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DEC 28 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

**REPLY TO RESPONDENT'S RETURN TO
APPELLANT'S MOTION FOR EXPEDITED RULING**

Respondent in his Return misstates what Appellant seeks among other distortions.

1. Respondent accuses Appellant of "*stray exhibits*". False.

There were four exhibits; two were testimony containing a quotation as it

appeared in the *official transcript* of the Beaufort County School Board Hearing, April 29-May 2, 2015. The other two exhibits were official Respondent documentations of the event *in the quotation* exhibits. The exhibits are again attached for the sake of clarity.

These documents are neither “*spurious*” nor “*stray*”. They confirm that Alice Walton, the Human Resources Officer, *TESTIFIED THAT APPELLANT WAS TERMINATED PRIOR TO A HEARING*. It is in the official record, page 351, line 15.

The Lower Court Order, Section Heading , “*Bauer’s employment was not terminated prior to his evidentiary hearing before the Board.*” is from page 19, signed March 29, 2016, by the Honorable Marvin H. Dukes, III. This statement is obviously false, given the *testimony* of Ms. Walton in exhibits 3 and 4, and Respondent’s own official documents, Exhibits 1 & 2. The false statement was written by David Duff, counsel for Respondent.

2. Respondent states in his Return that Appellant’s intention was for an “*immediate ruling...in Appellant’s favor*”. False.

Appellant did not intend to request an *immediate* ruling, he merely wished for an *expedited ruling* in the classic definition, i.e. “*speeding up the process*”.

If Appellant’s contention is correct that Respondent began this case with one essential *imperative* violation (although, among many other violations) of the Teacher Employment and Dismissal Act, Section 59-25-460, “*termination prior to a hearing*” then no other determination is necessary for a reversal of this case. Brown v. James, 697 S.E. 2d 604, 389 S.C. 41 (2010) ‘From Brown “...*the observance of the procedural requirements of the Employment and Dismissal Act is mandatory and not a matter of*

discretion.”

Respondent should welcome the opportunity since he affirmed to the Honorable Marvin H. Dukes III, Fourteenth Judicial Circuit, that Appellant was “*not terminated*” prior to a hearing.

3. Respondent in his Return has again requested sanctions against Appellant.

Rule 11(c)(2) Federal Rules of Civil Procedure “*A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b).*” The South Carolina Rules make the same requirement.

If a seasoned attorney, such as Mr. Duff, has specific knowledge that Rule 11(c) (2) does not apply here, perhaps he is aware of some other praxis. Therefore, see #4 below.

Respondent’s counsel and Respondent’s ‘current’ counsel were made aware that exculpatory evidence had been withheld by Respondent prior to the hearing, and has been, and is *continuing* to be withheld *after* the hearing, but Respondent’s counsel, David Duff, ruled (ruling in the name of the school board) that “*It wasn't withheld.*” Page 247, line 8.

4. With such duplicitous official behavior should not remedial action have been required in light of: (SCRCP Rules 3.3(3), 1.2(d), 1.0(f), 1.6); SCRPC 8.4(a)

How can a respected attorney only be concerned with winning a case against a popular and successful teacher, and not also be concerned with the truth, nor the wishes of the parents, nor the wishes of the children, and not be concerned with adherence to the law? (Law violated was: the Teacher Employment and Dismissal Act, Section

59-25-460 *"No teacher shall be dismissed unless.... an opportunity for a hearing has been afforded the teacher."*

Respondent's Counsel, David Duff, seems to not recognize that Appellant's 17-year distinguished and unblemished career has received a death penalty based on false evidence that can be disproved with *"Preserved Evidence"*.

It would seem appropriate that with such repeated deceitful behavior that Duff White and Turner, and also that the Respondent, should forfeit all fees paid in this case and that an appropriate accommodation should be made in favor of Appellant.

Donald O. Clendaniel, Assistant Principal (Respondent's witness), referring to Appellant, *"...he was a good teacher. He seemed to love what he did, love children."* (Board Hearing page 126, line 17)

Since Respondent complains that Appellant does not indicate how revealing the *"Preserved Evidence"* will exonerate Appellant, therefore, a brief one-paragraph recapitulation is in order.

Appellant did not leave a *"disabled child, unattended, off-campus"* as written by Mr. Duff. The *'gifted and talented'* child came to the *public* pool, alone, on-campus, at an undetermined time (no investigation), to a pool that had two attendants and a volunteer parent assisting (parent was Angela Thune--affidavit available, but not filed). The child did not join the class of 23, and did not return when Appellant returned the class to the classroom teacher. The classroom teacher completed a head count (23) and accepted the returned class. *"Preserved Evidence"* in the form of surveillance footage would reveal the truth and exonerate Appellant. All of that evidence was to be copied

and verified for use in Appellant's hearing. It was not.

Appellant was then "*fired*", i.e., terminated without a hearing? And the preserved EXCULPATORY EVIDENCE WAS, AND IS, WITHHELD.

One may believe that Appellant, or the attendants, or the parent volunteer should have known about the additional child in the public pool, while instructing 23 other children in a safety-intense class...BUT it cannot be shown that Respondent's violating the Teacher Employment and Dismissal Act Section 59-25-460 is justified. From the law: "*No teacher shall be dismissed unless.... an opportunity for a hearing has been afforded the teacher.*"

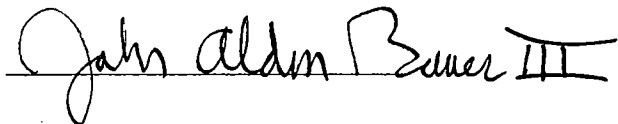
Accordingly, in respect for the law, the judgement of the lower court should be REVERSED.

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Respectfully Submitted,

A handwritten signature in cursive script that reads "John Alden Bauer III". The signature is written in black ink and is positioned above a horizontal line.

John Alden Bauer, III, pro se
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Columbia, SC 29229
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(843) 384-1506

December 23, 2016

CERTIFICATE OF SERVICE VIA ELECTRONIC MAIL AND VIA US MAIL

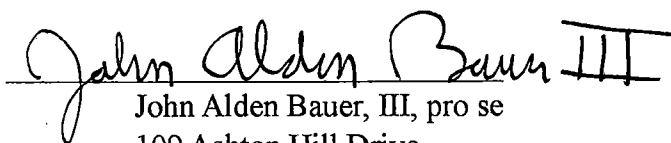
The undersigned, John Alden Bauer, III, pro se, certifies that he has served the following Counsel of Record with the foregoing REPLY TO RESPONDENT'S RETURN TO APPELLANT'S MOTION FOR EXPEDITED RULING by making a copy of same, via electronic mail, and via US Mail, postage prepaid, and return address clearly indicated to the following on the 23rd day of December, 2016.

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SC Court of Appeals

David Duff, Esq.
Duff, White and Turner
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Columbia, SC 29204



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Exhibit 1

Superintendent's summary, Board of Education special called meeting - June 5, 2014

Vice Chair Mary Cordray called the meeting to order at 4:20 p.m.

Pledge of Allegiance

Board members agreed to discuss the proposed 2014-15 budget first, then go into executive session to discuss a personnel issue.

Superintendent Moss and Chief Operations Officer Phyllis White presented an overview of proposed increases to the 2014-15 budget. The need for the budget as proposed was due to increases in benefits for employees, state-mandated step increases for staff, an increase in student enrollment and instructional initiatives. The initial budget sent to County Council was \$192.8 million.

Dr. Moss and Ms. White presented several budgetary options for Board members to discuss as they worked to develop a reduced proposal to present to County Council. After Board members discussed various options, Ms. Bush moved to direct the superintendent to propose \$1.5 million in 2014-15 budget reductions. The reductions would be achieved by utilizing new, recently approved state funding for literacy coaches, greater efficiencies in school bus transportation, ending the Teacher Advancement Program and delaying the expansion of some CATE programs. The reductions would lower the district's budget proposal to \$191,398,015. The motion passed 7-4.

The Board then went into executive session to discuss a personnel matter. Out of executive session, the board made a motion to approve the superintendent's recommendation to terminate the employment of Employee A. Approved.

The meeting was adjourned at 6:15 p.m.

Exhibit 2

Personnel Action Form

Beaufort County School District

Personnel Action Fi

Employee Information

Today's Date: 07/14/2014 (MM/DD/YYYY)

PID: 13241 [Find by PID] Social Security Number: 251230861 [Find by SSN] (#####)

If neither lookup automatically populated the employee's name, please enter it below:

Name: BAUER, JOHN

Category: Certified

School/Location: Hilton Head IB Elementary

Action

Resigned (Send Resignation Letter to HR)

Transfer

Retired (Send Retirement Letter to HR)

Position change: (Indicate Below)

Terminated

Change Number of Days

TERL Date:

Change Number of Hours

Funding Change (Provide account in comments section below)

Step Upgrade

Leave of Absence (FMLA, ADMIN, etc.)

Other Employee Action (Please explain in comments section)

Details / Comments

Effective Date: 07/01/2014 (MM/DD/YYYY)

Provide detailed information regarding the action and the reason for the action:
Terminated per Alice Walton.

Employee #: 109775

Task Notes

Print Summary Print Details **F U A - 2 - 2** 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52

<https://wincculr.beaufort.k12.sc.us/wincculr/portal/wFormIO.exe?Session=36p1WCtQ...> 7/14/2014

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A I don't remember if I were or not.

Q Does policy trump law?

A No.

Q Does the law say that a teacher cannot be terminated without a hearing?

MR. WILLIAMS: Again, to the extent you're asking for a legal conclusion, I'd have the same objection I previously made.

BY MR. BAUER:

Q You can answer.

A And your question was?

Q Does the law say that a teacher cannot be terminated without a hearing?

A I specifically can't answer yes or no to that.

Q Okay. You were asked on February 5th, 2015, if Mr. Bauer was terminated by the Board without a hearing, and your answer is -- was, "That is correct." Now, please see file 59. That's --

MR. WILLIAMS: Is this the exhibit?

MR. BAUER: Yes, 59 -- oh, yeah. I'm sorry. This is a different exhibit coming up.

MR. WILLIAMS: Are you offering it as an exhibit?

MR. BAUER: Yes. Here we go. It's -- sorry. I keep handing it over here. Okay.

Witness: Walton
Cross by Bauer

Betty Anderson & Associates
Beaufort, South Carolina
(843)525-0791 (800)543-5506

WALTON TESTIMONY

EXHIBIT 4

19 or a copy of the check that was written for the
20 first legal fees in this case?

21 A I don't know if I can or not.

22 THE WITNESS: Can I?

23 MR. WILLIAMS: You can't.

24 You can submit a request to us and
25 we will respond to it.

0074

1 MARTEL - WALTON (DIRECT EXAMINATION)

2 MS. MARTEL: Off the record.

3 (Whereupon, an off-the-record
4 discussion was held.)

5 BY MS. MARTEL:

6 Q Did you or Dr. Moss ever say in an
7 E-mail we will make Mr. Bauer's life miserable?

8 A No, we never said that.

9 Q So what I have gathered from the
10 testimony today is that Mr. Bauer was terminated
11 without a hearing by the board on June 5,
12 correct?

13 A That is correct.

14 Q And so then did you consider that vote
15 to be an initial decision subject to the results
16 of a hearing?

17 A What vote?

18 Q The vote on June 5?

19 A Yes.

20 Q And then again additionally the vote on
21 August?

22 A Correct. Yes.

23 Q So you have testified that you are not
24 aware of the Brown Versus James case?

25 A That is correct.

0075

1 MARTEL - WALTON (DIRECT EXAMINATION)

2 (Whereupon, Defendant's Exhibit
3 Number 6 was marked for
4 identification.)

5 BY MS. MARTEL:

6 Q Are you aware that when a board has
7 used the word terminate before a hearing, that
8 in that case the teacher was ordered to be
9 reinstated?

10 MR. WILLIAMS: Object to the form.

11 You can answer if you know.

12 THE WITNESS: I am not aware.

13 BY MS. MARTEL:

14 Q On the bottom of page 6 in this case it
15 indicates that: "Further, when the board voted
16 to accept James' recommendation for the