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THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. SUPREME COURT

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. 2020-000919
Unpublished Opinion No. 2020-UP-013

Sharon Brown,

Petitioner,

vs.

Cherokee County School District,

Respondent.

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

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that Petitioner's Reply to Respondent's Return to Petitioner's Petition for a Writ of Certiorari complies with Rule 240c, SCRPC.



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ARGUMENTS IN REPLY

I. Application of Rule 75 SCRCF is correctly applied by Petitioner Brown

Respondent District claims that Rule 75, SCRCF, does not govern appeals of a teacher termination by a school board when in fact it does. Respondent district failed to file a complete transcript record certified by a district official and failed to transmit a certified transcript record by an official of the Respondent District to the Circuit Court pursuant to Rule 75. Further, Petitioner's (Brown's) teacher appeal reached the Circuit Court (Court of Common Pleas) as a civil case that was noncriminal. Therefore Rule 75 applies to petitioner's case. Further, it is to be noted that S.C. Code §59-25-480 does not provide the form of the transcript of record nor does it provide how the certified record shall be transmitted, so Rule 75 applies to the form of the record and how it should be transmitted to the Circuit Court in this particular case. *See State vs. James A. Brown Sr.*, Opinion No. 3304, SC Court of Appeals, 2001, Sr.; *See Witzig vs. Witzig*, 325 S.C. 363, 479 S.E. 2d 297 (Ct. App. 1996).

Rule 75 was added by the South Carolina legislature to supply omissions in statutes where no provision is made for the time to file notice of intention to appeal, the form of the record on appeal, and how it shall be transmitted.

Additionally, in *McWhirter vs. Cherokee County School District No. 1*, 274 S.C. 66, 261 S.E. 2d 157 (1979) our Supreme Court referred to the actions of a local school board in language that indicates that the board is held to the standards of an "agency" as defined in the APA. *See Brown vs. William B. James, Superintendent for Cherokee County School District*, 389 S.C. 41, 697 S.E.2d 604 (Ct. App. 2010).

S.C. Code of Laws Title 1 Chapter 23 Section 1-23-320 (G), states that the record in a contested case must include the following:

- (1.) all pleadings, motions, intermediate rulings, and depositions;
- (2.) evidence received or considered;
- (3.) a statement of matters officially noticed;
- (4.) questions and offers of proof, objections, and rulings on the contested case;
- (5.) proposed findings and exceptions
- (6.) any decision , opinion, or report by the officer presiding at the hearing.

Respondent District blatantly failed to submit a complete certified record to the Circuit Court (Court of Common Pleas) as well as failed to transmit a certified record to the Circuit Court signed by an agency official. Rule 75 and S.C. Code Ann 59-25-480 mandates are clear. A timely filed complete transcript record was not filed in this teacher dismissal case. The Respondent District was responsible for preparing and submitting a complete certified transcript record to the Circuit Court, which it failed to do. Therefore Brown could not legally obtain judicial review without the filing of a complete certified record that is transmitted to the Circuit Court by a District official.

Here because Respondent District did not file an official certified transcript record as anticipated, the trial court and The Court of Appeals should have reinstated Brown to her teaching position. The Respondent District failed to seek an extension under Rule 75 before their 30 days expired to file the record.

II. Court of Appeals violated its own precedent

The Respondent District states, "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. Dis. 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." In a footnote the respondent District states, "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."

Brown contends that Ms. Toney was charged and found guilty of dishonesty in the Toney vs. Lee County case. However, the Court of appeals reinstated her to her teacher position. The Court of Appeals did not give any explanation in their decision on why they reinstated Toney to her teacher position after having been found guilty of dishonesty.

Once a case is decided, it establishes a precedent, or a judicial decision that should be followed when a similar case comes to court. It is important to note that Brown was terminated in 2015 by the Respondent District and the Toney case was decided by the Court of Appeals in 2017. Therefore, the Court of Appeals should have reinstated Brown to her teaching position based on its precedent in the Toney case.

CONCLUSION

This prejudice the Petitioner in so many ways. As such, Petitioner requests that the Circuit Court and the Court of Appeal's decision be reversed and that Brown be ordered reinstated to her job as a school teacher. A job she is well qualified to serve in.



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RULE 75**RECORD ON APPEAL TO THE CIRCUIT COURT: TRANSMITTAL**

Appeals to the circuit court shall be made upon the original record in the lower court or administrative agency or tribunal. Upon filing of notice of appeal in an action the original record shall be certified by the clerk of the inferior court or administrative agency or tribunal and transmitted within thirty (30) days to the clerk of the court to which the appeal is taken. If the lower court, agency or tribunal has no clerk, then the original record shall be certified and transmitted by the judge or chief official of the lower court, agency or tribunal. Upon motion for good cause shown, the court may extend the time for the lower court, agency or tribunal to prepare and certify the record. Upon receipt of the certified record, the clerk of the circuit court shall give notice in writing to the parties that the record has been filed.

Note:

These 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.

Note to 1986 Amendment:

This amendment requires the record to be certified to the circuit court within thirty days, and provides that the court may grant additional time for good cause shown.