

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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Sharon Brown,

Appellant,

vs.

Cherokee County School District,

Respondent.

APPELLANT'S AMENDED FINAL REPLY BRIEF

FLETCHER N. SMITH JR. (S.C. BAR #005165)
P.O. Box 10496, F.S.
Greenville, South Carolina 29603
(864)232-6541
(864)232-6756 Fax
fnsmith@bellsouth.net
ATTORNEY FOR APPELLANT

OTHER COUNSELS OF RECORD:

ANDREA E. WHITE (S.C. BAR #11891)
BRITTANY M. LOZANNE (S.C. BAR #78720)
White & Story, LLC
P.O. Box 7036
Columbia, S.C. 29202
(803)814-0993
(803)814-1183 Fax
ATTORNEYS FOR RESPONDENT

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STATEMENT OF FACTS IN REPLY

Appellant disagrees with Respondent's characterization of Student J's English fluency.

Respondent states, "Student J, a student who spoke limited English, was the end of line." Student J spoke English very well. Nanette.Ruppe concurs with Brown on the fact that Student J was fluent in English. (R. p. 315, lines 14-24). However, Justin Kelly states, "His English is kind of broken. " R.p. 296.

Further, the Respondent District states, "when asked by Carpenter on June 1, 2015 whether she had any witnesses to the events of May 28, 2015, Brown provided Owens and Tracie Wilson ("Wilson")." Appellant was asked by Dr. Carpenter had anyone seen her talking to the student outside the art room. Ms. Brown informed him that Mrs. Beth Owens (Ms. Owens) had passed by. Ms. Brown never told Dr. Carpenter that Ms. Owens was a witness for her. She just said that Ms. Owens and her husband passed by. Ms. Brown is aware of Ms. Owen's dislike for her (R. p. 420, lines 2-8). During this meeting with Dr. Carpenter and Ms. Ruppe on June 1, 2015, Ms. Brown informed Dr. Carpenter that Ms. Tracie Wilson was in the art room.

Also, the Respondent District states, " several days after Brown's meeting with Carpenter and Ruppe, Wilson was at a Ross Department Store in Spartanburg when Brown approached her." Appellant contends that she came into the Ross store, and when she entered, Ms. Wilson was standing off to the right, and she said, hey, Ms. Brown (R. p. 422, lines 23-25; R. p. 423 line 1).

Further, the Respondent District states, "this interaction was in direction violation of the directive given to Brown by Carpenter." This assertion is irrelevant to this case. Brown was not under contract with Cherokee County School District on June 5, 2015. Brown's teaching contract for the 2014-2015 school term terminated on June 3, 2015. Brown owed no duties and obligations to Cherokee County school district on June 5, 2015. Further, Brown does not recall Dr. Carpenter ever verbally telling her on June 1, 2015 not to have contact with school district employees or students in any manner.

Lastly, the fabricated allegations of Ms. Wilson were not shared with Ms. Brown in Dr. Moore's letter (proposed cancellation of contract letter) dated August 11, 2015. (R. pp. 458-460).

ARGUMENTS IN REPLY

I. Failure to File Transcript

Defendant District concurs with Brown on the fact that the Cherokee County Clerk of Court Office does not have any record of the Respondent District filing a transcript of the teacher dismissal hearing. Defendant District in a document to this Court stated the following: "Notwithstanding that the Cherokee County Clerk of Court's record do not reflect that the Transcript was received in that office. "

It was the Respondent's duty to file the transcript of the teacher dismissal hearing with the Cherokee County Court of Common Pleas Clerk of Court Office. Therefore, the respondent should not be in the mindset that Brown should have filed a writ of mandamus when she discovered that no transcript was filed. Appellant asserts that the Respondent District should not be given out any advice given that it was their duty to ensure that the teacher dismissal hearing transcript was at the Clerk of Court's Office. Further, Respondent District is claiming that if Brown did not receive a notice form the Cherokee County Clerk of Court, she should have at that time pursued a writ of mandamus. Brown asserts that the Respondent district should have considered filing a writ of mandamus when they did not receive notice from the Cherokee County Clerk of Court that the transcript was received in their office given that it was their duty to have the transcript there. Respondent district failed to file a transcript with Cherokee County Court of Common Pleas Clerk of Court Office. Therefore, the Respondent District defaulted in this case and Brown should have been reinstated by the lower court judge to her teaching position.

II. Brown had no duty to comply with an Alleged Directive

Respondent district's assertion that Brown did not raise before the Board or Circuit Court that she was not "under contract" when she encountered Wilson in Ross Store on June 5, 2015 is addressed as follows: (1.) The argument is not a new argument. Appellant thought it was understood by the Board and the Circuit Court that all this Ms. Wilson drama was going on during the summer months

while school was not in session, therefore Brown was not under contract. (2.) The Board and the Circuit Court Judge are already aware that teachers are not under contract during the summer months when school is not in session. The transcript of the teacher dismissal hearing clearly indicate that school was not in session. It is to be noted that respondent's counsel stated the following at the teacher dismissal hearing: "Explain to the Board if you would what happened on June the 5th, which would have been Friday, school's out, when you ran into Ms. Brown at Ross." (R.p. 364, lines 7-9).

Also, it is to be noted that Tracie Wilson stated the following at the teacher dismissal hearing: " I didn't really care what happened because I was on summer break and I didn't care at all what was happening." (R. p. 365, lines 19-22).

Ms. Brown stated the following during the teacher dismissal hearing. "On Friday, June 5th, I came into the Ross Store, and when I entered, Ms. Wilson was standing off to the right, and she said, hey, Ms. Brown, how you doing, and I replied fine, and she asked how my summer was going, and also she told me she was glad to be off. (R. p. 422, lines 23 -24 and R.p. 423, lines 1-3).

Brown's teaching contract for the 2014-2015 terminated on June 3, 2015 and the next contract did not commence until August of 2015. Brown was completely free of all contractual obligations to Cherokee County School District when the alleged failure to follow a directive occurred. Brown had no duties or obligations owed to, or functions to perform for Cherokee County School District on June 5, 2015, the day the Respondent District is alleging Brown failed to follow a district directive. Brown was not under contract with Cherokee County School District on June 5, 2015.

Thus, the court below should reverse and Brown reinstated to her teaching position because of the invalid alleged directive while she was not employed.

III. Brown disagrees with the Respondent's statement, "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 Affected an Investigation"

First Off, Respondent district failed to file a transcript of the teacher dismissal hearing with Cherokee County Court of Common Pleas Clerk of Court office, so there could not possibly be substantial evidence in the record on any of the charges asserted against the Appellant by Cherokee County School District. Further, 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 . (R.p. 462, line 6; R. p. 450, lines 4-5). Nan Ruppe interviewed student J and he told her, "he was at end of line because he was tying his shoe. He walked into class with other students and went to 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, and 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." (R. p. 450).

Further, student J's mom told Mrs. Torres that her son said teacher did not touch him (R. p. 451, lines 11- 12)).

Further, Brown's statement matches up with student J's in all respects. (R. p. 462). Brown statements indicate 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 statements state that she did not assault a student as alleged by Justin Kelly. Further Brown, testified during the trial that the student was not touch by her (R. p. pg. 140, lines 19-23). 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.

The actions of the respondent district 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 should not 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 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 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 employees are still employed with Cherokee County School District. The respondent district has animosity toward Ms. Brown for having been reinstated by court order to their district in November 2011. Justin Kelly and the other employees of this district were used by this school district.

Further, the respondent 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 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 Respondent District Board's actions are arbitrary, capricious, and characterized by abuse of discretion. Further, the respondent 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.

IV. Impartiality of the Board

There were many instances of bias toward Appellant during her teacher dismissal hearing. As stated in Appellant's 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. (R. p. pg. 371, lines 19-25). Robin Harper stated, "I think she still said she didn't know who the child was, right? (R. p. 371, lines 19-21). Next, Robin Harper said, "Yeah until they were in Ross and then she said his name in their conversation. (R. p. pg. 371, lines 23-25.). Robin Harper was biased and partial 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.

V. Student J's Absence

The Respondent District's assertion that Student J's absence was not raised before the Board or in any filings with the Court, therefore Brown is precluded from raising it. Appellant disagrees with this assertion because if the alleged victim was not at the school board hearing as a witness, where is the unbiased testimony. Further, where is the unbiased consideration by the board. The appellant asserts that she should not have been found guilty of assaulting a student ("inappropriate interaction") by the school board without the victim at the board hearing testifying that the assault(s) ("inappropriate interactions") actually happened, not merely that they were asserted. The Board actions in confirming an assault(s) ("inappropriate interactions") without the victim there to testify to the allegations proves that the Board actions are arbitrary and capricious.

VI. Insufficient Notice of Grounds for Termination

Respondent District states that Moore's letter of August 11, 2015, sufficiently enumerated the three separate grounds upon which her recommendation for Brown's termination was based: that she inappropriately interacted with a student; that she willfully violated a directive; and that she was dishonest in her conversations with Moore, each of which independently manifests an evident unfitness to teach. Such notice satisfied the requirements of S.C. Code § 59-25-460, as well as the general due process principle that a public employee facing termination has to the right to know the charges against her.

Appellant contends that the Respondent District's *Notice of Grounds for Termination* is insufficient. Appellant was entitled to an explanation of the employer's evidence. See *Cleveland Bd. of Education vs. Loudermill*, 470 U.S.532 105 S. Ct. of U.S. 1487 (1985).

Dr. Moore's letter to Appellant, dated August 11, 2015, does not give Appellant any information as to the substance of Ms. Tracie Wilson's allegations concerning an encounter at Ross Department Store with the Appellant on June 5, 2015. (R. pp. 458-460).

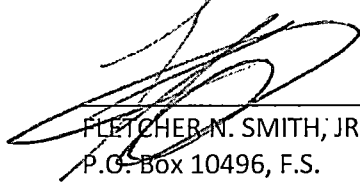
If you give an explanation of something you give details about it or describe it so that it can be understood.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the Appellant's Amended Final Brief, the Appellant respectfully requests that this Court reverse the decision of the lower court and reinstate the appellant to her teaching position with back pay, lost employment benefits, 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.

June 27, 2018

Respectfully Submitted,



FLETCHER N. SMITH, JR. (S.C. Bar #005165)

P.O. Box 10496, F.S.

Greenville, S.C. 29603

(864)232-6541

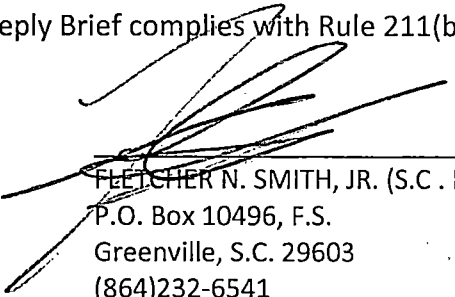
(864)232-6756 Fax

fsmith@bellsouth.net

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

This is to certify that Appellant's Amended Reply Brief complies with Rule 211(b), SCACR.



FLETCHER N. SMITH, JR. (S.C. Bar #005165)

P.O. Box 10496, F.S.

Greenville, S.C. 29603

(864)232-6541

(864)232-6756 Fax

fsmith@bellsouth.net

ATTORNEY FOR APPELLANT

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