

1 STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**
2 COUNTY OF GEORGETOWN

3 -----

4 **B E F O R E:** The Honorable Benjamin Culbertson
5 January 10, 2020
6 -----

7 EBONY FRIARSON,

8 Plaintiff,

9 vs.

10 NEW OPPORTUNITY ACADEMY OF HOPE,

11 Defendant.

12 -----

13 APPEARANCES:

14 William Luse, Esq.
15 Attorney for the Plaintiff.

17 Eduardo Curry, Esq..
18 Attorney for the Defendant.

RECEIVED
MAY 04 2020
SC Court of Appeals

21 Natalie Dahl, RPR
22 Court Reporter:

23
24
25

P-R-O-C-E-E-D-I-N-G-S

1
2 THE COURT: All right. Next is 2018-CP-22-107
3 Ebony Frierson versus New Opportunity Academy of Hope
4 and others. According to my roster, the matter is
5 before the Court on a motion for a new trial and a
6 motion for attorney's fees -- or defendant's motion to
7 plaintiff's motion for attorney's fees.

8 Give the court reporter your names and who you
9 represent.

10 MR. CURRY: Thank you very much, Your Honor. If
11 it pleases the Court, I'm Eduardo Curry representing
12 New Opportunity Academy of Hope, doing business as
13 St. Paul's African Methodist Episcopal Church.

14 MR. LUSE: And Bill Luse for the plaintiff, Ebony
15 Frierson.

16 THE COURT: All right. Motion for a new trial.
17 Mr. Curry, this is your motion?

18 MR. CURRY: Yes, Your Honor. We had filed a
19 motion. As you recall, we had a trial
20 December 11th. Judge, I would ask that -- we
21 submitted a motion along with, I guess, a written
22 position with regard, and we would like to incorporate
23 that with regard to arguments, because I want to
24 streamline it, but you have --

25 THE COURT: Yeah, I've got it. .

1 MR. CURRY: Okay. And, Judge, we used the
2 particular grounds that we thought that we would be
3 entitled to set aside the verdict and judgment and the
4 granting of a new trial.

5 Number one ground was that it was -- the evidence
6 was contrary as to the -- with regard to the weight,
7 and that you as a thirteenth juror should grant a new
8 trial for damages.

9 Number two, that the jury verdict was as a result
10 of procedural error and that the jury was given, in
11 our opinion, an incorrect jury instruction pertaining
12 to defendant's position and arguments.

13 And number three, there was a procedural error on
14 the verdict form as it did not specify which claim
15 that the jury would make a particular award with
16 regard to it, and as a result, the award that came
17 back was a \$7,500 award, but did not say whether or
18 not -- the two surviving counts were, number one,
19 breach of contract and, number two, overtime under the
20 Fair Labor Standards Act, and that the award by the
21 jury was not specific as to which one of the claims
22 actually were the claims in terms of survival, and so
23 it gave for speculation and, therefore, inconsistency.

24 As you know, one of the reasons that we're
25 arguing that particular part as well is because if, in

1 fact, the jury had made an award based on the Fair
2 Labor Standards Act, then the issue would --
3 attorney's fees and costs that Mr. Luse has actually
4 pushed forward would be initial in terms of payment.

5 So, Judge, it is our position that we -- I
6 objected, you know, obviously in terms of direct at
7 the close of the plaintiff's evidence, at the close of
8 all of the evidence, and we objected to some
9 particularities specifically about how the jury should
10 be instructed as to the defendant's position. You had
11 made some rulings that said, you know, I'm going to
12 leave it as it is. So our position, Judge, is that
13 when you look at the particular facts with regard to
14 the -- determining the verdict and how it should be
15 determined, it should not be left up to, you know,
16 gesture or speculation.

17 And so, Judge, in our brief -- or in our motion
18 that we put a written brief in it, it is our position
19 that, number one, that on the verdict form it should
20 have set out Fair Labor Standards Act or breach of
21 contract. So the award we got, as my understanding
22 from the jury verdict, was just a lump sum award of
23 \$7,500. So we were not able to ascertain exactly to
24 which it was actually allocated.

25 Now, out of an effort to be brief, and you see in

1 our documents, we did calculations, you know. What
2 would it be at \$15 an hour if she was an hourly
3 employee? What would it be at \$12 an hour? Take that
4 and double it with regard to overtime, and it came up
5 with numbers that were certainly north of the \$7,500:
6 10,500, those kinds of things along the line.

7 So we believe that it could not have been
8 overtime, because if you took the hourly wage and you
9 calculated it up, then it would have been more than
10 the \$7,500. So what would that mean? That means that
11 more likely it would have been a breach of contract.
12 When you look at the beginning where the contract
13 went, look at the amount of money that she was being
14 paid, and you look at the term on the end of the
15 contract, it is more like \$7,600 in terms of an award
16 from the jury.

17 Secondly -- secondarily, it is our position
18 that if, in fact, they made the award based on
19 calculations from the breach of contract, then the
20 issue of attorney's fees and costs is moot. The
21 lawyer gets what -- reaps whatever the contract is
22 between he and his particular client.

23 Judge, we also believe that in the instruction,
24 when we talked about the fact that the plaintiff was
25 an exempt party, and there was some issue where we

1 object, and you asked me what should the instruction
2 be, and it is our position that, number one, that
3 Ms. Frierson had submitted her resignation and -- or
4 had failed in the alternative to complete her duties,
5 and there was testimony about it, and, therefore, she
6 did not honor the exemption and, therefore, would not
7 be entitled to an overtime claim. When we look at all
8 of the evidence, by her own admission she said she was
9 a salaried employee. By the admission of one of the
10 supervisors that was there, she was a salaried
11 employer. There were factors that had to be
12 considered, and we talked about those factors: Was
13 she able to hire or fire, primary duties for
14 supervision, making at least 480 a month -- I mean 480
15 a week with regard to her time frame. All of those
16 conditions were met. And so, first of all, we believe
17 that Ms. Frierson should not have been entitled to
18 move forward on her Fair Labor Standards Act claim
19 because she was exempt and, therefore, could not be
20 awarded that.

21 Third of all, it is our position that the
22 calculations don't work for Fair Labor Standards Act
23 based whether it was \$15 an hour. If you viewed her
24 as being an hourly employee, or \$12 an hour if you
25 viewed -- or even if you took the whole 34 weeks and

1 calculated it, it just doesn't calculate
2 mathematically.

3 And so, Judge, we made our argument in the
4 written documents. We ask that you include that. It
5 is our position with regard to it that this is a
6 breach of contract claim, and that the award is
7 similar to what a breach of contract would have been
8 on the contract, whether it was \$12 an hour or \$15 an
9 hour, but that she would not be entitled to receive
10 overtime under the Fair Labor Standards Act because
11 she was an exempted employee. And even so, if you
12 look at all of the factors, and we talked about the
13 standard as having to look at a federal claim, it had
14 to be more than a scintilla of evidence. There were
15 no factors to support her claim with regard to
16 overtime.

17 So, Your Honor, in an effort to sort of keep it
18 succinct, and I know you've already read the documents
19 and you tried the case, so we would ask that you award
20 us a new trial or dismiss the case because the
21 evidence that was presented was not more than a
22 scintilla of evidence and, therefore, the verdict that
23 was filed by the jury would have been speculative at
24 best and, therefore, this case should be dismissed or
25 remanded back for a new trial on the new trial issue.

1 Do you want me to deal with the motion with
2 regard to attorney's fees?

3 THE COURT: Yeah, go ahead and deal with that.

4 MR. CURRY: Okay. Your Honor, if it pleases the
5 Court, the issue with regard to attorney's fees was a
6 little confusing for me because when I looked at
7 Attorney Luse's affidavit, one of the things that
8 stuck out for me on the affidavit was the issue with
9 regard to how he calculated his fees. He said \$350 an
10 hour and, Judge, when I looked at it, I could not
11 ascertain how the point system was.

12 MR. LUSE: May I interject, Your Honor?

13 THE COURT: All right.

14 MR. LUSE: The amount of my attorney's fees I
15 don't believe is before the Court today, that is at
16 another hearing on February 6th.

17 THE COURT: Yeah, the amount of fees -- as I
18 understand, you filed a motion to disallow attorney's
19 fees, which is all we're going to deal with today.

20 MR. CURRY: That's fine, Judge.

21 THE COURT: And, quite frankly, if I grant your
22 motion, there is no attorney's fees. If I deny your
23 motion, when he files -- when we have his hearing on
24 his motion for fees, then you can argue again.

25 MR. CURRY: Your Honor, if it please the Court, I

1 apologize. I received an e-mail from Attorney Luse
2 questioning the Court as to whether or not we were
3 going to combine all of those together, and I didn't
4 see a response, so I apologize, Your Honor, for --

5 THE COURT: That's fine.

6 MR. CURRY: So, Judge, what we believe is that if
7 this award of \$7,500 is considered breach of contract,
8 then there should not be an allocation of attorney's
9 fees, because the breach of statutory (sic) does not
10 allow for separate attorney's fees and costs to be
11 recovered in addition to the jury verdict award. So
12 we believe that the evidence does not -- does not
13 comport it to be a Fair Labor Standards overtime
14 violation.

15 When you look at the factors that were there,
16 there was some speculation that she served as little
17 as five hours, from what she said, as much as ten
18 hours, what she said. No documentation to support
19 that, whatsoever, Your Honor. There was one of the
20 exhibits that had a couple of dates in the beginning
21 and a couple of the dates in the end, but it was only
22 by her own testimony.

23 In conflict, there was a young lady who testified
24 that she was a salaried employee. By her own
25 testimony, when I questioned Ms. Frierson, she agreed

1 she was a salaried employee. So this whole issue
2 about whether or not it is Fair Labor versus contract
3 we believe, Judge, is speculative, because the jury
4 made one award. They did not assign it to one or the
5 other so, therefore, in our position, Judge, there
6 should not be an issue of attorney's fees because the
7 jury was not specific as to what count it was actually
8 making the award, and any such allocation other than
9 that would be speculative and, therefore, should make
10 the finding of giving attorney's fees not proper in
11 this particular case, Your Honor.

12 THE COURT: Mr. Luse.

13 MR. LUSE: Thank you, Your Honor. Respectfully,
14 the plaintiff would disagree. We think it was a fair
15 and just trial. I think there was plenty of evidence
16 in the record concerning an overtime claim. Plaintiff
17 testified that she was hourly. If you will recall,
18 every time, for her entire employment, was entered
19 into evidence, the plaintiff was asked painstakingly
20 each week what she worked. There was evidence about
21 the hours of the day being 6:30 in the morning until
22 6:00 p.m. The defendant's contracts were introduced;
23 they had hourly in them.

24 A key point, I think, is the jury question that
25 came back that was should we double the overtime, that

1 leads me to believe that there was deliberations
2 regarding overtime in their award and whether they
3 should double it or not.

4 Since he brought up the calculations, if you
5 calculate the overtime at \$5 an hour, it comes to
6 \$3,757.50. If you double that, that comes to \$7,515.
7 The award was 7500. I would say anything between, you
8 know -- she said five hours to ten hours. Anything in
9 that amount is reasonable that the jury concluded that
10 it was overtime.

11 I would agree if all there is is a breach of
12 contract that I would not be entitled to attorney's
13 fees. I believe that the plaintiff is entitled to
14 attorney's fees because I think the jurors' award was
15 related to overtime based on the facts in the case and
16 the evidence presented and their jury question of
17 should we double the amount.

18 THE COURT: All right. Anything in reply?

19 MR. CURRY: Just to sort of -- sort of narrow the
20 scope with regard to -- even though Attorney Luse
21 correctly talks about the opening of the daycare,
22 there was never any factual specific testimony that
23 she worked all the hours that the daycare was opened,
24 and so we beg to differ. In our -- in our motion we
25 put calculations where you were able to look at it if

1 it was \$15 an hour for a certain period, if it was \$12
2 an hour for a certain period, if it was 34 weeks' with
3 regard to the contract and you took the amount of if
4 she was an hourly employee and calculated it, and it
5 just doesn't compute when you look at the final
6 numbers, Your Honor. We stick with those numbers.

7 If there was a breach of contract, I think it is
8 probably closer, because when we did the calculations
9 on the breach of contract, and it is in our filing of
10 our motion, when we did the filing on the breach of
11 contract it was more like, Your Honor, respectfully, I
12 think it was seven -- just for a moment, Your Honor,
13 I'll pull that.

14 (A brief pause in the proceedings.)

15 MR. CURRY: On the breach of contract, Judge, I
16 think my memory -- \$7,680, and that would have been
17 the calculation that her monthly income was \$1,920 at
18 480 a week. 1920 times four would equal to \$7,680.
19 We filed that. That is in our motion to deal with
20 attorney's fees, and in our calculations with the
21 motion for new trial and motion notwithstanding the
22 verdict.

23 So if you look at the calculations, they more
24 similarly indicate that this was a breach of contract
25 and not a Fair Labor Standards Act overtime case.

1 THE COURT: All right.

2 (A brief pause in the proceedings.)

3 THE COURT: All right. Mr. Curry, I'm going to
4 deny your motions. I think there was ample evidence
5 to support the jury verdict. Likewise, I'm denying
6 your motion to prohibit attorney's fees, and that
7 doesn't mean he gets an award, but I do think that the
8 jury question came back do we double the amount, that
9 kind of signifies that there was a verdict under the
10 Fair Labor Standards Act, so I'm going to deny your
11 motions, all right.

12 MR. LUSE: Thank you.

13 (Whereupon, the proceedings concluded.)
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

State of South Carolina)
County of Georgetown)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate Transcript of Record and the evidence introduced in the hearing of the above-captioned case, relative to appeal, in the Court of Common Pleas for Georgetown County, South Carolina, on the 10th day of January, 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 23, 2020

Natalie Dahl, RPR
Court Reporter

THE
CURRY LAW FIRM

Attorneys at Law

Eduardo K. Curry (SC,PA)
Cindy R. Pinckney Graham (SC)

6518-D Dorchester Road (29418)
Post Office Box 42270
North Charleston, South Carolina 29423
currylawfirm@bellsouth.net

Tel: (843) 767-5284
Fax: (843) 767-5286
1-888-54CURRY (28779)

Via U.S. Priority Mail

April 29, 2020

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

RECEIVED
MAY 04 2020
SC Court of Appeals

RE: Ebony Frierson vs. New Opportunity Academy of Hope
Case #: 2018-CP-22-00107


Clerk of Court,

I hope this letter finds you well. Enclosed please find the six (6) copies of the Transcript of Record transcribed from the hearing dated January 10, 2020. I have also enclosed a pre-paid self addressed envelope for returning the clocked copy of this documents. a copy of this document has also been sent to opposing counsel.

Should there be any questions, feel free to give me a call.

Best Regards,

The Curry Law Firm, LLC


Eduardo K. Curry, Esquire
EKC/tf

cc: William Luse

CURRY LAW FIRM

Attorneys at Law

Eduardo K. Curry (SC,PA)
Cindy R. Pinckney Graham (SC)

6518-D Dorchester Road (29418)
Post Office Box 42270
North Charleston, South Carolina 29423
currylawfirm@bellsouth.net

Tel: (843) 767-5284
Fax: (843) 767-5286
1-888-54CURRY (28779)

April 29, 2020

William J Luse
917 Broadway Street
Myrtle Beach, SC 29577

RE: Ebony Frierson vs. New Opportunity Academy of Hope
Case #: 2018-CP-22-00107

RECEIVED
MAY 04 2020
SC Court of Appeals

Mr. Luse,

I hope this letter finds you well. Enclosed, please find a copy of the transcript of record transcribed from the January 10, 2020 hearing.

If there are any questions feel free to call my office or reach me on my cell number.

Best Regards,

Nick Lewis for Eduardo K. Curry

The Curry Law Firm, LLC
Eduardo K. Curry

EKC/tf

PRESS FIRMLY TO SEAL

PRESS FIRMLY TO SEAL

PRIORITY MAIL
FLAT RATE
POSTAGE REQUIRED



PRIOR
MA

UNITED STATES POSTAL SERVICE		Retail
P	US POSTAGE PAID	
	\$7.75	Origin: 29418 05/01/20 4514850240-45
PRIORITY MAIL 2-DAY®		
		0 Lb 15.80 Oz 1006
EXPECTED DELIVERY DAY: 05/04/20		
		C076
SHIP TO: 1220 SENATE ST COLUMBIA SC 29201-3769		
USPS TRACKING® NUMBER		
9505 5119 2027 0122 2085 88		

- Date of delivery c
- USPS TRACKING™ International desti
- Limited internatio
- Pick up available. *
- Order supplies onli
- When used internat declaration label m:
- Domestic only

P500001000014

OD: 12 1/2 x 9 1/2

USPS.COM/PICKUP

PRIORITY
★ MAIL ★



FROM: Eduardo Y. Curry
The Curry Law Firm, LLC
6518-D Dorchester Road
North Charleston, SC 29418

RECEIVED

MAY 04 2020

SC Court of Appeals
TO: The Honorable Jenny
Robbitt Kitchens
South Carolina Court of Appeals
1220 Senate Street
Columbia, S.C. 29201

Label 220, March 2016

FOR DOMESTIC AND INTERNATIONAL USE

This envelope is made from 100% consumer waste. Please recycle ♻️

Free
Kup,
code.

* Domestic only. ** For Domestic shipments, the maximum weight is 70 lbs. For International shipments, the maximum weight is 4 lbs.

This packaging is the property of the U.S. Postal Service and is provided solely for use in sending Priority Mail® shipments. Please mail to the U.S. Postal Service. © U.S. Postal Service October 2016. All rights reserved. Misuse may be a violation of federal law. This cachet may be used for resale. Error & U.S. Postal Service October 2016. All rights reserved.