

IN THE COURT OF APPEALS OF TENNESSEE  
EASTERN SECTION

**FILED**  
**November 13, 1997**  
**Cecil Crowson, Jr.**  
Appellate Court Clerk

BRIAN STEPHENSON ) JEFFERSON COUNTY  
Petitioner - Appellant ) 03A01-9705-CH-00185  
v. )  
HON. C. S. RAINWATER, JR.,  
CHANCELLOR  
TOWN OF WHITE PINE, TENNESSEE )  
Respondent - Appellee ) VACATED AND REMANDED

J. MICHAEL KERR OF JEFFERSON CITY FOR APPELLANT

DAVID L. McCORD and TIMOTHY E. IRWIN OF KNOXVILLE FOR APPELLEE

O P I N I O N

Goddard, P. J.

Brian Stephenson, formerly a police officer of White Pine, was dismissed from that position by the White Pine Chief of Police and its Mayor. Subsequently, a hearing was held before the Town Mayor and Board of Alderman, and the action in dismissing Mr. Stephenson was upheld.

Thereupon, Mr. Stephenson filed a petition in the Chancery Court for Jefferson County, seeking a writ of certiorari

to review the propriety of his dismissal. The writ was issued by the Clerk and Master, and after the Town had filed a motion for summary judgment the Trial Court, sua sponte, dismissed the petition because it was not verified.

Mr. Stephenson appeals, raising as his sole issue that the Court was in error in dismissing the petition.

We conclude that resolution of this appeal turns upon whether the method of appeal of the Town's action is governed by the Uniform Administrative Procedures Act.

We first observe that petitions for certiorari are required to be verified under the law of this State. Article 6, Section 10 of our Constitution;<sup>1</sup> T. C. A. 27-8-104(a).<sup>2</sup>

The Code Sections which we consider relevant in resolving the appeal are as follows:

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<sup>1</sup> **Sec. 10. Certiorari.** -- The Judges or Justices of the Inferior Courts of Law and Equity, shall have power in all civil cases, to issue writs of certiorari to remove any cause or the transcript of the record thereof, from any inferior jurisdiction, into such court of law, on sufficient cause, supported by oath or affirmation.

<sup>2</sup> **27-8-104. Power of circuit and chancery courts.** -- (a) The judges of the inferior courts of law have the power, in all civil cases, to issue writs of certiorari to remove any cause of transcript thereof from any inferior jurisdiction, on sufficient cause, supported by oath or affirmation.

**27-9-114. Proceedings involving certain public employees.**

. . . . .

(b)(1) Judicial review of decisions by civil service boards of a county or municipality which affects the employment status of a county or city civil service employee shall be in conformity with the judicial review standards under § 4-5-322 of the Uniform Administrative Procedures Act.

**4-5-322. Judicial review.** -- (a)(1) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter [Administrative Rules and Procedure], which shall be the only available method of judicial review. A preliminary, procedural or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

As above set out, Code Section 27-9-114(b)(1) provides that review of civil service boards shall be "in conformity with the judicial review standards under § 4-5-322 of the Uniform Administrative Procedures Act." The Town, however, argues that Code Section 27-9-114 requires only the standard of review comply with T.C.A. 4-5-322, and does not change the procedure for appeal.

This might be a plausible argument were it not for the fact that Chapter 1001 of the Public Acts of 1988 removed the

provision of T. C. A. 27-9-114,<sup>3</sup> which had previously required review by "common law certiorari."

We conclude, in light of the Legislature's repealing the common law certiorari feature by enacting Chapter 1001, that the proper method of appeal is by a petition seeking review, not by a common law writ of certiorari.

We find nothing in the Statute to require verification of a petition under the Uniform Procedures Act and, consequently, conclude the Chancellor was in error in dismissing the petition.

In reaching our conclusion we are aware that the petition purports to seek review under common law certiorari. However, since that procedure is no longer applicable, we deem it appropriate to treat the petition as one for review, as contemplated by T. C. A. 4-5-322.

For the foregoing reasons the judgment of the Trial Court is vacated and the cause remanded for further proceedings not inconsistent with this opinion. Costs of appeal are adjudged against the Town of White Pine.

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<sup>3</sup> **27-9-114. Proceedings involving certain public employees.** -- (a) No court of record of this state shall entertain any proceeding involving the civil service status of a county or municipal employee when such proceeding is in the nature of an appeal from a ruling of a city or county official or board which affects the employment status of a county or city employee, except such proceeding be one of common law certiorari.

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Houston M Goddard, P. J.

CONCUR:

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Herschel P. Franks, J.

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William H. Inman, Sr. J.