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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III
Administrative Law Court Judge

Appellate Case No. 2022-00289

Charleston Advancement Academy High School ……………………………...…….Appellant,

V.

South Carolina Public Charter School District……………………………………..Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. Did the Administrative Law Court correctly dismiss the appeal as untimely where the appeal was filed almost two years after the challenged decisions occurred?

STATEMENT OF THE CASE

Appellant is a charter school, Charleston Advancement Academy, formerly known as Charleston Acceleration Academy and Pathways in Education-South Carolina ("CAA" or "School"). Respondent is the sponsor of the charter school, the South Carolina Public Charter School District, ("District"). The relationship of School and District is governed by the South Carolina Public Charter Schools Act of 1996, S.C. Code Ann. §§ 59-40-10 to -240 ("the Act").

The School initiated the proceedings in this matter by requesting to amend its charter. (R. pp. 039-042). The School's request to amend its charter followed the School's termination of an education management contract that was part of its charter. (*Id.*). The District denied the charter amendment request on November 14, 2019, issued sanctions short of revocation because the School terminated the contract forming part of its charter prior to seeking an amendment, and provided steps for the School to complete for the amendment to be approved. (R. pp. 047-049).

The School filed an appeal to the Administrative Law Court on December 3, 2021 challenging decisions of Respondent made "beginning on November 14, 2019." (R. pp. 458-460). The Notice of Appeal alleges these decisions "contributed to [Appellant] being found liable by an arbitrator for $859,124.41." (*Id.*). The arbitration award referenced in the Notice of Appeal was issued on March 16, 2020. *See Acceleration Academies, LLC v. Charleston Acceleration Academy, Inc.*, 858 Fed. Appx. 606 (4th Cir. May 28, 2021) (affirming District Court judgment confirming arbitration award).

The Notice of Appeal to the Administrative Law Court was filed almost two years after the decisions on appeal were made. (R. pp. 458-460). Respondent moved to dismiss the appeal because it was untimely under SCALC Rule 33 and S.C. Code Ann. § 1-23-380. (R. pp. 304-305). The Administrative Law Court granted the motion by Order dated February 10, 2022 ("Order"), and this appeal followed. (R. pp. 450-455).

FACTS

This matter arises from the statutory relationship between the District and School under the Act. The District is a public body governed by a Board of Trustees appointed by the Governor and Legislature. S.C. Code Ann. § 59-40-220. The District awarded Appellant Charleston Advancement Academy, formerly known as Charleston Acceleration Academy and Pathways in Education-South Carolina ("CAA" or "School") a charter to become a public charter school on May 20, 2017. CAA thereby became a public school that is part of the District. S.C. Code Ann. § 59-40-40(2)(a). The District became the School's sponsor, responsible for oversight and monitoring the performance of the School. S.C. Code Ann. § 59-40-40(4). The State Superintendent of Education and the State Board of Education have general supervision and management authority over the School and District because they are a public school and a public school district, respectively. *See* S.C. Code Ann. § 59-3-30 (Superintendent duties); § 59-5-60 (State Board of Education powers).

As part of the School's charter, it contracted with a management company, Acceleration Academies, Inc. ("Acceleration Academies") to provide certain services specified both in the management contract and in the charter. (R. pp. 450-455). However, the School decided to terminate its contract with Acceleration Academies, effective immediately, on October 31, 2019, without seeking an amendment to its charter. (*Id.*). Acceleration Academies initiated arbitration against the School alleging wrongful termination a few days later on November 3, 2019. (*Id.*).

After it had terminated the management contract, School presented a Request for Charter Amendment to the District Board of Trustees on November 14, 2019. (*Id.*). The Amendment Request was to remove Acceleration Academies as School's management company. (*Id.*). The District Board of Trustees denied the School's request to amend the charter because it found the

School did not have a plan in place to replace the management company services or address the supposed security issues[1] that predicated the termination of the management company contract. (*Id.*). The District Board also issued sanctions short of revocation requiring the School to maintain the status quo regarding school operations until it could present a plan to replace the management company and address the security issues claimed by the School. (*Id.*).

On November 15, 2019, the School terminated its Director. The District Superintendent sent correspondence to the School objecting to this action as well as other actions the District deemed to be a failure to maintain the status quo, such as implementing a new administrative structure, new policies and procedures, adopting a news school name, new bylaws, and the like. (R. pp. 47-49). The District also issued additional sanctions short of revocation based on the School's failure to comply with the Board's requirement for the School to maintain the status quo. (*Id.*).

The School requested a special called meeting to address the correspondence, and the District Board called a special meeting on December 13, 2019 to address the School's actions and the Superintendent's correspondence. (R. pp. 469-471). Importantly, the School did not request a hearing or contested case, but only a public meeting. The Record is devoid of any such request by the School. At the December 13, 2019 special called meeting, the District Board declined to grant the relief requested by the School and ratified its prior actions as well as those by the Superintendent. (App. Br. 4).

Following the Board meeting, the School filed its Complaint in the Court of Common Pleas

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[1] An arbitrator later found the security issues claimed by the School to be pretextual and unsupported by the evidence, requiring the School to pay damages to the management company. *See Acceleration Academies, LLC v. Charleston Acceleration Academy, Inc.*, 858 Fed. Appx. 606 (4th Cir. May 28, 2021) (Unpublished Mem. Op.) (affirming District Court judgment confirming arbitration award).

on December 20, 2019 asserting causes of action for Breach of Contract, Violation of Due Process, and Declaratory Judgment. (R. p. 451). On the same day, the School also filed a Motion for Temporary Restraining Order and Preliminary Injunction ("Motion for TRO"). (*Id.*) The District moved to dismiss the Complaint and opposed the Motion for TRO on substantially the same grounds. (*Id.*).

On January 4, 2020, the arbitrator in the case between Acceleration Academies and School considered a motion for injunctive relief by Acceleration Academies. (R. pp. 484-490). Like the District Board, the arbitrator ruled the parties should maintain the status quo,[2] though it ruled the School and management company should revert to the status quo as of the October 31, 2019 when the contract was terminated rather than the District Board meeting date of November 14, 2019. *(Id.* at *¶14.*). In other words, the District ruling, which was more favorable to the School than the arbitrator's ruling, was superseded by the arbitrator's injunction ruling.

The arbitration hearings on the merits were conducted on February 20 and 21, 2020. By written order dated March 16, 2020, the arbitrator found the School breached the management contract with Acceleration Academies and awarded Acceleration Academies $859,142.41, for a total award against the School in the gross amount of $1,050,726.44.[3] The arbitration award was affirmed by the United States District Court of South Carolina and the Fourth Circuit Court of Appeals. *Acceleration Academies, LLC v. Charleston Acceleration Academy, Inc.*, 858 Fed. Appx. 606 (4th Cir. May 28, 2021) (Unpublished Mem. Op.) (affirming District Court judgment

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[2] While the District required the status quo to be maintained as of the November 14, 2019 District Board meeting date to accommodate changes in circumstances since the contract termination, the arbitrator rules the School and management company were required to revert to the status quo as of the contract termination date of October 31, 2019.

[3] The arbitrator offset this amount by $133,708.12 in grant funds the management company did not claim for the School when calculating the total award.

confirming arbitration award).

Meanwhile, the Motion for TRO was denied by Circuit Court Judge Bentley D. Price by Order dated February 26, 2020 ("TRO Order"). (R. pp. 484-490). First, Judge Price found the Circuit Court did not have jurisdiction because the Administrative Law Court had exclusive jurisdiction over School's challenges to final decisions by the District. (*Id.* at ¶ 20). Further, Judge Price noted that the School reported the alleged violation related to funding to the South Carolina Department of Education, which in fact exercised jurisdiction over the matter and elected to take no action. (*Id.* at ¶ 21). Second, Judge Price found that, even if the Circuit Court did have jurisdiction, the School could not meet the elements required for injunctive relief for a number of reasons. (*Id.* at ¶¶ 22 – 34), but most importantly for this appeal it ruled that the School had an adequate remedy at law because:

> 32. Section 59-40-90 of the Act provides that a charter school must appeal any final decision of the District to the Administrative Law Court. The School did not file an appeal to the Administrative Law Court.

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Following a hearing on October 26, 2021, the District's Motion to Dismiss the School's Complaint on the merits was granted by Circuit Court Judge Roger M. Young by Order dated November 3, 2021 ("Circuit Court Order"). (R. pp. 479-483) Like Judge Price, Judge Young based his decision on the lack of subject matter jurisdiction in the Court of Common Pleas due to exclusive jurisdiction in the Administrative Law Court over final decisions by the District. (*Id.*). The School did not move to reconsider, alter, or amend. Instead, the School appealed the Circuit Court decision to this Court (App. Case No. 2021-001414). It also "simultaneously" filed a Notice of Appeal to the Administrative Law Court stating the School is "appealing the actions of the District "that began on or about November 14, 2019, which contributed to CAA being found liable

by an arbitrator for $859,124.41." (R. pp. 458-460.) The Notice of Appeal attaches three letters from the District. (R. pp. 461-468.).

The District filed a Motion to Dismiss the appeal before the Administrative Law Court. By Order dated February 10, 2022 ("Order"), the Administrative Law Court dismissed the appeal because it was untimely by almost two years. (R. pp. 450-455).

STANDARD OF REVIEW

The Order grants Respondent's Motion to Dismiss based on timeliness of the appeal, which is a matter of law. Appellate courts may decide matters of law with no deference to the trial court. *See Catawba Indian Tribe of S.C. v. State of South Carolina*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). However, the appellate court will not disturb findings of fact by the trial court unless there is no evidence to support them. *See Matter of Est. of Moore*, 435 S.C. 706, 715, 869 S.E.2d 868, 872-73 (Ct. App. 2022).

ARGUMENT

The Appeal Was Untimely No Matter Which Decision The School Was Attempting To Appeal.

Section 59-40-90 of the Act requires the School to appeal any final decision of the District to the Administrative Law Court. Interlocutory decisions, of course, are not appealable. *See Doe v. Howe*, 362 S.C. 212, 216, 607 S.E.2d 354, 355 (Ct. App. 2004). In addition, the South Carolina Department of Education exercises general oversight responsibility regarding the District's operations and compliance with state and federal law. *See* S.C. Code Ann.§ 59-40-40(4) (sponsor is LEA); 34 CFR § 303.23(b)(3)(i) (LEA is under general supervision of State Education Agency).

Pursuant to Section 1-23-380(1) and SCALC Rule 33, no matter what decision the School was attempting to appeal, the School was required to file the appeal within thirty days of the decision. Timely filing and service of the appeal is a jurisdictional requirement, and it cannot be extended. *See Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 714 S.E.2d 547 (2011). The School

admits it did not meet the statutory requirement for timely filing, stating "The District's counsel correctly notes that CAA brings claims in this Court related to actions taken by the District in 2019. (Appellant's. Br., 6). As concluded by the Administrative Law Court, "consequently, [School] concedes that its Notice of Appeal is untimely." (R. pp. 533-538).

The School attempts to circumvent the consequences of its untimely filing by nonsensically arguing that the Administrative Law Court has jurisdiction over its appeal – "the ALC begins its analysis by correctly noted it has subject jurisdiction over this matter [sic]" – while simultaneously claiming the District never issued a final decision. (Appellant's. Br., 10).[4] At the same time, the School attached three letters to the Notice of Appeal filed in December 2021 indicating the School was appealing from the decisions of the District Board of Trustees described in the correspondence. Each of the letters were dated from November and December 2019. (R. 451-468). Moreover, the Notice of Appeal indicated whatever actions or decisions the School was asking the Administrative Law Court to review "contributed to CAA being found liable by an arbitrator for $859,142.41." (*Id.*) The arbitrator's decision was issued on March 16, 2020. (R. pp. 384-387). By July 16, 2020, at the latest, CAA admitted it was no longer at any risk of sanctions or having its Charter revoked for anything related to its management company. *See Charleston Advancement Academy High School v. Acceleration Academies, LLC*, 2020 WL 4016256 (D.S.C. July 16, 2020) ("…CAA now admits there is no risk of having its Charter revoked by the SCPCSD or facing sanctions short of revocation.") (citations to record omitted).

Naturally, then, whatever the School was asking the Administrative Law Court to review

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[4] The District withdrew its request to dismiss based on subject matter jurisdiction after the School conceded the Administrative Law Court had jurisdiction over its appeal. The Administrative Law Court likewise noted it could not determine if the decisions the School complained about were final or interlocutory, but did not need to reach the issue because the appeal was untimely regardless of whether the decisions were appealable in the first instance. (R. p. 455, fn 5).

must have occurred before the arbitration award was rendered on March 16, 2020. The School was indisputably aware of the decisions based on the correspondence attached to the Notice of Appeal. (R. pp. 458-460). The School also sought injunctive relief based on these same three letters in the Circuit Court, where Judge Price ruled on February 26, 2020 that the Administrative Law Court had exclusive jurisdiction over the decisions of the District. (R. pp. 001-007). Further, March 16, 2020, the date of the arbitration award, was the absolute latest time at which the School could have known about the unidentified decisions it appeals from because the school claims those decisions caused the damages the arbitrator awarded by the arbitrator against the School. As such, the School should have filed its appeal, at the latest, on approximately April 15, 2020. Therefore, the Administrative Law Court correctly concluded that the appeal was untimely when the School filed it over a year later in December 2021.

In its Brief, the School argues that the Administrative Law Court should have ruled differently because it could not determine whether the decisions appealed from by the School were "final decisions by the District or if they are interlocutory orders." (App. Br. 12).[5] However, the Administrative Law Court took care to note that it did not have to make this determination. (R. pp. 533-538). As explained by the Administrative Law Court, the appeal would be dismissed either way since the filing was untimely. (*Id.*).

The Act prescribes avenues for charter schools to pursue grievances against sponsors. Complaints regarding funding or compliance with day-to-day operational decisions can be addressed through the administrative process of the State Department of Education, which

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[5] Of note, the School seemed to abandon its argument made below that the Administrative Law Court should have extended the deadline based on good cause. To the extent it did not, it appears the only support advanced for the argument is that no final decision was issued. Of course, if as explained by the Administrative Law Court, the decision was interlocutory, it would not be appealable. (R. p. 437, fn 5).

exercises general supervisory powers over both the District and School along with the General Assembly. S.C. Code Ann. § 59-3-30 (Superintendent duties); § 59-5-60 (State Board of Education powers). The Administrative Law Court maintains exclusive jurisdiction to hear appeals from the administrative decisions of sponsors like the District pursuant to the Act. S.C. Code § 59-40-90. In fact, the General Assembly specifically removed the Circuit Court as an avenue for relief when it amended the Act in 2006. (R. pp. 361, ¶ 18).

In this case, the appeal was untimely regardless of whether the Administrative Law Court's jurisdiction is exclusive. The appeal to the Administrative Law Court was untimely either way. The School sought relief from the Department prior to filing suit in December 2019, but did not file any appeal or pursue any administrative remedy within the Department after the Department took no action in response to the School's complaints. (R. p. 361, ¶ 21). Moreover, it was notified that it should file in the Administrative Law Court when the Circuit Court ruled in January 2020 that it did not have jurisdiction based on the Administrative Law Court's exclusive jurisdiction. (R. p. 363, ¶ 32). The latest date a final decision could have been issued based on the School's Notice of Appeal was March 20, 2020, the date the arbitrator issued the Award. The School logically could not have been harmed by a final decision of which the School was unaware, and certainly could not have filed a lawsuit based on one in December 2020. The Notice of Appeal therefore must have been filed, at the latest, by April 15, 2020, thirty days after the School received the arbitration award against it and which it claims the decisions of the District contributed.

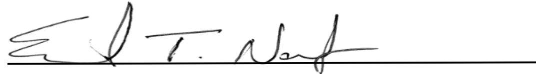
The School did not file the appeal until December 2021 despite a Circuit Court Order in January 2020 notifying it of its obligation to do so. At minimum, the Circuit Court Order advised the School of its obligations to preserve its rights in the Administrative Law Court. The Administrative Law Court was right to dismiss the appeal, and its Order should be affirmed.

CONCLUSION

This Court should affirm the Administrative Law Court's Order dismissing the School's appeal as untimely.

Respectfully submitted,

HARRELL, MARTIN & PEACE, PA



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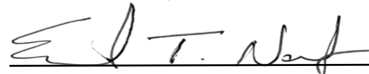
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

HARRELL, MARTIN & PEACE, PA



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