

**IN THE SUPERIOR COURT OF FULTON COUNTY
 STATE OF GEORGIA**

PAUL MOORE,)	
Petitioner,)	
)	
v.)	
)	
TONY PALAZZO,)	
Defendant-in-Certiorari/)	CIVIL ACTION FILE
Opposite Party,)	
)	NO. 2022CV372935
and)	
)	
CITY OF MILTON ETHICS PANEL,)	
Respondent-in-Certiorari,)	
)	
and)	
)	
MILTON CITY COUNCIL,)	
Respondent-in-Certiorari.)	

**ORDER GRANTING OPPOSITE PARTY TONY PALAZZO’S MOTION TO
 DISMISS PETITION FOR CERTIORARI OF PETITIONER PAUL MOORE**

Petitioner Paul Moore (“Moore”) filed a petition for writ of certiorari (the “Petition”). The Petition challenges a decision of the City of Milton Ethics Panel (the “Ethics Panel”) that decided Moore violated three of the City of Milton’s Ethics Ordinances by participating in matters in which he has a conflict of interest. Opposite Party Tony Palazzo (“Palazzo”), the person who filed the ethics complaint, moved to dismiss the Petition for lack of jurisdiction. Having reviewed the extensive briefing on the issue, and having heard oral argument on May 12, 2023, the Court GRANTS Palazzo’s motion to dismiss (the “Motion”).

BACKGROUND

The facts are taken from Moore’s Petition for Certiorari and the record as transmitted by the City of Milton and Ethics Panel as follows:

1. Moore is a City Councilman from the City of Milton. (Pet. at 3.)
2. Palazzo is a resident of the City of Milton. (Pet. at 3.)
3. On May 6, 2022, Palazzo filed an ethics complaint against Moore based on Moore's acts at a May 2, 2022 meeting of the Milton City Council. (R-EP-A1, p. 8-79.)¹
4. Palazzo's complaint alleged that Moore wrongly participated in deliberations and voted on a matter in which he had a conflict of interest. (Pet. at 8-9.)
5. Pursuant to Milton's ordinances, the City Clerk decided that Palazzo's complaint "met the requirements" of the Ethics Code and convened an ethics panel pursuant to Milton Ordinances 2-881 and 2-884(d).² (R-EP-A8 at 332-33.)
6. Further pursuant to Milton's Ethics Code, the panel held "an initial review meeting to determine whether there was specific, substantiated evidence from a credible source(s) to support a reasonable belief that there has been a violation of the [Ethics] Ordinance." (R-EP-A11 at 425.) The Ethics Panel answered that question in the affirmative pursuant to Milton Ordinance 2-882. (Id.)
7. Consequently, the Ethics Panel provided notice to both Palazzo and Moore, and it convened a hearing on August 2, 2022. (R-EP-A-11 at 425.)
8. The Ethics Panel issued an order (the "Order") on August 30, 2022. (R-EP-A-11 at 433.)

¹ Record citations from the City of Milton Ethics Panel's Answer and Transmittal are designated (R-EP) and use page numbers from the .pdf document.

² A certified copy of Milton's Ethics Code was attached to the City of Milton's Answer and Transmittal of the Record. Ordinances are cited by their number.

9. The Order concluded that Moore violated three provisions of Milton's Ethics Code by participating in the matter while having an interest in the same. (R-EP-A-11 at 425-33.)
10. The Order recommended that Moore be censured or publicly reprimanded for the violations. (R-EP-A-11 at 433.)
11. Pursuant to Milton Ordinance 2-892(c), the City Council considered the Order at the October 17, 2022 City Council meeting. (R-City-A2 at 72-75.)³
12. At the meeting, the City Council unanimously approved a motion "that the Council take no further action with respect to Councilmember Moore and that the matter be considered concluded." (R-City-A2 at 75.)
13. Moore filed the Petition on November 22, 2022. (Pet.)
14. Palazzo, the City of Milton, and the Ethics Panel each opposed the Petition.
15. Palazzo moved to dismiss the Petition on December 21, 2022. Moore filed a timely response, which included an affidavit from Moore that was not part of the record below. Palazzo filed a Reply Brief. Moore then filed a Sur-Reply Brief. Palazzo responded to Moore's Sur-Reply Brief. Then, on May 10, two days before the hearing on Palazzo's Motion, Moore filed another Sur-Reply Brief, which contained another affidavit from Moore.
16. The Court held a hearing on the Motion on May 12, 2023.

ANALYSIS

The Motion argues that this Court lacks jurisdiction to consider the Petition because it either represents an untimely appeal of the Ethics Panel's Order, or it

³ Record citations from the City of Milton's Answer and Transmittal are designated (R-City) and use page numbers from the .pdf document.

improperly seeks a writ of certiorari from a process that was not quasi-judicial. The Motion also contends that, because the City Council did not punish Moore in any way, Moore is not aggrieved and, therefore, lacks standing.

As an initial matter, the parties rightly agree that petitions for writ of certiorari to the superior courts are available only for appeals of quasi-judicial decisions. City of Cumming v. Flowers, 300 Ga. 820, 823 (2017). They also agree that, if a petition for certiorari is available, it must be filed “within 30 days after the final determination of the case in which the error is alleged to have been committed.” O.C.G.A. § 5-4-6(a). They disagree as to whether the Ethics Panel’s decision could be appealed before the City Council acted, and whether the Ethics Code provides a quasi-judicial process if the City Council’s potential review is considered. The parties also disagree on standing.

The Court ultimately agrees with Palazzo. If Moore wanted to seek a petition for certiorari, he would have had to do so within 30 days of the Ethics Panel’s final decision. Alternatively, because Milton’s ordinances do not require the City Council to act, and at the very least, the ordinances do not require the City Council to act within any period of time, the process overall is not quasi-judicial.

1. The Petition Is Untimely.

As an initial matter, the face of the Petition makes plain that Moore’s challenge is to the decision of the Ethics Panel and not the City Council. It describes the appeal as one “from the blatantly erroneous ruling of a municipal ethics panel,” and Moore asks this Court to “reverse the findings of the Milton Ethics Panel.” (Pet. at 1, 28.) See Sturman v. State, 59 Ga. App. 498 (1939) (looking to petition for writ of certiorari to determine purpose).

Because the parties agree that, in isolation, the Ethics Panel hearing could be considered quasi-judicial (and the Court agrees), Code Section 5-4-6 could apply to an appeal of the Order.⁴ Moore argues the contrary; he claims that there was no “final determination of the case” to appeal until the City Council acted. O.C.G.A. § 5-4-6(a). And, because Moore filed the Petition within 30 days of the City Council’s decision, he claims the Petition is timely. The Court disagrees.

Moore could rely on O.C.G.A. § 5-4-6(a) and the petition for certiorari procedure only if the underlying process was quasi-judicial. Put differently, the statute provides a means to appeal quasi-judicial decisions, but it is not available to appeal other types of decisions of inferior adjudicatory bodies. Flowers, 300 Ga. at 823. Thus, the finality Moore claims to have achieved by waiting for the City Council actually results in his attempt to appeal a decision that was not quasi-judicial.

Had he appealed the decision of the Ethics Panel in 30 days, the outcome may be different. While Moore relies on the language of O.C.G.A. § 5-4-6(a) that speaks to the finality of a case, Milton’s ordinances use language that lend support to challenging decisions of the Ethics Panel before the City Council may act. Milton, Ga., Code § 2-883(d). Specifically, the Ethics Code provides that a “final determination resulting from the ethics hearing shall include written findings of fact and conclusions of law.” Id. (emphasis added). Given that Moore challenges only the findings and conclusions of the Ethics Panel, the time to file a petition for certiorari (if at all) would have been within 30 days of the Ethics Panel’s “final determination.”

⁴ Whether Moore’s Petition would ultimately be procedurally proper if filed within 30 days of the Order is not before this Court. For purposes of this Order, the Court holds only that, if Moore intended to use a petition for certiorari, the only time he could have timely done so was within 30 days of the Order.

Put simply, if Moore wanted to utilize the petition for certiorari process, he would have had to do so within 30 days of the Order and not wait on the City Council's decision. Because he did not, the Petition is untimely and the Court GRANTS Palazzo's Motion.

2. The Petition Impermissibly Appeals A Process That Is Not Quasi-Judicial.

As an alternative holding, the Court concludes that Milton's ordinances—when viewed in totality—do not provide for a quasi-judicial decision. “Determining whether a decision is quasi-judicial may also be difficult in some cases.” Flowers, 300 Ga. at 833. The parties agree on the necessities of a quasi-judicial proceeding. See Riverdale Land Grp., LLC v. Clayton Cty., 354 Ga. App. 1, 3 (2020) (citing Housing Auth. of the City of Augusta v. Gould, 305 Ga. 545 (2019)). Specifically, a quasi-judicial process must include (1) the right to notice and hearing, “with the opportunity afforded to present evidence under judicial forms of procedure;” (2) a judicial decision involving applying legal standards to findings of fact; and (3) a decision that is “final, binding, and conclusive on the rights of the interested parties.” Gould, 305 Ga. at 551. Applying these factors to the entirety of the process set forth in Milton's Ethics Code reveals that the Ethics Code does not create a quasi-judicial decision.

Specifically, Milton's Ethics Code sets forth four possible steps to address ethics complaints. First, the City Clerk makes an independent facial review of the complaint to determine if it meets basic requirements. Milton, Ga., Code § 2-2881. If the complaint satisfies this analysis, an independent ethics panel is impaneled. The panel first decides whether there is “specific, substantiated evidence from a credible source to support a reasonable belief that there has been a violation of” the Ethics Code. Milton, Ga., Code §

2-882(f). If the panel answers that question in the affirmative, the ethics panel holds a hearing to consider the complaint. Milton, Ga., Code § 2-882(g). After the hearing, the panel must issue a decision, and “any final determination resulting from the ethics hearing shall include written findings of fact and conclusions of law.” Milton, Ga., Code § 2-883(d). If the panel decides that there has been a violation of the Ethics Code, it “shall recommend to the mayor and the city council” a type of penalty, if any. Milton, Ga., Code § 2-892(a).

The critical step for the purposes of Palazzo’s motion is what happens next.

Ordinance 2-892(c) explains that, once the ethics panel concludes its work:

The city council shall retain the discretion to determine whether any recommendation presented by the ethics panel under subsections (a) and (b) shall be imposed. In exercising this discretion, the city council shall not be bound by the recommendation of the ethics panel and may impose any combination of the penalties listed in the relevant section. This discretion shall not entitle the city council to override a determination by the ethics panel that a violation has occurred.

Milton, Ga., Code § 2-892(c). Palazzo argues this final step, and the lack of any requirement that the City Council act or act in a specified period of time, renders the entirety of the process something other than quasi-judicial. Based on the Supreme Court’s decision in Gould, the Court agrees.⁵

Gould addressed the question of whether certain decisions of the Augusta Housing Authority were quasi-judicial and subject to a petition for writ of certiorari.

⁵ In none Moore’s three briefs—(1) initial response in opposition; (2) sur-reply brief; and (3) a second sur-reply brief—does he distinguish or analyze Gould, though he does cite it in his initial response in opposition. (Br. in Opp. at 5). Palazzo, however, relied heavily on it. (Reply Br. at 3, 6-7, 9, 11-12.) Because Moore’s arguments at the hearing were new, the Court deems them waived. This ends the inquiry and warrants the granting of Palazzo’s Motion, which the Court does, in part, based on Moore’s omission. The discussion above is in made in the alternative only.

305 Ga. at 545. Like Milton's Ethics Code, the Housing Authority utilized a bifurcated process to resolve some eligibility disputes. Id. An independent hearing officer engaged in a process that appeared to be quasi-judicial. Id. at 549. The proceeding before the hearing officer provided notice and hearing, judicial-like procedure, and application of the laws to the facts. Id. The hearing officer's decision would then be reviewed by the Housing Authority. Id. at 550-51. Like the Milton City Council, the Housing Authority was not bound by the hearing officer's decision. Id. at 556-57. Also like the Milton Ethics Code, the regulations governing the Housing Authority "provide[d] no time limit for the agency to make [a] determination." Id. The Supreme Court decided that this lack of any time limit meant that the overall process lacked finality, as the Housing Authority could choose not to act indefinitely. In other words, there was "no practical way" to know when or if a case would conclude, and consequently, the process did not reflect a "final, binding, and conclusive [result] in the way that a judicial decision is." Id. at 557.

The Supreme Court also decided that, as here, it did not matter if the process satisfied the other guideposts of a quasi-judicial proceeding (e.g., notice and hearing, and application of law to the facts). Gould, 305 Ga. at 549-50. Nor did it matter that the Housing Authority ultimately acted in the case on appeal. The reality that nothing compelled the Housing Authority to decide anything by any particular time rendered the process something other than quasi-judicial. Id.

This analysis applies equally to Milton's ordinances. Ordinance 2-892(c) imposes no requirement for the City Council to act in response to an ethics panel decision, nor does it set any timeline to do so. As discussed at the hearing in this case, the City Council could have done nothing, and Moore would have no opportunity to appeal. This

possible outcome demonstrates the lack of finality in Milton's process. As was the case in Gould, the process created by Milton's Ethics Code is not "sufficiently final, binding, and conclusive of the rights of the parties to be properly characterized as a quasi-judicial decision for purposes of Georgia certiorari law." Id. at 558.

Moore's attempt to distinguish Gould is not persuasive. He argues that it is distinguishable because of the differences between Milton's Code of Ethics and the applicable federal housing regulations in Gould. Those differences are without substantive distinction and, at worst, are matters of degree. And, Moore did not address that the Milton Ordinance 2-892(c), like the one in Gould, imposes no deadline for the City Council to act. This alone is dispositive. Nor does it matter that Palazzo agrees that, taken in isolation, the Ethics Panel's process is quasi-judicial. If the process ended there, then perhaps a petition for certiorari would be appropriate, which is all Palazzo argues. He has consistently said that inclusion of the City Council renders the totality of the procedure something other than quasi-judicial.⁶ For these reasons, the Court decides that—when examined from start to finish—the Milton Ethics Code does not provide a quasi-judicial procedure, and a petition for certiorari is not an available means for Moore to obtain judicial review.

3. Standing.

As the Court has provided two grounds upon which to dismiss the case the Court views the third ground as moot.

⁶ Moore also argues that Palazzo's briefs describe the City Council's involvement as part of a "process." This is the point Palazzo makes: a process that has no definite end is not quasi-judicial. Moreover, Moore's contention that Palazzo's agreement that the Ethics Panel proceeding is quasi-judicial means the entire process is so lacks merit. In Gould, it did not matter if all the hallmarks of a quasi-judicial process were present for the proceeding before the hearing officer, because there was no time limit imposed on the agency to review the hearing officer's decision. 305 Ga. at 557-58.

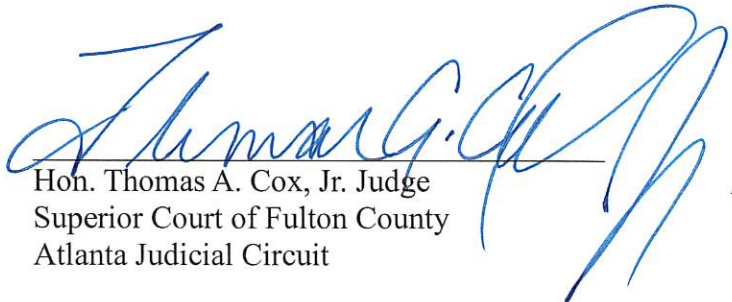
4. Attorneys' Fees.

Given this Court's resolution of the dispute, Moore's claim for attorneys' fees is DENIED. Pursuant to his answer, the Motion, and O.C.G.A. § 5-4-17, Palazzo may move for fees and costs within 30 days.

CONCLUSION

Ultimately, this Court is without jurisdiction to proceed to hear the merits of Moore's Petition. To the extent it appeals the decision of the Ethics Panel, it is untimely. If it is an appeal of the City Council's decision—either because it established the “end of the case” or because it is the last decision of an inferior body—the appeal is not from a quasi-judicial process. For each of these reasons, as independent and alternative holdings, the Court GRANTS Palazzo's Motion to Dismiss.

SO ORDERED, this 18th day of May, 2023.


Hon. Thomas A. Cox, Jr. Judge
Superior Court of Fulton County
Atlanta Judicial Circuit