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Judges rule Burkons' case can't be heard in Chardon court

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Feb 12, 2021



Beachwood City Councilman Michael A. Burkons, left, sits next to his lawyer, Peter Pattakos, during his arraignment in Chardon Municipal Court on Oct. 16, 2020.

CJN Photo / Jane Kaufman

A criminal case against Beachwood City Councilman Mike Burkons is likely headed back to Shaker Heights Municipal Court, where it was first filed, according to University Heights Prosecutor Stephanie B. Scalise, who is acting as special prosecutor for the case.

Burkons is accused of interfering with the civil rights of Beachwood resident Alix Nouredine after Burkons sent a July 13, 2020, email to Nouredine's employers at the city of Cleveland Heights, where Nouredine is assistant law director. Beachwood City Council censured Burkons Aug. 17, and he was charged criminally in the same matter Sept. 25.

A three-judge 11th District Court of Appeals in Warren ruled unanimously that Chardon Municipal Court Judge Terri L. Stupica, who the case had been transferred to, doesn't have subject-matter jurisdiction in the case, agreeing with the arguments of Burkons' lawyer Peter Pattakos. The ruling was made Feb. 11 and signed by Judges Cynthia Westcott Rice, Matt Lynch and Mary Jane Trapp. Chardon law Director Benjamin G. Chojnacki, a partner at Walter | Haverfield Attorneys at Law in Cleveland, wrote the brief on behalf of Stupica, arguing that she had jurisdiction.

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GEAUGA COUNTY CLERK OF COURTS Case: 20G000274, eFile ID: 45864,
FILED: COURT OF APPEALS 02/11/2021 09:04 AM

STATE OF OHIO)
) SS.
COUNTY OF GEAUGA)

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

STATE OF OHIO ex rel.
MIKE BURKONS,

JUDGMENT ENTRY

Relator,

CASE NO. 2020-G-0274

- vs -

HON. TERRI STUPICA,

Respondent.

Pending before this court is Respondent, the Honorable Terri Stupica's, Motion to Dismiss Relator's Verified Complaint pursuant to Rule 12(B)(6) of the Ohio Rules of Civil Procedure for Failure to State a Claim upon Which Relief Can Be Granted, filed on December 24, 2020. Relator, Mike Burkons, filed a Brief in Opposition to Respondent's Motion to Dismiss on January 12, 2021. Judge Stupica filed a Reply to the Brief in Opposition to Motion to Dismiss on February 1, 2021.

On November 24, 2020, Burkons filed a Verified Complaint for Writ of Prohibition, seeking "a writ of prohibition to bar Respondent, Judge Terri Stupica of the Chardon Municipal Court, from continuing to exercise judicial power in a criminal case against Burkons – which arises from events that took place entirely within Cuyahoga County – over which the Chardon Court patently and unambiguously lacks subject-matter jurisdiction."

It is alleged that, on September 25, 2020, the State of Ohio instituted misdemeanor criminal proceedings against Burkons in the Shaker Heights Municipal Court, *State of Ohio v. Michael Burkons*, No. 20-CRB-00722, based on allegedly

“The crime that Burkons is alleged to have committed did not take place within the municipal court’s territory,” the panel decided. “The jurisdictional defect is patent and unambiguous ...”

Scalise told the CJN Feb. 12, “It’s up to a judge to decide what happens next. My expectation is that it will go back to Shaker Heights. This is very rare. My expectation is that Judge Stupica will cut an order.”

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Stupica

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IN COURT OF APPEALS

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DENISE M. KAMINSKI
CLERK OF COURTS
GEAUGA COUNTY

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO

STATE OF OHIO EX REL. MIKE)	CASE NO. 2020-G-0274
BURKONS,)	
)	
Relator,)	
)	
vs.)	
)	
HON. TERRI STUPICA,)	
)	
Respondent.)	

**RESPONDENT'S MOTION TO DISMISS RELATOR'S VERIFIED COMPLAINT
PURSUANT TO RULE 12(B)(6) OF THE OHIO RULES OF CIVIL PROCEDURE FOR
FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

Respondent, the Honorable Judge Terri Stupica of the Chardon Municipal Court ("Judge Stupica"), by and through counsel, respectfully moves the Court pursuant to Rule 12(B)(6) of the Ohio Rules of Civil Procedure for an order dismissing Relator, Mike Burkons' ("Berkons") Verified Complaint for Writ of Prohibition for failure to state a claim upon which relief can be granted.

Burkons' Verified Complaint fails to state a claim for the extraordinary relief of the issuance of a writ of prohibition because: (1) Judge Stupica's exercise of judicial power over Burkons' criminal case is authorized by law (*See* R.C. 2901.12(K) and 2931.29); and (2) Burkons possesses an adequate remedy in the ordinary course of law—he can raise jurisdictional arguments and/or challenge the constitutionality of the statutes giving Chardon Municipal Court jurisdiction over Burkons' criminal case in a direct appeal of his criminal case—as such, denying

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"It'll have to be refiled," Victoria L. Dailey, clerk and court administrator at Chardon Municipal Court, told the CJN Feb. 12. "That's usually what happens."

As of mid-day Feb. 17, Stupica had not made any new orders pertaining to the case.

Steven Tomaszewski, chief clerk of court at Shaker Heights Municipal Court, said his court is not currently following the case.

"Since the case is marked transferred out of here, I don't have anything on it,"

Tomaszewski told the CJN Feb. 12. "Once we get it back from Chardon, we would follow up at that point."



Burkons

Meanwhile, Pattakos, a civil rights litigator at Pattakos Law Firm, LLC of Fairlawn, has filed a separate appeal with the 8th District Court of Appeals in Cleveland challenging the legal authorization of Scalise's appointment as special prosecutor in the criminal case against Burkons. His argument is that Scalise's appointment as special prosecutor required a vote by Beachwood City Council, which did not take place. Scalise is working for Beachwood without compensation.

"The bizarre procedural irregularities continue to underscore the fact that this retaliatory and shameful prosecution never should have been brought in the first place," Pattakos wrote in a Feb. 11 email to the CJN. "With this case now officially languishing in no-man's land, we hope the University Heights prosecutor will finally come to her senses and just drop it."

In addition, Pattakos wrote, "It has been repeatedly made clear to the University Heights prosecutor as well as the Beachwood Law Department that the charges against Burkons constitute a clear violation of his civil rights and we will continue fighting to vindicate those rights and uphold Burkons' right to do his job and speak freely about government affairs, as he was elected to do by the citizens of Beachwood."

Beachwood City Council appointed Cleveland lawyer Kenneth J. Fisher to handle the case in the 8th District Court of Appeals, at the request of Beachwood Law Director Diane Calta. Fisher has filed a motion to dismiss the appeal. In a Feb. 5 brief supporting that motion, he argued that Beachwood first engaged Scalise in a mutual aid agreement "solely in an investigatory capacity."

"Even interpreting all material allegations in the verified complaint for writ of mandamus as true and admitted, the instant proceeding must be dismissed as a matter of law as the city is without legal authority to collaterally vacate the journal entry issued by the Shaker Heights Municipal Court appointing Ms. Scalise as special prosecutor for the city in the criminal proceeding," Fisher wrote.

When contacted by the CJN on Feb. 12, Scalise had no comment on the 8th District Court of Appeals appeal.



Scalise

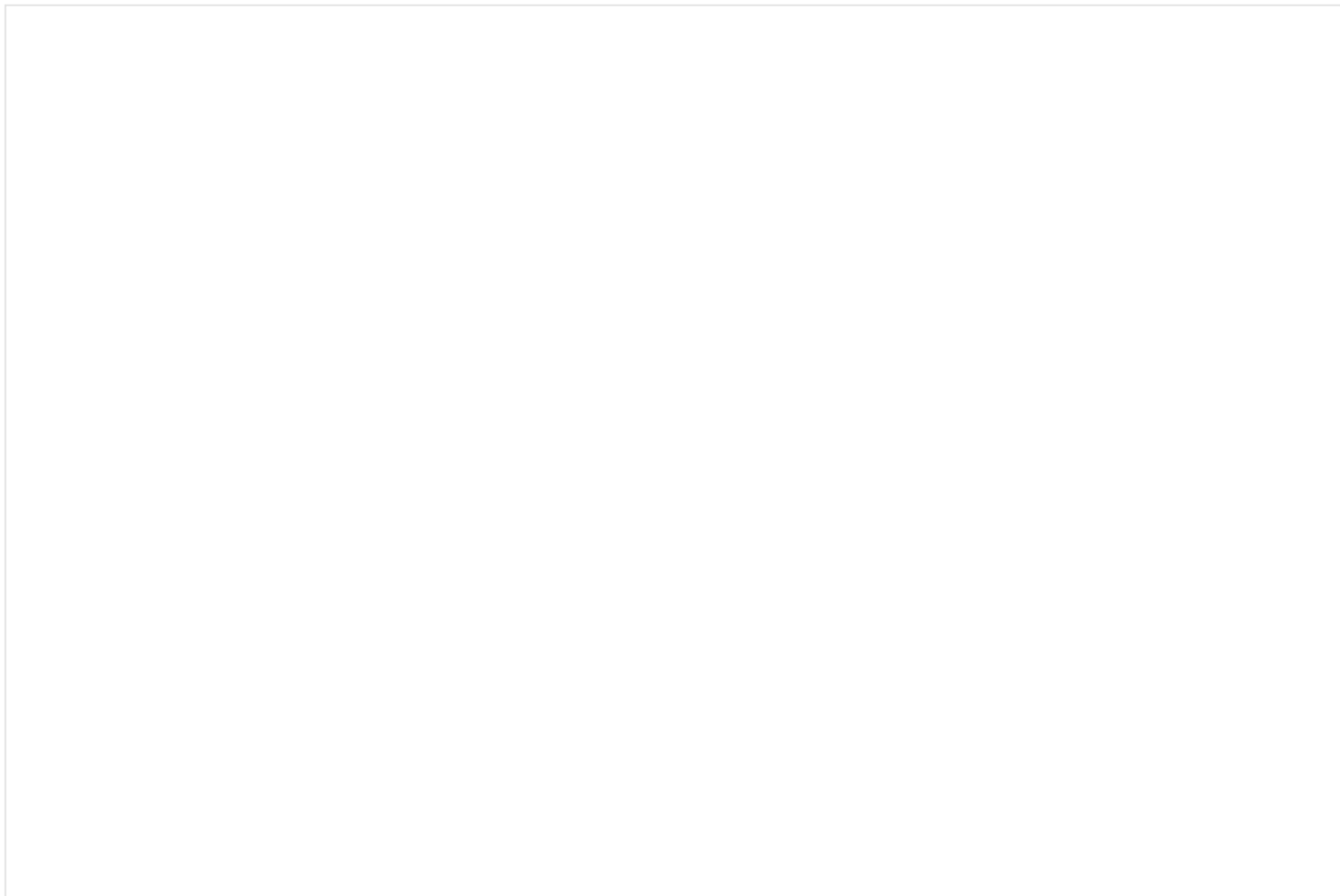


Pattakos

Burkons wrote in a Feb. 12 email to the CJN, "I look forward to moving onto the really important part of this process where the University Heights prosecutor will finally be forced to explain and defend her belief that my email to Cleveland Heights officials isn't First Amendment protected speech."

The first-degree misdemeanor Burkons has been charged with is punishable with a maximum of 180 days in jail, a fine of up to \$1,000, or both.

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