *Henley*, supra; *Saeed*, supra.

⁷ *Henley*, supra; *Groppe*, supra; *Saeed*, supra.

⁸ *Hartzog v. Ohio State Univ.* (1985), 27 Ohio App.3d 214, 500 N.E.2d 362.

Nash v. Cincinnati.⁹ In that case, city employees had also sought reclassification from administrative technicians to administrative specialists. The civil service commission had denied the employees' requests for reclassification. The common pleas court had reversed the commission's decision, finding that the employees had "worked significantly at the Administrative Specialist level."¹⁰

We affirmed the common pleas court's decision. We stated, "Our review of the record leads us to agree with the trial court. The differences in the job descriptions, including the general duties, essential functions, knowledge, ability, and experience required, were subtle to the point of being indefinable. In essence, the employees here performed the work of both job classifications. Further, the employees offered much evidence to demonstrate that they had performed substantial work on the Administrative Specialist level."¹¹

In this case, the trial court noted that, in denying Hood's request for reclassification, the commission had found that Hood's duties "involve[d] work that is redundant in nature and [were] predominantly secretarial, general office, accounting or production/processing type duties." The court went on to state that "[t]he court finds that Cincinnati and the Commission have not properly analyzed the distinctions between the Technician and Specialist classifications in this case as identified by *Nash*. The level of work performed for her department as well as the amount of budgeting, finance, and personnel responsibility is determinative of which classified [sic] she is entitled and not the 'clerical' nature of such work. * * * Thus, despite the deference which the court must afford to the Commission's decision, the court finds that its decision is unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. The

⁹ 150 Ohio App.3d 651, 2002-Ohio-5985, 782 N.E.2d 1167.

¹⁰ Id. at ¶16.

¹¹ Id. at ¶17.

court finds that Hood has substantially performed the duties of an Administrative Specialist.”

We cannot hold that the trial court abused its discretion. The commission argues that the evidence showed that it had performed a thorough reclassification study, which revealed that Hood was performing the duties of an administrative technician. But the issue is not whether she was performing the duties of a technician, but whether she was also substantially performing the duties of a specialist. The two were not mutually exclusive. A preponderance of substantial, probative, and reliable evidence showed that while Hood had performed the duties of a technician, she had also substantially performed the duties of a specialist. Therefore, as in *Nash*, she was entitled to reclassification.

The commission also argues that the trial court erroneously relied on outdated job descriptions. It contends that both job descriptions were amended after *Nash*, but that the trial court failed to consider the new amendments. The record shows that the court did consider the new job descriptions. The new descriptions were not significantly different from the old ones and were still “subtle to the point of being indefinable,” as we stated in *Nash*.

The only meaningful distinction between the two positions under both the new and the old job descriptions was that administrative specialists had duties related to collection of data for budgeting, finance, and personnel management. This language was not present in either the new or the old job description for the administrative technician. The evidence showed that Hood had significant responsibilities relating to budgeting, finance, and personnel management. Therefore, the evidence supported the trial court’s finding that she had substantially performed the duties of an administrative specialist.

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The trial court's decision finding that the commission's decision was not supported by substantial, reliable, and probative evidence was not so arbitrary, unreasonable or unconscionable as to connote an abuse of discretion.¹² Consequently, we overrule the commission's assignment of error and affirm the common pleas court's judgment.

A certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on July 3, 2007
per order of the Court _____.
Presiding Judge

¹² See *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140; *Groppe*, supra.