STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

CHARLES PATRICK HEASTER,
INDIVIDUALLY AND AS REPRESENTATIVE
OF THE 100 QUALIFIED PETITIONERS,
Petitioner

vs.) No. 17-0558 (Doddridge County No. 16-C-57)

GREGORY L. ROBINSON,
Respondent

FILED
May 14, 2018
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EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

The petitioner herein, and petitioner below, Charles Patrick Heaster, individually and as representative of the 100 qualified petitioners, appeals the May 23, 2017, final order of the Circuit Court of Doddridge County dismissing the petition to remove the respondent herein and respondent below, Gregory L. Robinson, from his office of Doddridge County Commissioner.[1]

Upon our thorough and considered review of the parties' arguments, the appendix record, and the pertinent authorities, we find that the circuit court committed no error in granting judgment as a matter of law to the respondent. Consequently, we affirm the circuit court's May 23, 2017, order. Because this case does not present a new or substantial question of law, and for the reasons set forth herein, we find the issuance of a memorandum decision is appropriate pursuant to Rule 21(c) of the West Virginia Rules of Appellate Procedure.

In November 2016, 100 citizens of Doddridge County signed a petition, pursuant to West Virginia Code § 6-6-7 (2016), to remove the respondent, Gregory L. Robinson, from his office as an elected commissioner of the County Commission of Doddridge County.[2] The petition alleged that Mr. Robinson had committed official misconduct by the following actions:

> [C]ircumventing a lawful action of the Doddridge County Commission on April 19, 2016. On that date the County

[1] The petitioner is represented by Gregory H. Schillace, and the respondent is represented by Duane J. Ruggier II, Drannon L. Adkins, and Joseph F. Shaffer.

[2] Mr. Robinson was elected to the County Commission in 2012.

> Commission voted to donate $50,000.00 to the Doddridge County EMS. Following the meeting, [Mr. Robinson] without official authority and against the laws of the State of West Virginia directed the Clerk to stop payment on the check.
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> [Mr. Robinson] has and continues to attend meetings of the Doddridge County Ambulance Authority interjecting himself into the deliberative and decision making process of that body in violation of the laws of the State of West Virginia including, but not limited to, wrongfully removing duly appointed Board Members. Such conduct is official misconduct.
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> [Mr. Robinson] has permitted, encouraged and directed the wrongful and wasteful expenditure of moneys belonging to the citizens of Doddridge County for the benefit of citizens of other West Virginia Counties by continuing to support the deficit spending and operation of the Doddridge County Ambulance Authority which is neglect of his duty as a County Commissioner.
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> [Mr. Robinson] has encouraged, directed and participated in the purchase with county funds of equipment without competitive bid in violation of West Virginia law.

The Circuit Court of Doddridge County forwarded to the Chief Justice of this Court a copy of the petition and a request to impanel and convene a three-judge court in accordance with the provisions of West Virginia Code § 6-6-7(g) (2016).[3] By

[3] West Virginia Code § 6-6-7(g) provides, in part:

> The court, or judge thereof in vacation, or in the case of any multi-judge circuit, the chief judge thereof, shall have authority to evaluate any resolution or petition for any procedural defect, and to consider all the allegations made in the resolution or petition in light of the applicable case law and the required strict construction of the grounds asserted, and conclude whether or not the allegations asserted would be sufficient, if proven by clear and convincing evidence, to warrant the removal of the officer from office. . . .
>
> . . . . If the court finds that the resolution or petition is sufficient under the standards for removal set forth herein to proceed to a hearing before a three-judge court, the court shall

administrative order dated November 29, 2016, the Chief Justice appointed three circuit judges to sit on the three-judge panel.

The three-judge panel held an evidentiary hearing on April 18, 2017, at which the petitioner presented the testimony of County Clerk Beth A. Rogers and Robert Beamer, who was a member of the Doddridge County Ambulance Authority ("DCAA") Board of Directors until the County Commission voted to remove him. The petitioner also placed various documents into evidence.

Following the petitioner's presentation of evidence, the respondent moved for judgment as a matter of law, which was granted by the panel. On May 23, 2017, the panel entered its final order in which it found that while it is undisputed that the respondent ordered a stop payment of the $50,000 check to the Doddridge County Emergency Squad, Inc. ("DCEMS"), a non-profit corporation, "the totality of the evidence presented inexorably fails to prove that the actions of Commissioner Robinson in this respect were willful, unlawful or otherwise constitute[d] official misconduct . . . as a matter of law."

Regarding the testimony of County Clerk Rogers, the panel observed that it was "factually sparse in nature." The circuit court further indicated that

> [w]ith respect to the exhibits that were admitted without objection, the Court finds that collectively, they are at best a muddled assortment of meeting agendas and minutes that while they represent actions taken by the Commission as a whole, fail in all respects to establish a *prima facie* case of willful or unlawful official misconduct on the part of Commissioner Robinson.

The panel similarly found little value in Mr. Beamer's testimony noting that

> [w]hile petitioners want this Court to accept the testimony of Mr. Beamer without pause, such cannot be done. Mr. Beamer

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> forward a copy of the resolution or petition to the Supreme Court of Appeals.
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> Upon receipt of said resolution or petition, the chief justice of the Supreme Court of Appeals shall . . . designate and appoint three circuit judges within the state, not more than one of whom shall be from the same circuit in which the resolution or petition was filed and, in the order of such appointment, shall require that the three-judge court designate the date, time and place for the hearing of the resolution or petition forthwith.

> was forthright in his animosity towards Commissioner Robinson, including his steadfast belief that he was responsible for his removal from the DCAA Board of Directors. Notwithstanding the testimony of Mr. Beamer, the petitioners produced no other evidence to support these charges. Namely, noticeably absent from the record is testimony of other DCAA Board members to corroborate Mr. Beamer's testimony; minutes or other credible documentation from proceedings of the DCAA Board of Directors to [sic] may have assisted in establishing official misconduct as charged on the part of Commissioner Robinson.

Moreover, the panel considered significant the fact that several of the respondent's alleged wrongful actions were taken as a member of the majority of the county commission and, as such, were actions of the county commission.

Finally, the panel concluded there was no merit to the charge that Mr. Robinson wrongly used his elected office to circumvent and usurp the authority of the DCAA by dissolving its Board of Directors. The panel reasoned:

> Again, this Court notes that the Commission could take no official action without majority vote of the Commissioners. In this case, the record clearly reflects that a majority of the Commission did approve removal of all DCAA Board members and dissolution of the Board in its entirety, passing a resolution proclaiming the same.

The petitioner now appeals the panel's final order to this Court.

> It is well-established that
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> > [i]n reviewing challenges to the findings and conclusions of the circuit court made after a bench trial, a two-pronged deferential standard of review is applied. The final order and ultimate disposition are reviewed under an abuse of discretion standard, and the circuit court's underlying factual findings are reviewed under a clearly erroneous standard. Questions of law are subject to a *de novo* review.

Syl. Pt. 1, *Public Citizen, Inc. v. First Nat. Bank*, 198 W.Va. 329, 480 S.E.2d 538 (1996). With these standards to guide us, we will now address the petitioner's challenge to the circuit court's order.

The petitioner sought to remove the respondent from office pursuant to West Virginia Code § 6-6-7(a) (2016), which provides that

> [a]ny person holding any county, school district or municipal office, including the office of a member of a board of education and the office of magistrate, the term or tenure of which office is fixed by law, whether the office be elective or appointive, except judges of the circuit courts, may be removed from such office in the manner provided in this section for official misconduct, neglect of duty, incompetence or for any of the causes or on any of the grounds provided by any other statute.

This Court has held regarding this statute that

> [p]ublic officers of a municipality may be removed from office for official misconduct, malfeasance in office, incompetence, neglect of duty, or gross immorality, pursuant to W.Va. Code § 6-6-7(a). Removal of such officers, however, is a drastic remedy and statutory provisions prescribing the grounds for removal are strictly construed.

Syl. Pt. 2, *In re Election Contest*, 200 W.Va. 335, 489 S.E.2d 492 (1997). West Virginia Code § 6-6-1(a) (2016), defines "official misconduct" as "conviction of a felony during the officer's present term of office or any willful unlawful behavior by a public officer in the course of his or her performance of the duties of the public office."

We also have held that "[t]o warrant removal of an official pursuant to *Code* 1931, 6-6-7, clear and convincing evidence must be adduced to meet the statutory requirement of satisfactory proof." Syl. Pt. 9, *Evans v. Hutchinson*, 158 W.Va. 359, 214 S.E.2d 453 (1975). "Clear and convincing evidence . . . is the highest possible standard of civil proof[.] . . . It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases." *Cramer v. West Virginia Dept. of Highways*, 180 W.Va. 97, 99 n. 1, 375 S.E.2d 568, 570 n. 1 (1988) (citation and internal quotation marks omitted); *see also Coleman v. Anne Arundel Police*, 797 A.2d 770, 781 n. 16 (Md. 2002) ("To be clear and convincing, evidence should be clear in the sense that it is certain, plain to the understanding, and unambiguous and convincing in the sense that it is so reasonable and persuasive as to cause you to believe it.") (citation and internal quotation marks omitted); *Maxwell v. Carl Bierbaum, Inc.*, 893 S.W.2d 346, 348 (Ark.App. 1995) ("Clear and convincing evidence has been defined as proof so clear, direct, weighty, and convincing as to enable the fact finder to come to a clear conviction, without hesitation, of the matter asserted[.] [I]t is that degree of proof that will produce in the trier of fact a firm conviction as to the

allegation sought to be established.") (citation omitted); *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984) (the party with the burden of persuasion may prevail only if he can "place in the ultimate factfinder an abiding conviction that the truth of [his] factual contentions are highly probable.") (citation and internal quotation marks omitted).

Significantly, we are also mindful that "[t]he public as a whole has an interest in seeing duly elected officials continue in office." Syl. Pt. 5, in part, *Powers v. Goodwin*, 170 W.Va. 151, 291 S.E.2d 465 (1982). Finally, it is true that

> the voters have a legitimate interest in protecting their duly elected officials from being hectored out of office through the constant charge of bankrupting attorneys' fees on their own personal resources. One of the obligations of a duly elected public official is to continue to discharge the office to which he was elected since it can reasonably be assumed that he was elected because of his public stand on issues of concern to the voters. Consequently, continued service in an elected position is not a question in which only the officeholder has a personal concern; in a democratic government predicated upon the competition of policies and ideas through different candidates for elected office, the public itself has an interest in seeing persons elected by a majority continue in office.

Powers, 170 W.Va. at 161, 291 S.E.2d at 476.

Having set forth the applicable law, we now address the only argument in the petitioner's brief which is sufficiently developed to be considered under our Rules of Appellate Procedure: whether the respondent should be removed for unilaterally stopping payment on a $50,000 check written by the county commission to the DCEMS. The petitioner explains that this check was authorized by the majority vote of the county commission at a legal meeting of the commission with a quorum present. The petitioner asserts that the respondent's action constitutes willful, unlawful behavior for which the respondent should be removed from office.

In defense of his action, the respondent counters that the vote by the commission to issue the check to the DCEMS was unlawful for two reasons: the public was not sufficiently advised in advance that the county would be voting on a payment to the DCEMS in violation of the Open Governmental Proceedings Act, W.Va. Code §§ 6-9A-1 to 6-9A-12, and one of the commissioners who voted in favor of the $50,000 payment to the DCEMS should have been prohibited from participating in the vote because he was a board member of the DCEMS.

The respondent points this Court to the testimony of County Clerk Rogers who indicated that the agenda of the meeting in which the vote regarding the $50,000 payment to the DCEMS was conducted, stated only "DCEMS discussion of finances." She agreed in her testimony that the agenda said nothing about funding or donating to the DCEMS. The respondent contends that the failure to specify these things in the agenda resulted in the Commission violating the Open Governmental Proceedings Act, West Virginia Code §§ 6-9A-1 to 6-9A-12.[4]

The respondent also asserts that former Commissioner Sandora made the motion for and voted in favor of the $50,000 donation to the DCEMS despite the fact that Mr. Sandora was a member of the board of directors of the DCEMS. The respondent alleges that Mr. Sandora's action potentially violated the anti-nepotism statute codified at West Virginia Code § 61-10-15(a) (2009) and the West Virginia Governmental Ethics Act, West Virginia Code §§ 6B-1-1 to 6B-1-6. According to the respondent, if the $50,000 donation was unlawful for one or both of the reasons stated above, the donation was void. The respondent cites to *Cochran v. Trussler*, 141 W.Va. 130, 89 S.E.2d 306 (1955) (holding teacher's contract for employment in violation of statute was void *ab initio*); *Poling v. Bd. of Educ.*, 56 W.Va. 251, 49 S.E. 148 (1904) (stating contracts violating

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[4]This Court has recognized that "[t]here is no question that the members of [the County] Commission constitute a 'governing body' subject to the [Open Governmental Proceedings] Act's requirements." *Peters v. County Comm'n of Wood County*, 205 W.Va. 481, 486-87, 519 S.E.2d 179, 184-85 (1999), *superseded by statute on other grounds as stated in Capriotti v. Jefferson County Planning Comm'n*, No. 13-1243, 2015 WL 869318, at *4 (W.Va. 2015). The respondent cites specifically West Virginia Code §§ 6-9A-3 (2013) and 6-9A-8 (1999). West Virginia Code § 6-9A-3(d) provides in applicable part that "[e]ach governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings . . . are made available, in advance, to the public and news media." According to West Virginia Code § 6-9A-8(a) (1999),

> Except as otherwise expressly provided by law, the members of a public agency may not deliberate, vote, or otherwise take official action upon any matter by reference to a letter, number or other designation or other secret device or method, which may render it difficult for persons attending a meeting of the public agency to understand what is being deliberated, voted or acted upon. However, this subsection does not prohibit a public agency from deliberating, voting or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted or acted upon, are available for public inspection at the meeting.

positive law or against public policy are void); *Exch. Bank of Virginia v. Lewis Cty.*, 28 W.Va. 273 (1886) (indicating that acts done against prohibitory statutes are not only illegal but absolutely void). The respondent asserts that his action regarding the check was valid because he believed the commission's donation of $50,000 to the DCEMS was improper and therefore void.

In finding that the respondent's stopping of payment on the commission's $50,000 check does not merit removing the respondent from office, the panel reasoned:

> While it is uncontroverted that Commissioner Robinson did order stop payment on the check, the Court is again mindful that the burden of proof in this proceeding was upon the petitioners to prove the charge of official misconduct by clear and convincing evidence. Therefore, even when viewing the aforesaid evidence in a light most favorable to the petitioners and affording it the most weight allowed by law, this Court hereby finds and concludes the totality of the evidence presented inexorably fails to prove that the actions of Commissioner Robinson in this respect were willful, unlawful or otherwise constitute official misconduct under W.Va. Code § 6-6-7 (Repl. Vol. 2015) as a matter of law.

We agree. Presuming that the respondent was wrong in stopping payment on the $50,000 check to DCEMS, we note that the respondent's action was an isolated event in that there was no evidence presented that he regularly interfered with other payments made by the commission with which he disagreed. Significantly, the respondent's action involved no personal enrichment or advantage. Moreover, one can conclude from the respondent's explanation of his conduct that it was made in good faith to prevent an unlawful act by the county commission. Further, the respondent's action was easily correctable by the other county commissioners. Those commissioners could have legally challenged the respondent's action of stopping payment of the check or they could have revisited the issue of donating $50,000 to the DCEMS at the next county commission meeting after proper notice. Therefore, we conclude that the panel did not err in finding that the petitioner failed to prove by clear and convincing evidence that the action of the respondent in stopping payment of the check constituted a willful, unlawful act or otherwise constituted official misconduct.

The remaining arguments set forth by the petitioner are not sufficiently developed to be considered by this Court. According to Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure,

> The brief must contain an argument exhibiting clearly the points of fact and law presented, the standard of review applicable, and citing the authorities relied on, under headings that correspond with the assignments of error. The argument must contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal. The Court may disregard errors that are not adequately supported by specific references to the record on appeal.

Further, pursuant to Rule 10(j) of the Rules of Appellate Procedure, "[t]he failure to file a brief in accordance with this rule may result in the Supreme Court refusing to consider the case, denying oral argument to the derelict party, dismissing the case from the docket, or imposing such other sanctions as the Court may deem appropriate." Additionally, in an Administrative Order entered December 10, 2012, "Re: Filings that Do Not Comply With the Rules of Appellate Procedure," this Court specifically provided that

> [e]xamples of . . . non-compliance [with the Rules of Appellate Procedure] include: . . . (2) Briefs that lack citation of authority, fail to structure an argument applying applicable law, fail to raise any meaningful argument that there is error, or present only a skeletal argument; . . . (7) Briefs with arguments that do not contain a citation to legal authority to support the argument presented[.]

Finally, this Court previously stated that

> [i]n the absence of supporting authority, we decline further to review . . . alleged error because it has not been adequately briefed. *See State v. LaRock*, 196 W.Va. 294, 302, 470 S.E.2d 613, 621 (1996) ("Although we liberally construe briefs in determining issues presented for review, issues which are not raised, *and those mentioned only in passing [which] are not supported with pertinent authority*, are not considered on appeal." (emphasis added) (citation omitted)). *See also Ohio Cellular RSA Ltd. Partnership v. Board of Pub. Works of West Virginia*, 198 W.Va. 416, 424 n. 11, 481 S.E.2d 722, 730 n. 11 (1996) (refusing to address issue on appeal that had not been adequately briefed).

State v. Allen, 208 W.Va. 144, 162, 539 S.E.2d 87, 105 (1999) (additional citations omitted); *see also Clain-Stefanelli v. Thompson*, 199 W.Va. 590, 593 n. 1, 486 S.E.2d

330, 333 n. 1 (1997) (declining to consider cross-assignments of error that "failed to elaborate, discuss, or cite any authority to support these assertions."), *overruled on other grounds by O'Dell v. Stegall*, 226 W.Va. 590, 703 S.E.2d 561 (2010). Of the petitioner's remaining arguments, he fails to cite supporting legal authority, fails to develop mere assertions into an argument applying the applicable law, or provides nothing more than a skeletal argument. Accordingly, consistent with this Court's Rules of Appellate Procedure and our legal precedent, we decline to consider these arguments.

For the reasons set forth above, we conclude that the panel did not err in finding that the petitioner failed to meet his burden of proof and in dismissing the petition to remove the respondent from office. Therefore, the May 23, 2017, order of the Circuit Court of Doddridge County is affirmed.

Affirmed.

ISSUED: May 14, 2018

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Menis E. Ketchum
Justice Allen H. Loughry II
Justice Elizabeth D. Walker