

**IN THE COURT OF APPEALS 07/02/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-CC-01039 COA**

**KENNETH R. BROADUS**

**APPELLANT**

**v.**

**JACKSON COUNTY SHERIFF'S DEPARTMENT**

**APPELLEE**

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

TRIAL JUDGE: HON. KATHY KING JACKSON

COURT FROM WHICH APPEALED: JACKSON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

KENNETH RAY BROADUS PRO SE

ATTORNEY FOR APPELLEE:

GARY S. EVANS

NATURE OF THE CASE: TERMINATION OF AN PUBLIC EMPLOYEE FOR CAUSE

TRIAL COURT DISPOSITION: FOUND THAT THE SHERIFF WAS JUSTIFIED IN FIRING  
BROADUS FOR CAUSE

BEFORE FRAISER, C.J., COLEMAN, AND KING, JJ.

FRAISER, C.J., FOR THE COURT:

Kenneth Ray Broadus was a deputy with the Jackson County Sheriff's Department (the Department). Broadus's employment was terminated by the Department because he, a married man, was seeing a

married woman who was not his wife. The Department's decision was upheld by the Jackson County Civil Service Commission (the Commission) and the Jackson County Circuit Court. On appeal, Broadus contends that the Commission's decision is not supported by substantial evidence, and that his termination denied him constitutionally protected rights of due process and equal protection under the law as guaranteed by the Fourteenth Amendment. Broadus's contentions are incorrect. We affirm.

## Facts

Kenneth Ray Broadus was a nonprobationary civil service employee working as a deputy sheriff for the Jackson County Sheriff's Department. In August of 1993, Broadus's wife filed for divorce in the Jackson County Chancery Court. In that same month, Larry B. Morris and Carrie Morris filed a joint complaint for an irreconcilable differences divorce. Larry Morris forced Carrie Morris out of the marital home and changed the locks. Carrie then moved in with several friends but was forced to move out after Morris and his family harassed and threatened her benefactors.

In early September, Carrie Morris arrived at Broadus's apartment. Because she had nowhere to go he allowed her to stay in his apartment. Soon thereafter, Larry Morris and others, including his relatives, began to call Sheriff D. B. Pope personally and complain that Broadus was seeing a married woman. Further, one caller complained that Broadus and Mrs. Morris had been seen in Broadus's squad car, which Broadus admitted. Because Broadus's actions reflected poorly on the Department, the Sheriff and several of his officers met with Broadus at different times and warned him to stop seeing Carrie Morris until her divorce was finalized.

In the course of investigating the burglary of Larry Morris's house, sheriff's department investigators looked for Carrie Morris at Broadus's apartment. Broadus told the investigators that Carrie was not at his apartment. However, her car was in the apartment complex parking lot. Officer Broadus argued with one of the investigators and was placed in the backseat of a patrol car. Soon after Carrie Morris appeared claiming that she had been at the laundromat immediately adjacent to the apartment complex.

After Sheriff Pope became aware that Mrs. Morris was at Broadus's apartment, he notified Broadus that they would meet and discuss the incident. The matter was discussed with Broadus and his attorney. Broadus was given an opportunity to resign or be terminated due to the seriousness of the situation. When Broadus refused to resign, he was terminated. This termination was based on a violation of the Department's Standard Operating Procedure, Section 2.28.2, for conduct unbecoming an officer, which was put in letter form for Mr. Broadus on September 22, 1993, the same day he was terminated.

On September 28, 1993, Broadus through his counsel by letter demanded immediate reinstatement or in the alternative for an investigation and formal hearing before the civil service commission.

On October 18, 1993, the civil service commission sent notice of the civil service hearing date to the law firm representing Broadus. On October 29, 1993, the Jackson County Civil Service Commission held a full evidentiary hearing. On November 4, 1993, the Commission in a unanimous decision upheld the termination of Broadus for conduct unbecoming an officer.

Broadus filed his notice of appeal to the Jackson County Circuit Court on November 19, 1993. On appeal the circuit judge affirmed the Jackson County Civil Service Commission's decision to uphold the employment termination of Broadus by the Jackson County Sheriff's Department finding that the decision to terminate was made in good faith for cause and supported by substantial evidence and the applicable law. On October 6, 1994, Broadus perfected this appeal pro se.

## DISCUSSION

Our standard of review in civil service commission cases is limited to determining whether the civil service commission acted in good faith and for cause in dismissing a certified employee. *City of Jackson v. Froshour*, 530 So. 2d 1348, 1355 (Miss. 1988). For the civil service commission's decision to be in good faith, Broadus must have been afforded all constitutional protections including due process by the Department's termination proceedings. *See Eidt v. City of Natchez*, 382 So. 2d 1093, 1094 (Miss. 1980) (reviewing Eidt's due process claim); *Little v. City of Jackson*, 375 So. 2d 1031, 1032 (Miss. 1979) (discussing due process considerations in classified employee terminations).

## WHETHER BROADUS WAS TERMINATED IN GOOD FAITH FOR CAUSE AND NOT FOR POLITICAL REASONS

Broadus contends that he was terminated for political reasons; consequently, he claims that he was not terminated in good faith and the decision to terminate him is not supported by substantial evidence. Specifically, Broadus alleges that he was discharged to placate Larry Morris and his family and stop them from harassing Sheriff Pope. Essentially, Broadus asks this Court to reweigh the evidence presented to the Jackson County Civil Service Commission. However, we may not reweigh the evidence.

[T]his Court, is limited, and we must ever bear in mind that it is not what the court, had it been a member of the governing authority, might have done in a particular instance, or indeed whether or not the court thinks a mistake may have been made, but instead the criterion is whether or not from an examination of the record there exists credible evidence substantiating the action taken by the city. It is upon this basis that the court determines whether or not the decision was in "good faith for cause." Courts are not empowered to supervise the intelligence, wisdom or fairness of the governing authorities, and no resources are available to a court to exercise such a function even if granted, in this extremely difficult task of determining the fitness of a particular person for a particular job. The task must be left to the governing authorities of the city. It is only when the record makes it clear that there is no "substantial evidence" supporting the governing authorities' determination that a court can act, and in such case it must.

*Froshour*, 530 So. 2d at 1355.

Thus, we are left with the question of whether there is sufficient proof on which the Commission could have based its decision that Broadus's conduct was unbecoming an officer. We conclude that

there is sufficient evidence to support the Commission's finding.

The Department predicated its decision to terminate Broadus on Broadus's violation of the Jackson County Sheriff's Department's Internal Operating Procedure 2.28.2, Conduct Unbecoming an Officer, which defines conduct unbecoming an officer as:

[A]ction which includes an act or conduct not specifically mentioned in these regulation, [sic] tends to bring the department into disrepute or reflects discredit upon the individual as a Sheriff's Department employee, based on an accepted standard of behavior in the community. Conduct unbecoming an officer includes intoxication in public places, commission of unlawful acts, or willful false public criticism of the department or any members of the department, and other similar acts of inappropriate behavior.

The Jackson County Civil Service Commission found that Broadus had violated this regulation by seeing Carrie Morris while she was legally married to Larry Morris and Broadus was legally married to his wife.

The record supports the Commission's decision. Broadus admitted that prior to his discharge both he and Carrie Morris were married to their respective spouses. Further, he admitted that he transported Mrs. Morris in his patrol car. The Department received numerous complaints about Broadus's seeing Mrs. Morris and specifically about his transporting her in his patrol car. Sheriff Pope and several of his officers on different occasions warned Broadus not to see Mrs. Morris until her divorce was final. Despite the department's warning, Broadus continued seeing Mrs. Morris. Broadus's actions adversely affected the Department's image in the community. There is substantial evidence to support the Commission's determination that Broadus's actions with Mrs. Morris reflected poorly on the Department and damaged the Department's community relations, thus constituting conduct unbecoming an officer.

Additionally, the Commission may have determined from the record that Broadus lied to investigators looking for Carrie Morris at Broadus's apartment. This also may constitute conduct unbecoming an officer.

## DUE PROCESS

Broadus claims that he was denied pre-termination due process. Specifically, he alleges that he did not receive notice in writing of the reasons he was to be terminated prior to his termination or have an opportunity to respond to those charges in writing.

Incident to claiming a denial of pre-termination due process, Broadus alleges that he was neither presented with written notice of the reason for his termination prior to his discharge nor afforded the opportunity to respond in writing to the charges against him prior to his termination. In support of his position Broadus cites *Thurston v. Dekle*, 531 F.2d 1264, 1273 (5th Cir. 1976) for the proposition that a tenured employee must be notified in writing of the reasons for his termination prior to discharge and afforded an opportunity to respond in writing to the reasons alleged for his termination

in order to satisfy due process. While the Department agrees that Broadus was not given a written prermination explanation or the opportunity to respond in writing to the charges against him prior to his termination, it argues that Broadus is not entitled under current due process jurisprudence to a written recitation of the reasons underlying his termination or to respond in writing to the charges against him when he is afforded, as he was, a full evidentiary post-termination hearing. In this situation, oral notice of the reason for his termination and the opportunity to respond orally to the charges satisfies due process. *See Browning v. City of Odessa*, 990 F.2d. 842, 844 (5th Cir. 1993) (holding that a brief meeting in which tenured employee was given oral notice of the reasons for his discharge and the opportunity to respond orally to the government employer's charges were sufficient to satisfy due process).

The existence of a legitimate property or liberty interest is a prerequisite to any claimed threat to procedural due process. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 537 (1985). Because the Department does not dispute that Broadus had a property interest in his position as a sheriff's deputy via Mississippi law, we will not linger on the point but, examine the question of to what process Broadus was entitled prior to termination.

In 1976, the Fifth Circuit Court of Appeals examined the due process jurisprudence of the United States Supreme Court and determined:

Where a governmental employer chooses to postpone the opportunity of a nonprobationary employee to secure a full-evidentiary hearing until after dismissal, risk reducing procedures must be accorded. *These must include, prior to termination, written notice of the reasons for termination and an effective opportunity to rebut those reasons. Effective rebuttal must give the employee the right to respond in writing to the charges made and to respond orally before the official charged with the responsibility of making the termination decision.*

*Thurston*, 531 F.2d at 1273 (emphasis added). Broadus seizes on this case to claim that he was denied due process protection. He would be correct if *Thurston* were still good law; but, it is not. In 1985, the United States Supreme Court again addressed the question of what process was due to a nonprobationary state employee. The court held that "[t]he tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. To require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee." *Loudermill*, 470 U.S. 532, 546 (1985) (citations omitted). Conspicuously absent from the supreme court's *Loudermill* requirements are the requirements that the employee be notified in writing or allowed to respond in writing to the charges against him. The *Loudermill* Court held that oral notification of the charges and an oral opportunity to respond satisfy due process.

In 1993, the United States Fifth Circuit Court of Appeals again examined what process is due a nonprobationary employee terminated for cause in light of *Loudermill*. The Court of Appeals held:

The United States Supreme Court decided in *Cleveland Board of Education v. Loudermill*, that if a governmental employer provides a full post-termination hearing,

pretermination due process is limited. In such circumstances, before dismissing an employee, the employer need only provide the employee with written or oral notice of the charges raised against him, explain to the employee the nature of the evidence of those charges, and afford the employee an opportunity to respond.

A satisfactory pretermination "hearing" need not be elaborate, for such a hearing is merely designed to prevent the employer from making a mistake. . The purpose of the hearing is simply to ensure that the charges raised against the employee are true and support his or her dismissal. Thus, an informal hearing which allows the employee to give his version of the facts sufficiently hedges against an erroneous dismissal and likewise satisfies the requirements of due process.

*Browning*, 990 F.2d at 844 (citations omitted).

In light of *Loudermill* and *Browning*, Broadus received adequate pre-termination due process. While Broadus did not receive written notice of the reasons for his termination until after he was terminated, he received oral notice at the termination meeting with Sheriff Pope. Further, several previous meetings had notified Broadus that this actions were causing problems. Broadus was warned sufficiently enough so that he brought his attorney to the termination meeting. At the meeting with Sheriff Pope, Broadus had the opportunity to respond orally to the charges against him. Because Broadus was later afforded a full evidentiary hearing, he received proper pre-termination due process.

Broadus also argues briefly that he was denied equal protection under the law; however, this error was not raised by Broadus's lawyer at the Commission's hearing or at the circuit court appeal. Because it was not raised, we are barred from considering it on appeal. *Little*, 375 So. 2d at 1033

(holding issues, including constitutional issues, not argued to the civil service commission are waived on appeal).

For the foregoing reasons, the decision of the Commission is affirmed.

**THE JUDGMENT OF THE JACKSON COUNTY CIRCUIT COURT AFFIRMING THE  
DECISION OF THE JACKSON COUNTY CIVIL SERVICE COMMISSION IS**

**AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

**BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN,  
PAYNE, AND SOUTHWICK, JJ., CONCUR.**