THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM ABBEVILLE COUNTY

Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

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S.C. SUPREME COURT

Circuit Court Case No. 2012-CP-01-158

Appellate Case No. 2018-001926

William Crenshaw — Respondent,

v.

Erskine College and David A. Norman — Petitioners.

PETITIONERS' RETURN TO PETITION FOR REHEARING

COMES NOW Petitioners, Erskine College and David A. Norman and file this Return to Petition for Rehearing in the above captioned case.

I. INTRODUCTION.

"No jury – nor any judge – is permitted by law to rewrite a contract to impose liability based on some vague personal sense of what is fair. The contract in this case is written – the Faculty Manual – and our decision is based on its written terms." See *Crenshaw v. Erskine Coll.*, 2020 S.C. LEXIS 134, P. 30 (S.C. Sept. 9, 2020). The above quotation from Justice Few's majority opinion is a direct and succinct explanation for why Erskine College did not breach its

employment contract with Crenshaw. An examination of the terms of the contract is all that is necessary and required in this case. The majority opinion thoroughly examines the terms of the contract, every argument asserted by Crenshaw and the Dissent and reaches the only possible decision, Erskine did not breach the contract as a matter of law.

The Petition for Rehearing's characterization of the decision as a shocking exercise of judicial activism simply is wrong. Erskine points out again, as it has throughout, that Crenshaw does not contest the fact that he failed to request a hearing before a Hearing Committee and therefore failed to follow a required step of his employment agreement.

The Petition for Rehearing's claim that the Court's decision means employees will no longer be employed at will as a matter of law regardless of whether a handbook or manual includes a disclaimer is also wrong. As explained in more detail below, the South Carolina legislature, in 2004, declared the public policy of the State regarding employee handbooks, manuals, policies and procedures with regard to disclaimers. Nothing in the majority's opinion changes express or implied contract law in South Carolina. Rather, the majority opinion is a thorough explanation of the application of South Carolina contract law.

II. STANDARD FOR A PETITION FOR REHEARING.

Under Rule 221(a), SCACR, in order to prevail on a Petition for Rehearing, the petitioning party must demonstrate the Court has overlooked or misapprehended some points requiring the case be reheard. A review of the majority's 27 page Opinion demonstrates nothing was overlooked or misapprehended. The decision is a thorough examination and analysis of all arguments raised by the parties, Court of Appeals and Dissent. Crenshaw cannot satisfy the standard for rehearing.

III. TENURE AND BREACH OF CONTRACT.

Petitioners comfortably rely entirely on Justice Few's majority opinion in the case. To reiterate and restate what has been so poignantly explained is neither necessary nor an effective use of judicial economy. Succinctly stated in a few sentences Petitioners reiterate their arguments.

Crenshaw's employment agreement with Erskine was based on the tenured faculty provisions of the Faculty Manual. What tenure means for Crenshaw and Erskine is based entirely on the Faculty Manual. What tenure means at other institutions is not relevant. Likewise ancillary academic writings and expressions of what tenure should be or is at other institutions or in general is not relevant.

The Faculty Manual provided substantive rights and a procedural framework for the parties to follow. Erskine could not terminate Crenshaw's employment without adequate cause. The President of Erskine can only recommend termination for cause. Crenshaw has the right to request a hearing, in writing, before a Hearing Committee. Crenshaw did not request such a hearing in writing or otherwise. By failing to request a hearing Crenshaw abandoned his rights under the Faculty Manual. Erskine fulfilled its requirements under the Faculty Manual and consequently did not breach the employment agreement with Crenshaw.

Crenshaw's reliance upon anything other than the terms of the Faculty Manual is not relevant and is an attempt to avoid his obligation which he failed to fulfill in requesting a hearing before a Hearing Committee.

Assertions that the majority opinion invades the province of the jury is simply wrong. A trial judge has an obligation to overturn a jury verdict when the verdict is not supported by the law. Judge Griffith recognized in this case that the jury verdict had to be overturned because the

verdict was not supported by the undisputed facts or the law. Appellate courts are under the same obligation. As Justice Few pointed out, "No jury – nor any judge – is permitted by law to rewrite a contract to impose liability based on some vague personal sense of what is fair." *Id.* P. 30. The majority opinion followed this guiding principle of contract law in applying the terms of the contract between private parties to the law. In this case the proper analysis leads to the only possible conclusion, that Erskine did not breach its employment agreement with Crenshaw.

IV. ASSERTED IMPLICATIONS OF THE DECISION.

The petition raises concerns about alleged unintended future implications of the decision. First, the petition cites the dissenting opinion argument that the majority opinion effectively renders academic tenure meaningless. The opposite is true. The majority opinion specifically addresses that the case is not about tenure. Id. at 18. The majority opinion makes it perfectly clear the case is a pure contract case. Crenshaw, a private citizen and Erskine, a private educational institution enter into a private contract and the contract is simply between those parties. There is no general academic standard that applies to Crenshaw's contract with Erskine. Tenure at Erskine between Crenshaw and Erskine meant what the Faculty Manual at Erskine meant. Tenure at other educational institutions with differing provisions are not impacted in any way by this decision.

Another issue the petition indicates would have future implications relates to the disclaimer language on the pages of the Faculty Manual. This argument is completely misplaced. If the Faculty Manual is not a contract, then Crenshaw is employed at will. Crenshaw's employment could be ended at any time for any reason or no reason so long as it's not an unlawful reason. This is well established South Carolina law.

The third alleged future implication of the decision described in the petition relates to the alleged end of employment at will in the State. This assertion is incorrect. South Carolina employee handbook law has been well settled for years. In 2004, the South Carolina legislature passed Section 41-1-110 of the South Carolina Code. The statute provides in full:

It is the public policy of this State that a handbook, personnel manual, policy, procedure, or other document issued by an employer or its agent after June 30, 2004, shall not create an express or implied contract of employment if it is conspicuously disclaimed. For purposes of this section, a disclaimer in a handbook or personnel manual must be in underlined capital letters on the first page of the document and signed by the employee. For all other documents referenced in this section, the disclaimer must be in underlined capital letters on the first page of the document. Whether or not a disclaimer is conspicuous is a question of law. SC Code Ann. Section 41-10-110.

The majority opinion does nothing to change this well settled law. This assertion and the assertion above fail to recognize the basic fact that Crenshaw was not at will and was contractually protected by provisions of the Faculty Manual. If the Faculty Manual is not a contract, Crenshaw has no claim Erskine breached the contract.

V. CONCLUSION.

For the foregoing reasons, this Court should deny this Petition.

Respectfully submitted,

Dated: October 23, 2020

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