

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

Case No. 2015-CP-11-0828
Appellate Case No. 2017-001466

RECEIVED
NOV 27 2017
SC Court of Appeals

Sharon Brown,

Appellant,

v.

Cherokee County School District,

Respondent.

**RESPONDENT'S RETURN TO APPELLANT'S MOTION TO AMEND APPELLANT'S
DESIGNATION OF MATTERS TO BE INCLUDED IN THE RECORD ON APPEAL TO
INCLUDE THE TRANSCRIPT OF THE TEACHER DISMISSAL HEARING HELD ON
OCTOBER 7, 2015**

Pursuant to Rule 240(e), S.C. Ct. App., Respondent Cherokee County School District (hereinafter "the District") hereby submits its Return to Appellant's Motion to Amend Appellant's Designation of Matters to be included in the Record on Appeal to include the transcript of the Teacher Dismissal Hearing held on October 7, 2015. Initially, the District agrees with Appellant that the Designation of Matter in this case should include the transcript of the hearing that was held by the District's Board of Trustees on October 7, 2015. However, the District avers that it timely filed a certified copy of the transcript of that hearing as required by S. C. Code Ann. § 59-25-480 of the S.C. Teacher Employment and Dismissal Act.

Business records maintained by counsel for the District reflect that a certified copy of the transcript of record was mailed to the Cherokee County Clerk of Court on December 1, 2015. A copy of the letter enclosing that transcript is attached as Exhibit A hereto. Further, in his Order dated August 1, 2016, Circuit Court Judge Mark Hayes specifically refers to the transcript, stating that he made his decision “after reviewing the transcript of the School Board’s hearing and the exhibits presented as part of the hearing’s record, reviewing the pleadings and briefs in the Clerk of Court’s file.” A copy of Judge Hayes’ Order is attached as Exhibit B hereto. Notwithstanding that the Cherokee County Clerk of Court has been unable to locate the transcript, Judge Hayes’ Order clearly establishes it was received by the Clerk of Court of Cherokee County and reviewed by him as part of the record before he rendered his decision.

By letter dated November 22, 2017, the District has sent another original of said Transcript to this Court with all exhibits introduced during the hearing.¹ As noted above, the District agrees that this Transcript with the exhibits should be part of the Designation of Matter in this case.

Respectfully submitted,

BY: 

Andrea E. White (S.C. Bar No. 11891)
Brittany M. Lozanne (S.C. Bar No. 78720)
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Attorneys for Defendant

November 22, 2017
Columbia, SC

¹ The court reporter provided another sealed original copy of the transcript without the exhibits on November 21, 2017, as the exhibits were previously returned to the responsible party. Along with the submitted Transcript, the District provides a copy of all exhibits referenced in the appendix of the District’s copy of the Transcript.

EXHIBIT A

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

ATTORNEYS AND COUNSELORS AT LAW

DAVID T. DUFF*†
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* CERTIFIED SPECIALIST IN EMPLOYMENT AND LABOR LAW
† CERTIFIED CIVIL ARBITRATOR AND MEDIATOR

December 1, 2015

The Honorable Brandy W. McBee
Cherokee County Court Clerk
P.O. Drawer 2289
Gaffney, South Carolina 29342-2289

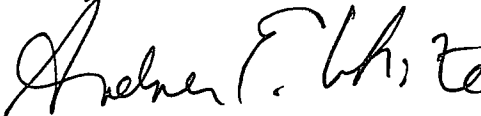
Re: Sharon Brown v. Cherokee County School District
C.A. No. 2015-CP-11-0828

Dear Ms. McBee:

Enclosed herewith for filing pursuant to S.C. Code Ann. § 59-25-480, please find a certified copy of the transcript record of the proceedings before Respondent Cherokee County School District Board of Trustees in reference to the above matter.

Thank you for your cooperation and assistance.

Sincerely,


Andrea E. White

Enclosure

c: Fletcher Smith, Jr., Esq.

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)
)
 Sharon Brown)
)
 Appellant,)
)
 v.)
)
 Cherokee County School Board)
)
 Respondent,)
)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT
 CASE NO. 2015-CP-11-0828

ORDER
 2016 AUG - 1 A 11: 32
 FILED IN THE OFFICE
 OF THE CLERK
 ANDY W. HOBBS
 CHEROKEE COUNTY, SC

This is an appeal of the Cherokee County School Board’s decision to uphold the School District Superintendent’s decision to dismiss Appellant, Sharon Brown, a Cherokee County school teacher.

The substantive statutes applicable to this case are the Teacher Employment and Dismissal provisions of S.C. Code Ann. §§ 59-25-410 to -530. This Court’s standard of review is limited to determining whether the Board’s decision is supported by substantial evidence in the record. S.C. Code Ann. § 1-23-380; *Felder v. Charleston County School Dist.*, 327 S.C. 21, 489 S.E.2d 191 (1997); *Lark v. Bi-Lo*, 276 S.C. 130, 276 S.E.2d 305 (1981); *Hall v. Board of Trustee of Sumter County School District No. 2*, 330 S.C. 402, 499 S.E.2d 216 (Ct. App. 1998).

The School Board concluded that sufficient reasons existed for Appellant’s termination. They concluded she engaged in conduct which evidenced a manifestation of an unfitness for teaching as she was dishonest in answering the superintendent’s questions during an investigation into an incident involving an elementary student, she was insubordinate regarding a

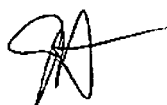
directive to not have any discussions with school personnel about her suspension during the investigative process, and she had inappropriate interactions with a student.

After reviewing the transcript of the School Board's hearing and the exhibits presented as part of the hearing's record, reviewing the pleadings and briefs in the Clerk of Court's file, considering the arguments presented by counsel, and applying the required standard of review, the School Board's decision is affirmed.

While there is very little evidence that Appellant "violently" grabbed the student or that she verbally "assaulted" the student, as was first reported to have been observed by a fellow teacher. There is substantial evidence in the record to support the School Board's decision that Appellant was told not to have any discussions about her suspension with school personnel during the investigation into the alleged assault. There is also substantial evidence in the record that after Appellant was told not to discuss the investigation, Appellant tried to influence another school employee who was a potential witness in the investigation. There is also substantial evidence that Appellant was dishonest in her responses about the conversation with this witness.

Furthermore, if Appellant had actually performed the violent grabbing of the student by his lower jaw and throat and forcing the student against the wall while verbally assaulting him, school policy would have required intervention by other government entities like the Sheriff's Department and/or the Department of Social Services. It is significant that school authorities interviewed the student in question and his mother. The student and his mother indicated that such a violent incident did not happen, nor did they indicate that the alleged verbal assault occurred.

Notwithstanding, the School Board's decision that the teacher had inappropriate interaction with the student was based on the Superintendent's investigation that the teacher had used more

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force than necessary when interacting with the student. Thus, applying the substantial evidence standard of review to the record, the School Board's decision that inappropriate interaction with the student occurred is supported.

Had the dismissal been based solely on the inappropriate interaction with the student, this Court may have agreed with the assertion that S.C. Code Ann. § 59-25-440 required the district to take reasonable efforts to correct Appellant's conduct. However, with the Board's finding of evidence that manifested an unfitness for teaching, which included dishonesty combined with the superintendent's "lost [sic] of all confidence" in Appellant's credibility, and rendered Appellant an ineffective and untrustworthy employee, S.C. Code Ann. § 59-25-430 does not require any affirmative remediation efforts by the district. *See Lark v. Bilo*, 276 S.C. 130, 276 S.E.2d 305 (1981) (cautioning that the court shall not substitute its judgment for that of the agency as to the weight of the evidence on the questions of fact).

Therefore, Appellant's appeal of the School Board's decision is DENIED and the appeal is DISMISSED.

IT IS SO ORDERED.

July 25, 2016
Spartanburg, South Carolina


The Honorable J. Mark Hayes, II
Presiding Judge, Seventh Judicial Circuit

FILED IN THE OFFICE
CLERK OF COURT
2016 AUG - 1 A 11: 32
GRANDY W. MCBEE
ZROKKEE COUNTY, SC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Mark Hayes Ir., Circuit Court Judge

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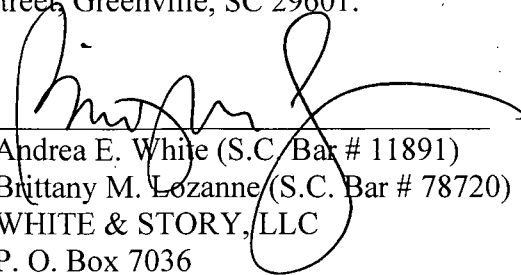
Cherokee County School District,

Respondent.

PROOF OF SERVICE

I certify that I have served Respondent Cherokee County School District's *Respondent's Return to Appellant's Motion to Amend Appellant's Designation Of Matters*, by depositing a copy in the United States Mail, postage prepaid, on November 22, 2017, addressed to her attorney of record, Fletcher N. Smith, Esquire, Law Firm of Fletcher N. Smith, Jr., LLC, 112 Wakefield Street, Greenville, SC 29601.

November 22, 2017


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November 22, 2017

VIA HAND-DELIVERY

The Honorable Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
NOV 27 2017
SC Court of Appeals

Re: Sharon Brown v. Cherokee County School District
C.A. No. 2015-CP-11-0828
Appellate Case No. 2017-001466

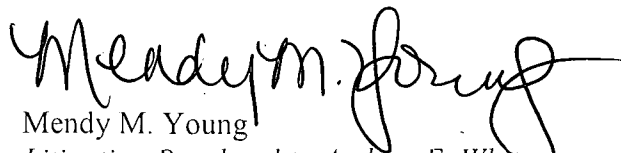
Dear Ms. Kitchings:

Enclosed for filing please find an original and (6) six copies of *Respondent's Return to Appellant's Motion to Amend Appellant's Designation of Matters to be included in the Record on Appeal to include the Transcript of the teacher dismissal hearing held on October 7, 2015 and Proof of Service*, regarding the above-referenced matter. If this meets with your approval, please return one (1) clocked copy in the enclosed self-addressed, postage paid envelope. Should you have any questions please feel free to contact our office.

Thank you for your assistance in this matter.

With kind regards, I remain

Sincerely,



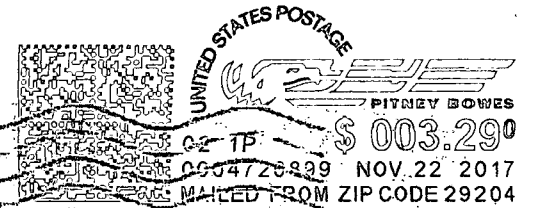
Mendy M. Young
Litigation Paralegal to Andrea E. White
& Brittany M. Lozanne

/mmy
Enclosures

cc: The Honorable Mark J. Hayes, II (w/enclosures)
The Honorable Brandy W. McBee (w/enclosures)
Fletcher N. Smith, Esquire (w/enclosures)

COLUMBIA SC 292

THU 23 NOV 2017 AM



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SC Court of Appeals

The Honorable Jenny Abbot Kitchings
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