81141

RECEIVED
OCT 03 2016
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes III, Master in Equity and Special Circuit Court Judge

---

Case No. 2015-CP-07-1343
Appellate Case No. 2016-000955

John Alden Bauer, III — Appellant

v

Beaufort County School District — Respondent

MOTION TO PRESERVE CLAIM OF ERROR

Appellant's Exhibits 22 and 23, dealing with McKee v. Peoria Unified School District, an out of state case, were outrageously excluded during the Beaufort County School District Board of Education Hearing April 30 - May 2, 2015. (McKee v. Peoria Unified School District, Superior Court of Arizona, LC2011-000006-001 DT, September 6, 2013. (Pages 20-22, herein)

Childs and Halligan, attorneys for the Superintendent/District/Board* (see note below) presented a Motion in Limine, on Day One of the Hearing. From the motion: *"The proposed exhibits submitted by Respondent to which Complainant objects, include, but are not limited to: (1) any exhibits which are either cases or articles from jurisdictions other than South Carolina,..."* (Limine. Page 14, herein)

From School Board Hearing, page 361, Mr. Vernie L. Williams, of Childs and Halligan representing the Superintendent/District/Board* (see note below) stated: *"But in the break, we also referred to his Exhibits 22 and 23, which related to an out-of-state case, a case out of, I think, the state of Illinois, and as was explained to him, that type of information is not proper to be introduced into evidence."*

*Note: *"Representing the Superintendent/District/Board*"*. The terminology is a problem since the district, the superintendent, and the board are synonymous, but with an ad hoc artifice of separation. As asserted by David Duff, now representing the district, *"... Board or the District which legally are one in the same."* Duff at times has represented all three. (Duff's assertion was in a Hearing, 14th Judicial District, August 19, 2016, page 27 lines 6-7) (Pages 15-16, herein)

Here is the ruling by the chair, also on Board hearing page 361: *"CHAIRMAN*

EVANS: And we would agree. Mr. Duff and I had this discussion two days ago, about some of the in limine motion, and that was certainly part of it, introducing case -- cases from other states,... "

Precedent for allowing manifold case law from out of state includes Brown v. James, 697 S.E. 2d 604, 389 S.C. 41 (2010). Respondent's counsel, then Advice Counsel to the Board, should have remembered this and disallowed the motion since he was one of the attorneys on the losing side in Brown. (Brown pages 10, 11, 12, 13, herein)

McKee is compelling case law and relevant to this case. Herein follows: first the rulings; second the pertinence to this case; followed by legal considerations.

Documents in support of the Motion:

1. Case Law: Brown v. James, 697 S.E. 2d 604, 389 S.C. 41 (2010) (Portions attached)
2. District's Motion in Limine (Page 1 Attached)
3. Court of Common Pleas, (Hearing, 14th Judicial District, August 19, 2016, Page 27 lines 6-7) (Portion attached)
4. APPELLANT'S REPLY TO RESPONDENT'S RETURN TO MOTION TO EXCLUDE UNCHARGED ACCUSATIONS. (Portions attached)
5. Case Law: McKee v. Peoria Unified School District, Superior Court of Arizona, LC2011-000006-001 DT, September 6, 2013) (Portions attached)

First the Rulings of the Arizona Superior Court in *McKee v. Peoria* (significance to Appellant follows):

"1. The Board was not an impartial tribunal.

a. The Board and the District are the same entity.

b. The Board predetermined the case.

3. The Board did not provide a written statement identifying the evidence upon which it relied or the reasons for its decision.

3. The District never served the Statement of Charges on McKee.

4. The hearing was not held within the statutory time frame.

The findings of the Superior Court of Arizona parallel, exactly, the contentions made by Appellant in this case, as follows. (Court copy Pages 20, 21, 22, herein)

McKee Ruling: *"a. The Board and the District are the same entity."*

Relevance: Assertion by David Duff, Counsel for Respondent "... *Board or the District which legally are one in the same."* (Hearing, 14th Judicial District, August 19, 2016, page 27 lines 6-7, pages 15-16, herein) Appellant contends that this also violates #22 of the South Carolina Constitution.

McKee Ruling: *"b. The Board predetermined the case."*

Relevance: Appellant was terminated June 5, 2014, without a hearing, and the termination was officially effected July 1, 2014--Ratified and published in August and September of 2014, thereby predetermined, since there had been no hearing. *"Yet, there is no language in the Employment and Dismissal Act that states a final decision of the Board is subject to a teacher's right to a hearing after the fact."* Brown v. James, page 5. (Page 11, herein)

McKee Ruling: *"3. The District never served the Statement of Charges on McKee."*

Relevance: Appellant (Bauer) was never served with a Statement of Charges. See REPLY TO RESPONDENT'S RETURN TO MOTION TO EXCLUDE UNCHARGED ACCUSATIONS, (Pages 17, 18, 19, herein)

McKee Ruling: *"4. The hearing was not held within the statutory time frame."*

Relevance: Appellant requested a hearing on June 21, 2014. By statute the hearing was to be held on or before July 6, 2014, which had given the attorneys five (5) months to prepare. The district imposed a delay until April 30 - May 2, 2015, 313 days after the request that required the hearing to be held within 15 days, by statute, and held well after the district ignored multiple petitions, motions and a FOIA request (ignoring a FOIA request is a misdemeanor). Again, "*...there is no language in the Employment and Dismissal Act that states a final decision of the Board is subject to a teacher's right to a hearing after the fact.*" (Brown v James, page 5. Page 11, herein)

Can one attempt to justify such an outrage? Yes, David T. Duff, counsel for the district, shamelessly and falsely, blamed Lauren Martel, esquire, for the delay. Ms. Martel was hired 132 days after the request for a hearing that was required to be held within 15 days, and after submission of the aforementioned petitions, motions, and FOIA. Mr. Duff badly mis-represented the truth.

Duff at the hearing March 4, 2016, page 30 line 16 said, *"So and the -- most of the delay, quite frankly, was due to Ms. Martel."*

Nodding sympathetically to Duff was The honorable Marvin H. Dukes, III, of the Court of Common Pleas.

Note: McKee was awarded One Million Dollars ($1M).

The Court of Common Pleas ignored that David Duff, then Advice Counsel to the Board, and Chairman Evans accepted the specious Motion in Limine, with its inappropriate captions. The Limine Motion was made known to appellant only 23 hours before the hearing, and the motion had been discussed prior to that by the opposing attorneys, by the Board Chairman, and by the Advice Counsel to the Board, David Duff, who is now Respondent's counsel. Board Hearing, page 361, lines 20 - 23. No judicial officer was involved.

"A written motion ... shall be served not later than ten days before the time specified for the hearing..." (Rule 6(d) South Carolina Rules of Civil Procedure.

The concept of timely disclosure is reinforced (in criminal procedures) Rule 110(a)(2) South Carolina Rules of Civil Procedure.

"...all motions...must be filed not less than ten (10) days before trial." Rule 110(a)(2) South Carolina Rules of Civil Procedure.

If Respondent claims that the cited rules were not applicable in this case, certainly reason requires something compatible with fairness.

Ironically, the administrators at Appellant's former school all indicated that Appellant was an excellent teacher and that they were willing to work with him again,

but the superintendent, who never met Appellant, was inflexible with everything but the law; AND he testified that he was unfamiliar with the Teacher Employment and Dismissal Act.

Appellant, pro se, is not aware if he is allowed to refer to similar and notorious *"prior bad acts",* by the superintendent (now well-publicized in Beaufort County), or if the *"prior bad acts",* can be published in conjunction with this case. If it is appropriate, this court can easily discover the scandals. If it is not appropriate for Appellant to draw attention to the superintendent's encounters and negotiations with the Ethics Commission, and beyond, Appellant will remain silent on the subject.

Clearly, in Appellant's case there were many egregious violations similar to those of *McKee v. Peoria Unified School District,* by the Beaufort County School District, committed in *admitted* ignorance of the law by the superintendent and by the General Counsel for the district, Drew Davis, who was not licensed to practice law in South Carolina.

With specificity, cited in multiple documents, and disclosed in Appellant's Initial Brief, and exemplified in case law, there are compelling reasons for a reversal of this case.

As reflected in the Judge's oath the avidity is "Justice and only Justice".

Respectfully Submitted,

RECEIVED
OCT 03 2016
SC Court of Appeals

John Alden Bauer III

John Alden Bauer, III
5 Gumtree Road
E-11
Hilton Head Island, SC 29926
aldenbauer706@gmail.com

(843) 384-1506

October 3, 2016

CERTIFICATE OF SERVICE VIA US MAIL AND VERIFIED ELECTRONIC MAIL

The undersigned, John Alden Bauer, III, pro se, certifies that he has served the following Counsel of Record with the foregoing MOTION TO PRESERVE CLAIM OF ERROR by making a copy of same, via verified electronic mail, and via US Mail, postage prepaid, and return address clearly indicated to the following on the 3rd day of October, 2016.

David Duff, Esq.
Duff, White and Turner
3700 Forest Dr.
Suite 404
Columbia, SC 29204

RECEIVED
OCT 03 2016
SC Court of Appeals

John Alden Bauer, III
5 Gumtree Road
E-11
Hilton Head Island, SC 29926
aldenbauer706@gmail.com
(843) 384-1506

File 59

LINK:

http://www.judicial.state.sc.us/opinions/displayOpinion.cfm?caseNo=4674

South Carolina

JUDICIAL DEPARTMENT

4674 - Brown v. JamesP

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Sharon Brown, Appellant,v.

William B. James, Superintendent for Cherokee County School District, Respondent.

Appeal From Cherokee County
J. Derham Cole, Circuit Court Judge

Opinion No. 4674
Heard October 13, 2010 – Filed April 12, 2010
Withdrawn, Substituted and Refiled July 21, 2010

REVERSED AND REMANDED

Fletcher Smith, Jr., of Greenville, for Appellant.

M. Jane Turner, David Duff and Kiosha A. Hammond, all of Columbia, for Respondent.

GEATHERS, J.: Sharon Brown (Brown) appeals the circuit court's decision granting District Superintendent William B. James' (James) motion for summary judgment in the matter she brought against him alleging a violation of her rights under the South Carolina Teacher Employment and Dismissal Act (Employment and Dismissal Act).[1] Brown asserts that (1) the circuit court abused its discretion when concluding she had not exhausted her administrative remedies; (2) the circuit court misinterpreted the Employment and Dismissal Act; (3) she had a legal right to appeal directly to the circuit court because the Board of Trustees (Board) had already reached a final decision regarding the nonrenewal of her contract; and (4) the circuit court abused its discretion when concluding that her motion to amend her complaint to add parties was moot. We reverse and remand.

FACTS

Brown was a teacher, assigned to Limestone Central Elementary School (Limestone) in Cherokee County, South Carolina, for the 2006-2007 school year. Brown had been a teacher at Limestone for eight years before she filed this action. On April 10, 2007, Brown was called to the Cherokee County School District

Brown asserts that the April 24, 2007 vote by the Board constituted a final action. We agree. The minutes of the April 24, 2007, Board meeting show a final decision regarding the termination of Brown's contract was made even before her fifteen-day period to request a hearing had expired.[9] On appeal, James admits a final determination regarding Brown's contract was made on April 24, 2007, but argues that the Board accepted the recommendation "subject to the [Employment and Dismissal] Act's procedural protections, particularly [Brown's] right to a Board hearing."[10] Yet, there is no language in the Employment and Dismissal Act that states a final decision of the Board is subject to a teacher's right to a hearing after the fact.

Our Supreme Court has expounded upon the exhaustion of administrative remedies with regard to an agency's final decision. In South Carolina Baptist Hospital v. South Carolina Department of Health & Environmental Control, the Court held:

An agency decision which does not decide the merits of a contested case . . . is not a final agency decision subject to judicial review . . . It would be premature for a court to decide the merits of a dispute when the agency responsible for making the decision has not yet had an opportunity to decide the merits of the case.

291 S.C. 267, 270, 353 S.E.2d 277, 279 (1987).

In that case, the Court did not find judicial review of an interlocutory decision to be appropriate. Id. Conversely, judicial review would have been appropriate if an evidentiary hearing was conducted and a final decision was made regarding the merits of the case. Id.[11] Additionally, in Canteen v. McLeod Regional Medical Center, 384 S.C. 617, 624, 682 S.E.2d 504, 507 (Ct. App. 2009), the Appellate Panel of the Workers' Compensation Commission reversed the findings of the single commissioner regarding a brain injury and remanded the case for a determination of permanency to body parts other than the claimant's brain. The claimant immediately sought judicial review and the employer filed a motion to dismiss, arguing the Appellant Panel's decision was interlocutory because it had remanded the case for further proceedings. Id. However, this Court held, "because the appellate panel ruled on [the only issue before it], there was a final agency decision on the merits in this case and [the claimant] exhausted all of her administrative remedies." Id.

In the case at hand, whether or not to terminate Brown was the only issue to be determined, and when the Board unanimously voted to terminate Brown, it reached a final decision on the merits. Section 59-25-480 of the South Carolina Code (2004) specifically states, "The decision of the district board of trustees shall be final, unless within thirty days thereafter an appeal is made to the court of common pleas of any county in which the major portion of such district lies."

Further, when the Board voted to accept James' recommendation for the nonrenewal of Brown's teaching contract prior to conducting a hearing, its decision had an immediate effect on Brown's legal rights.[12] Sections 59-25-460 and 59-25-470 of the South Carolina Code (2004) make it expressly clear that before the Board makes a final decision regarding the acceptance or rejection of a recommendation for nonrenewal of a teacher's contract, the teacher must be afforded the opportunity to be heard. The observance of the procedural requirements of the Employment and Dismissal Act is mandatory and not a matter of discretion.

With regard to what Board action constituted a final agency decision, James inaccurately interprets the procedure outlined in section 59-25-470 and improperly conflates the requirements of section 59-25-410 with those of section 59-25-470.[13]

Section 59-25-410 of the Employment and Dismissal Act instructs the Board to decide and notify the teachers "in their employ concerning their employment for the ensuing year." According to the statute, by April 15th of each year, the Board or its designee,[14] must notify the teachers in writing of the recommendations for non-renewal. James notified Brown with an April 12th letter of his intent not to renew her contract for the ensuing year. This satisfied the April 15th notice requirement of section 59-25-410. There-

Plainly, the procedure is set in place to afford the teacher a meaningful review of the evidence prior to the Board making a final determination, as a review of the evidence after the fact would be futile. "The elementary and cardinal rule of statutory construction is that the Court ascertain and effectuate the actual intent of the legislature." Horn v. Davis Elec. Constructors, Inc., 307 S.C. 559, 563, 416 S.E.2d 634, 636 (1992). Where, as here, the terms are clear and unambiguous, "the Court must apply them according to [their] literal meaning." Anders v. S.C. Parole & Cmty. Corr. Bd., 279 S.C. 206, 209, 305 S.E.2d 229, 230 (1983).

Our research has not revealed any specific South Carolina case law addressing whether a teacher must participate in a hearing after the Board has made a final determination regarding the nonrenewal of her contract. However, courts in other jurisdictions have analyzed issues similar to the case at bar. Specifically, the Indiana Court of Appeals has held:

[T]he notice by the school corporation to the tenure [sic] teachers was not sufficient, as it did not comply with the statutory requirements for the dismissal of a tenure teacher and such failure to comply with the statutory requirements did not require a tenure teacher to go forth with the burden of requesting a hearing for cause.

Joyce v. Hanover Cmty. Sch. Corp., 276 N.E.2d 549, 564 (Ind. Ct. App. 1971) (finding that the school board's action was arbitrary and capricious as it pertained to tenured teachers), overruled on other grounds by Myers v. Greater Clark County Sch. Corp., 464 N.E.2d 1323 (Ind. Ct. App. 1984); see also Tippecanoe Valley Sch. Corp. v. Leachman, 261 N.E.2d 880, 887 (Ind. Ct. App. 1970) (holding that "evidence . . . was sufficient to sustain an implied finding by the trial court that the procedure provided by the contract for the removal of the plaintiff from his position as teacher was not followed and that failure to follow it was a gross abuse of discretion").

The statutes interpreted in the Pennsylvania case of In re Swink, 200 A. 200 (1938), are very similar to South Carolina law in that they afford a teacher who has been notified that her contract has been recommended for nonrenewal an opportunity to present her case to the local school board before a final decision on termination is made. [3] In that case, the Pennsylvania Superior Court held the Board of School Directors failed to comply with the statutory requirements and reversed the board's actions, stating that the observance of the prescribed procedure "is not a matter of discretion." Id. at 203. The court further held, "[T]he purpose of the procedure prescribed by the act for the dismissal of a teacher . . . is to prevent arbitrary action by the board, to afford a fair hearing to the teacher . . . before dismissal, and to provide for full, impartial, and unbiased consideration by the board of the testimony produced." Id. (emphasis added).

Similarly, the North Dakota Supreme Court has held that in order for a teacher to benefit from a hearing, she must be allowed to present her case in an atmosphere where even though there exists a contemplated recommendation for nonrenewal, the ultimate decision of termination has yet to be made. Henley v. Fingal Pub. Sch. Dist. #54, 219 N.W.2d 106, 110 (N.D. 1974). Furthermore, the Supreme Court of Connecticut has explained:

Notice before termination and notice after termination are not two sides of the same coin. Once the board has committed itself by its action to a particular result it may be too late in the day to suggest a change of direction: at that stage the urge to proceed along its committed course is compelling. But before the die is cast it is still possible for persuasion to affect the result.

Petrovich v. New Canaan Bd. of Educ., 457 A.2d 315, 318 (Conn. 1983).

Analogous to the cases cited above, in the present case, a hearing after the fact would have likely proven futile. Sections 59-25-420 and 59-25-430 of the South Carolina Code (2004) provide for a hearing prior to a final decision of the Board to avoid futility and allow for a meaningful and fair administrative hearing. Section 1-23-380 of the South Carolina Code (2005 & Supp. 2009) states in part, "A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency

after, pursuant to section 59-25-470, the Board must afford the adversely affected teachers a hearing based on the notice of dismissal that was recommended by the superintendent. After the hearing is completed, the Board is required to either affirm or withdraw the notice and that action will translate into its final decision. See S.C. Code Ann. § 59-25-470 (2004); see also Adamson, 332 S.C. at 128, 503 S.E.2d at 756 (explaining the Board is free to reject the superintendent's recommendation, and, until then, there is no final board action).

Contrary to James' argument, there are no inconsistencies or conflicts between section 59-25-410 and 59-25-470. When the Board voted unanimously on April 24th to terminate Brown's contract, it clearly affirmed the notice of dismissal and this constituted a final decision. Consequently, there was nothing left procedurally under the Employment and Dismissal Act for Brown to do except appeal to the court of common pleas pursuant to section 59-25-480. The fact that an administrative hearing was not conducted below rests with the Board's failure to follow procedure as prescribed in the Employment and Dismissal Act, and not in any failure of Brown to exhaust her administrative remedies.

B. Exceptions to the Requirement of Exhaustion

Brown asserts that even if she failed to exhaust her administrative remedies before the Board, exhaustion was not required because her case satisfied one of the exceptions to the exhaustion requirement. We agree.

South Carolina, like most jurisdictions, recognizes exceptions to the exhaustion of administrative remedies requirement. The general rule is that administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule. Andrews Bearing Corp. v. Brady, 261 S.C. 533, 536, 201 S.E.2d 241, 243 (1973); Ex parte Allstate Ins. Co., 248 S.C. 550, 567, 151 S.E.2d 849, 855 (1966). A commonly recognized exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that pursuit of administrative remedies would be a vain or futile act. Moore v. Sumter County Council, 300 S.C. 270, 273, 387 S.E.2d 455, 458 (1990); Ward v. State, 343 S.C. 14, 19, 538 S.E.2d 245, 247 (2000); Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue, 342 S.C. 34, 39, 535 S.E.2d 642, 645 (2000). "Futility, however, must be demonstrated by a showing comparable to the administrative agency taking 'a hard and fast position that makes an adverse ruling a certainty.'" Law v. S.C. Dep't of Corr., 368 S.C. 424, 438, 629 S.E.2d 642, 650 (2006) (citing Thetford Props. IV Ltd. P'ship v. U.S. Dep't of Hous. & Urban Dev., 907 F.2d 445, 450 (4th Cir. 1990)). Another exception to the exhaustion requirement is recognized when an agency has acted outside of its authority. Responsible Econ. Dev. v. S.C. Dep't of Health & Envtl. Control, 371 S.C. 547, 553, 641 S.E.2d 425, 428 (2007).

Brown argues she was not required to participate in a hearing after a final determination had already been made regarding the nonrenewal of her teaching contract, as such a pursuit would constitute a futile act. Consequently, she asserts that she was within her legal right to appeal directly to the circuit court. We agree.

Article 1, section 22, of the South Carolina State Constitution states:

No person shall be finally bound by a judicial or quasijudicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard . . . and he shall have in all such instances the right to judicial review.

Further, section 59-25-470 states that after the hearing has taken place and the Board has had the opportunity to determine "whether the evidence showed good and just cause for the notice of suspension or dismissal," or in this case, nonrenewal of Brown's teaching contract, the Board "shall render its decision accordingly, either affirming or withdrawing the notice of suspension or dismissal." In his brief, James cites this section of the Code and admits "recommendations, when adverse to a teacher, are subject to the [Employment and Dismissal] Act's procedural protections, particularly the right to a Board hearing pursuant to § 59-25-470."[15]

6

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) BEFORE THE BEAUFORT COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES

Dr. Jeffrey C. Moss,

Complainant,

vs.

John Alden Bauer,

Respondent.

COMPLAINANT'S MOTION IN LIMINE

Respondent has proposed numerous exhibits, including many that contain information Complainant contends are not relevant to the issues involved in Respondent's Teacher Employment and Dismissal Act ("TEDA") hearing. The proposed exhibits submitted by Respondent to which Complainant objects, include, but are not limited to: (1) any exhibits which are either cases or articles from jurisdictions other than South Carolina, (2) any correspondence between Respondent and legal counsel for the Complainant, as those items typically are not considered evidence for purposes of a hearing, (3) articles from journals or newspapers, (4) online legal advice, and (5) email correspondence between Respondent and his father. Additionally, Respondent seeks to introduce other documents, which Complainant believes are not relevant to this hearing, including but not limited to, policies from other school systems from out of state.

Complainant does not take the position that the rules of evidence strictly apply to hearings held pursuant to the TEDA; however, the general principles stated in the Rules of Evidence regarding relevance should apply in any hearing. Rule 402 of the South Carolina Rules of Evidence provides that, "[a]ll relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes,

1 State of South Carolina) Court of Common Pleas
) 14th Judicial Circuit
2 County of Beaufort) No.: 2015-CP-07-1343

3

4

John Alden Bauer, III,)
5)
Appellant,)
6) HEARING
vs.)
7)
Jeffrey C. Moss, Ed.D.,)
8) August 19, 2015
Respondent.)
9)

10

11 Hearing reported by Deborah S. Thomas,
12 Certified Verbatim Reporter and Notary Public in and
13 for the State of South Carolina; said hearing held
14 before the Honorable Marvin H. Dukes, III, Beaufort
15 County Master in Equity and Special Circuit Court
16 Judge in accordance with the South Carolina Rules of
17 Civil Procedure, at the Beaufort County Courthouse,
18 102 Ribaut Road, Room 212, Beaufort, South Carolina,
19 on August 19, 2015, at the hour of 11:15 a.m.
20
21
22
23 THOMAS REPORTING SERVICES

11 definite and certain, I suppose that that probably
12 wouldn't hurt to make it clear that this is nothing
13 more than an appeal. So, anyway, you were going on.
14 So I'm sorry I interrupted you, Ms. Martel. Go
15 ahead. I just wanted to get that point clear
16 because, again, it sounded like you all were on the
17 same page.
18 MS. MARTEL: Well, Your Honor, I
19 don't need to continue to go on if that resolves the
20 issue in and of itself.
21 JUDGE DUKES: Well, let me ask you
22 this. Jeffrey Moss, your explanation on naming him
23 as a Defendant I suppose makes some sense, but it is
24 in conflict with the rules it looks like. What does
25 the 59 Code -- does it call for anything as far as

27

1 what -- what does it say about that?
2 MR. DUFF: Well, the appeals section
3 I think makes it clear that the appeal is from the
4 Board's order. At this point it is the Board's
5 order that is at issue. And the proper respondent
6 is the Board or the District which legally are one
7 in the same.
8 And I did cite -- all of this is in

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes III, Master in Equity and Special Circuit Court Judge

Case No. 2015-CP-07-1343
Appellate Case No. 2016-000955

John Alden Bauer, III — Appellant

v

Beaufort County
School District — Respondent

**REPLY TO RESPONDENT'S RETURN TO
MOTION TO EXCLUDE UNCHARGED ACCUSATIONS**

Respondent fails to respond in substance to the motion. The manifold substance is that Charges required by The Teacher Employment and Dismissal Act (59-25-460) were never issued, and uncharged accusations, invented for a '*Kangaroo*' Board Hearing, were

now counsel to Respondent (without consent). Therefore, the doctor's professional concerns about the errors must be weighed. This Court has discretion to consider any relevant evidence of error.

The Court of Common Pleas acknowledged that false evidence existed, but considered it to be inconsequential, an obvious error by the court, and symptomatic of systemic deficiency.

The district also refused to verify the challenged creation date of specious evidence. The task would have required only two (2) computer commands to expose the truth. (1. Right click on "name" of document, 2. left click on "get info". Creation date is shown) Respondent's counsel, acting as "Advice Counsel" to the Board, was willfully complicit in denying this effortless revelation.

A Motion to Compel the said simple "verification" in the Court of Common Pleas was denied, another remarkable error. Appellant even offered to hire an independent person to perform the task.

Appellant is mindful that this appeal is from the decision of the Court of Common Pleas, as extended from the opprobrium of the Board Hearing.

Appellant emphasizes, and Respondent ignores, that the only claimed substitute for a *Statement of Charges* was the superintendent's email, dated May 29, 2014. Respondent also fails to acknowledge that the District's principal witness, Superintendent Jeffrey C. Moss, ***denied*** that his May 29, 2014 email contained the charges. (page 530, line 16, and beyond, Board Hearing, May 2, 2015) Therefore, there was no Statement of Charges issued prior to the hearing, real, de facto, or presumed, a violation of The

Teacher Employment and Dismissal Act (59-25-460). *"No teacher shall be dismissed unless written notice specifying the cause of dismissal is first given the teacher by the District Board of Trustees..."* (Emphasis by Appellant)

Failure to reverse this case legitimizes that districts need not comply with law.

Respondent in his Return to the Appellant's Motion ignores the corrective obligation of the Appellate courts, *"originally called court of errors (or court of errors and appeals), and was on the premise that it was intended to correct errors made by lower courts"* An example of such courts includes the New Jersey Court of Errors and Appeals (which existed from 1844 to1947).

Related to the absence of charges and missing *admitted* Appellant exhibits, Respondent's counsel has never addressed the issue that he attended the deliberations of the "Jury", a violation of Gonzales v. McEuen, 435 F. Supp. 460 (C.D. Cal. 1977) U.S. District Court for the Central District of California - 435 F. Supp. 460 (C.D. Cal. 1977) March 2, 1977.

The administrators at *Hilton Head Island International Baccalaureate Elementary School* (yes, that is the name) all praised Appellant's teaching ability and expressed a willingness to work with him again. How is it, then, that Appellant's career received the *death penalty* based on untrue and uncharged evidence after 17.3 unblemished years?

Again, The Court of Common Pleas acknowledged that the false evidence existed, but erroneously considered it to be inconsequential.

SUPERIOR COURT OF ARIZONA MARICOPA COUNTY

LC2011-000006-001 DT

THE HON. CRANE MCCLENNEN

TIMOTHY MCKEE v.

PEORIA UNIFIED SCHOOL DISTRICT (001) KATHY KNECHT (001)

RECORD APPEAL RULING / REMAND

Plaintiff-Appellant Timothy McKee asks this Court to review the action taken by the Board of Defendant-Appellee, the Peoria Unified School District, in voting to dismiss him as a teacher. For the following reasons, this Court reverses the action of the Board.

I. FACTUAL BACKGROUND.

Plaintiff-Appellant Timothy McKee (McKee) was a teacher employed by Defendant-Appel- lee the Peoria Unified School District (the District). On May 12, 2010, McKee's P.E. class was in the swimming pool at Ironwood High School. At about 11:30 during the free swim, Larry Allen's (Allen) P.E. class came to the pool. McKee and Allen agreed McKee would watch the shallow end and Allen would watch the deep end. Because student J.P. was a beginning swimmer, McKee restricted J.P. to the shallow end.

A. The District denied McKee due process.
1. The Board was not an impartial tribunal.

a. The Board and the District are the same entity.

b. The Board predetermined the case.

c. The Board was biased.
(1) At the time of dismissal, the Board was litigating a case against McKee.
(2) The Board has a direct pecuniary interest in the outcome of the hearing.

d. The Board did not adopt relevant policies until after the hearing.

e. The Board relied on evidence from outside the hearing.

f. The Board did not review the entire record before changing the findings of fact.

g. The Board never identified the policy, statute, or regulation it claimed McKee vio lated.

h. Two Board members based their decision on matters outside the scope of the Statement of Charges.

2. The Statement of Charges did not provide adequate notice.
3. The Board did not provide a written statement identifying the evidence upon

which it relied or the reasons for its decision.
B. The dismissal process violated A.R.S. §§ 15–539 and 15–541.

1. The Statement of Charges did not comply with A.R.S. § 15–539(F).

2. The Statement of Charges did not comply with A.R.S. § 15–539(C).

3. The District never served the Statement of Charges on McKee.

4. The hearing was not held within the statutory time frame.