

6/17/97

IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 95-CC-01016 COA

BARBARA SHEALY APPELLANT

v.

BOARD OF TRUSTEES OF THE NESHOBA

COUNTY SCHOOL DISTRICT APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

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

TRIAL JUDGE: HON. JOHN C. LOVE

COURT FROM WHICH APPEALED: NESHOBA COUNTY CHANCERY COURT

ATTORNEYS FOR APPELLANT: PATRICIA A. HANCOCK TIM HANCOCK

ATTORNEY FOR APPELLEE: JAMES A. KEITH

NATURE OF THE CASE: NON-RENEWAL OF A TEACHER'S CONTRACT

TRIAL COURT DISPOSITION: AFFIRMED THE SCHOOL BOARD'S DECISION NOT TO RENEW CONTRACT

MANDATE ISSUED: 7/8/97

BEFORE THOMAS, P.J., DIAZ, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

This is an appeal from the Chancery Court of Neshoba County wherein the chancellor affirmed the school board's non-renewal of Barbara Shealy's teaching contract. Feeling aggrieved, Shealy appeals to this Court arguing: (1) her constitutional rights of freedom of speech, freedom of association and freedom of petition were violated; (2) the decision of non-renewal is not supported by substantial evidence; and (3) the decision of non-renewal is arbitrary and capricious. Finding no error, we affirm.

STATEMENT OF THE FACTS

Barbara Shealy was employed as an elementary school teacher with the Neshoba County School District. Shealy taught for seven years at Neshoba Central Elementary School with Mrs. Crawford as the principal the last three years. Prior to her position with Neshoba County, Shealy had taught for sixteen years. In March, 1994, Shealy was notified that her contract would not be renewed for the 1994-95 school year. The stated reasons for Shealy's non-renewal were: (1) a history of excessive absences; (2) failure to acknowledge plan of improvement given in May, 1993, and failure to follow directives of the plan; and (3) failure to work toward a positive school climate by being less than forthright about meetings that have taken place between Shealy and her principal.

The following time line illustrates the events involved in this case:

January 27, 1993- Principal Crawford met with fifth grade teachers (including Shealy who taught fifth grade at that time) regarding the teachers' failures to meet physical education classes on time. During the meeting, Shealy expressed disapproval of the way Crawford was handling the matter. Shealy claimed that the fifth grade supervising teacher/grade representative was upset and crying because Crawford had threatened to take away the teachers' privileges and that Crawford discussed the meeting and its subject in front of students.

February 1, 1993- Crawford and Shealy met and discussed Shealy's conduct at the meeting. Crawford testified that Shealy apologized, and they both agreed the matter was resolved. Crawford also testified that she informed Shealy that her notes from the meeting would be placed in her personnel file and that Shealy could have a copy at any time. After the meeting, Crawford's notes on the meeting were placed in Shealy's personnel file.

February 12, 1993- Shealy asked Crawford for a copy of the notes Crawford had placed in Shealy's file. Shealy testified that a copy of Crawford's notes about the February 1st meeting were not placed into her file until she requested a copy from Crawford. On or about **February 16**, Shealy asked that a copy of her version of events also be placed in her personnel file. Crawford complied with both requests.

May 21, 1993- Crawford and Shealy met to discuss problems of (1) Shealy's excessive absences, (2) Shealy's misrepresentation of facts of what occurred at the February 1st meeting, and (3) Shealy must work to improve her employment situation. Assistant Principal Shaw also attended this meeting and the meeting was tape recorded. Shealy was also informed that her contract for the 1993-1994 school year would be renewed.

May 25, 1993- Crawford sent a follow-up letter to Shealy regarding the meeting on May 21st. Crawford's letter included the following language:

After reviewing these problems and deficiencies [excessive absences, and Shealy's letter in response to the February 12 principal/teacher conference], I directed you to a plan of improvement which was:

1. I will expect you to conduct yourself in a professional manner regarding your opinion of your Principal's actions. If you have concerns, I will direct you in the steps to our grievance procedure.

2. There will not be personal confrontations at any time, no stabbing in the back. We must provide the best opportunities for our students, not creating an unproductive atmosphere of dislike between teacher and Principal.

3. I believe the quality of job we do is influenced by poor attitude and outward behavior, therefore we will begin fresh in the fall with our duties to this school and the students with a good attitude, fostering an atmosphere of cooperation and professionalism. We need to seriously consider what is your duty to this school and what is my duty to this school.

September 16, 1993- Shealy asked to review her personnel file. Crawford complied.

October 14, 1993- Shealy availed herself of the grievance process and requested that Crawford's letter, notes, and memo be removed from Shealy's personnel file.

February 23, 1994- Crawford sent a letter to the superintendent stating she was recommending that Shealy's contract not be renewed.

March 21, 1994- Shealy received a letter from the school board announcing that her contract would not be renewed for the 1994-95 school year. Crawford had recommended to the board that Shealy's contract not be renewed.

April 21, 1994- Pursuant to Shealy's request, a hearing was held before the school board. The school board allowed the decision not to renew Shealy's contract to stand.

Pursuant to section 37-9-113, Shealy appealed the decision of the school board to the Chancery Court of Neshoba County. *See* M.C.A. 37-9-13 (Rev. 1996). The chancellor upheld the school board's decision and affirmed.

The record reveals Shealy's number of absences for each school year as follows:

1987-88 23 days

1988-89 20 days

1989-90 24 days

1990-91 21 days

1991-92 26 days

1992-93 43 days

1993-94 18 days through March 15, 1994

The record also indicates that between March 15 and April 21, 1994, Shealy missed another day of work.

ANALYSIS

The School Employment Procedures Law of 1977 sets out the procedure for review of decisions not to renew an employment contract of public school employees. M.C.A. 37-9-101-113 (Rev. 1996). We note that there is no assertion that Shealy was denied due process.

On appeal, this Court's review is limited to a determination of whether the school board's action was (1) not supported by substantial evidence; (2) arbitrary or capricious; or (3) in violation of a statutory or constitutional right. *Harris v. Canton Separate Pub. Sch. Bd. of Educ.*, 655 So. 2d 898, 903 (Miss. 1995). Shealy's assignments of error are framed around our standard of review.

The Mississippi Supreme Court has said, " Where a board declines to rehire a school employee, it must provide a demonstrable reason for its decision. Once the board has provided a reason, the employee must, to prevail, prove that such reason is without factual basis as the Court explained in *Calhoun County Bd. of Educ. v. Hamblin*, 360 So. 2d 1236, 1240 (Miss. 1978), in which it reinstated a school board's decision not to renew a principal. *Id.* at 904.

For purposes of non-renewal, the burden was no longer on the Board; it was on [the non-renewed employee] to show that the Board's reason 'had no basis in fact.' This [the employee] could not do. He could continue to insist that [the allegations were not true], but as long as there was conflicting testimony from the other witnesses [] that the Board could, in its discretion, choose to believe, [the employee] was unable to prove 'affirmatively and conclusively' that he did not commit the acts [alleged]. Because [the employee] failed to carry his burden of proof at the hearing, the board's decision not to renew [his] contract, affirmed by the chancellor, should not be disturbed.

Harris, 655 So. 2d at 904. In *Harris*, the court held that while the employee had carried his burden on several of the allegations, he failed to carry his burden on others. *Id.* In affirming, the Mississippi Supreme Court concluded that the board's decision of non-renewal was properly affirmed by the lower court because of the employee's failure to carry his burden on some of the grounds, even though the other grounds for non-renewal were unsupported by the evidence. *Id.* In other words, because one of the grounds for non-renewal was proper and supported by substantial evidence, the decision of non-renewal must be affirmed.

In the present case, the stated grounds for Shealy's non-renewal were: (1) a history of excessive absences; (2) failure to acknowledge plan of improvement given in May, 1993, and failure to follow directives of the plan; and (3) failure to work toward a positive school climate by being less than forthright about meetings that have taken place between Shealy and her principal. Assuming *arguendo* that the second and third stated grounds for Shealy's non-renewal were not supported by substantial evidence, it is clear, and Shealy even admitted in her hearing before the board, that her excessive absences are supported by the record. Furthermore, there is written documentation as well as the testimony of Principal Crawford establishing the issue of absences was clearly a concern that Shealy was instructed to remedy. Yet, as of the date of her non-renewal hearing, Shealy had missed eighteen days. While this number is less than the year before, it is still a large enough number to establish excessive absences. Because the record amply supports the decision of non-renewal based on the ground of excessive absences, our consideration of the other two grounds is unnecessary. Suffice it to say that the lower court was correct in upholding the board's non-renewal decision on the ground of excessive absences. Accordingly, we affirm the decision of the school board.

THE JUDGMENT OF THE CHANCERY COURT OF NESHOPA COUNTY IS

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

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING,
HINKEBEIN, KING, AND SOUTHWICK, JJ., CONCUR.**