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No. 72890-3-I

COURT OF APPEALS DIVISION I
OF THE STATE OF WASHINGTON

WAYNE GODING,

Respondent/Cross-Appellant,

v.

CIVIL SERVICE COMMISSION of King County; KING COUNTY, a
Municipal corporation; KING COUNTY SHERIFF'S OFFICE, a
department of King County

Appellant/Cross-Respondents

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**REPLY IN SUPPORT OF CROSS-APPEAL OF
RESPONDENT/CROSS-APPELLANT
WAYNE GODING**

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. ARGUMENT REGARDING CROSS-APPEAL ISSUES 1

A. THE COMMISSION’S PROCEEDINGS WERE UNTIMELY. 1

B. THE TRIAL COURT ERRED IN NOT ORDERING THE REMOVAL OF THE DISCIPLINE FROM GODING’S PERSONNEL FILE..... 3

C. THE SUPERIOR COURT SHOULD HAVE AWARDED ATTORNEY FEES. 5

III. CONCLUSION 6

TABLE OF AUTHORITIES

Cases

<i>Arnold v. City of Seattle</i> , __ Wn. App. __, 345 P.3d 1285 (March 23, 2015)	5
<i>Arnold v. The City of Seattle</i> , No. 71445-7-I, April 24, 2015	6
<i>Eiden v. Snohomish Cy. Civil Serv. Comm'n</i> , 13 Wn. App. 32, 533 P.2d 426 (1975).....	4
<i>Keiffer v. Seattle Civil Serv. Comm'n</i> , 87 Wn. App. 170, 940 P.2d 704 (1997)	3
<i>Skagit Surveyors and Engineers v. Friends of Skagit County</i> , 135 Wn2d 542, 958 P.2d 962 (1998)	4, 5
<i>State ex rel. Evergreen Freedom Foundation v. Wash. Educ. Assoc.</i> , 140 Wn.2d 615, 999 P.2d 602 (2000).....	3

Statutes

RCW 41.14.120	1, 2, 4
RCW 49.48.030	5

I. INTRODUCTION

Goding hereby replies in support of his issues on cross-appeal.

II. ARGUMENT REGARDING CROSS-APPEAL ISSUES

A. The Commission's Proceedings Were Untimely.

There is no question that the Civil Service Commission proceedings were untimely. RCW 41.14.120 requires the hearing to be held within 30 days of an appeal being filed. Goding filed his appeal on October 18, 2013, CP 739, and the hearing was not held until January 20, 2014. CP 206. Unless the plain text of RCW 41.14.120 is completely meaningless, the hearing was untimely as a matter of law. The questions instead are whether Goding preserved the issue for appeal by raising it earlier, and whether he waived the issue by his stipulation.

The timeliness issue was specifically addressed by both the Commission and the Superior Court. CP 1156, Verbatim Report of Proceedings, 9:23-10:2. The Superior Court held that the hearing timely was timely because it improperly concluded, like the Commission improperly concluded, that Goding had stipulated that the hearing was

timely before the Commission. Verbatim Report of Proceedings, 9:23-10:2. Goding is asserting that both the Commission's and Superior Court's holding on that issue was error.

The Commission's and the Superior Court's error was mistaking Goding's notice of *appeal* with the resulting *hearing*. RCW 41.14.120 includes a 10-day requirement for the employee to file his or her appeal, and a 30-day requirement for the Commission to hold the public hearing. The question posed to counsel for Mr. Goding, and to which he assented, was whether he agreed that the appeal itself was timely, not whether the hearing was being conducted on a timely basis. CP 212-213 This difference is evident in the language used by the Commissioner, as she spoke of the "appeal" in one instance and the "hearing" in another. CP 212-213. The parties did not stipulate that the hearing before the Commission was timely.

Similarly, the Superior Court erred in concluding that there was no prejudice to Goding in the delay. The discipline imposed on Goding, specifically the change from day shift to swing shift, was a significant hardship for him and his family. CP 31-32; Goding Dec. in Support of his Response to Appellant's Motion to

Stay, at ¶4. Even though the discipline was overturned, King County was able to punish Goding for two months more than it should have due to the untimeliness of the hearing.

The failure of the Commission to timely hear Goding's appeal of his discipline warranted the dismissal of the discipline. *See Keiffer v. Seattle Civil Serv. Comm'n*, 87 Wn. App. 170, 173, 940 P.2d 704 (1997) (court upheld default judgment in favor of appellant where Commission failed to submit a decision within the required 90 days). There is little question what the result would have been for Goding had he failed to file his appeal within the statutory 10-day requirement. Whatever the remedy, to hold that there is no recourse for the Commission's delay is to give administrative agencies free reign to ignore unequivocal statutory requirements.

B. The Trial Court Erred In Not Ordering The Removal Of The Discipline From Goding's Personnel File.

King County correctly notes that the powers of an administrative agency are those expressly granted or *necessarily implied*. *State ex rel. Evergreen Freedom Foundation v. Wash. Educ. Assoc.*, 140 Wn.2d 615, 634, 999 P.2d 602 (2000) (emphasis added). Here, the Commission has the explicit authority to

“reinstate . . . [Goding] in the office, place or position from which he was removed.” RCW 41.14.120. See, *Eiden v. Snohomish Cy. Civil Serv. Comm'n*, 13 Wn. App. 32, 533 P.2d 426 (1975) (approving trial court order directing the removal of contested discipline). Such express authority necessarily implies that the Commission has the authority to order the removal of the overturned discipline from an employee’s personnel file. That implication arises from the language of the statute (and the Rule) – which clearly suggests an intention to allow the Commission to take measures to restore the *status quo ante* – something that is not accomplished if improperly issued discipline remains in an employee’s personnel file. If the powers of the Commission are circumscribed as argued by the County, the County could wrongfully impose discipline and yet have the wrongfully imposed discipline remain a matter of record in the employee’s personnel file. That would not be putting the employee, in this case Goding, in the place or position from which he was removed. *Id.*

Skagit Surveyors and Engineers v. Friends of Skagit County, 135 Wn2d 542, 958 P.2d 962 (1998), cited by King County, does not compel the outcome urged by the County. King County’s Reply and Response, at 22. In *Skagit Surveyors*, the court held that the

Growth Management Hearings Board did not have the implied authority to invalidate pre-Growth Management Act county zoning ordinances because its explicit authority was to recommend economic sanctions against counties that enforced the preexisting ordinances. *Id.* at 568. Here, as stated above, the Commission has the explicit authority to restore Goding to the place he was before the discipline, which implies the authority to remove the discipline.

C. The Superior Court Should Have Awarded Attorney Fees.

The most recent and controlling case law on the attorney fees issue is *Arnold v. City of Seattle*, ___ Wn. App. ___, 345 P.3d 1285 (March 23, 2015), which held that RCW 49.48.030 provides the statutory authority for the award of attorney fees. The current situation is almost identical to the situation in *Arnold*, in that each is concerning an appeal before a Civil Service Commission. King County's suggestion and request that the decision in *Arnold* is not final and that the Court "revisit" (that is, reconsider) it's decision is inappropriate given that this Court had already declined to reconsider its decision by the time King County filed its Reply/Response on May 15. See *Order Denying Motion for*

Reconsideration, Arnold v. The City of Seattle, No. 71445-7-I, April 24, 2015.

The Superior Court's Order denying attorney fees was error and should be reversed.

III. CONCLUSION

For the foregoing reasons the Superior Court order finding the Civil Service Commission's decision affirming the discipline of Goding to be arbitrary and capricious be AFFIRMED and its decision denying Goding his reasonable costs and attorney's fees should be reversed.

RESPECTFULLY SUBMITTED on June 11, 2015, at Seattle, Washington.

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CERTIFICATE OF SERVICE

Pursuant to the January 21, 2015 agreement of the parties, I have served by email the foregoing document to the following counsel of record and legal assistants:

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Dated June 11, 2015, at Seattle, Washington.



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