RENDERED: SEPTEMBER 21, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-001401-MR

CHAD ALLEN MURRAY — APPELLANT

v.

APPEAL FROM GALLATIN CIRCUIT COURT,
HONORABLE RICHARD A. BRUEGGEMANN, JUDGE
ACTION NO. 17-CI-00023

COMMONWEALTH OF KENTUCKY,
ex rel. ANDY BESHEAR,
ATTORNEY GENERAL — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, KRAMER AND J. LAMBERT, JUDGES.

KRAMER, JUDGE: Chad Murray appeals from the Gallatin Circuit Court's order, which granted summary judgment in favor of the Commonwealth and ordered Murray to be ousted from his office as a member of the Gallatin County Board of Education. After careful review of the record and applicable law, we affirm.

Murray was elected to the board in 2012 and again in 2016. Shortly after the 2016 election, the Office of Education Accountability requested Murray send proof that he met the educational requirements to be eligible for membership on a board of education in the Commonwealth. In response, Murray sent a copy of a diploma issued in May 1994 by Loveland Baptist School[1] and signed by the principal, Kitty Carpenter.

The Kentucky State Police (KSP) also investigated Murray's educational qualifications. During this investigation, KSP obtained a signed verification from principal Carpenter wherein she stated Murray never completed the twelfth grade at Loveland Baptist. Further, she stated that she fraudulently "backdated" the diploma at issue to assist Murray. Of particular note, Murray ultimately admitted he did not complete the twelfth grade at Loveland Baptist.

This information was given to the Office of the Attorney General. As a result, an assistant attorney general also requested Murray provide proof that he met the educational requirements to serve on a board of education. As proof, Murray proffered the same Loveland Baptist diploma. Primarily due to principal Carpenter's statement, the assistant attorney general informed Murray that he did not meet the educational requirements of KRS[2] 160.180 and requested Murray

---

[1] Loveland Baptist School is located in Ohio.

[2] Kentucky Revised Statute.

resign his position on the board. However, Murray refused to resign and asserted he had "a certified diploma issued by the state of Ohio[.]"

Thereafter, the Commonwealth filed a complaint against Murray pursuant to KRS 415.060 seeking to usurp him from the board. Following a period of discovery, the Commonwealth moved for summary judgment. The circuit court ultimately concluded that the Commonwealth met its burden, granted summary judgment, and ordered Murray to be ousted from his office as a member of the Gallatin County Board of Education. Murray timely filed this appeal. Further facts will be discussed as they become relevant.

On appeal, the only issue is whether Murray satisfied the educational requirements of KRS 160.180 to be eligible for membership on a board of education. The requirement at issue here is in KRS 160.180(2)(c), which reads: "No person shall be eligible for membership on a board of education . . . [u]nless he has completed at least the twelfth grade or has been issued a High School Equivalency Diploma[.]"

Murray does not argue that he was issued a High School Equivalency Diploma. Therefore, the only way for Murray to satisfy the requirement was to prove he completed the twelfth grade. As previously mentioned, the only evidence Murray presented was the 1994 diploma from Loveland Baptist. We agree with the circuit court that the "diploma" was not proof that Murray completed the

twelfth grade. Moreover, in a sworn statement Principal Carpenter admitted Murray never completed the twelfth grade at Loveland Baptist and that she backdated the diploma in an effort to assist him. Further, in his response to the Commonwealth's request for admissions, Murray admitted he only "substantially completed the twelfth grade[.]" He points to no other evidence that would prove otherwise. KRS 160.180 mandates that board members complete the twelfth grade; it does not say that board members may *substantially* complete the twelfth grade. Therefore, the circuit court did not err when it ousted Murray from office.

Notwithstanding the above, Murray presents two new arguments on appeal that he did not argue below. Namely, Murray argues the circuit court erred because it violated the full faith and credit clause of the United States Constitution and violated choice of law principles when the court ordered Murray ousted from his office. We are mindful that "a theory of error cannot be raised for the first time on appeal[.]" *Kindred Healthcare, Inc. v. Henson*, 481 S.W.3d 825, 831 (Ky. App. 2014) (citing *Fischer v. Fischer*, 348 S.W.3d 582, 588 (Ky. 2011)). "[A]nd an appellant 'will not be permitted to feed one can of worms to the trial judge and another to the appellate court.'" *Id.* (quoting *Kennedy v. Commonwealth*, 544 S.W.2d 219, 222 (Ky. 1976)). Murray admits these issues were not preserved and tenuously asks this Court to review these issues under the palpable error standard

of CR[3] 61.02. However, neither of these arguments would reach the level of manifest injustice that would warrant a reversal under that standard.[4] Simply put, Murray admitted he never completed the twelfth grade. No amount of legal posturing or constitutional theorizing changes that fact. Therefore, Murray's two arguments on appeal fail.

Lastly, we do not take the ousting of an elected official lightly. Neither did the circuit court, which is evidenced by its thoughtful and well-reasoned seventeen-page opinion, addressing all arguments presented below.

In light of the foregoing, the order of the Gallatin Circuit Court is AFFIRMED.

ALL CONCUR.

BRIEF FOR APPELLANT:

Paul Croushore
Cincinnati, Ohio

BRIEF FOR APPELLEES:

Taylor Payne
Frankfort, Kentucky

---

[3] Kentucky Rule of Civil Procedure.

[4] For palpable error relief to be available the error must have: (1) been clear or plain under existing law; (2) been more likely than ordinary error to have affected the judgment; and (3) so seriously affected the fairness, integrity or public reputation of the proceeding to have been jurisprudentially intolerable. *See Commonwealth v. Jones*, 283 S.W.3d 665, 668 (Ky. 2009). We have thoroughly reviewed both of Murray's appellate arguments with this standard in mind and conclude that neither would even satisfy the first part of the three-part palpable error test.