

IN THE COURT OF APPEALS 12/29/95
OF THE
STATE OF MISSISSIPPI

NO. 94-CA-01281 COA

BENNIE MCNEILL

APPELLANT

v.

DEER CREEK EDUCATIONAL INSTITUTE, INCORPORATED

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. HOWARD Q. DAVIS, JR.

COURT FROM WHICH APPEALED: WASHINGTON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

MARTIN KILPATRICK

ATTORNEY FOR APPELLEE:

MICHAEL L. PREWITT

NATURE OF THE CASE: EMPLOYMENT CONTRACT

TRIAL COURT DISPOSITION: SUMMARY JUDGMENT

BEFORE BRIDGES, P.J., COLEMAN, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

Bennie McNeill was employed by Deer Creek private school to teach for the 1992-93 school year. As

a result of his leaving students unsupervised in his home, he was allowed to resign in lieu of being fired. McNeill then sued his employer for breach of contract. McNeill appeals the trial judge's grant of summary judgment in favor of Deer Creek. Finding no error, we affirm.

ISSUE

The only question involved in this case is whether Deer Creek breached its contract with McNeill by dismissing him. Did McNeill fail to fulfill the terms of his contract to "perform such teaching duties in a good and satisfactory manner and in accordance with the policies, rules and directions of the Board of Directors," when he left unsupervised students in his home while the students waited to be taken to a school function and he left on school business which he was required to perform? It is undisputed that McNeill was aware of Deer Creek's policy not to leave students unsupervised. What transpired during McNeill's absence was unfortunate. The students broke into a locked closet and retrieved an X-rated video which they watched in his absence. At his hearing before the Unemployment Compensation Commission, the commission found that McNeill was dismissed for misconduct and therefore was not entitled to unemployment compensation. This suit is not an appeal from that ruling, but rather a case grounded in contract, filed before and apart from that determination.

STANDARD OF REVIEW

In determining whether the trial court properly granted a motion for summary judgment, this Court conducts a *de novo* review of the record. *Daniels v. GNB, Inc.*, 629 So. 2d 595, 599 (Miss. 1993); *Mantachie Natural Gas Dist. v. Mississippi Valley Gas Co.*, 594 So. 2d 1170, 1172 (Miss. 1992). A trial court may grant summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." M.R.C.P. 56(c). A fact is material if it "tends to resolve any of the issues, properly raised by the parties." *Webb v. Jackson*, 583 So. 2d 946, 949 (Miss. 1991) (citing *Mink v. Andrew Jackson Casualty Ins. Co.*, 537 So. 2d 431, 433 (Miss. 1988)). The evidence must be viewed in the light most favorable to the non-moving party. *Morgan v. City of Ruleville*, 627 So. 2d 275, 277 (Miss. 1993) (citing *Brown v. Credit Ctr., Inc.*, 444 So. 2d 358, 362 (Miss. 1983)). If, in this view, the moving party is entitled to a judgment as a matter of law, then summary judgment should be granted in that party's favor. *Id.*

ARGUMENT

McNeill argues good law regarding ambiguity in a contract, but it is entirely inapplicable to the case at hand. There was no ambiguity in the contract nor in the policy which required that students not be left unsupervised. The students, though visiting after school in his home, were still in school custody. The trial judge found, with our emphasis added:

McNeill extended the invitation to students *while at school*; the students were watching videos at this house while waiting on the bus to take them *to a school function*. Allowing students to be at this house unsupervised was a matter of poor judgment; he also says he told them to stay out of his beer. As a result, McNeill must suffer the consequences of his poor judgment There is no material fact in dispute, and the MOTION FOR SUMMARY JUDGMENT is well-taken and is, therefore, granted.

There was no requirement that McNeill offer his residence to the students as a "waiting place," but having done so, he was duty bound to operate under his contract while they were under his supervision, even if on his private property. The student's conduct was inexcusable. They had no right to break into his locked closet. McNeill's possession of X-rated videos may have been ill advised, particularly since it was kept in the house to which he invited the students. The school's demand for McNeill to absent himself from the school to drive a bus thereby leaving students in his care unsupervised sent mixed messages. However, the fact remains that the policy against leaving students unsupervised was violated. As a matter of law, the school is entitled to summary judgment.

THE JUDGMENT OF THE CIRCUIT COURT OF WASHINGTON COUNTY IS AFFIRMED. THE APPELLANT IS TAXED WITH THE COSTS OF THIS APPEAL.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, AND SOUTHWICK, JJ., CONCUR.