

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

172480

Lee C. Palms and Nelle S. Palms, as Guardians ad Litem for
L.P., a minor Respondents,

v.

The School District of Greenville County Appellant.

Appellate Case No. 2013-002232
Opinion No. 5237

Appeal from Greenville County
Court of Common Pleas
Edward W. Miller, Circuit Court Judge

RESPONDENTS' PETITION FOR REHEARING

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JUN 13 2014

SC Court of Appeals

Respondents hereby file this Petition for Rehearing. Respondents seek rehearing because they respectfully believe the Court overlooked or misapprehended Respondents' arguments, the law, the facts, and the posture of this case. In support therefore, and in compliance with Rule 221(a), SCACR, the Respondents offer the following points for particular reconsideration.

1. The Court of Appeals overlooked or misapprehended the correct standard of appellate review applicable to a writ of mandamus. That standard is abuse of discretion.

2. The Court of Appeals misapprehended the boundaries of the South Carolina Supreme Court's reluctance to interfere with school administrator and school district decisions. That reluctance applies only to cases that involve subjective judgments. It does not apply to a case that involves the performance of a ministerial act according to a bright line objective standard mandated by a South Carolina statute and official state and local government rules, as is the case here. It does not apply to violations of the law.

3. Chief Justice Toal reviewed the Respondents' case and put her stamp of approval on its justiciability when she entered an Order expediting it.

4. The Complaint in this case is not a challenge to a teacher's grade on a student's papers or tests. It is not a challenge about something that happened in the classroom. It is about the transfer from one school to another of grades that already exist. That is a purely ministerial function that does not involve student/teacher interaction.

5. The cases uniformly counsel against allowing outside intervention to supplant the judgment of a student's classroom teachers and his or her own school. Even the cases cited by the Appellant School District and Amici say this. The decisions are based on the sensible proposition that the persons in the best position to judge a student's performance are his own teachers. The Court of Appeals misapplied these decisions because

it did not respect the judgment of Riverside Military Academy and its teachers. Riverside was L.P.'s own school, its teachers were his own teachers, and they gave him the grades that he deserved. Those grades were entered on an official Riverside transcript. The Court of Appeals decision has allowed the School District to intervene from the outside – even across state lines – to ignore Riverside's teachers and their grades and substitute its own judgment for L.P.'s performance. That is the exact opposite of what the cases uniformly stand for.

6. This same proposition is behind S. C. Code Ann. § 59-5-68, the South Carolina State Department of Education Uniform Grading Policy mandated by that statute, and the School District's own Grading Systems mandated by that statute and that state policy. Grades from one school are to be transferred to another school without adjustment, period. That is because the persons in the best position to judge a student's performance are his own teachers. They are the persons who gave him the grades. The grades that they gave him *must* stand.

7. The Court of Appeals misunderstands the effect of affirming the writ of mandamus. Because it is based upon a bright line objective standard, it will not encourage litigation. Under the writ, grades are transferred exactly as they are received. That is simple. There is nothing to litigate. By undermining this bright line objective standard and giving in to pushy parents, the Court of Appeals has encouraged endless complaints to schools about so called "unfairness", and also set the stage for litigation, which will surely follow. Moreover, the School District has said that this case is unique. It is not worried about a floodtide of similar situations. (Respondents' Brief, p. 20, fn 6).

8. The Amici misquoted *Epperson v. Arkansas*, 393 U.S. 97 (1968), thereby leading the Court of Appeals astray. (Amici Brief p. 4). What the Amici left out were the following two sentences:

a) “Our courts, however, have not failed to apply the First Amendment’s mandate in our educational system where essential to safeguard the fundamental values of freedom of speech and inquiry and of belief.”

b) “On the other hand, ‘[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools’.”

The United States Supreme Court will most certainly intervene in school matters.

9. The United States Supreme Court’s cases quoted by the Court of Appeals all involve subjective judgments; none involves the performance of a ministerial act according to a bright line objective standard mandated by statute and official state and local government rules.

10. The Court of Appeals reversed the trial court’s order granting Respondents a writ of mandamus to compel the School District to transfer their son’s grades in accordance with a South Carolina statute mandating a state-wide uniform grading system, the official South Carolina Uniform Grading Policy adopted by the South Carolina State Department of Education in compliance with that statute, and the School District’s own official Grading Systems likewise adopted to comply with that legislative mandate.

11. The Court stated, “We find the trial court should not have reached the merits of the issues raised in this case because these issues are not appropriate for judicial determination. Our supreme court has refused to interfere with the internal decisions of school administrators and school districts ‘unless there is clear evidence of corruption, bad faith, or a clear abuse of power’”.

12. In this case – unlike the South Carolina Supreme Court cases cited by the Court of Appeals – there is a legislative mandate and two administrative mandates creating an *objective* standard that *must* be followed. All require that the School District *must* transfer

the grades exactly as provided to it in an official transcript from an accredited school. That was not done here. Because this case involves an objective statutorily based mandate, the trial judge *did have* jurisdiction. Because he did not abuse his discretion, his writ of mandamus should not be reversed.

13. The posture of this case is distinguishable from the cases the Court of Appeals cited in its opinion. In those cases, except for *Epperson v. Arkansas*, supra, neither laws nor policies were violated; and in *Epperson*, the United States Supreme Court accepted jurisdiction and ruled against the government. That is exactly what the Respondents requested in this case, and it is what the trial judge correctly did. For the reasons previously stated, the other cases do not share the special -- and perhaps unique -- posture of the pending case.

14. Because the School District was required to transfer the numerical averages provided to it – and did not – it disobeyed the law, a State rule based on that law, and its own rule likewise based on that law.

15. A writ of mandamus is the proper remedy when a public official disobeys the law and violates applicable governmental rules, including its own. It requires no additional proof of other bad faith, corruption, or clear abuse of power. Disobedience itself suffices. That was alleged and proven.

16. The trial court agreed with the Respondents that the School District violated the law, a State Department of Education grade transfer rule, and the School District's own grade transfer rule when it reversed its earlier decision and refused to transfer the numerical averages from L.P.'s official transcript.

17. The trial court did not abuse its discretion. Absent an abuse of discretion, the trial court's decision must be affirmed.

18. Although a writ of mandamus does not require a separate showing of bad faith, corruption, or abuse of power, the School District's behavior in this case rises to those levels.

19. The Respondents respectfully suggest that the Court of Appeals overlooked or misapprehended allegations and evidence of bad faith, corruption, and/or abuse of power on the part of the School District. That is one of the central themes presented by the Respondents in this case.

20. The School District acted in bad faith, corruptly, and abused its powers as follows, all of which were included in Respondents' presentation before the trial court and in its brief and oral argument in the Court of Appeals. (Respondents' Brief, pp. 5-12, 14, 17-18, 22 fn. 7, and 23).

- a) From October 5, 2012 through January 23, 2013, almost four months, the School District worked in secret to change L.P.'s grades. The emails irrefutably show that the School District knew throughout this time-period that neither L.P. nor his parents were aware that this was happening behind their backs. (*See e.g.*, December 4, 2012 email from Ms. Henderson to Principal Brooks that L.P.'s parents had not been notified and stated that "[I]f you would like me to contact them to make them aware now, just let me know."). (Respondents' Brief p. 10). The record is replete with evidence that the School District deliberately kept the parents and L.P. completely in the dark.
- b) Only after the School District had already lowered L.P.'s grades, were the Respondents told. (Respondents' Brief p. 11).

- c) The School District required a Southside guidance counselor – over her objection --to convince a clerk at Riverside Military Academy to send unofficial and unverified grades in an email after Riverside Military Academy’s Dean had already refused to change the transcript. (Respondents’ Brief p. 9). School districts should not be in the business of violating a student’s privacy rights or pressuring other schools to change an official transcript; yet that is exactly what the Appellant School District did. The trial court expressed legitimate concern: “we don’t know the accuracy of what’s reported in these unofficial e-mails. You’ve got the official transcript. . . . that’s what we go by.” (R. p. 77, lines 1-4).
- d) The School District changed L.P.’s grades in violation of the law, the official South Carolina Department of Education Uniform Grading Policy and its own Grading Systems mandated by the law and statewide policy. The trial court agreed with L.P. that the school district wrongfully “interpreted” his transcript in violation of the law and stated that, “the law is clear, the regulations are clear about you must take the numerical number.” (R. p. 69, lines 15-17).
- e) The School District initially transferred L.P.’s grades correctly. Moreover, it told Mrs. S. that the transfer was correct even *after* reviewing the official transcript in light of Mrs. S.’s complaining. The Southside principal, Mr. Carlos Brooks, Dr. Childs, and Mr. Rhodes at the School District all reviewed the Riverside transcript and considered Mrs. S.’s complaint. Each and every one of them confirmed that the October 4, 2012 Southside transcript was correct. (Respondents’ Brief p. 7). Only after continued

pressure from Mr. and Mrs. S, the current and past presidents of the school's PTA, did the School District embark on a means to appease them. (Respondents' Brief p. 7).

- f) The School District waited until after an entire semester had passed and final grades for that semester were entered and the next semester was started before first telling the Respondents that they were changing L.P.'s grades. From August 2012 until January 23, 2013, L.P. had no idea that anything was amiss. (Respondents' Brief p. 10).
- g) The School District acted deliberately, secretly, in concert with and at the behest of a powerful family who held the PTA presidency for the past four years, and violated the law, the official State Department of Education Uniform Grading Policy, and its own official Grading Systems. L.P. and his parents were excluded from the process and discussion – it is difficult to be part of either when everything is done in secret. (Respondents' Brief p. 11). While there may be a more egregious set of facts in some other case, the Respondents find it difficult to imagine what that would entail.

21. Pursuant to Rule 220(c), SCACR, the Court may affirm the trial court's decision on any ground appearing in the Record on Appeal. The Respondents request that the Court of Appeals affirm on any ground available, including estoppel. The Respondents made this request in their brief and renew it here. (Respondents' Brief pp. 24-25).

22. This case is not moot. L.P. must provide the college to which he hopes to matriculate in the fall his final grades this summer. His acceptance and scholarships at that college may be put in jeopardy because of his grades being changed. Also, he will need his grades for future applications, whether in higher education or employment.

23. The School District has lowered L.P.'s grades despite Respondents having advised the School District that a motion for rehearing and, if necessary, a writ of certiorari to the South Carolina Supreme Court would be filed.

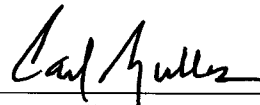
24. The two parties to this action are the School District and the Respondents. There is no party whose relief would be rendered moot or who would be harmed in the event the Order of the Court of Appeals is stayed pending the final outcome of this appeal.

25. Respondents request that the automatic stay of appellate orders typically in effect during appeals be applied in this case for the duration of the appeal.

26. Respondents request that the Court of Appeals specifically stay its Order pending this request for rehearing, the time period for remittitur, the time period for petitioning to the South Carolina Supreme Court for writ of certiorari and the time period for appeal in the South Carolina Supreme Court should the writ of certiorari be accepted.

27. If the Court of Appeals has already remitted this case to the trial court before the time-period for filing for rehearing expired, Respondents request that the Court reinstate the case.

Respectfully submitted,



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June 12, 2014

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Lee C. Palms and Nelle S. Palms, as Guardians ad Litem for
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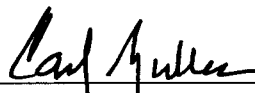
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PROOF OF SERVICE

I certify that I have served Respondents' Petition for Rehearing and accompanying Memorandum by depositing a copy of them in the U.S. Mail, postage prepaid, on June 12, 2014, addressed to:

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SC Court of Appeals

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June 12, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: The School District of Greenville County vs. Lee C. Palms and
Nelle S. Palms, as Guardians ad Litem for L. Cannon Palms, a minor
CA No.: 2013-CP-23-03447

Dear Ms. Kitchings:

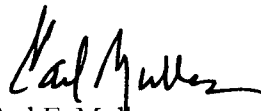
Enclosed please find the original and six copies of the following:

1. Respondents' Petition for Rehearing;
2. Respondents' Memorandum of Law in Support of Petition For Rehearing;
3. Proof of Service; and
4. our firm's check in the amount of \$25.00 representing payment of the filing fee associated therewith.

Please return a file-stamped copy of each to us in the envelope provided for your convenience. By copy of this letter we are serving copies of these filings on all counsel of record.

Thank you for your assistance. If you need anything further, please do not hesitate to contact us.

Very truly yours,


Carl F. Muller

CFM:dph

c: J. Theodore Gentry Esq.
Wade S. Kolb, III, Esq.
Thomas K. Barlow, Esq.
Kenneth L. Childs, Esq.

Enclosures

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