

IN THE COURT OF APPEALS

7/29/97

OF THE

STATE OF MISSISSIPPI

NO. 95-CC-01271 COA

IVA LOIS HODGES APPELLANT

v.

DURANT PUBLIC SCHOOL DISTRICT

BOARD OF TRUSTEES APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. WILLIAM JOSEPH LUTZ

COURT FROM WHICH APPEALED: HOLMES COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT: BENJAMIN E. GRIFFITH

DANIEL JUDSON GRIFFITH

ATTORNEY FOR APPELLEE: JAMES H. POWELL III

NATURE OF THE CASE: ADMINISTRATIVE-SCHOOL BOARD

TRIAL COURT DISPOSITION: CHANCERY COURT AFFIRMED NON-REEMPLOYMENT DECISION OF BD. OF TRUSTEES.

MANDATE ISSUED: 8/19/97

BEFORE BRIDGES, C.J., COLEMAN, AND SOUTHWICK, JJ.

BRIDGES, C.J., FOR THE COURT:

Iva Lois Hodges (Hodges) was employed by the Durant Public School District as director of federal programs. The superintendent recommended that her contract not be renewed for the 1995-96 school year. Hodges was allowed to state her case at a hearing before a hearing officer and the School District Board of Trustees. At their regular meeting on June 13, 1995, the trustees made their final decision not to renew Hodges contract. Subsequently, Hodges appealed to the Chancery Court of Holmes County. The decision of the trustees was affirmed by the chancellor on November 14, 1995.

FACTS

Hodges was employed as Director of Federal Programs by the Durant Public School District during the 1994-1995 school year. At a School Board of Trustees meeting in March of 1995, the superintendent, Wardell Herring, recommended to the Board of Trustees that Hodges not be re-employed for the next year, citing 13 reasons for his recommendation. Hodges was notified of the recommendation and the 13 reasons, as well as her right to have a hearing before the hearing officer.

Hodges exercised her right and was represented by counsel at the hearing. In May of 1995, the hearing officer rendered his opinion that 3 of the 13 reasons were "valid and viable" and recommended that the trustees support the superintendent's decision. The 3 valid reasons may be summarized as follows:

1. False pretenses were utilized by Hodges to obtain signatures.
2. An official's signature had been signed to documents without his consent.
3. Hodges did not timely perform her duties as safety officer for the school district.

Hodges was then allowed to appear before the School District Board of Trustees to make a statement. At the Trustees regular meeting in June of 1995, the Trustees decided not to renew Hodges contract. Hodges appealed to the Chancery Court of Holmes County. The Trustees' decision was affirmed as being supported by substantial evidence, not arbitrary nor capricious, and not violative of any law. Hodges claims that the whole thing was retaliation for criticisms she made of Herring at a public school board meeting in January of 1995. In that meeting, Hodges prevailed upon the Board of Trustees to assist her in her attempts to be evaluated in order to improve her certificate

rating. The decision not to renew her contract was made shortly after this meeting.

ARGUMENT AND DISCUSSION OF LAW

I. WHETHER THE NON-REEMPLOYMENT DECISION OF THE BOARD OF TRUSTEES WAS UNLAWFUL FOR THE REASON THAT IT WAS NOT SUPPORTED BY ANY SUBSTANTIAL EVIDENCE, WAS ARBITRARY AND CAPRICIOUS, AND WAS IN VIOLATION OF HODGES' CONSTITUTIONALLY PROTECTED RIGHT TO FREEDOM OF SPEECH.

Our scope of review is limited to determining whether the board's action was 1) not supported by any substantial evidence; 2) arbitrary or capricious, or 3) in violation of some statutory or constitutional right of the employee. Miss. Code Ann. § 37-9-113. *See also Harris v. Canton Public School Board of Education*, 655 So. 2d 898, 903 (Miss. 1995). Furthermore, at the hearing of these matters, the burden was on Hodges to prove affirmatively and conclusively that the reasons for non renewal relied upon by the Trustees had no basis in fact. *Calhoun County Board of Education v. Hamblin*, 360 So. 2d 1236, 1240 (Miss. 1978).

At the hearing on this matter before the hearing officer, of the thirteen reasons given by the superintendent for the non-renewal of Hodges' contract, only three were found by the hearing officer to be valid and sufficient reasons. These were reasons Five, Six and Twelve. Reasons Five and Six are as follows:

Reason Five: That false pretenses were utilized by Hodges to obtain signatures of employees on papers that should have been previously signed had she followed policy. In order to obtain the signatures she needed for her records, she falsely told employees of the district that the Special Education Department of the State Department of Education would be conducting an on-site visit to the district. A check with the State Department of Education by Mr. Herring revealed that no on-site visit was scheduled for the 1994-1995 school year.

Reason Six: A Local Survey Committee member's signature has been signed to documents without the consent of the member.

Our review of the record reveals that both of the above reasons were clearly supported by the testimony of Malinda Keith and Wardell Herring. Keith is a speech pathologist for the Durant Public School District. Keith testified that her signature was improperly used by Hodges. She also testified that her signature was obtained by use of false pretenses. Superintendent Herring testified to the same improprieties as Keith. Furthermore, we find that Hodges did not carry her burden with regard to these reasons by failing to show that they had no basis in fact.

Reason Twelve was as follows:

Reason Twelve: Hodges was given the job of safety officer for the district. As such, she was responsible for developing fire drills and escape route maps for each classroom during the spring of 1994. No fire or tornado drills were ever authorized by Hodges and the escape route maps were not placed in the classrooms until 1995, even though there are less than fifty classrooms in the entire district.

Superintendent Herring testified that he gave Hodges the job of safety officer in the spring of 1994. Some of her duties were to design and post escape route maps and to conduct periodic and spontaneous disaster drills. Herring further testified that the escape maps were not designed and posted until early 1995, and that disaster drills were not conducted at all by Hodges. In fact, Herring finally had to take it upon himself to conduct a disaster drill. While the record reflects no definite deadline for the posting of escape maps, it appears that Hodges' delay in doing so reflected poorly upon her ability to be the safety officer for the district. Our review of the record reveals clear support for reason Twelve. Again, Hodges failed to carry her burden by proving that this reason was not based in fact.

Finally, Hodges attempts to hang her argument on the third prong of the *Harris* test that was enunciated above. In doing this, Hodges alleges that the non renewal of her contract was in retaliation for her speaking out at the Board meeting, and that this was a violation of her constitutionally protected right to free speech. We disagree. To clear this First Amendment hurdle, Hodges must first show that the speech upon which the termination was allegedly based is speech which is of legitimate concern to the public. *Connick v. Myers*, 461 US 138, 142, 103 S.Ct. 1684, 1687 (1983).

We find that Hodges fails to clear this first hurdle in that her speech before the Board was not of legitimate public concern. The record reveals that her motivations in approaching the Board were purely private in nature, to further her career by advancing her certification. Her motivations were admirable, but not of public concern. It is clear to this Court that the decision of the Board is 1) supported by substantial evidence; 2) neither arbitrary nor capricious; or 3) in violation of some statutory or constitutional right of Hodges. *Harris*, 655 So. 2d at 903. Accordingly, we affirm the findings and opinion of the chancellor.

THE JUDGMENT OF THE CHANCERY COURT OF HOLMES COUNTY IS HEREBY AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.