

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

FRANK R. KREMPS,)
)
 Appellant,)
)
 v.)
)
 MANATEE COUNTY BOARD OF)
 COUNTY COMMISSIONERS,)
)
 Appellee.)
 _____)

Case No. 2D16-5318

Opinion filed January 5, 2018.

Appeal from the Manatee County
Government.

Valerie L. Leatherwood of The Leatherwood
Law Firm, P.A., Sarasota, for Appellant.

Mark E. Levitt and Shannon L. Kelly of Allen,
Norton & Blue, P.A., Winter Park, for
Appellee.

CASANUEVA, Judge.

This case arises from the termination of Frank R. Kremps, who had been employed by Manatee County for fifteen years. Following his termination, Mr. Kremps sought a termination hearing to challenge the bases of his firing. A hearing officer, whose title appears to be director of financial management, recommended "to the County Administrator that the termination . . . be upheld." On November 11, 2016, the

county administrator concurred with the hearing officer's recommendation. Thereafter, Mr. Kremps filed a notice of appeal seeking review of this action by this court.

Prior to oral argument, this court asked that the parties address whether this court has jurisdiction to hear this appeal and to also address the application of Lee County v. Harsh, 44 So. 3d 239 (Fla. 2d DCA 2010). At oral argument, counsel for both parties concurred that Harsh applies to the instant case. This court acknowledges and appreciates the candor of each counsel.

In Harsh, 44 So. 3d at 241, Lee County terminated a group of employees who then requested a hearing before a grievance committee. Following a hearing, the grievance committee recommended to the county manager that the termination be upheld, and the county manager agreed to do so. The terminated employees petitioned the circuit court for a writ of certiorari seeking review of the county manager's decision. The circuit court granted the petition and quashed the county manager's decision. Id. On second-tier certiorari review in this court, this court noted that "[c]ertiorari review is available for orders of local agencies and boards that are quasi-judicial and not subject to direct review under the Administrative Procedure Act," but it is not available to review executive decisions. Id. at 242. In Harsh, as in the present case, the county manager was not required to hold a hearing when he reviewed the recommendation and findings and he was not bound by such. Id. This court held that this decision is an executive decision, not quasi-judicial, and the circuit court did not have jurisdiction to review this decision. Id. at 243; see also De Groot v. Sheffield, 95 So. 2d 912, 915 (Fla. 1957) ("[W]here one holds office at the pleasure of the appointing power and the power of appointment is coupled with the power of removal contingent only on the exercise of

personal judgment by the appointing authority, then the decision to remove or dismiss is purely executive and not subject to judicial review." (citing Bryan v. Landis, 106 Fla. 19, 142 So. 650 (Fla. 1932))).

The proper method to challenge an executive action dismissing an employee "is a suit in circuit court for declaratory or injunctive relief on grounds that the action taken is arbitrary, capricious, confiscatory, or violative of constitutional guarantees." Neapolitan Enters., LLC v. City of Naples, 185 So. 3d 585, 592 (Fla. 2d DCA 2016) (quoting City of St. Pete Beach v. Sowa, 4 So. 3d 1245, 1247 (Fla. 2d DCA 2009)).

Accordingly, this case is dismissed for lack of jurisdiction.

Dismissed.

LaROSE, C.J., and SALARIO, J., Concur.