



DELAWARE COUNTY BOARD OF SUPERVISORS

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PRESS RELEASE

Decision & Order in the case of Scuderi-Hunter vs. Delaware County November 3, 2020

The Honorable John F. Lambert, Acting Justice of the Supreme Court, has reviewed the record and facts of the 2019 hearing that resulted in the termination of Dana Scuderi-Hunter, former Commissioner of Delaware County Social Services. His ruling on Scuderi-Hunter's subsequent challenge under Section 76 of the Civil Service Law, pursuant to Civil Practice Law and Rules Article 78, states that the preliminary issues presented to the court have been resolved and will proceed to the Appellate Division, Third Department for disposition.

On August 15, 2019, Delaware County filed charges against Scuderi-Hunter that included misconduct, insubordination, and child endangerment. Under Civil Service Law, an independent Hearing Officer was brought in to review evidence, hear testimony, and make a recommendation to the Delaware County Board of Supervisors regarding the case. After several days of hearings including testimony from the County Attorney, Amy Merklen; the Chairman of the Board of Supervisors, Tina Mole; former chairman, James Eisel; and several county department heads and former employees, the Hearing Officer found significant evidence to support the charges and recommended immediate termination.

On June 24, 2020, Scuderi-Hunter filed a petition under Section 76 of the Civil Service Law pursuant to Civil Practice Law and Rules Article 78, challenging the Administrative Hearing Officer's recommendations. She requested:

1. An annulment of the Hearing Officer's findings and subsequent recommendation for termination;
2. A reinstatement as Delaware County Department of Social Services Commissioner;
3. Back payment and benefits of the Commissioner position starting December 11, 2019 to the present; and
4. Reimbursement for all court costs and legal fees associated with these proceedings.

Scuderi-Hunter claimed there were multiple errors of law, that incorrect legal standards were applied, and that there were insufficient findings of fact by the Hearing Officer. The record and facts of the hearing, consisting of more than 3,000 pages of evidence and transcripts, have since been reviewed by Judge Lambert, Acting Justice of the Supreme Court.

Scuderi-Hunter asserted that evidence supporting several of the 203 specifications filed were beyond the 18-month statute of limitations allowed under the law. Judge Lambert concluded that although Civil Service Law Article 75 has an 18-month statute of limitations, it also has an exception for criminal conduct.

The record provides sufficient evidence regarding child endangerment charges, of which Scuderi-Hunter was found guilty, constituting criminal conduct. Therefore, the statute of limitations did not need to be applied to the evidence or testimony presented to the Hearing Officer.

Scuderi-Hunter claimed that County Attorney Merklen had a direct conflict of interest in this case. She claimed that some of the evidence presented involved a case about a teenager that the Delaware County Probation Office had recommended be incarcerated in a facility for the youth rather than released back into foster care. Scuderi-Hunter disagreed with the recommendation and testified in court to that effect. Amy Merklen, representing Delaware County on behalf of Delaware County Probation stood by the recommendation of the probation officer and made assertions in court that these steps were necessary for the safety of the child and the public. Scuderi-Hunter believed that this was in direct conflict with her recommendation as the Commissioner of Social Services and therefore, Amy Merklen must recuse herself from the proceedings. Judge Lambert concluded that under New York County Law Section 501, Merklen in her official capacity as County Attorney must represent County interests, and that she was acting in that capacity. He went on to clarify that under New York County Law Section 501(2), any situation where the interests of the County are in conflict with an officer of the county, the officer has the right to obtain independent legal counsel. Scuderi-Hunter never sought independent counsel in this situation, nor did she attempt to resolve the issues or avoid the conflict through the proper procedures prior to the hearing. Therefore, Merklen's actions were consistent with the law and the law was applied correctly.

Scuderi-Hunter also claimed there were procedural issues regarding access to the record for review prior to the Board of Supervisors' vote to terminate her from her position. Judge Lambert ruled that based on Scuderi-Hunter's own assertions, there was a sufficient amount of time prior to the vote for the Supervisors to review the record. The record was available in two secure locations at the Board office and the Personnel office for 30 days prior to the vote to provide sufficient time for the Board members to review the record in its entirety.

The final ruling of Judge Lambert states that the preliminary issues presented to the court have been resolved. In accordance with CPLR Section 7804(g), the matter will be deferred to the Appellate Division, Third Department for disposition.