

③

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
DEC 16 2016
SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H Dukes, III, Maser 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 COMPEL
RESPONDENT TO PRODUCE SEVENTEEN MISSING ADMITTED EXHIBITS FROM
THE BOARD HEARING OF APRIL 30 TO MAY 2, 2015 AND TO COMPEL
RESPONDENT TO PRODUCE PRESERVED EVIDENCE ORDERED BY, AND
AGREED TO BY RESPONDENT.**

Pursuant to Rule 240(e), Respondent Beaufort County School District hereby submits its Return to Appellant’s Motion to Compel, asserting that the Motion should be denied.

Appellant’s Motion seeks to compel Respondent to produce 17 unidentified exhibits that he states were admitted during the School Board hearing but which allegedly have been “removed from the index and shredded.” Initially, Appellant’s allegations that the School Board Chair conspired with the Board’s advice counsel and the District’s general counsel to destroy exhibits and exclude them from the record is outrageous, without proof or merit, and has no place, either procedurally or substantively, in a motion in this appellate proceeding. As noted in

prior filings, Appellant agreed to accept the Board Chair's determination with regard to what evidence had been admitted during the hearing. (See Exhibit A, Board Hearing Transcript pp. 563-566). Appellant cannot now, nearly 18 months after the hearing, seek to add additional material to the record. Furthermore, Respondent is not responsible for the documents Appellant brought to the hearing but failed to have entered into evidence as a consequence of his refusal to testify or present any case in his defense.

The second part of Appellant's Motion requests this Court to compel Respondent to produce "preserved evidence." Notwithstanding the fact that Appellant does not identify the specific evidence he is seeking or how such evidence would "exonerate" him, a motion to compel the production of evidence is clearly improper in a case on appeal. Though he is *pro se*, Respondent has been repeatedly informed during this appeal, and during his initial appeal to the circuit court, that an appeal is not a new trial in which he can present new evidence that was not presented during the School Board's hearing. In addition to this Court's rules, which have been cited in Respondent's motions and responses to Appellant's motions, as well as this Court's prior Orders, the Court's website makes the point with great clarity:

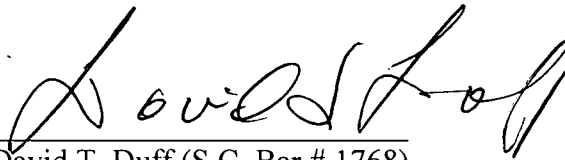
An appeal is not a new trial. Parties before the Court of Appeals will not be permitted to conduct discovery, call witnesses, or offer any evidence that was not presented first to the court below. The Court decides appeals strictly on the basis of the record that existed in the court below and the written briefs that are filed by the parties.

<http://www.sccourts.org/appeals/faq.cfm#whatAIB>

This is now the fifth filing in which Appellant has sought to add to or modify the record established at the School Board hearing in this teacher dismissal case. Such motions are clearly improper under the rules and, therefore, frivolous. Nevertheless, Appellant continues with his effort to alter the record, causing Respondent, a tax-payer funded public school district, to spend

time and money responding. Respondent respectfully requests that the Court admonish Appellant in no uncertain terms that the filing of any further motions regarding the existing record, which are determined to be improper and frivolous in an appellate proceeding, will result in severe sanctions pursuant to Rule 269, SCACR, including the award of attorney's fees and costs to Respondent and/or dismissal of this appeal.

Respectfully Submitted,



David T. Duff (S.C. Bar # 1768)
David N. Lyon (S.C. Bar # 100676)
DUFF, WHITE & TURNER, LLC
P. O. Box 1486
Columbia, South Carolina 29202
(803) 790-0603

Drew H. Davis (S.C. Bar # 102017)
General Counsel
Beaufort County School District
Post Office Box 309
Beaufort, South Carolina 29901-0309
Telephone: 843-322-2414

Attorneys for Respondent Beaufort County
School District

December 16, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

DEC 16 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,

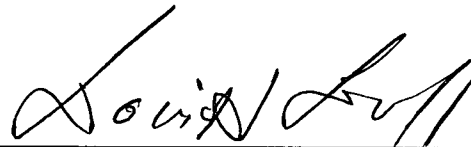
Respondent.

PROOF OF SERVICE

I certify that I have served Respondent's Return to Appellant's Motion to Compel Respondent to Produce Seventeen Missing Admitted Exhibits from the Board Hearing of April 30 to May 2, 2015 and to compel Respondent to Produced Preserved Evidence Ordered by, and agreed to by Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on December 16, 2016, addressed to *pro se* Appellant John Alden Bauer, III, 109 Ashton Hill Drive, Columbia, South Carolina 29229.

December 16, 2016

SEE SIGNATURE NEXT PAGE



David T. Duff (S.C. Bar # 1768)
David N. Lyon (S.C. Bar # 100676)
DUFF, WHITE & TURNER, LLC
P. O. Box 1486
Columbia, South Carolina 29202
803.790.0603

Drew H. Davis (S.C. Bar # 102017)
General Counsel
Beaufort County School District
P.O. Box 309
Beaufort, South Carolina 29901-0309
843.322.2414

Attorneys for Respondent Beaufort County
School District

DUFF, WHITE & TURNER, L.L.C.

ATTORNEYS AND COUNSELORS AT LAW

POST OFFICE BOX 1486
COLUMBIA, SOUTH CAROLINA 29202

3700 FOREST DRIVE, SUITE 404
COLUMBIA, SOUTH CAROLINA 29204
WWW.DWTLAWFIRM.COM

TELEPHONE
803 / 790-0603

FACSIMILE
803 / 790-0605

DAVID T. DUFF*†
ANDREA E. WHITE
MEREDITH L. SEIBERT
WILLIAM C. FREEMAN
DAVID N. LYON
ASHLEY C. STORY
TIFFANY L. BUTLER

OF COUNSEL
M. JANE TURNER
LAURA CALLAWAY HART

sender's email address
dlyon@dwtlawfirm.com

* CERTIFIED SPECIALIST IN EMPLOYMENT AND LABOR LAW
† CERTIFIED CIVIL ARBITRATOR AND MEDIATOR

December 16, 2016

V. Claire Allen, Esq.
Deputy Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED

DEC 16 2016

SC Court of Appeals

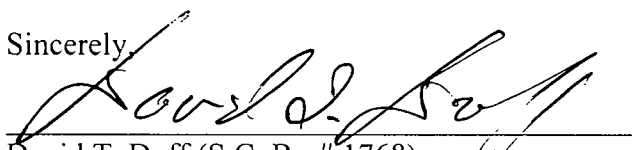
Re: John Alden Bauer, III, v. Beaufort County School District
Appellate Case No. 2016-000955

Dear Ms. Allen:

Enclosed for filing is an original and six copies of Respondent's Return to Appellant's Motion to Compel Respondent to Produce Seventeen Missing Admitted Exhibits from the Board Hearing of April 30 to May 2, 2015 and to Compel Respondent to Produce Preserved Evidence Ordered by, and agreed to by Respondent, along with a Proof of Service for same.

Thank you for your assistance in this matter.

Sincerely,


David T. Duff (S.C. Bar# 1768)

David N. Lyon (S.C. Bar # 100676)

DUFF, WHITE & TURNER, LLC

P. O. Box 1486

Columbia, South Carolina 29202

803.790.0603

Drew H. Davis (S.C. Bar # 102017)

General Counsel

Beaufort County School District

P.O. Box 309

Beaufort, South Carolina 29901-0309

843.322.2414

Attorneys for Respondent Beaufort County School
District

Ms. V. Claire Allen, Esq.

December 16, 2016

Page 2

Enclosures

c: John Alden Bauer, III (*Via U.S. Mail*)
109 Ashton Hill Drive
Columbia, SC 29229
Appellant