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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Siskiyou)

RUTH LATOURELLE,

Plaintiff and Appellant,

v.

COUNTY OF SISKIYOU et al.,

Defendants and Respondents.

C067656

(Super. Ct. No.
SCSCCVPT 09-0000135)

Appellant Ruth LaTourelle appeals from the judgment of the superior court denying LaTourelle's petition for writ of mandate. She filed the petition for writ of mandate pursuant to Code of Civil Procedure section 1094.5. She claims she is entitled to a rehearing before the Siskiyou County Board of Supervisors (Board) because the recording of the testimony of three of her witnesses was lost. She argues she was entitled to have the trial court review the entire record of the administrative proceedings, and that her due process rights have been violated because of the missing testimony.

The trial court relied on offers of proof by both parties regarding the content of the missing testimony, and determined these offers of proof sufficiently reconstructed the administrative record to allow it to determine that the weight of the evidence supported the Board's decision.

We shall conclude that the trial court was able to reconstruct the record sufficiently to support its findings. We reject LaTourelle's argument that there is nothing in the record to show the offers of proof relied upon by the trial court, because LaTourelle has not provided an adequate record for us to make this determination.

FACTUAL AND PROCEDURAL BACKGROUND

LaTourelle was employed by respondent County of Siskiyou (County) as an assistant planner. Her supervisor, Terry Barber, gave her a written performance evaluation for the period covering July 2006 to December 2007. The evaluation stated LaTourelle needed improvement in her work performance, judgment, job knowledge, reliability/stability, and personal interaction. Barber implemented a performance improvement plan, the goal being for LaTourelle to improve her performance by the end of May 2008.

By the end of May 2008, Barber issued a second written reprimand. Barber also determined that the next disciplinary step was necessary, and she initiated a notice of proposed disciplinary action pursuant to which LaTourelle would be suspended without pay for three days.

LaTourelle invoked her right to a *Skelly* hearing.¹ The hearing officer determined the three-day suspension was appropriate. LaTourelle invoked her right to an appeal before the Board. The Board upheld the three day suspension and a petition for writ of mandamus followed.

The trial court gave the following summary of LaTourelle's performance:

“Petitioner's work performance was rated as unacceptable because she had difficulty with her written communications, numerous errors in staff reports and other documents, difficulty in knowing what material is appropriate to discuss in public meetings, difficulty being consistent

¹ *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194.

during her planning commission presentations, and difficulty processing non-routine projects Petitioner's judgment was rated as unacceptable because she has difficulty accepting decisions made by her supervisor and goes outside of the department to solicit support of her positions that contradict those of her supervisors[.] [S]he is resistant to change, exhibits poor judgment in her communications with the public and she has made personal and inappropriate comments during public hearings Petitioner's job knowledge, reliability/stability and personal interactions were rated as need improvement Petitioner has eight years of planning experience, her job knowledge should be better than it is, she is not able to work independently and she is not capable of processing more complex applications Petitioner's reliability/stability rated as needs improvement because she has difficulty in meeting timelines, and has a great deal of difficulty following directions given by her supervisor Petitioner's personal interactions were rated as need improvement because she has a great deal of difficulty interacting with clients and co-workers”

LaTourelle's petition asserted numerous due process violations stemming from her assertions that she was not provided with all of the documents upon which the adverse action was based, that the hearing procedures were changed during the hearing, that the Board excluded relevant evidence and limited cross-examination of County's witnesses, and that the transcript of the testimony of three of her witnesses (Anne Marsh, Al Morris, and John “Jack” Meyer) was not part of the record before the superior court.

The Board's written decision indicated that Morris, Meyer, and six other citizens generally praised LaTourelle in their testimony. But the Board also noted that these witnesses “have all had relatively limited contact with her over the last 8 years.” The Board ascertained that they were unaware of the performance problems that were the basis of the disciplinary action, and that they did not support LaTourelle's claim that she was being targeted because Barber did not like her.

As to Marsh's testimony, the Board stated that in her direct testimony she said she overheard former planning director Wayne Virag and Barber discussing the desire to

terminate LaTourelle. However, “on cross-examination it was revealed that Virag (who is no longer with the County), not Barber, stated that he wanted LaTourelle terminated. In addition, Marsh could not even confirm that she heard any such conversation at all because she could not know with certainty that the discussion was about LaTourelle.”

The trial court’s ruling contains the following explanation of the missing transcript:

“Petitioner presented a list of some 15-16 witnesses and chairman requested an offer of area of anticipated testimony Respondent’s attorney objected to the numerous witnesses as being cumulative on issues of general competence After a brief recess, parties stipulated that John aka Jack Meyer and Al Morris would be called as members of the public on issue of petitioner’s general competence There was no evidence that petitioner was denied her rights to cross-examine any witness, or bring relevant witnesses to the hearing.

The record reflects that Anne Marsh, John aka Jack Meyer and Al Morris testified and were subject to cross-examination, but the recording of their testimony was inadvertently lost. The court must review the entire administrative record to determine . . . whether the agency committed any errors of law. [Citation.] . . .

In *Aluisi v. Fresno County* (1958) 159 Cal.App.2d 823, a partial record would be inadequate if there was missing testimony or evidence that is necessary and material for the court to determine whether the administrative record is supported by substantial evidence. The court determines that petitioner’s and respondent’s offers of proof as to the testimony of Anne Marsh, John aka Jack Meyer and Al Morris, sufficiently reconstructs the administrative record. The testimony of these three witnesses called by petitioner and cross-examined by respondent was very brief. Anne Marsh was called and testified that she had overheard a conversation between petitioner’s supervisor Terry Barber and former Director of Planning Wayne Virag in which they discussed the desire to terminate petitioner. On cross-examination, [Anne] Marsh further testified that it was

Wayne Virag and not Barber who wanted petitioner terminated and that she could not confirm that the discussion was about petitioner. While Anne Marsh may have overheard such statements, there was no evidence that Terry Barber was acting on anything but petitioner's own work product and performances to appropriately evaluate and discipline petitioner. . . .

John aka Jack Meyer and Al Morris testified as members of the public, with experience as a developer and land surveyor, regarding petitioner's general competency Alfred Morris generally had praise for petitioner. However, there was no evidence that John aka Jack Meyer or Alfred Morris had any specific knowledge regarding any of the projects or work performances that were evaluated and subject to the notice of discipline in this case, they are essentially general character witnesses for petitioner."

LaTourelle elected to proceed without a reporter's transcript, and the clerk's transcript is silent as to the parties' offers of proof regarding the missing testimony.

DISCUSSION

Because the Board's decision substantially affected LaTourelle's fundamental vested right, the trial court exercised its independent judgment to determine if the weight of the evidence supported the Board's findings. Our review of such decisions is limited. (*Pasadena Unified Sch. Dist. v. Commission on Professional Competence* (1977) 20 Cal.3d 309, 314.) We sustain the superior court's findings if substantial evidence supports them. (*Ibid.*)

LaTourelle's sole claim on appeal is that the missing record of the testimony of three of her witnesses before the Board violated her due process rights and entitles her to a rehearing. Citing *Chavez v. Sacramento County Civil Service Com.* (1978) 86 Cal.App.3d 324 (*Chavez*), she claims the trial court was required to review the entire administrative record, and that if the parties are not able to reconstruct the record, a new hearing must be held.

Chavez does not support LaTourelle's argument. In that case, an entire day of the administrative hearing could not be transcribed because of a defective tape. (*Chavez, supra*, 86 Cal.App.3d at p. 326.) Although *Chavez* stated that a petitioner is entitled to have the entire administrative record reviewed, it also indicated that if a portion of the record is missing, a rehearing is necessary only when the missing portion cannot be reconstructed and the partial record is not adequate for review. (*Chavez, supra*, 86 Cal.App.3d at p. 332.) This occurs if the missing testimony is necessary and material for the court to determine whether the administrative decision is supported by substantial evidence. (See *Aluisi v. County of Fresno* (1958) 159 Cal.App.2d 823, 825-828.)

The trial court in this case determined that the missing testimony was not necessary and material for its review because offers of proof by both LaTourelle and County sufficiently reconstructed the administrative record.

LaTourelle argues that the trial court failed to cite to any record that the parties had made an offer of proof. However, LaTourelle herself has prevented this court from evaluating the merits of this contention by failing to provide a reporter's transcript. It is a fundamental rule of appellate law that the party challenging the judgment, in this case LaTourelle, has the burden of showing reversible error by an adequate record. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.)

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

We concur: BLEASE, Acting P. J.

NICHOLSON, J.

ROBIE, J.