DISTRICT COURT, ADAMS COUNTY, COLORADO 1100 Judicial Center Drive Brighton, CO 80601 Telephone: 303-659-1161	DATE FILED: January 3, 2023 5:47 PM FILING ID: E71F1438ABF4C CASE NUMBER: 2022CV31503
Plaintiff: ASHTON STEELY v. **Defendants:** MICHAEL MARTINEZ, in his official capacity as City Manager for the City of Brighton; and CITY OF BRIGHTON, a Colorado Municipal Corporation	**▲COURT USE ONLY▲**
Attorneys for Plaintiff: Bradley J. Hansen, #36263 Elkus & Sisson, P.C. 7100 E. Belleview Avenue, Suite 101 Greenwood Village, CO 80111 303-567-7981 bhansen@elkusandsisson.com	Case No.: 2022CV31503 Div.: C

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO COLO. R. CIV. P. 12(B)(1)

COMES NOW the Plaintiff, Ashton Steely ("Steely" or "Plaintiff"), by and through her undersigned counsel, Bradley J. Hansen of Elkus & Sisson, P.C., and hereby submits her Response to Defendants' Motion to Dismiss and in support thereof, submits as follows:

I. Introduction

Defendants City of Brighton ("Brighton") and City Manager Michael Martinez ("Martinez") claim that Plaintiff's appeal of termination from employment with the City of Brighton falls outside the scope of Rule 106(a)(4) because the City Manager's decision was administrative—not quasi-judicial. In turn, Defendants argue that this Court lacks subject matter jurisdiction over this civil action. However, the reality is that Martinez is an officer of a governmental body who exercised quasi-judicial functions and his decision was a final agency

action that adversely affected or aggrieved Plaintiff. Therefore, Plaintiff's complaint meets the threshold for judicial review under Rule 106(a)(4) and C.R.S. § 24-4-106 which states in part, "any party adversely affected or aggrieved by final agency action may bring action for judicial review in the district court."

II. The District Court does not lack subject matter jurisdiction to review Plaintiff's dismissal under Rule 106(a)(4).

Brighton and Martinez claim that Plaintiff's termination from employment and subsequent complaint filed for judicial review lacks subject matter jurisdiction because the action by Martinez was administrative and not quasi-judicial in nature. C.R.C.P. 106(a)(4) states in part: "(a) In the following cases relief may be obtained in district court: (4) Where any governmental body exercising judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion, and there is no plain, speedy and adequate remedy otherwise provided by law." Defendants contend that if a hearing is not held, the action taken is more administrative and not subject to judicial review. Plaintiff rejects this notion because Plaintiff's termination was both final agency action and quasi-judicial in nature.

The Colorado Supreme Court set forth the test for distinguishing judicial and quasi-judicial acts from administrative acts in *Cherry Hills Resort Dev. Co. v. City of Cherry Hills Vill.*, 757 P.2d 622, 626 (Colo. 1988). There, the Court recognized that the existence of a statute or ordinance mandating notice and a hearing is "a clear signal that the governmental decision is to be regarded as quasi-judicial for the purpose of judicial review under C.R.C.P. 106(a)(4)." However, those factors are not the *sine qua non* of quasi-judicial action. Rather, the central focus, in our view, should be on the nature of the governmental decision and the process by which that decision is reached. If, for example, the governmental decision is likely to adversely affect the protected interests of specific individuals, and if a decision is to be reached through the application of preexisting legal standards or policy considerations to present or past facts presented to the governmental body, then one can say with reasonable certainty that the governmental body is acting in a quasi-judicial capacity in making its determination." *Id*.

Here, the governmental decision to terminate Plaintiff is clearly quasi-judicial because it was the result of a process including notice and opportunity to be heard. City Manager Martinez acted in a quasi-judicial capacity when he reviewed the full internal affairs file and, after deliberation, rendered a decision that affected Plaintiff's property interest in her employment as a police officer with the City of Brighton. Martinez acted as the fact finder and ultimate decisionmaker—much like a judge in a bench trial. Once, Martinez had issued his findings and conclusions, there were no further avenues of internal review available to Ms. Steely**.** ***See,*** **PL. Ex. 1, page 2.** By their own admission, Defendants' policy for appeals under 16.04 B. states that the "City Manager's decision will be final for purposes of judicial review and no further internal appeal may be made." In that way, Martinez's decision to terminate Plaintiff was final agency action and her only remaining avenue of review is through Rule 106(a)(4). If Plaintiff had another avenue of internal review available to her, she would be pursuing it. However, she does not have any such options, so she is pursuing this appeal under Rule 106(a)(4). For these reasons, Defendants' argument that Martinez's decision to terminate Plaintiff's employment was administrative and not quasi-judicial in nature fails.

As the Defendants' Motion to Dismiss states, "The City of Brighton's Charter places the final authority with the City Manager for supervision and control of all City administrative departments." Further, Defendants concede that "Supervision and control plainly include decisions regarding terminations." Those words give the clear implication that the City Manager is vested with the power to make a final agency action in the form of terminating an employee, such as Plaintiff. Further, the City Manager was acting in accordance with those vested powers when he made the unilateral decision to terminate Plaintiff after deliberation and review of the internal affairs file. Martinez made findings based on his review of the evidence, and made conclusions for his basis to uphold Plaintiff's termination. He was acting in a quasi-judicial manner by doing so.

In arguing that City Manager Martinez's decision to terminate Plaintiff's employment was not quasi-judicial, Defendants rely on *Chellsen*, in which the Court of Appeals concluded that approval or dismissal of probationary firefighters was not a quasi-judicial act subject to review under C.R.C.P. 106(a)(4). *Chellsen v. Pena*, 857 P.2d at 475. However, this reliance on

Chellsen is improper because its facts can be easily distinguished from the facts in the present case. In *Chellsen,* the Court of Appeals considered the dismissal of probationary employees whereas in this case, Plaintiff was not a probationary officer. In fact, she had been employed with the Brighton Police Department for seven years and thus had a strong property interest in her employment with the City of Brighton. If Plaintiff had been a probationary employee of the Brighton Police Department, perhaps the analysis would be different and more analogous to the facts and reasoning in *Chellsen*. Nonetheless, she was not a probationary employee and in fact had seven years as a City employee. Therefore, Defendants' reliance on *Chellsen* is misplaced. City Manager Martinez's decision to terminate Plaintiff's employment was clearly quasi-judicial.

Additionally, Plaintiff would note to the Court that there was a similar case of a Brighton police officer who was terminated from employment and filed for judicial review under Rule 106(a)(4). *Koehler v. Disessa and City of Brighton,* case# 2021CV30861. The facts of *Koehler* are analogous to the present case yet, in *Koehler,* Defendants did not raise the issue of subject matter jurisdiction. While every case and reasoning differ as to issues raised, it begs the question why are Defendants raising the issue of subject matter jurisdiction in this case, but failed to do so in the case of *Koehler*.

III. Plaintiff's remedy is judicial review.

Plaintiff's remedy after final agency action taken by Brighton and Martinez was to file a complaint to request judicial review pursuant to C.R.S. § 24-4-106. This judicial review process gives the Plaintiff who has been adversely affected and aggrieved by the action of the Defendants, standing to file this civil action against them.

The actions of Defendants in finding violation of Departmental Policies, Brighton Rules and Policies applicable to Plaintiff, and in ordering, as discipline, the Plaintiff's termination exceeded their authority and/or constituted an abuse of discretion and are contrary to law. As a direct and proximate result of the actions of Defendants, Plaintiff has suffered harm, loss, and/or injury, as set forth by Plaintiff in the proceedings against Brighton and Martinez.

WHEREFORE, the Plaintiff respectfully requests the Court deny Defendants' Motion to Dismiss for the above stated reasons. This matter is ripe for judicial review under Rule 106(a)(4) because the actions of Brighton and Martinez were quasi-judicial in nature and final agency action. There is no plain, speedy, or adequate remedy otherwise provided by law and why Plaintiff is entitled to judicial review of this matter.

Respectfully submitted this 3rd day of January, 2023.

ELKUS & SISSON, P.C.

/s/ Bradley Hansen
Bradley J. Hansen, Esq.
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2023, a true and correct copy of the foregoing was filed with the Court, and served on counsel of record, via Colorado Courts E-Filing System.

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