

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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OCT 12 2016

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

**SC Court of Appeals**

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.

**RESPONDENT'S RETURN TO APPELLANT'S MOTION TO PRESERVE  
CLAIM OF ERROR**

Pursuant to Rule 240(e), Respondent Beaufort County School District hereby submits its Return to Appellant's Motion to Preserve Claim of Error. This case involves an appeal under the substantial evidence standard of review of a circuit court ruling upholding the decision of the Beaufort County School Board in a teacher dismissal case. Respondent's School Board reached its decision to terminate Appellant's employment as a teacher after an evidentiary hearing pursuant to S.C. Code § 59-25-460, in which Appellant had the option of presenting a case in his defense. He refused to do so and, as

a result, there was virtually no evidence in Appellant's favor for the School Board to consider.

Throughout this appeal, including the initial appeal to the circuit court, Appellant has sought to convert this appeal into an original action, having eschewed the opportunity to present a case at the evidentiary hearing before the School Board. As part of this effort, Appellant has repeatedly and improperly sought to introduce into the record evidence which could have been presented to the School Board but was not.

For example, Appellant previously filed a "Motion to Consider Relevant Evidence" asking this Court to consider evidence not presented to the School Board. This Court denied the motion to the extent Appellant was asking the Court to consider matters not presented below as required by Rule 210(c). Subsequently, Appellant filed a "Motion to Exclude Uncharged Accusations," which appears to request that this Court ignore certain testimony presented by the District's administration at the School Board's hearing regarding Bauer's employment history. Respondents have urged the Court to deny this pending motion.

Appellant's Designation of Matter also cited numerous documents that were not introduced into evidence at the School Board's hearing. This Court granted Respondent's Motion to Strike those portions of Appellant's Designation of Matter. Appellant filed an Amended Designation of Matter and a Second Amended Initial Brief, which eliminated some, though not all, of the documentary material that appeared in his initial Designation of Matter. Respondent has filed a second Motion to Strike those improper citations. This Court's ruling on this motion is pending.

The instant motion, the third in a series of frivolous motions intended to alter the record created below, complains that two of Appellant's exhibits<sup>1</sup> were "outrageously excluded" from evidence at the hearing, which presumably prohibited the School Board from considering the case of *McKee v. Peoria Unified School District*, a circuit level court decision from Arizona. That decision is neither persuasive nor binding authority on this Court. To the extent the motion alleges error on the part of the School Board in excluding this evidence, such arguments belong in a brief, not a motion. The same is true of the other arguments and unsupported allegations contained in the motion, several of which are duplicative of those made in Appellants Second Amended Initial Brief.

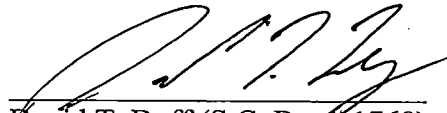
For the reasons state above, Respondent requests that this Court deny Appellant's latest frivolous motion and further requests that the Court take any additional action it deems appropriate to prevent the filing of future frivolous motions by Appellant.

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<sup>1</sup> It is not clear what Exhibits 22 and 23 are, as they are not attached to the instant motion. These exhibits were discussed briefly and superficially during the hearing. See Exhibit A. However, they were not entered into the record and Respondent cannot now determine what these exhibits are. It should be noted also that the Board agreed that Appellant could reference this material during his testimony, but he chose not to testify or put on a case in chief. Nevertheless, to the extent the exhibits referenced merely intend to bring certain case law to the court's attention, Appellant may obviously cite to those cases in his briefs.

Respectfully Submitted,



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October 12, 2016

# EXHIBIT

A

1 decisions to accept or reject a superintendent's nonrenewal  
2 recommendation prior to an evidentiary hearing, if such a  
3 hearing is requested, or simply the notice of a nonrenewal  
4 recommendation and of the opportunity for a hearing is to  
5 be given prior to May 15th."

6 Q Notice the words "nonrenewal," the same wording  
7 as the April 1st minutes, and, quote, Mr. Chairman -- we  
8 need 60-B.

9 (LIVE discussion begins.)

10 MR. BAUER: And if you wish to skip over  
11 this, this is exactly what you explained to me.

12 CHAIRMAN EVANS: Yes. Okay.

13 MR. BAUER: And that's fine with me.

14 CHAIRMAN EVANS: Thank you, Mr. Bauer.

15 MR. BAUER: Yes.

16 CHAIRMAN EVANS: Can we go ahead and, with  
17 somebody's supervision, skip over this part?

18 MR. WILLIAMS: I have a transcript that may  
19 help us move it along.

20 CHAIRMAN EVANS: Okay. Thank you. Why  
21 don't we take a quick 10-minute break while we're  
22 going through this?

23 (Brief recess.)

24 MR. DUFF: Mr. Williams and Mr. Bauer, will  
25 you make it clear by verbalizing your agreement that

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**Bettye Anderson & Associates**

**Witness: Walton  
Cross by Bauer**

**Beaufort, South Carolina  
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**Page 360 of 587**

1           some portion of the tape can be skipped or fast-  
2           forwarded?

3                   MR. WILLIAMS:   And during the break, Mr.  
4           Bauer and I, along with Mr. Duff, were trying to have  
5           a discussion, in the interest of efficiency, to fast-  
6           forward parts.  Mr. Bauer acknowledged some parts that  
7           he did not have an objection to us fast-forwarding to  
8           prior to the break.

9                   But in the break, we also referred to his  
10          Exhibits 22 and 23, which related to an out-of-state  
11          case, a case out of, I think, the state of Illinois,  
12          and as was explained to him, that type of information  
13          is not proper to be introduced into evidence.  If he  
14          wants to ask the Board as part of his closing or his  
15          testimony to consider that, that's something that he  
16          can do, but we all agree that, in terms of testimony  
17          of the witness and including them in the evidence  
18          book, that those are not proper documents to be  
19          included or referred to by the witness.

20                   CHAIRMAN EVANS:  And we would agree.  Mr.  
21          Duff and I had this discussion two days ago, about  
22          some of the in limine motion, and that was certainly  
23          part of it, introducing case -- cases from other  
24          states, that it's not appropriate in this phase, but  
25          if he wants to introduce them in his summation --

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Witness: Walton  
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Page 361 of 587

1 MR. BAUER: Yes.

2 CHAIRMAN EVANS: -- that that would be an  
3 appropriate point to do it.

4 MR. BAUER: I understand. I was not clear  
5 on that, and you've been --

6 CHAIRMAN EVANS: No, that's fine. We  
7 understand.

8 MR. BAUER: I appreciate it, explaining that  
9 to me.

10 MR. WILLIAMS: And I believe Ms.  
11 Cushingberry has fast-forwarded through a portion and  
12 is ready now to proceed.

13 MS. CUSHINGBERRY: You said go to file 225?

14 MR. WILLIAMS: Correct.

15 (VIDEO testimony resumes.)

16 MR. BAUER: Please.

17 (WHEREUPON, a document was marked as  
18 Defendant's Exhibit Number 6 for Identification to the  
19 Walton Deposition.)

20 CHAIRMAN EVANS (LIVE): What's the number,  
21 Robyn?

22 MS. CUSHINGBERRY (LIVE): Two two five.

23 CHAIRMAN EVANS (LIVE): Two two five.

24 BY MR. BAUER:

25 Q Please read the last sentence.

---

**Bettye Anderson & Associates**

**Witness: Walton  
Cross by Bauer**

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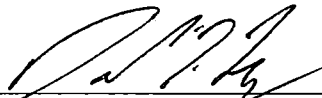
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**PROOF OF SERVICE**

I certify that I have served Respondent's Return to Appellant's Motion to Preserve Claim of Error, by depositing a copy of it in the United States Mail, postage prepaid, on October 12, 2016, addressed to *pro se* Appellant John Alden Bauer, III, 5 Gumtree Road E-11, Hilton Head Island, South Carolina, 29926.

October 12, 2016

*SEE SIGNATURE NEXT PAGE*



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October 12, 2016

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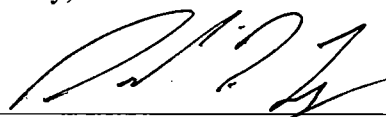
Re: John Alden Bauer, III, v. Beaufort County School District  
Appellate Case No. 2016-000955

Dear Ms. Allen:

Enclosed for filing is the original and six copies of Respondent's Return to Appellant's Motion to Preserve Claim of Error with Proof of Service for same.

Thank you for your assistance in this matter.

Sincerely,



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Enclosures

Ms. V. Claire Allen, Esq.

October 12, 2016

Page 2

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