

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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APPEAL FROM LEE COUNTY
Court of Common Pleas

FEB 15 2017

Maité Murphy, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2015-000558

Laura ToneyRespondent

vs.

Lee County School DistrictAppellant.

APPELLANT'S PETITION FOR REHEARING

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ARGUMENT

Pursuant to Rule 221, SCACR, Appellant, Lee County School District (“District”), respectfully petitions for rehearing of the above-captioned appeal in which the Court of Appeals filed its Opinion No. 5466 on February 1, 2017. In its opinion, the Court found that the Circuit Court properly determined that the record did not contain substantial evidence to support the decision of the District’s Board of Trustees (“Board”) to terminate Ms. Laura Toney’s employment contract for the 2013-14 school year under S.C. Code Ann. § 59-25-430. This petition is based on the Court having overlooked substantial evidence in the record regarding Respondent’s evident unfitness to teach.

1. Failure to Follow Principal’s Directive

Although the Court determined that Respondent disobeyed her principal’s directive in submitting the packet of information concerning another teacher who had a pending grievance against her, the Court found that the record did not contain substantial evidence showing Respondent’s alleged insubordination demonstrated unfitness for teaching. This finding is not supported by substantial evidence in the record.

The Board found that Respondent violated her principal’s directive to leave the matter with the other teacher alone based on Respondent’s admission, corroborated by both the school principal and another administrator. (R. pp. 195-96, 221, 278, 312, 330, 332). The evidence before the Board reflected that Respondent continued to involve herself in a dispute with another employee at school, even after having been asked by her supervisor to leave it alone until he returned. (R. pp. 195-96). Based on this evidence, the Board determined that Respondent willfully violated the directive of a supervisor

regarding a pending grievance at the school level and escalated the situation from the building level to the District level when she submitted the information to the Superintendent. (R. p. 222).

Moreover, the record reflects that Respondent exhibited unprofessional behavior once confronted by her supervisors for violating her principal's directive. After learning that Respondent had violated her principal's directive in interfering with the pending grievance, the Superintendent held a meeting with the principal, the school administrator to whom Respondent provided the information regarding the grievant, and Respondent. (R. p. 417, lines 2-5). The record contains substantial evidence that Respondent was not cooperative during the meeting, providing the Superintendent justification for placing Respondent on administrative leave. (R. p. 417, lines 6-15; p. 419, lines 22-23; p. 420, lines 4-8). Thus, the record provides support for the Board's conclusion that Respondent's behavior building up to her administrative leave was consistent with her historic pattern of disregarding administrative directives with which she disagrees.

Based on the substantial evidence of Respondent's disregard for the directives of her superiors, the Board found that Respondent engaged in unprofessional conduct amounting to evident unfitness for teaching under S.C. Code Ann. § 59-25-430. Therefore, the Court's finding that the record did not contain substantial evidence supporting the Board's conclusion that Respondent's insubordinate behavior amounted to evident unfitness is not supported by the evidence in the record.

2. Improper Communication with a Board Member

The Court found that the record did not contain substantial evidence to support the Board's decision to terminate Respondent's employment based upon her

communication with a Board member. This finding is not supported by substantial evidence in the record. Although the Court, like the Circuit Court, relies on the language of Appellant's October 4, 2013 letter to Respondent regarding her administrative leave, this letter is not the only evidence in the record of the Superintendent's directive to Respondent. The Superintendent testified before the Board that she met with Respondent and clearly advised Respondent that "if [she] had a question about anything, [she] could call [her]." (R. p. 421, lines 5-7). The Superintendent further testified that Respondent "left with a good understanding" that Respondent was not to have communication with anyone, and let the administration investigate. (R. p. 421, lines 13-15; p. 472, lines 14-17).

The Court agreed with Respondent's claim that contacting a board member regarding the substitute teacher assigned to her classroom was unrelated to the reasons for her administrative leave. (R. p. 369, lines 7-10). However, the assignment of substitute staff to Respondent's classroom is directly related to Respondent's administrative leave. Based on the evidence before it, the Board determined that Respondent "communicated with [one] board member about the qualifications of her substitute teacher."¹ (R. p. 18) (emphasis added). The Superintendent testified before the Board that Respondent's communication to the Board member was directly related to her fitness to teach, because as "[p]rincipals, teachers, district-level staff, we are all on the same team, and students don't benefit if [they] are not working together." (R. p. 435, lines 7-9).

¹ Despite Respondent's belief, the individual who taught Respondent's class was indeed certified by the South Carolina Department of Education. (R. p. 225, lines 8-12; p. 226, lines 18-19; p. 560, lines 23-25; p. 561, lines 1-6).

Furthermore, the Superintendent testified that individual board members do not assign teachers, whether substitute or certified, to classrooms. (R. p. 421, lines 16-19). Thus, the record reflects that Respondent's behavior was consistent with her pattern of challenging her superiors to thwart administrative directives. Therefore, the Court's finding that Respondent's communication was a matter of public concern and not related to her administrative leave is not supported by the substantial evidence in the record.

3. Pattern of Unprofessional Conduct

The Court found that the record did not contain substantial evidence to support the Board's decision to terminate Respondent's employment based upon a pattern of unprofessional conduct. Notably, the Court found that the record contained evidence of unprofessional conduct, but the fact that Respondent was continually offered a contract to teach through the 2013-14 school year undermined the weight of the incidents in the record. This finding is not supported by substantial evidence in the record.

The instances contained in the record do not reflect professionalism or fitness to teach, and the Court's reliance upon the fact that Respondent received a contract without any condition overlooks the weight of the record that was before the Board. Respondent signed contracts "For Professional Services," which provided that she is "responsible to [her] immediate supervisor." (R. p. 445, lines 23-25; p. 446, lines 1-17; pp. 1178-87). The S.C. Teacher Employment and Dismissal Act does not require that a teacher receive continuous notices regarding their conduct. See S.C. Code Ann. § 59-25-410 et seq. The profession of teaching lends itself to requiring professional behavior at all times, as evidenced by the potential to have one's certificate suspended or revoked by the S.C.

Department of Education for unprofessional conduct. See S.C. Code Ann. §§ 59-25-160, 59-25-530.

As indicated in Respondent's personnel file, which was admitted into evidence, a former principal of Respondent previously advised her that her inappropriate behavior could lead to termination. (R. pp. 8, 1016-17). Although this letter is dated January 25, 2006, the date of the letter cannot be considered too remote in light of the fact that Respondent submitted witness testimony dating back to 1990-2001, referenced other documents in her personnel file dating back to 2000, and then voluntarily placed her personnel file into the record. (R. pp. 188, 289-90, 332, 344; p. 531, lines 10-19; p. 532, lines 2-3; pp. 622-23, 1133-35, 1140-49).

Moreover, the Superintendent's recommendation specifically stated:

Given the urgent need of the District to improve the academic performance of our students, there is simply no tolerance for persons who put their personal agenda above the need to work in a cooperative fashion with the administration for the good of all students.

(R. pp. 301, 446-47, 1014). The record before the Board contained substantial evidence reflecting a pattern of unprofessional conduct, including insubordination and uncooperativeness, justifying the Board's determination that termination of Respondent's employment was warranted. (R. p. 8). Therefore, the Court's finding that the record did not contain substantial evidence of unprofessional conduct to support the Board's decision is not supported by the evidence in the record.

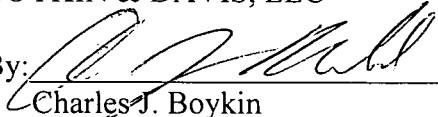
CONCLUSION

The issues addressed by the Court are not supported by the evidence in the record because the evidence shows that Respondent's conduct during the course of her employment with Appellant amounted to evident unfitness to teach. For this reason, the

Court should reverse the Circuit Court because its findings are not supported by the substantial evidence in the record.

Respectfully submitted,

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February 14, 2017

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SC Court of Appeals

APPEAL FROM LEE COUNTY
Court of Common Pleas

Maité Murphy, Circuit Court Judge

Appellate Case No.: 2015-000558

Laura Toney..... Respondent,

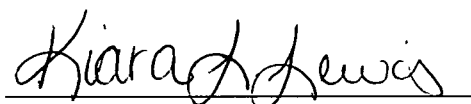
vs.

Lee County School District..... Appellant.

PROOF OF SERVICE

I certify that I have served the **APPELLANT'S PETITION FOR REHEARING** in the above-referenced matter on all counsels of record, by mail a copy of same, postage prepaid and return address clearly indicated, to the following on this 15th day of February 2017:

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February 15, 2017

VIA HAND DELIVERY

The Honorable James I. Davis
Lee County Clerk of Court
123 S. Main Street
Bishopville, South Carolina 29010

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SC Court of Appeals

Re: Laura Toney v. Lee County School District
C.A. No. 2014-CP-31-00227

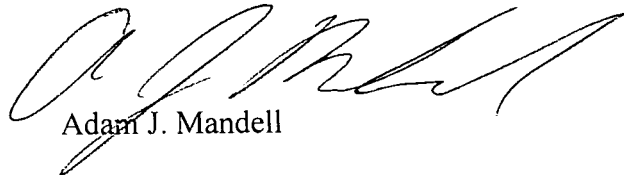
Dear Mr. Davis:

Enclosed herewith for filing, please find the original and seven (7) copies of Appellant's Petition for Rehearing in the above-referenced matter. Please return the file-stamped copies of the pleading to our courier.

By copy of this letter, we are today serving this pleading on all counsel of record in this matter.

Thank you for your attention to this matter.

Sincerely,



Adam J. Mandell

/kl

Enclosures

cc: W. Allen Nickles, III, Esq. (w/ encls.)
Charles J. Boykin, Esq. (w/o encls.)
Shawn D. Eubanks, Esq. (w/o encls.)