

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
GENERAL DIVISION**

**DEPARTMENT OF YOUTH SERVICES,** : **CASE NO. 16 CV 4441**  
: **JUDGE COLLEEN O'DONNELL**  
**Appellant,** :  
**vs.** :  
**DAN GRIMSLEY,** :  
**Appellee.** :

**DECISION AND ENTRY**

**O'DONNELL, J.**

This appeal is before this Court pursuant to R.C. 119.12 and R.C. 124.34 from an April 22, 2016 Order by the State Personnel Board of Review ("SPBR"). The Department of Youth Services ("DYS") removed Appellee, Dan Grimsley, from his position as an Operations Manager at Indian River Juvenile Correctional Facility ("Indian River"). He appealed that decision. After a hearing, the SPBR Administrative Law Judge ("ALJ"), Jeanette Gunn, recommended to the Board that Appellee's removal be modified to a thirty (30) day suspension. December 2, 2015 Report and Recommendation. Thereafter, SPBR examined the entire record, and adopted the ALJ's findings of fact, conclusions of law, and recommendation modifying Appellee's discipline. April 22, 2016 SPBR Order.

The R.C. 124.34 Order of Removal states the grounds for Appellee's removal as follows, in relevant part:

...Your actions are in violation of the following Policy 103.17 Rule(s) effective July 8, 2009, specifically:

Rule 4.09P Use of excessive force-without injury  
Physical response beyond what was necessary to

control/stabilize the situation

Rule 5.01P Failure to follow policies and procedures  
Specifically:  
ODYS Policy-301.05-Managing Youth Resistance  
ODYS SOP-301-05-01 Use of Force

Rule 6.05P Use of prohibited physical response  
Techniques or practices that unduly risk serious  
harm or needless pain to the youth. May not  
be used unless in an emergency defense situation  
to prevent an act which could result in death or  
severe bodily injury to oneself or to others.

ALJ Jeannette Gunn presided over a hearing which was held on October 20, 2014 and February 9, 2015. The Court will note that the ALJ's Report and Recommendation refers to Appellant (Dan Grimsley) and Appellee (DYS), not to be confused with the case herein where DYS is the Appellant and Dan Grimsley is the Appellee.

The underlying facts as set forth in ALJ Jeannette Gunn's December 2, 2015 Report and Recommendation are as follows:

Appellant was employed by Appellee at its Indian River facility for approximately twenty years prior to his removal; he had no history of prior discipline. Appellant held the position of Operations Manager at the time of his termination.

As an Operations Manager, Appellant served as a shift manager and was routinely called on to oversee the response to incidents at the facility. Appellant had been trained in a variety of response techniques, including (sic) mechanical restraints and managing youth resistance.

On August 31, 2013, Appellant and three additional staff members responded to an assistance call from the Mental Health Unit (Unit C). Youth specialist (YS) Emily Parker, YS Antonio James, General Activities Therapist (GAT) Dan Grimsley, Jr., Unit Manager (UM) Gloria Robbins and staff psychologist Dr. Bixler were all on scene at the time of the incident which formed the basis for Appellant's removal.

UM Robbins had been conducting an Intervention Hearing for the youth involved in the incident, who was being held in seclusion for an earlier assault on a staff member. The youth left his room during the hearing and refused to return, which prompted UM Robbins' call for assistance. When Appellant arrived at the Mental Health Unit, Ms. Robbins stepped away from the incident and allowed him to handle the situation as Incident Commander; she and another staff member took several youth into the group room.

Upon arriving at the Unit, Appellant and YS James initially utilized verbal strategies to convince the youth to comply and go back to his room. While they were standing in the hallway with him, the youth unexpectedly charged YS James. The youth was violently kicking, spitting and striking out with his fists; he, YS James and Appellant fell to the floor as Appellant and YS James attempted to gain control of the youth. The youth continued to punch, kick and spit at Appellant and YS James after he was taken to the ground. Both Appellant and YS James attempted to deflect his blows and gain physical control of the youth. Appellant was struck in the face and had a bloody lip as a result of the youth's actions.

After unsuccessfully attempting to gain control of the youth using other methods, Appellant struck the youth two or three times with a closed fist. This action is a prohibited physical response, however, in some instances Appellee's policies permit its use as an emergency defense technique. Appellee's Use of Force policy provides that staff may use this level of physical response only in certain limited circumstances to prevent an act which could result in death or severe bodily injury to oneself or to others.

Appellant stepped away from the situation after striking the youth and GAT Grimsley, YS James and Dr. Bixler successfully secured the youth's arms and legs. Appellant re-engaged briefly to assist in applying restraints and a spit mask to the youth. The youth was examined by medical personnel following the incident and was not injured.

Appellant was familiar with Appellee's policies and participated in a pre-disciplinary meeting on December 6, 2013. He testified that, based on his training, he believed his actions were permissible as an emergency defense, and stated that he used only the amount of force necessary to take control of the situation and ensure the safety of all of the individuals involved in the incident.

### **Standard of Review**

R.C. 124.34 authorizes an appeal on questions of law and fact to the court of common pleas after an intermediate appeal to SPBR and grants the common pleas court the authority to affirm, disaffirm, or modify the judgment of the appointing authority. Thus, under R.C. 124.34, a court may substitute its judgment for that of the administrative tribunal.

In cases of removal for disciplinary reasons, R.C. 124.34 permits an employee or an agency to appeal a decision to a court of common pleas. R.C. 119.12 sets forth the procedure to be followed in such an appeal. R.C. § 119.12 sets forth the standard of review a common pleas court must follow when reviewing an administrative appeal. R.C. 119.12 provides in pertinent part:

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative and substantial evidence and is in accordance with law.

In *Our Place* the Ohio Supreme Court provided the following definition of reliable, probative and substantial evidence as:

(1) ‘Reliable’ evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) ‘Probative’ evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) ‘Substantial’ evidence is evidence with some weight; it must have importance and value.

*Our Place, Inc. v. Ohio Liquor Comm.*, 63 Ohio St. 3d 570, 571 (1992).

Once the common pleas court has determined that the administrative agency’s order is supported by reliable, probative and substantial evidence, the court must then determine whether the order is in accordance with law. See R.C. § 119.12. The reviewing court cannot substitute its judgment for the agency’s decision where there is some evidence supporting the decision. See *Harris v. Lewis*, 69 Ohio St. 2d 577, 579 (1982); see also *University of Cincinnati v. Conrad*, 63 Ohio St. 2d 108 (1980).

The determination of whether reliable, probative, and substantial evidence supports a decision of the agency is primarily a question of the absence or presence of the requisite quantum of evidence. If a preponderance of reliable, probative and substantial evidence exists, a common pleas court must affirm the administrative agency’s decision. If the common pleas court finds after its appraisal of all the evidence that the agency’s decision is not supported by reliable, probative, and substantial evidence and is not in accordance with law, the court may reverse the decision. R.C. 119.12

The common pleas court’s review of the administrative record is neither a trial de novo nor an appeal on questions of law only, but a hybrid review in which the court must appraise all

the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof. The findings of the agency are not conclusive, but the trial court must give due deference to the administrative agency's resolution of evidentiary conflicts. *Id.* Moreover, where the evidence supports the Board's decision, the common pleas court must affirm and has no authority to modify the penalty. *Id.*

Here, Appellant asserts the following as legal errors:

B. OM Grimsley's Use of Force was Improper.

1. The investigator demonstrated why OM Grimsley's use of force was not justified, and eyewitness testimony did not contradict that testimony.
2. The Bureau Chief of Facility Operations for DYS demonstrated why OM Grimsley's use of force was not justified.
3. By his own admission, OM Grimsley's witness's testimony did not establish that OM Grimsley's use of force was justified.
4. The DYS Facility Intervention Administrator demonstrated why OM Grimsley's use of force was not justified.
5. The Facility Resource Administrator at DYS demonstrated why OM Grimley's use of force was not justified.

C. Removal was a proper level of discipline for OM Grimsley's violations of policy.

D. The Board erred in finding mitigating circumstances sufficient to preclude removal of OM Grimsley for his actions.

E. The board erred as a matter of law in construing the Department's Rules as providing a purely subjective standard for determining when emergency defense was justified.

July 10, 2014 Appellant's Brief.

**Appellant's Argument**

Appellant asserts that the Board erred as a matter of law in determining that Appellant's rules governing emergency defense permit an employee to engage in violence against a youth based on his subjective belief that he is at risk of severe bodily injury. In addition, given the weight of the

evidence as evidenced in the testimony and exhibits in this case, DYS met its burden of demonstrating that OM Grimsley violated DYS policies on use of force, that he had knowledge of those policies, and that he was trained in order to be able to comply with those policies. His removal was also proportionate to his violation of DYS policies because of the extreme unjustified nature of his actions against the youth, his long service with DYS and concomitant lengthy training history, and DYS's compliance with its internal disciplinary grid.

Appellant asserts that OM Grimsley's arguments that his actions were justified because he legitimately feared for his life or severe bodily injury were utterly implausible. The Board's inference drawn from the evidence introduced at the record hearing were improper in light of the obvious nature of the incident depicted on the video evidence in this case. An Operations Manager, not pinned down or cornered, striking a youth who is supine on the floor and being neutralized by other staff is an egregious violation of DYS policy. July 18, 2016 Appellant's Brief.

#### **Appellee's Argument**

Appellee asserts that DYS policies regarding use of force and emergency response are subjective in nature and do not provide a bright line rule. As admitted by all of the witnesses, these policies regarding use of force are subjective. Additionally, DYS claims that Appellee should be fired because his conduct was "egregious and retaliatory." Appellee asserts that these statements are not supported by the record. Appellee asserts that there is absolutely no evidence that Mr. Grimsley was acting in a retaliatory manner towards the subject youth or was acting in such an egregious manner that would shock the conscious. Indeed, Dr. Bixler and Ms. Parker who were both present during the subject attack testified that they believed that Mr. Grimsley was acting appropriately and was not using excessive force. July 29, 2016 Appellee's Brief.

### **Law and Analysis**

The determination of whether reliable, probative and substantial evidence supports SPBR's Order is primarily a question of the absence or presence of the requisite quantum of evidence. *Beeler v. Franklin County Sheriff*, 67 Ohio App.3d 748, 753 (1990). If the common pleas court finds after its appraisal of all the evidence that the SPBR's Order is not supported by reliable, probative and substantial evidence and is not in accordance with law, the court may reverse, vacate, or modify SPBR's Order. When evidence supports a SPBR Order, a common pleas court must affirm the SPBR Order and has no authority to modify the penalty or discipline. *Franklin County Sheriff v. Frazier*, 174 Ohio App.3d 202 (2007).

**By requesting that this Court reinstate the more stringent discipline of Appellee's removal, Appellant is conceding that there is reliable, probative and substantial evidence to impose some type of discipline against Appellee.** Thus, this Court will address Appellant's legal errors simultaneously, and determine whether there is reliable, probative, and substantial evidence to support SPBR's April 22, 2016 Order. Additionally, this Court will address whether that Order is in accordance with law.

The ALJ's Conclusions of Law, set forth in her December 2, 2015 Report and Recommendation, provide, in pertinent part:

Appellee's (DYS) policies do not explicitly require individuals to wait until an assailant has gained a physical advantage over them or until they have actually suffered an injury to defend themselves, either in an emergency situation or otherwise. Appellee's policies do not cite the use of alternative response techniques as a prerequisite to an emergency defense. Policy 301.05, SOP 301-05-01, and Rule 6.05P all require a subjective determination by the individual involved in the situation as to whether or not a risk of severe bodily injury or death exists. "Severe bodily injury" is not defined by Appellee's policies.

Both Dr. Bixler and YS Parker, who were physically present at the time of the incident, agreed that the youth was affirmatively resisting and presented an immediate danger to himself and others. They both stated that Appellant acted defensively and characterized the youth's actions as presenting the possibility of severe bodily harm. They agreed that the

youth presented an immediate danger to himself and others, and neither witness believed that Appellant's actions were excessive.

The individuals who reviewed the video recording of the incident as part of Appellee's investigation concluded that Appellant was not at risk of severe bodily injury, however, upon review of the totality of the testimony and evidence presented at record hearing, I disagree. I find Appellant's determination that an emergency defense was warranted to be both reasonable and justifiable. I further find that his limited use of force was not excessive. Although some question was raised at (sic) hearing as to whether or not Appellant also struck the youth with his knee when he re-engaged, Appellant denied doing so and insufficient testimony was offered by witnesses to establish that he did.

Because Appellant's determination that an emergency defense was warranted was reasonable and justifiable, and his limited use of force was not excessive, I find that Appellant's conduct did not violate Appellee's policies. Therefore, I respectfully **RECOMMEND** that Appellant's removal be **DISAFFIRMED**.

In the event, however, that this Board should determine that Appellant's use of a prohibited physical response was unjustified, and that his conduct violated Appellee's policies, severe mitigating factors should be considered in determining whether or not the discipline imposed by Appellee was appropriate. The parties agreed that Appellant's actions did not result in any injury to the youth. The parties also agreed that Appellant had no history of prior discipline during his 20 years of employment with Appellee. Given the lack of definition provided in Appellee's policies and the circumstances of the incident described, I find that the discipline imposed by Appellee was too harsh and would alternatively **RECOMMEND** that Appellant's removal be **MODIFIED** to a 30-day suspension.

April 22, 2016 Report and Recommendation.

In its April 22, 2016 Order, the Board **DISAFFIRMED** Appellant's removal and adopted the ALJ's recommendation to modify Appellee's discipline to a 30 day suspension.

Dr. Andrew Bixler, an eyewitness to the incident of August 31, 2013, is a psychologist and worked with the youth and other youths housed in Indian River's mental health unit. Tr. 259-261. He stated that the youth had a pattern of assaultive behavior. Tr. 261-262. He stated that the youth did not sustain any injury as a result of the August 31, 2013 incident. Tr. 266-267. He stated that he was familiar with the rules regarding force and that the youth was resisting the rules. Tr. 269-270. He testified that the youth initiated the incident and began punching and kicking YS James and Appellee. Tr. 270-271. He stated that Appellee was defending himself and was trying to gain



control. Tr. 271, 275, 282, 284-285. The day before this incident the youth had attacked two other staff members. Tr. 287.

Emily Parker, another eyewitness, is a Juvenile Correction Officer. She testified that the youth was disruptive, and described his past behavior. She testified that he had spread feces on himself, cut himself, acted out, and lashed out at staff members. Tr. 289-290. She stated that he spat on and punched staff members. Tr. 290. She testified that she was operating the camera, and witnessed the youth attacking YS James. Tr. 295-296. She stated that she observed the youth punching and spitting on Appellee. She stated that Appellee was trying to restrain the youth. Tr. 303.

Based on these eyewitness accounts, and all other evidence in the record, this Court concludes as a matter of law that there is reliable, probative and substantial evidence to support SPBR's April 22, 2016 Order. Once the reviewing court finds that there was reliable, probative and substantial evidence to support an agency order, it may not modify a sanction authorized by statute. See *Henry's Café, Inc., v. Bd. of Liquor Control*, 170 Ohio St. 233 (1959).

In considering the appropriateness of a sanction or penalty, the trial court is limited to determining whether the sanction or penalty is within the range of acceptable choices. Even if this Court were inclined to be more lenient or more stringent in imposing a sanction or penalty, it could not modify a penalty imposed by the Board in this case as long as the penalty or sanction is statutorily permitted. R. C. 119.09. As a matter of law, this Court concludes that the April 22, 2016 SPBR Order is in accordance with the law, and the discipline imposed by the Board is within the acceptable choices permitted by law. R.C. 119.09. This Court declines to substitute its judgment for that of SPBR.

In regard to Appellant's asserted legal error that "OM Grimley's Use of Force was

Improper,” the record is clear that the Board’s April 22, 2016 SPBR’s Order made that conclusion of law when it adopted the ALJ’s Report and Recommendation, and modified the discipline imposed from a removal to a 30 day suspension.

...In the event, however, that this Board should determine that Appellant’s use of prohibited physical response was unjustified, and that his conduct violated Appellee’s policies, ...

December 2, 2015 Report and Recommendation.

Consequently, this assertion of legal error is perplexing because the SPBR did find that Appellant’s use of force was improper when it imposed discipline. Moreover, Appellee is requesting that this Court affirm the SPBR Order that imposes discipline against him. Appellant’s remaining legal errors, in essence, are challenging the level of discipline imposed by SPBR against Appellee. Thus, the legal errors asserted by Appellant are hereby **OVERRULED**.

Accordingly, this Court concludes that there is reliable, probative and substantial evidence supporting SPBR’s April 22, 2016 Order. Furthermore, the Board’s April 22, 2016 Order is in accordance with law and the sanction, which is less severe than the one imposed by DYS, is authorized by law and is within the range of acceptable choices. R.C. 119.09. Accordingly, this Court hereby **AFFIRMS** the Board’s April 22, 2016 Order and concludes that it is in accordance with law.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

**(B) Notice of filing.** When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of

the time for appeal except as provided in App. R. 4(A).

**THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS IS A FINAL APPEALABLE ORDER.** Pursuant to Civil Rule 58, the Clerk of Court shall serve notice upon all parties of this judgment and its date of entry. The Agreed Order of Stay issued by this Court on January 27, 2016 is hereby lifted.

It is so **ORDERED**.

Copies to all parties

Franklin County Court of Common Pleas

**Date:** 08-30-2016  
**Case Title:** DEPARTMENT YOUTH SERVICES -VS- DAN GRIMSLEY  
**Case Number:** 16CV004441  
**Type:** ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Colleen O'Donnell". The signature is written over a blue circular seal. The seal contains the text "FRANKLIN COUNTY OHIO" around the top and "ALL THINGS ARE" around the bottom. In the center of the seal, there is a smaller circular emblem with a scale of justice and a book.

/s/ Judge Colleen O'Donnell

Court Disposition

Case Number: 16CV004441

Case Style: DEPARTMENT YOUTH SERVICES -VS- DAN  
GRIMSLEY

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes