THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Maité Murphy, Circuit Court Judge

Appellate Case No.: 2015-000558

Laura Toney.....Respondent,

v.

Lee County School District.....Appellant.

RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR REHEARING

By Petition filed February 15, 2017 and received February 21, 2017, Appellant, Lee County School District, ("District") asserts that the order issued by this Court on February 1, 2017 "overlooked substantial evidence" in affirming reinstatement of Respondent, Laura Toney, ("Ms. Toney"). For the following reasons, the District's petition is without merit and should be dismissed.

STANDARD OF REVIEW

A petition for rehearing is limited to points overlooked or misapprehended by the court. Rule 221(a), SCACR. A petition may not be presented to address new issues or to have the case tried in the appellate court a second time. Arnold v. Carolina Power & Light Co., 168 S.C. 163, 167 S.E.2d 234 (1933) In this instance, the District merely reiterates arguments presented in its appellate brief. Accordingly, the District has failed to satisfy the requirement of identifying an

overlooked or misapprehended issue necessary for reconsideration. Further, as stated below, the Court properly applied the controlling law of this State in affirming Ms. Toney's reinstatement to employment with the District.

LEGAL ARGUMENT

This Court properly applied the substantial evidence doctrine in ruling that the record does not contain "substantial evidence" to support the termination of Ms. Toney's employment contract for the 2013-2014 school year.

In support of its motion for reconsideration, the District reasserts arguments advanced to the circuit court and this court that Ms. Toney disobeyed a directive from her principal, improperly communicated with a Board member and exhibited a pattern of unprofessional conduct. A review of the District's argument reveals no new or overlooked evidence and identifies no authority improperly applied.

Throughout the appellate process, the District has argued that a reviewing court must accept its findings regardless of its obligation to establish incompetence or evident unfitness for teaching as illustrated by: "persistent neglect of duty, willful violation of rules and regulations of district board of trustees, drunkenness, conviction of a violation of the law of this State or the United States, gross immorality, dishonesty, illegal use, sale or possession of drugs or narcotics." S.C. Code Ann. § 59-25-430 The District did not attempt to demonstrate incompetence. Moreover, both the circuit court and this court properly concluded that the conduct identified by the Board in support of Ms. Toney's termination does not reach the level of "unfitness" contemplated by the General Assembly. In this context, mere acceptance of the Board's stated reasons for terminating Ms. Toney's employment would have required the circuit court and this court to ignore their obligations on review to preserve rights guaranteed by statute.

In summary, the District has failed to identify any evidence that Ms. Toney's alleged actions substantially interfered with her performance or constituted "unprofessional conduct" as defined by S.C. Code Ann. § 59-25-430 and applied in Hall v. Bd. of Trs. of Sumter Cty. Sch. Dist. No. 2, 330 S.C. 402, 499 S.E.2d 216 (Ct. App. 1998) and other authorities identified in the order issued on February 1, 2017. Having failed to establish an error in this court's review or decision, the District's arguments are not entitled to further consideration.

CONCLUSION

For reasons expressed in this court's order, the decision by the circuit court judge, the District failed to establish substantial evidence of unprofessional conduct warranting the termination of her continuing contract to teach. In both instances, the record was examined in full in keeping with the substantial evidence standard of review and the controlling law of this State contained in S.C. Code Ann. § 59-25-430 applied. Accordingly, Appellant's motion for rehearing is without merit and should be denied.

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BY: _____

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February 27, 2017
Columbia, South Carolina

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served the foregoing Respondent's Return to Appellant's Petition for Rehearing by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Charles J. Boykin, Esquire
Shawn D. Eubanks, Esquire
Adam J. Mandell, Esquire
Boykin & Davis, LLC
P. O. Box 11844
Columbia, South Carolina 29211

This 27th day of February, 2017.

NICKLES LAW FIRM, LLC

BY: _____

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February 27, 2017

Via Hand Delivery
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Laura Toney v. Lee County School District
Appellate Case No.: 2015-000558

Dear Ms. Kitchings:

Enclosed please find the original and copies of Respondent's Return to Petition for Rehearing in the above matter. Please file the original and return the extra, clocked-in copies with the bearer. Thank you for your cooperation and assistance in this matter.

Sincerely,

W. Allen Nickles, III

WAN/pfb
Enclosures
cc: Charles Boykin, Esquire
Adam J. Mandell, Esquire
Shawn Eubanks, Esquire
File #13-167