

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From Cherokee County Court of Common Pleas

J. Mark Hayes Jr., Circuit Court Judge

Docket Case No.: 2015-CP-11-0828

Appellate Case No. 2017-001466

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OCT 10 2017
SC Court of Appeals

Sharon Brown, Appellant,

vs.

Cherokee County School District, Respondent.

APPELLANT'S INITIAL REPLY BRIEF

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TABLE OF AUTHORITIES

S.C. Code Ann. § 1-23-380

Brown disagrees with the Respondent that "Brown's Unfitness for Teaching was manifested by her Inappropriate Interactions with Student J on May 28, 2015 and that she tried to Undermine and/or Adversely Affect an Investigation

There is substantial evidence in the record that student J was not touched by Brown and that Student J entered the art classroom room with other students on May 28, 2015. (Teacher Dismissal Hearing Transcript, Exhibit 1: Statement from Nan Ruppe). Nan Ruppe interviewed student J and he told her that "he was at end of line because he was tying his shoe. He walked into class with other students and went to his seat. Mr. Kelly was in classroom when he arrived. Miss Brown came to class, and asked Mr. Kelly to see the student. He went outside room to speak to Miss Brown. Nothing unusual happened when he spoke to Miss Brown. He didn't remember what it was about. When asked if Miss Brown ever put her hand on him, the student said no." Student J was asked by Nanette Ruppe (principal) what he thought of Miss Brown as a teacher, and he said, "she's nice."

Further, Student J's mom told Mrs. Torres that her son said teacher did not touch him (Teacher Dismissal Hearing, Transcript, Exhibit 1: Statement from Nan Ruppe).

Further, Brown's statement matches up with student J's in all respects. (Teacher Dismissal Hearing Transcript, Respondent's Exhibit #1: Statement from Sharon Brown). Brown's statements indicates that she did not speak with student J at all before he entered the art room as Justin Kelly, art teacher, has fabricated. Additionally, Brown's statements states that she did not assault a student as alleged by Justin Kelly. Further Brown, testified during the trial that the student was not touched by her (Teacher Dismissal Hearing Transcript, pg. 140). Brown and the alleged victim's testimony match almost verbatim. The fact that Justin Kelly and Beth Owens claimed that the student was touched or assaulted is of no value when the student has confirmed that no such thing happened.

This circus that the defendant district has going against Brown is analogous to a bank teller calling the police and stating that the bank was robbed for \$10,000. However, when the money is counted no money is missing from the bank. The courts of this state cannot allow Districts to start

ruining teachers lives by framing up charges (assaulting children, etc...) against them with no investigation by the police department. The alleged assaulted victim confirmed that he was not touched.

Further, the district investigation into the bogus allegation by Justin Kelly was completed before Ms. Brown saw Tracie Wilson at Ross Department Store in Spartanburg, S.C. Ms. Brown was not trying to influence a witness that lives in Gaffney that Brown saw by chance in a store in Spartanburg, S.C. on June 5, 2015. This contention does not make sense and is appears to be illogical reasoning. If Ms. Brown wanted to influence Tracie Wilson she could have called Tracie Wilson by phone when she was placed on administrative leave on June 1, 2015. Further, Brown would have needed to contact Ms. Wilson immediately before police arrived to investigate Ms. Brown if she was going to attempt to undermine the investigation. I'm sure Ms. Brown expected that the police was going to be called when she was placed on administrative leave for allegedly choking a student.

Justin Kelly and all the other dishonest employees are still employed with Cherokee County School District. The Defendant District has animosity toward Ms. Brown for having been reinstated by court order to their district in November 2011 and for filing several Whistleblower charges against them since her reinstatement to the district. Justin Kelly and the other employees of this district were used as puns by this school district.

Further, the defendant district cannot maintain that a student was assaulted/touched without having the victim to confirm that he was touched/assaulted. The courts of this state must not start allowing this sort of ridiculous conduct as exhibited by this school district. If this sort of thing is allowed to go on, a teacher would be able to assert that he/she saw another teacher raping a kid with no investigation by DSS and the police department.

The Defendant Board's actions in going along with all this crazy stuff from their employees prove to be arbitrary, capricious, and characterized by abuse of discretion and clearly an unwarranted exercise

of discretion. Further, the Defendant Board's action in this case prove to be erroneous in view of the reliable (the victim himself said Brown did not touch him), probative, and substantial evidence on the whole record.

S.C. Code Section 1-23-380 provides that "the court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a.) in violation of constitutional or statutory provisions;
- (b.) in excess of statutory authority of the agency;
- (c.) made upon unlawful procedure
- (d.) affected by error or law;
- (e.) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or
- (f.) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Impartiality of the Board

There were many instances of bias toward Appellant during her teacher dismissal hearing. As stated in Appellant's initial brief, Ms. Robin Harper imputed, conveyed, and insinuated that the alleged victim was not capable of knowing whether he was assaulted by Brown. Board Member Robin Harper revealed when she made the statement "And I want to know. Can you talk to a seven year old" that she was going to disregard Ms. Brown and Ms. Brown's witness (the alleged victim himself) on the fact that the child was not touched by Ms. Brown." Robin Harper exhibited prejudgment of the factual question to be determined at the hearing. See *Kizer v. Dorchester County Edu. Bd. of Trustees*, 287 S.C. 545, 550, 340 S.E. 2d 144, 147 (1986). Additionally, Robin Harper interjected when Attorney Smith was questioning Ms. Tracie Wilson. (Transcript of Teacher Dismissal Hearing, pg. 95). Robin Harper stated, "I think she still said she didn't know who the child was, right? (Transcript of Teacher Dismissal Hearing, pg. 95). Next, Robin Harper said, "Yeah until they were in Ross and then she said his name in their conversation. (Transcript of Teacher Dismissal Hearing, pg. 95.) Robin Harper was biased and impartial

towards Appellant. Board member Harper repeatedly interfered while appellant's counsel asked questions of witnesses. Ms. Brown was denied the opportunity to have a meaningful hearing. Bias was demonstrated by Robin Harper in words and in her actions throughout the school board hearing. Further, preconceived bias was also shown by the Board actions. By the board failing to take the alleged victim's word and his mother's word that Brown had not touch him. This indicates that the board was bias toward Ms. Brown. Brown's constitutional rights were violated. Brown was denied the opportunity to have a meaningful and impartial hearing before the school board. Further, the district failed to have Student J at the Board Hearing because the board was not going to listen to anyone that was going to confirm the events that Ms. Brown said happened on May 28, 2015. The school Board already had preconceived notions that they were not going to believe Student J or Ms. Brown on what transpired on May 28, 2015.

S.C. Code Section 1-23-380 provides that "the court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a.) in violation of constitutional or statutory provisions;
- (b.) in excess of statutory authority of the agency;
- (c.) made upon unlawful procedure
- (d.) affected by error or law;
- (e.) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or
- (f.) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

CONCLUSION

An order reinstating Appellant to her teaching position with Cherokee County School District should be entered by this Court. The respondent violated S.C. Code Section 1-23- 380 and the Board's decision must be reversed. If reinstatement is not feasible because of the outrageous conduct exhibited by Cherokee County School District toward Appellant, Appellant requests front pay with benefits.

Further, judgment should be entered against Respondent for actual damages, including back pay, lost employment benefits, and contributions to the South Carolina Retirement System, Attorney Fees, Cost of this Action, and such other relief as the Court may deem just and proper.

October 6, 2017

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I, Sharon Brown, hereby certify that I have this 6th day of October, served a copy of the herein below listed document to the address listed below by depositing a copy of same in the United States Postal System postage prepaid, and mailing same to:

PLEADING(S): APPELLANT'S INITIAL REPLY BRIEF

PARTY SERVED:

Ms. Andrea E. White, Esq.
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SC Court of Appeals


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October 06, 2017

South Carolina Court of Appeals
ATTN: Jenny Abbott Kitchings, Clerk of Court
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Re: Sharon A. Brown, Appellant vs. Cherokee County School District, Respondent.
Docket No. 2015-CP-11-0828
Appellate Case No. 2017-001466

Dear Clerk of Court,

Enclosed you will find one (1) original and three (3) copies of *APPELLANT'S INITIAL REPLY BRIEF*. Additionally, you will find a Certificate of Service.

Please file, time stamp, and return copies of same in the self-addressed stamped envelope provided.

Sincerely,

A handwritten signature in black ink, appearing to be "Fletcher N. Smith Jr.", written over a horizontal line.

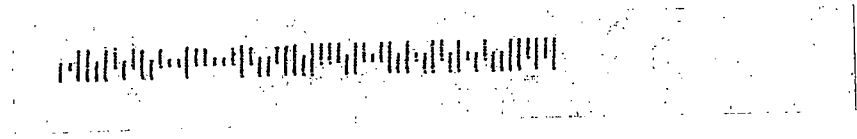
Fletcher N. Smith Jr., Esquire
FNS/fns
Enclosure(s).

Cc: Ms. Andrea E. White, Esquire
White & Story, LLC



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