

RECEIVED
JUN 28 2016
SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2016-UP-160 (S.C. Ct. App. filed Apr. 6, 2016)

Mariam R. Noorai.....Petitioner,

v.

School District of Pickens County, School District of Oconee County, and
Gary Culler, Donald Boggs, Richard Hudak, Earnestine Williams, Marilyn
Raines and Dr. Kelly Pew in their individual capacities,

Of whom the School District of Pickens County and Gary Culler

areRespondents.

PETITION FOR A WRIT OF *CERTIORARI*

R. Mills Ariail, Jr.
Law Office of R. Mills Ariail, Jr.
11 North Irvine St., Suite 11
Greenville, S.C. 29601
(864) 232-9390
Facsimile (864) 232-9392
Attorney for Petitioner

David T. Duff
Laura Callaway Hart
Duff, White & Turner, LLC
P.O. Box 1486
Columbia, South Carolina 29202
(803) 790-0603
*Attorneys for Respondents School District of Pickens
County, Gary Culler, Donald Boggs, Richard Hudak,
Marilyn Raines, and Dr. Kelly Pew*

Mary Allison Caudell
Thomas K. Barlow
Childs & Halligan, P.A.
P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035
*Attorneys for Respondents School District of Oconee
County and Earnestine Williams*

INDEX

Certificate of Counsel1

Questions Presented1

Statement of the Case.....1

Argument7

 I. The Court of Appeals Improperly Failed to Consider Petitioner’s Evidence That Showed That a Genuine Issue of Material Fact Existed Regarding Whether Petitioner Suffered a Pecuniary Loss as a Proximate Cause of Respondents’ Misrepresentations.7

 II. The Court of Appeals Improperly Failed to Consider Petitioner’s Evidence That Showed That a Genuine Issue of Material Fact Existed Regarding Whether Respondent SDPC Breached its Contract with Petitioner.9

 III. The Court of Appeals Improperly Failed to Consider Petitioner’s Evidence that Showed That a Genuine Issue of Material Fact Existed Regarding Whether Respondents Intentionally Inflicted Emotional Distress on Petitioner.9

Conclusion10

CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on May 17, 2016.

QUESTIONS PRESENTED

- I. Did the Court of Appeals improperly fail to consider Petitioner's evidence that showed that a genuine issue of material fact existed regarding whether Petitioner suffered a pecuniary loss as a proximate cause of Respondents' misrepresentations?
- II. Did the Court of Appeals improperly fail to consider Petitioner's evidence that showed that a genuine issue of material fact existed regarding whether Respondent School District of Pickens County breached its contract with Petitioner?
- III. Did the Court of Appeals improperly fail to consider Petitioner's evidence that showed that a genuine issue of material fact existed regarding whether Respondents intentionally inflicted emotional distress on Petitioner?

STATEMENT OF THE CASE

This Court should grant *certiorari* because this case involves special and important reasons, specifically, malfeasance in the South Carolina public education system. *See* SCRAP 242(b). The public education system is paramount to South Carolina, and here, Respondents failed to protect a public school teacher from shocking incidents. If we do not shield our teachers from such harms, we show them that our State does not value them. This will lead to a decline in retaining quality teachers. This Court should grant *certiorari* to evaluate this case and protect the sacrosanct public education system.

This appeal only concerns Respondents School District of Pickens County ("SDPC") and Gary Culler ("Culler"). Because Petitioner's argument focuses on how the Court of Appeals

properly considered the unique case facts, Petitioner provides a concise and material factual recitation in compliance with South Carolina Rule of Appellate Procedure 242(d)(3).

In August 2007, SDPC hired Petitioner to teach eighth grade at R.C. Edwards Middle School ("Edwards") in Pickens County, South Carolina. In February 2008, an Edwards student sexually assaulted Petitioner. Edwards pressed charges against the student and he was arrested. (App. at 4.) Despite this disturbing incident, Petitioner continued to perform her employment duties in an exemplary manner, achieving high teaching standards scores and serving as yearbook advisor. (App. at 15.)

Petitioner signed a contract to teach during the 2008-2009 school year. (App. at 193.) After signing this contract, the SDPC announced that it assigned Culler as the new Edwards principal. During the 2008-2009 school year, Culler began to harass, intimidate, and bully Petitioner. (App. at 209, 636-37.) Noorai found Culler's conduct intimidating and eventually became scared of Culler. (App. at 636-37.)

Despite Culler's behavior, in December 2008 Petitioner signed a letter of intent with SDPC indicating that she intended to teach at Edwards for the 2009-2010 school year. (App. at 651.) Petitioner nonetheless felt overwhelmed by her heavy workload and Culler's harassment. She considered leaving the SDPC to work at the Oconee County School District. (App. at 653-54.) As the 2008-2009 school year continued, her heavy workload impacted her teaching abilities. She expressed concern to Culler. (App. at 630.) Culler initially allowed her to step down from acting as the yearbook advisor, but, as described below, reneged on this promise. (App. at 630.) Petitioner explored her employment options, and in January and February 2009 applied and interviewed for a position with the Oconee County School District. (App. at 656-57, 670-71.)

During the 2009 spring semester, three troublesome events occurred showing how Culler engaged in a pattern of intimidation, harassment, and bullying towards Petitioner, and SDPC allowed Culler to engage in this pattern.

On January 27, 2009, during a class change, a male student confronted Petitioner in a locker area where fights had occurred, and Edwards teachers knew they “had to be very vigilant.” (App. at 672-73.) The male student, who was taller, larger, and wider than Petitioner, “began singing a very inappropriate sexually explicit song in which he inserted [Petitioner’s] name.” (App. at 673-75.) Petitioner, in a loud voice, told the student that “this is not appropriate. You need to stop.” (App. at 674-75.) Petitioner explained that the male student:

just kept on, and I was pinned because I was at the stairwell, and I could have fallen down the stairwell. The railing that’s between going down and going up was at my back. And he came and wrapped himself around me as he’s singing these lyrics about being obsessed with me and wanting to have sex right then. And he pinned himself, and I was only slightly able to turn so that it wasn’t full frontal contact between his organs, I guess, and mine.

* * *

And it was very uncomfortable because that was extremely inappropriate. And I was scared about falling down the steps, and there was nothing I could do to stop it.

(App. at 675.) Finally, the student “let go, had a smile on his face, and he just walked away.”

(App. at 676.)

Petitioner filed a complaint in the administration’s office. She did not report the sexual assault to the police because she assumed the SDPC would report it. (App. at 685.) The student then assaulted another Edwards student. Edwards briefly suspended the student for the second assault, but took no action against the student for assaulting Petitioner. Culler allowed the student to return to Petitioner’s class without any discipline. (App. at 703.) That a school

administration would allow this is shocking. Every day, Petitioner faced the student and began developing symptoms of post-traumatic stress disorder. (App. at 4.)

The second incident occurred in April 2009. Petitioner had health problems. Her gall bladder stopped functioning and was out for surgery and recovery for two weeks. On her first day back, Culler called Petitioner into his office. He did not ask about her health, told Petitioner that he had “changed his mind,” and would again require Petitioner to serve as the yearbook advisor. Culler told Petitioner that she “would have a bigger workload because [the next year’s yearbook class] was a larger class.” (App. at 746-48.) While a principal certainly has discretion to manage his staff and assign work as he sees fit, Culler’s lack of sensitivity, combined with the sexual assault and other incidents described below, demonstrate that SDPC engaged in a pattern and practice of disregarding Petitioner’s well-being.

The third incident also occurred in April 2009. Petitioner returned from her medical leave, still weak from her recent surgery. Petitioner still had a tube sticking out of her. (App. at 212.) Petitioner kept a student late so the student could complete an exam, and gave him a pass to explain his late arrival to his next class, taught by Mr. Hudak. (App. at 210-11.)

At the end of the next class, Hudak, a “big, puffy, muscular man,” (App. at 212), stormed into Petitioner’s classroom and verbally berated and belittled Petitioner in front of her students. (App. at 19.) Hudak was so angry at Petitioner that Hudak stood up to leave and “slammed into one of [Petitioner’s] eighth grade students who was trying to enter my classroom. The girl hit the door and slammed her head, and I had to send another student to get ice for the injury that Mr. Hudak caused and completely ignored.” (App. at 213-14.) Petitioner was frightened and “in fear of Mr. Hudak during this incident.” (App. at 218.)

Petitioner reported this incident to Culler. Culler did nothing except tell Petitioner to avoid Hudak. (App. at 19-20.)

To recap, within a three-month time period (1) a student sexually assaulted Petitioner and neither SDPC nor Culler reported the incident or disciplined the student, (2) Culler reneged on his promise to reduce Petitioner's workload, and (3) another teacher threatened Petitioner in front of her students, and neither SDPC nor Culler adequately addressed the threat.

By the end of the 2008-2009 school year, Petitioner had "suffered both emotional and physical health problems as a result of . . . [her] treatment at the school" and "felt forced to resign and seek employment elsewhere." (App. at 5.)

The SDPC offered Petitioner a "continuing contract" to teach for the 2009-2010 school year. In light of her heavy workload and the three incidents, Petitioner told Culler that she could not sign the contract if she had to serve as yearbook advisor. (App. at 222.) Petitioner also felt that Edwards was an unsafe environment for her or her students, and was unsure if she wanted to remain for another year. (App. at 223.)

On May 22, 2009, Culler called Petitioner to his office to discuss whether Petitioner would sign the continuing contract. Despite her hesitation, Petitioner was open to signing the contract. However, Culler belittled Petitioner, telling her that she was just a "little writing teacher," implying that she was a lesser teacher than her peers. (App. at 224.) Culler told Petitioner to sign the continuing contract, but promised Petitioner that if she found another job within a month, he would "let her out" of the contract. (App. at 224-25.) Petitioner decided not to sign the contract and pursue job openings in Oconee County. (App. at 223.)

Petitioner had a job interview scheduled for June 1, 2009 at West Oak Middle School in Oconee County. (App. at 753-54.) After the interview, Culler confronted Petitioner and told

Petitioner that he wanted her to “write a letter of resignation so that [Culler] could interview” for her position. (App. at 227.) Petitioner then met with an Edwards assistant principal, Mary Bridges, who told Petitioner that “Mr. Culler wanted [Bridges] to tell [Petitioner] that if [Petitioner] did not write her [letter] of resignation that day, that [Petitioner’s teaching] certificate would be pulled and [Petitioner] would never teach again in the State of South Carolina.” (App. at 229-30.) Culler also directly told Petitioner that if she did not write a letter of resignation, that he would pull her teaching certificate. (App. at 775-76.) Before this string of incidents, Petitioner enjoyed teaching, and did not want to lose her teaching certificate.

Culler did not have the authority to revoke Petitioner’s teaching license. Petitioner did not know this. Culler had worn down Petitioner through his abuse and threats. As a result, Petitioner believed this misrepresentation and began drafting her resignation letter in the administration office. Culler entered the office and berated Petitioner. Culler developed an erection from abusing Petitioner:

So then sometime later the door opened and Mr. Culler came in there, and he was very angry. And he was screaming, and he was going off. He came and he closed the door. He’s standing with a bright red face. He was so angry. He was screaming. He had excitement. He had pleasure on his face because he seemed to take pleasure of the fact that I was completely scared, that I was completely crying, that it was – I was just in a state. It was horrible.

* * *

Then his face kind of changed a little bit, and it appeared that he was having an erection and he came forward to get in the seat that was in front of me and he sat down and his tone kind of changed.

(App. at 235-36 (emphasis added).)

Shocked, Petitioner completed the resignation letter, left the office and was no longer employed by SDPC. After her initial February interview with the Oconee County School District, an Oconee employee told Petitioner that she was “the top candidate for the eighth grade position” and her references were “quite good.” (App. at 247-48, 869.) Before Petitioner was

forced to sign the June resignation letter, Oconee County was still considering Petitioner for the open position. However, after the incident an Oconee County employee then told Petitioner that she did not get the job “based on what Mr. Culler had said.” (App. at 794.) Petitioner has also applied and interviewed for other positions in Oconee, Anderson, and Greenville Counties, and due to Culler’s negative employment reference has prevented her from getting another teaching job.

The Oconee County Circuit Court granted Respondents’ Motions for Summary Judgment. Petitioner appealed to the Court of Appeals, arguing that the circuit court erred by granting summary judgment on her claims of negligent misrepresentation, breach of contract, breach of contract accompanied by fraudulent acts, and intentional infliction of emotional distress. The Court of Appeals filed its opinion on April 6, 2016, and denied Petitioner’s Petition for Rehearing without discussion on May 17, 2016. On June 17, 2016 Petitioner received a twenty day extension to file this Petition. This Petition for Writ of Certiorari follows.

Petitioner now seeks a writ of *certiorari* from this Court because this case presents special and important implications for the South Carolina public education system. Petitioner asks this Court to review the decision of the Court of Appeals, reverse the decision, and order the Circuit Court to deny summary judgment for Respondents.

ARGUMENT

I. The Court of Appeals Improperly Failed to Consider Petitioner’s Evidence That Showed That a Genuine Issue of Material Fact Existed Regarding Whether Petitioner Suffered a Pecuniary Loss as a Proximate Cause of Respondents’ Misrepresentations.

The Court of Appeals failed to consider much evidence showing that Respondents made actionable misrepresentations to Petitioner. The Court of Appeals failed to consider that Culler misrepresented (1) to Petitioner that Petitioner was required to sign a letter of resignation “that day” because she chose not to renew her contract, when Petitioner was not

required to sign any such letter; and (2) that Culler had the authority to revoke Petitioner's teaching certificate if she failed to sign the forced resignation letter. These representations are false.

First, Petitioner's contract contains no term requiring her to sign a letter of resignation. S.C. Code Ann. § 59-26-40, the statute that governs Petitioner's contract, does not require a letter of resignation. The contract expires automatically. At no time could Culler or SDPC require Petitioner to sign a resignation letter. Her contract was for a fixed term, and would automatically lapse at the end.

Second, neither Respondent had the authority to *automatically* revoke Petitioner's teaching certificate for any reason, let alone failing to sign a resignation letter. S.C. Code Ann. §§ 59-25-159 to -160 provides that Petitioner's certificate could only be revoked for "good cause" and lists twelve categories, none of which includes a failure to sign a resignation letter. Additionally, S.C. Code Ann. § 59-25-170 provides that Petitioner's certificate could not be revoked or suspended without written notice to Petitioner and a hearing. Petitioner did not receive written notice or a hearing.

These misrepresentations forced Culler's resignation, deprived her of her substantive procedural due process rights, and led to the negative references that Respondent Culler provided to other schools.

Accordingly, but for the misrepresentations, Petitioner never would left her Edwards job, and never would have suffered the pecuniary loss of continually being denied employment due to the false information Culler provided to Petitioner's prospective employers.

Petitioner requests that this Court grant this Petition so that it may fully consider the evidence presented to the circuit court and the Court of Appeals.

II. The Court of Appeals Improperly Failed to Consider Petitioner's Evidence That Showed That a Genuine Issue of Material Fact Existed Regarding Whether Respondent SDPC Breached its Contract with Petitioner.

Petitioner had a contract with SDPC. This contract employed Petitioner for the 2008-2009 school year. Implied into this contract are S.C. Code Ann. §§ 59-24-60 & 59-63-335, which impose a *mandatory* duty on school administrators to report criminal conduct to law enforcement authorities. Despite Respondents' testimony to the contract, Petitioner testified that the criminal conduct was never reported to law enforcement. (App. at 670, 688.) There is, at a minimum, a genuine issue of material fact about whether SDPC breached this implied contractual duty.

Also implied into Petitioner's contract is S.C. Code Ann. § 59-63-330. This section imposes a mandatory duty on SDPC to report school-related crimes to the South Carolina Department of Education. SDPC did not do so. (App. at 703.)

Petitioner requests that this Court grant this Petition so that it may fully consider all of the evidence presented to the circuit court and the Court of Appeals.

III. The Court of Appeals Improperly Failed to Consider Petitioner's Evidence that Showed That a Genuine Issue of Material Fact Existed Regarding Whether Respondents Intentionally Inflicted Emotional Distress on Petitioner.

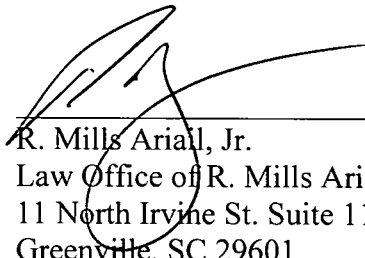
Respondent Culler berated, belittled, and threatened Petitioner for reporting the three incidents. When Culler improperly forced Petitioner to sign a resignation letter, the thrill he gained from the abuse caused him to have an erection. This incident alone is extreme and outrageous. It is certainly so when considered in the context the underlying systematic pattern of conduct. This incident "exceed[s] all possible bounds of decency . . . [and is] utterly intolerable" in a civilized community. *Gattison v. S.C. State Coll.*, 318 S.C. 148, 151, 456 S.E.2d 414, 416 (Ct. App. 1995).

Second, despite the Court of Appeals holding, Petitioner provided sufficient evidence to show that her emotional distress was severe. In *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 355, 650 S.E.2d 68, 73 (2007), cited by the Court of Appeals in its opinion, the appellant's emotional damages "rested on his testimony that he lost sleep at night and [was] grinding his teeth in his sleep." The *Hansson* appellant never received treatment or medication from any other physician or counselor, did not lose any time from work, and did not affect his ability to perform his job. *Id.* Here, Petitioner developed post-traumatic stress disorder. Here, Petitioner can no longer find work as a result of Culler's systematic abuse and the SDPC's failure to act. *Hansson* and the instant case are distinguishable.

Petitioner requests that this Court grant this Petition so that it may fully review the evidence showing the emotional distress that Respondents caused Petitioner.

CONCLUSION

A quality public school education is a core function of South Carolina. To retain qualified teachers, we must protect them within the bounds of the laws and school rules from the very incidents that occurred here. Failing to do so will undercut the South Carolina public education system. For the reasons stated, Petitioner respectfully requests that this Court grant this Petition for Writ of *Certiorari*.



R. Mills Ariail, Jr.
Law Office of R. Mills Ariail, Jr.
11 North Irvine St. Suite 11
Greenville, SC 29601
(864) 232-9390
Attorney for Petitioner Mariam R. Noorai

June 23, 2016
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2016-UP-160 (S.C. Ct. App. filed Apr. 6, 2016)

Mariam R. Noorai.....Petitioner,

v.

School District of Pickens County, School District of Oconee County, and
Gary Culler, Donald Boggs, Richard Hudak, Earnestine Williams, Marilyn
Raines and Dr. Kelly Pew in their individual capacities,

Of whom the School District of Pickens County and Gary Culler

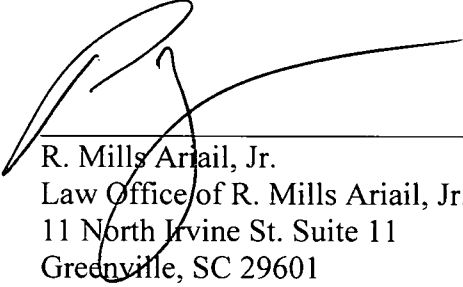
areRespondents.

PROOF OF SERVICE

I certify that I have served the original and six (6) copies of Petitioner's Petition for a Writ of Certiorari via U.S. Certified Mail, Return Receipt requested, on June 24, 2016, to the South Carolina Supreme Court, addressed as follows:

The Honorable Daniel Shearhouse
Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

June 23, 2016



R. Mills Ariail, Jr.
Law Office of R. Mills Ariail, Jr.
11 North Irvine St. Suite 11
Greenville, SC 29601
(864) 232-9390
Attorney for Petitioner Mariam R. Noorai

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2016-UP-160 (S.C. Ct. App. filed Apr. 6, 2016)

Mariam R. Noorai.....Petitioner,

v.

School District of Pickens County, School District of Oconee County, and
Gary Culler, Donald Boggs, Richard Hudak, Earnestine Williams, Marilyn
Raines and Dr. Kelly Pew in their individual capacities,

Of whom the School District of Pickens County and Gary Culler

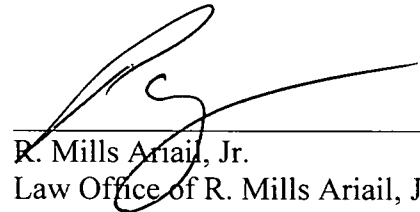
areRespondents.

PROOF OF SERVICE

I certify that I have served a copy of Petitioner's Petition for a Writ of Certiorari via U.S. Mail on June 24, 2016, to the South Carolina Court of Appeals, addressed as follows:

The Honorable Jenny Abbott Kitchings
Clerk of Court
Court of Appeals of South Carolina
P.O. Box 11629
Columbia, SC 29211

June 23, 2016



R. Mills Ariail, Jr.
Law Office of R. Mills Ariail, Jr.
11 North Irvine St. Suite 11
Greenville, SC 29601
(864) 232-9390
Attorney for Petitioner Mariam R. Noorai

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

JUN 28 2016

SC SUPREME COURT

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2016-UP-160 (S.C. Ct. App. filed Apr. 6, 2016)

Mariam R. Noorai.....Petitioner,

v.

School District of Pickens County, School District of Oconee County, and
Gary Culler, Donald Boggs, Richard Hudak, Earnestine Williams, Marilyn
Raines and Dr. Kelly Pew in their individual capacities,

Of whom the School District of Pickens County and Gary Culler

areRespondents.

PROOF OF SERVICE

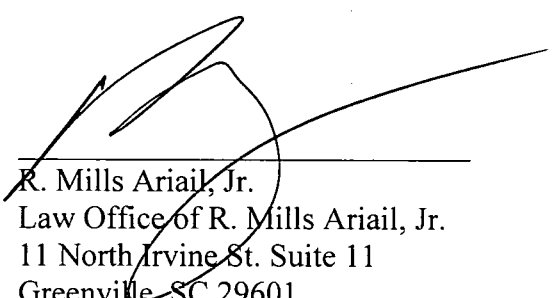
I certify that I have served a copy of Petitioner's Petition for a Writ of Certiorari via U.S. Mail on June 24, 2016, to the respective attorneys of record:

David T. Duff
Laura Callaway Hart
Duff, White & Turner, LLC
P.O. Box 1486
Columbia, South Carolina 29202
(803) 790-0603
*Attorneys for Respondents School District
of Pickens County, Gary Culler,
Donald Boggs, Richard Hudak, Marilyn Raines,
and Dr. Kelly Pew*

Mary Allison Caudell
Thomas K. Barlow
Childs & Halligan, P.A.
P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035
*Attorneys for Respondents School District
of Oconee County and Earnestine Williams*

[SIGNATURE BLOCK FOLLOWS ON NEXT PAGE]

June 23, 2016



R. Mills Ariail, Jr.
Law Office of R. Mills Ariail, Jr.
11 North Irvine St. Suite 11
Greenville, SC 29601
(864) 232-9390
Attorney for Petitioner Mariam R. Noorai