

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SEP 28 2015

SC Court of Appeals

APPEAL FROM LEE COUNTY  
Court of Common Pleas

Maité Murphy, Circuit Court Judge

Case No. 2014-CP-31-227

Laura Toney ..... Respondent

vs.

Lee County School District ..... Appellant.

**APPELLANT'S RETURN TO RESPONDENT'S  
MOTION TO FILE SEALED DOCUMENTS**

**INTRODUCTION**

Appellant, Lee County School District (hereinafter "District"), by and through its undersigned counsel, hereby files this Return to Respondent Laura Toney's (hereinafter "Toney") Motion to File Sealed Documents (hereinafter "Motion"). The District does not join in Toney's request; and, therefore, as discussed more fully below, Toney's Motion should be denied.

**PROCEDURAL HISTORY**

This matter is on appeal from the Lee County Court of Common Pleas. On December 18, 2013, Dr. Wanda Andrews notified Toney of a recommendation to

terminate Toney's employment with the District. (R. p. 1014). Toney timely requested a hearing and deposed "Teacher B." In preparation for the hearing, Toney listed Teacher B as a witness, as well as identified certain documents pertaining to Teacher B to be used as evidence at the hearing. In response to the subpoena and the documents sought to be included in evidence, Teacher B, through his legal counsel, submitted a motion in limine.

A decision on the motion in limine, was initially held in abeyance by the Lee County School District Board of Trustees (hereinafter "Board") until the conclusion of the District's case to determine whether it was relevant. (R. pp. 152-66, 175-76, 358-61). Subsequently, after hearing arguments from counsel for all affected parties, as well as, reviewing the documents in question in executive session and hearing the District's case-in-chief supporting termination, the Board voted to exclude the documents and Teacher B's testimony. (R. pp. 512-15). After the hearing concluded, Toney's employment was terminated, and the Board's order clearly indicates that the Board did not rely upon any of the documents or deposition testimony of Teacher B. (R. pp. 1-10).

Toney appealed the Board's decision to the Lee County Court of Common Pleas, which reversed the Board's decision. (R. p. 21). In the Order, the court indicated that the documents included Facebook postings with vulgar comments, sexual implications, references to Teacher B's sexual orientation, and a photo of Teacher B's deceased spouse. (R. p. 13). According to the lower court, the stated grounds for reversal included: (1) disobeying a directive does not justify termination; and (2) the record did not reflect a pattern of unprofessional conduct. (R. pp. 17-20). The court ultimately determined that because it believed the record was inadequate to support termination, a ruling on "the Board's decision to quash the teacher's subpoena and not consider the content of the teacher's Facebook postings," was not required. (R. p. 20).

## LEGAL ANALYSIS

As an initial matter, it is important to highlight that the main reason for the recommendation of termination is Toney's poor judgment and behavior with respect to her dealings with administration. (R. p. 1014). Teacher B's testimony, Facebook posts, and other related documents are not relevant to the recommendation for termination. Dr. Andrews did not recommend the termination of Toney's employment because of Teacher B's sexual orientation, or because Teacher B made Facebook posts, wrote complaints allegedly regarding Toney, or filed a grievance regarding statements made by Toney.

In support of the recommendation for termination, the Board heard testimony regarding the following: (1) whether Toney engaged in unprofessional conduct during her employment with the District; (2) whether Toney received notice from the District that her conduct was inappropriate and/or unprofessional; and (3) whether Toney failed to follow the reasonable directives of her supervisors. (R. p. 3). In weighing the evidence relating to Toney's conduct, and the documents and testimony pertaining to Teacher B, it is clear that the sealed documents are not relevant to the ultimate determination of the Board.

Additionally, Toney's assertion that the lower court included these materials in its conclusion that the "record" did not support termination, is misplaced. Rather, in footnote 3 at the end of the order, the lower court specifically stated:

Toney has argued that the Board's decision to quash the teacher's subpoena and not consider the content of the teacher's Facebook postings violate TEDA and due process. . . . [h]aving found the record inadequate to support termination, a ruling on these grounds is not required."

(R. p. 20). There is nothing in the lower court's order, in footnote 1 or 3, to suggest that the court expressly reversed the Board's ruling to exclude the documents and testimony

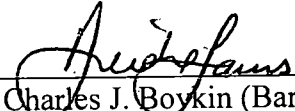
in question. Further, the court's reference to the "record" did not include the documents and testimony relating to Teacher B, as the court specifically addressed these additional materials separately when providing its grounds for reversal and stating the record did not support termination. The record referenced would be the documents and testimony presented to and considered by the Board when making its determination.

**CONCLUSION**

For the foregoing reasons, we respectfully submit that the documents filed under seal are not properly before this Court, as they were not considered by the Board and the lower court did not expressly rule on the documents. Moreover, these documents are neither relevant to the basis for the recommendation for termination, nor Toney's behavior as an employee of the District.

Respectfully submitted,

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Attorneys for Appellant

September 28, 2015



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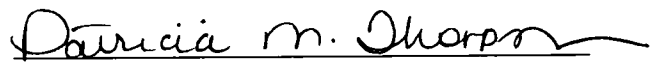
vs.

Lee County School District .....Appellant.

**PROOF OF SERVICE**

I certify that I have served the **APPELLANT'S RETURN TO RESPONDENT'S MOTION TO FILE SEALED DOCUMENTS** in the above-referenced matter on all counsels of record, by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 28th day of September 2015:

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SC Court of Appeals

September 28, 2015

**VIA HAND-DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

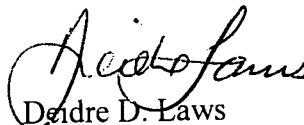
Re: Laura Toney v. Lee County School District  
Case No.: 2015-000558

Dear Ms. Kitchings:

Enclosed herewith for filing, please find the original and seven (7) copies of Appellant's Return to Respondent's Motion to File Sealed Documents regarding the above-referenced matter. Please return one (1) file-stamped copy of the Motion to our courier.

By copy of this letter, we are serving this pleading on all counsel of record. Thank you for your assistance with this matter.

Sincerely,

  
Deidre D. Laws

/pmt  
Enclosures

cc: W. Allen Nickles, Esq. (Via U.S. Mail, w/encls.)  
Charles J. Boykin, Esq. (w/o encls.)