

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Jul 20 2020

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

J. Mark Hayes, Jr., Circuit Court Judge

Docket Case No. 2015-CP-11-0828
Appellate Case No. 2017-001466
Unpublished Opinion No. 2020-UP-013

Sharon Brown,

Petitioner,

v.

Cherokee County School District,

Respondent.

**RESPONDENT'S RETURN TO PETITIONER'S PETITION FOR A WRIT
OF CERTIORARI**

Andrea E. White (S.C. Bar # 11891)
WHITE & STORY, LLC
Post Office Box 7036
Columbia, South Carolina 29202
Telephone: 803.814.0993
Facsimile: 803.814.1183
Attorney for Respondent

Other Counsel of Record:
Fletcher N. Smith (S.C. Bar No. 5165)
Post Office Box 10496
Greenville, South Carolina 29603
Telephone: (864) 232-6541
Fax: (864) 232-6756
fsmith@bellsouth.net
Attorney for Petitioner

INDEX

Certificate of Counsel3

Table of Authorities4

Question Presented.....5

Statement of the Case.....5-6

Reasons for Denying the Writ6-11

Conclusion.....11

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Mark Hayes Ir., Circuit Court Judge

Docket Case No. 2015-CP-11-0828
Appellate Case No. 2017-001466
Unpublished Opinion No. 2020-UP-013

Sharon Brown,

Appellant,

v.

Cherokee County School District,

Respondent.

CERTIFICATE OF COUNSEL

This is to certify that Respondent Cherokee County School District's Return to Appellant's Petition for Writ of Certiorari complies with Rule 211(b), SCACR.

s/Andrea E. White

Andrea E. White (S.C. Bar # 11891)
White & Story, LLC
P.O. Box 7036
Columbia, South Carolina 29202
Telephone: 803.814.0993
Facsimile: 803.814.1183

Attorneys for Respondent

July 20, 2020
Columbia, South Carolina

TABLE OF AUTHORITIES

Cases

Felder v. Charleston County Sch. Dist.,
327 S.C. 21, 489 S.E.2d 191 (1997)..... 7

Hall v. Sumter Sch. Dist. 2,
330 S.C. 402, 499 S.E.2d 216 (Ct. App. 1998)..... 10

Herron v. Century BMW,
719 S.E.2d 640, 643 (S.C. 2011)..... 9

Laws v. Richland Co. Sch. Dist. No. 1,
270 S.C. 492, 243 S.E.2d 192 (1978)..... 7

Nelson v. QHG of S.C., Inc.,
608 S.E.2d 855, 858-859 (S.C. 2005) 9

Pye v. v. Estate of Fox,
633 S.E.2d 505, 510 (S.C. 2006)..... 9

Toney v. Lee Cty. Sch. Dist.,
419 S.C. 210, 797 S.E.2d 55 (Ct. App. 2017)..... 10

Statutes

S.C. Code Ann. § 59-25-410..... 5

S.C. Code Ann. § 59-25-430..... 5, 10, 11

S.C. Code Ann. § 59-25-480..... 5, 8, 9

Rules

Rule 242 SCACR..... 6, 9, 10

Rule 74 SCRCR..... 8

Rule 75 SCRCR..... 8

Rule 75 SCACR..... 9

I. QUESTION PRESENTED

Whether the South Carolina Court of Appeals erred in affirming the Circuit Court's holding there was substantial evidence on the record that the Cherokee County School District Board of Trustees ("the Board" or "the District") terminated Sharon Brown ("Brown") in accordance with the requirements of the South Carolina Teacher Employment and Dismissal Act, ("TEDA") S.C. Code Ann. § 59-25-410, et seq. (2019).

II. STATEMENT OF THE CASE

On October 15, 2015, the Board terminated Brown following an evidentiary hearing held pursuant to TEDA. The Board's termination of Brown was based on its decision she engaged in inappropriate interactions with a student; was insubordinate in responding to directives from the District Superintendent regarding the investigation into Brown's conduct; and was dishonest in responding to questions from the Superintendent regarding the District's investigation. Thereafter, on November 5, 2015, Brown filed an appeal of the Board's decision to the Circuit Court for Cherokee County in accordance with the procedures set forth in S.C. Code Ann. § 59-25-480. By Order dated June 25, 2016, the Honorable J. Mark Hayes, Circuit Court Judge, denied Brown's appeal, finding there was substantial evidence on the record from the Board hearing that Brown engaged in conduct sufficient to support her termination as set forth in S.C. Code Ann. § 59-25-430 . Brown filed a Motion for Reconsideration, which was denied by Order from the Circuit Court dated June 12, 2017.

On July 28, 2017, Brown filed an appeal to the South Carolina Court of Appeals. The Court of Appeals denied Brown's appeal and upheld the Circuit Court, finding there was

sufficient on the record from the Board hearing indicating Brown had been dishonest in responding to questions from the District Superintendent regarding Brown's interference with the investigation into Brown's conduct.¹ On January 28, 2020, Brown filed a Petition for Rehearing with Suggestion En Banc. The Court of Appeals denied Brown's rehearing petition on May 22, 2020. On June 22, 2020, Brown filed this Petition for a Writ of Certiorari ("Petition").

III. REASONS FOR DENYING THE WRIT

A. Appropriateness of Certiorari

South Carolina Appellate Court Rule 242(b) sets forth a non-exclusive list of reasons where the South Carolina Supreme Court may decide to grant certiorari in a case, as follows:

- (1) Where there are novel questions of law.
- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals conflicts with a prior decision of the Supreme Court.
- (4) Where substantial constitutional issues are directly involved.
- (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Rule 242(b), SCACR.

This case does not fall within any of these reasons.

- **Novel Question of Law**

South Carolina appellate courts consistently have held a circuit court's standard of review of the decision of a school district board of trustees to terminate a teacher is limited to whether

¹ The Court of Appeals declined to rule on the remaining grounds for Brown's termination, holding that because it found sufficient evidence of her dishonesty, it need not address those additional grounds.

there is substantial evidence on the record to support the termination. “Judicial review of a school board decision terminating a teacher is limited to a determination whether it is supported by substantial evidence. The court cannot substitute its judgment for that of the school board.” *Felder v. Charleston Cty. Sch. Dist.*, 327 S.C. 21, 25, 489 S.E.2d 191, 193 (1997); see also *Laws v. Richland Cty. Sch. Dist. No. 1*, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978)(“[T]he standard by which the Board's decision is to be gauged [is] whether the grounds given for termination or the respondent's employment are supported by 'substantial evidence.'”). Because this standard of review is well-established, Brown does not present a novel question of law in her Petition.

- **Dissent in the Court of Appeals**

The Court of Appeals’ Order of January 15, 2020 denying Brown’s appeal was unanimous, as was the subsequent Order denying her request for reconsideration.

- **Conflict with a Prior Decision of the Supreme Court**

Brown points to no decision by the South Carolina Supreme Court that conflicts with the Court of Appeals’ decision in this case.

- **Involvement of Substantial Constitutional Issues**

Brown does not identify any substantial constitutional issue involved in her case. To the extent she argues TEDA is void for vagueness and violative of due process, she has not preserved those arguments for review by this Court, as explained below.

- **Inclusion of Federal Question**

Brown’s Petition does not assert a federal question.

B. Brown’s Additional Arguments for Certiorari are Insufficient

1. Application of Rule 75, SCRCP

Brown devotes eighteen pages of her twenty-page Petition to arguing that because the District did not comply with Rule 75, SCRCP, in certifying the record of her dismissal hearing to the Circuit Court, her termination should be reversed, and she should be reinstated². Her reliance on the process set forth in Rule 75, SCRCP, is misplaced.

Rule 75, SCRCP, does not govern appeals of a teacher termination by a school board. Rather, S.C. Ann. §59-25-480(B) specifically sets forth that procedure stating “Notice of the appeal and the grounds thereof shall be filed with the district board of trustees. The district board shall, within thirty days thereafter, file a certified copy of the **transcript record** with the clerk of such court (emphasis added). “

When it adopted SCRCP 74 and 75, the South Carolina Legislature noted, and this Court reiterated:

“Rules 74 and 75 are added to make uniform the procedure on appeals to the Circuit Court **where there is no provision by statute**. They do not replace any provisions as to such appeals in Title 18 of the Code, or other statutes providing for appeals from administrative decisions; but are added to supply omissions in these statutes where no provision is made for the time to file notice of intention to appeal, the form of the record on appeal, or how it shall be transmitted.”

Rule 75, SCRCP (Notes)(emphasis added).

In § 59-25-480, TEDA provides how a teacher may appeal a school board’s termination decision and how the record of the termination proceedings should be transmitted. Section 59-25-480 reads as follows:

² Even if the Court of Appeals’ decision is reversed, Brown is not entitled to the remedy she seeks. The appropriate remedy would be a remand to the lower court for further proceedings on the issue of the filing of the transcript.

(A) The decision of the district board of trustees is final, unless within thirty days afterward an appeal is made to the court of common pleas of any county in which the major portion of such district lies.

(B) Notice of the appeal and the grounds thereof shall be filed with the district board of trustees. The district board shall, within thirty days thereafter, file a certified copy of the transcript record with the clerk of such court.

The Court of Appeals correctly found the District complied with the requirements of S.C. Code § 59-25-480, holding there was sufficient evidence in the record that the District's counsel sent the certified transcript of Brown's dismissal hearing³t to the Cherokee County Clerk of Court by letter dated December 1, 2015. In its Order, the Court of Appeals also pointed to evidence in Circuit Court Judge Hayes' Order that he reviewed that transcript before issuing his Order upholding Brown's termination.

Because Brown has not, and cannot, cite to any case law supporting her argument of the applicability of Rule 75, SCACR, to this proceeding, her Petition should be denied.

2. Brown did not preserve for appeal her remaining arguments in support of her Petition.

An issue cannot be raised for the first time on appeal. *Pye v. Estate of Fox*, 633 S.E.2d 505, 510 (S.C. 2006). As stated in Rule 242(d)(2), SCACR, permissible grounds for certiorari are limited to those grounds raised in an initial appeal to the Court of Appeals. Further, an issue cannot be raised for the first time in a petition for rehearing. *Herron v. Century BMW*, 719 S.E.2d 640, 643 (S.C. 2011). An issue raised for the first time in a rehearing petition before the Court of Appeals is not preserved for certiorari review by this Court. *Nelson v. QHG of S.C., Inc.*, 608 S.E.2d 855, 858-859 (S.C. 2005).

³ The court reporter who was present for the hearing and typed the transcript certified it was a true and accurate record of the proceeding.

In her Petition, Brown asserts the Court of Appeals “overlooked and/or misapprehended” the precedent the Court of Appeals established in the cases of *Toney v. Lee Cty. Sch. Dist.*, 419 S.C. 210, 797 S.E.2d 55 (Ct. App 2017) and *Hall v. Sumter Sch. Dist. 2*, 330 S.C. 402, 499 S.E.2d 216 (Ct. App. 1998). These decisions hold that, under the specific facts of each respective case, dishonesty and failure to follow the directives of a supervisor did not rise to the level of manifesting an evident unfitness for teaching in accordance with the requirements of S.C. Code Ann. § 59-25-430.

Brown did not raise this argument in either her initial appeal to the Court of Appeals or her Petition for Rehearing. Though Brown cites to the *Hall* case in her initial appeal, she fails to assert how the holding in that case relates to the facts of her case. Concerning the relevance of the Court of Appeals’ *Toney* decision, Brown first raises that argument in this Petition. Because Brown did not preserve this argument for appeal, her Petition should be denied.⁴

Brown also challenges the Court of Appeals’ alleged oversight of its application of “precedent that §59-25-430 is void for vagueness in violation of her rights to procedural and substantive due-process due to over-breadth of §59-25-430.” Brown did not properly raise or preserve this issue for appeal either before the Board, the Circuit Court or the Court of Appeals. Not until her Petition for Rehearing does Brown raise the constitutionality issues surrounding the dishonesty provision, which does not preserve that issue for appeal.

Because Brown did not preserve for appeal her two additional grounds for seeking certiorari, those grounds are not properly before this Court.

⁴ Even if Brown had raised this argument in her appeal to the Court of Appeals, her reliance on these cases is misplaced. Unlike the teachers in *Hall* and *Toney*, Brown’s dishonesty and failure to follow the directives of the Superintendent interfered with the District’s investigation into her conduct, as noted in the Circuit Court’s Order.

CONCLUSION

For the reasons stated herein, the District respectfully requests this Court deny Brown's Petition for Writ of Certiorari.

Respectfully submitted,

WHITE & STORY, LLC

By: s/Andrea E. White

Andrea E. White (S.C. Bar #11891)
WHITE & STORY, LLC
P.O. Box 7036
Columbia, South Carolina 29202
Telephone: 803.814.0993
Facsimile: 803.814.1183

**Attorney for Respondent Cherokee County
School District**

July 20, 2020
Columbia, South Carolina