

IN THE COURT OF APPEALS 02/27/96

OF THE

STATE OF MISSISSIPPI

NO. 94-CC-00416 COA

THOMAS PITTS

APPELLANT

v.

GULFPORT 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. JASON H. FLOYD, JR.

COURT FROM WHICH APPEALED: HARRISON COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

CHESTER D. NICHOLSON

ATTORNEY FOR APPELLEE:

D. COLLIER GRAHAM

NATURE OF THE CASE: APPEAL FROM A DECISION OF THE GULFPORT SCHOOL
DISTRICT BOARD OF TRUSTEES TO NON-RENEW AN ADMINISTRATIVE CONTRACT

TRIAL COURT DISPOSITION: CHANCELLOR AFFIRMED THE DECISION OF THE BOARD
OF TRUSTEES

BEFORE FRAISER, C.J., BARBER, AND DIAZ, JJ.

BARBER, J., FOR THE COURT:

This case involves the decision of the Gulfport School District Board of Trustees not to renew

Thomas Pitts' contract for administrative services. Thomas Pitts appeals from the decision of the Harrison County Chancery Court to affirm the decision of the Board. Pitts raises the following issues on appeal:

1. WHETHER THE CHANCELLOR ERRED IN FINDING THE ACTION OF THE BOARD IN NON-RENEWING MR. PITTS' CONTRACT IS NOT CONTRARY TO THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

2. WHETHER THE CHANCELLOR ERRED IN FINDING THE NON-RENEWAL DECISION OF THE BOARD WAS NOT ARBITRARY AND CAPRICIOUS.

FACTS

This case involves the non-renewal of a contract between the Gulfport public school system and Thomas Pitts, a teacher who had been employed by them since 1969. The issues set forth arise under the School Employment Procedures Act, sections 37-9-101 *et seq.*, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. In 1984, Mr. Pitts became an assistant high school principal at Gulfport High School and continued in that capacity until the spring of 1991.

In the spring of 1991, Dr. Terrell was appointed principal of Gulfport High School. A decision was made by the school superintendent, Dr. Strebeck, that the new principal should be allowed to select persons of his own choosing for the two assistant principal positions at Gulfport High School.

Shortly thereafter, at a meeting attended by Dr. Strebeck, Dr. Terrell and Mr. Pitts, Strebeck advised Pitts that he wanted to reassign him to an administrative assistant position in transportation and custodial services. At the time of this meeting, the deadline for notification of contract non-renewal had expired. Pitts' contract had, therefore, been renewed for the following school year.

Pitts, however, agreed to the reassignment with knowledge that the position was to exist for only one year. Pitts agreed not to contest the reassignment because of reassurances by Dr. Strebeck that when the current administrator of transportation and custodial services retired, Pitts would be in line to take over this position which was continuing or permanent in nature.

Unfortunately for Pitts, one year later, in the spring of 1992, Strebeck advised Pitts that he was not going to recommend that Pitts' contract be renewed for the following school year. Strebeck's explanation was that there were significant reorganization plans for the operations division. At this juncture, Pitts requested a full evidentiary hearing into the matter. At the conclusion of the hearing, the school board declined to follow the recommendation of the superintendent and offered Pitts a contract for the 1992-93 school year.

Apparently, the rationale for the board's decision was that the elimination of the position into which he was placed from his assistant principal's job was considered a reduction in force as defined by the internal policies of the school board. Under the provisions of the board's "reduction in force" policies, "any professional personnel whose services are terminated or who was 'bumped' as a result

of a declared reduction in force shall receive first consideration for other vacancies in the school district for which he or she is qualified."

The superintendent placed Pitts in a position which again expired by its own terms in the spring of 1993. This essentially placed Pitts in the same situation he was before, i.e., a position which was targeted for a reduction in force. Under this contract, Pitts was assigned to operations as an administrative assistant; however, the position description had been revised as of May 18, 1992. The "special provisions" section of the position description indicated that the position would be effective from July 1, 1992 through June 30, 1993 for a classified administrator like Pitts but thereafter would become reclassified to one which did not require a teaching certificate and which would have a drastically lower pay scale. But what was most significant is that since the position no longer would require a teaching certificate, it would not be covered under the reduction in force policy giving Pitts first consideration in upcoming open positions.

Next, on June 1, 1992, a revised reduction in force policy was issued which no longer contained the priority consideration language. There was testimony at trial that the primary reason for the change in language was that Pitts relied on this language for his defense at the hearing for non-renewal of his contract.

Pitts claims that since May 4, 1992 there have been five positions requiring administrative certification for which he should have received first consideration under the old RIF policy.

In the spring of 1993, the school board again gave Pitts a notice of non-renewal. A hearing was held on March 30, 1993, and the board subsequently voted not to renew Pitts' administrator's contract which required a teaching certificate, placed him in a position that did not require certification, and decreased his salary by about \$12,000.00. Pitts was told that at this time there were no certified position vacancies for which the superintendent was willing to recommend Pitts. Pitts filed a timely notice of appeal to the local chancery court and, on April 6, 1994, the Chancellor of the Harrison County Chancery Court rendered an opinion affirming the board's action. From that opinion, Pitts takes this appeal.

Pitts asserts, both here and below, that:

First, the action of the board in not renewing Mr. Pitts' contract is contrary to the Due Process Clause of the Fourteenth Amendment, since he had a vested right in the former reduction in force policy which was improperly taken from him.

Second, the non-renewal decision of the board was arbitrary and capricious, since the board changed its reduction in force policy in an effort to oust a capable administrator whom they would have had to retain under existing rules.

The school board reframes the issues on appeal to this Court as:

(1) Whether or not this Court should affirm the opinion of the Chancery Court of Harrison County wherein said court affirmed the actions of the Gulfport School District in its decision not to renew Pitts' contract for a certified position for the 1993-94 school year; finding that the decision was supported by substantial evidence, was not arbitrary or capricious, and violated neither statutory nor

constitutional rights of the appellant and,

(2) whether or not the Gulfport School District's policy regarding layoffs or reductions in force operated to create a vested property interest in Pitts.

ANALYSIS

In our determination of whether any error was committed by the court below, we must first ascertain the appropriate level of review on appeal. Our determination is governed by the provisions of section 37-9-113 of the Mississippi Code which read as follows:

(1) Any employee aggrieved by a final decision of the school board is entitled to judicial review thereof, as hereinafter provided.

. . . .

(3) The scope of review of the chancery court in such cases shall be limited to a review of the record made before the school board or hearing officer to determine if the action of the school board is unlawful for the reason that it was:

(a) Not supported by any substantial evidence;

(b) Arbitrary or capricious; or

(c) In violation of some statutory or constitutional right of the employee.

. . . .

(5) Any party aggrieved by action of the chancery court may appeal to the Supreme Court in the manner provided by law.

Miss. Code Ann. § 37-9-113 (1972).

The chancery court found that in this case, Pitts did not have a vested right of tenure in his teaching position with the Gulfport School District. Further, Mr. Pitts voluntarily applied for and accepted a position whose classification later changed. The court stated that it could not find that the school board's decision to change the classification of his position was arbitrary or capricious since it was shown that this reclassification resulted in monetary savings for the school district.

The chancellor also found that Pitts had been afforded a hearing before a hearing officer and, that based upon that hearing, the school board accepted the superintendent's recommendation not to renew Pitts' contract for a certificated position because he was being offered employment in the same position as a classified employee at classified wages. The court found that the board's action was supported by substantial evidence and did not violate any of Pitts' rights, either statutory or constitutional. Based on those findings of fact and conclusions of law, the lower court affirmed the board's actions.

In order for Pitts to prevail on appeal, we must find clear error on the part of the chancellor as the finder of fact. We review questions of law de novo. In so doing, we find that no error was committed.

We agree with the chancellor that the decision of the board not to renew Pitts' contract was supported by substantial evidence and was neither arbitrary nor capricious. The superintendent testified that the reason for the non-renewal was monetary. His decision was supported by the fact that tax dollars could be saved by changing the position held by Pitts from one which required a teaching certificate to one which did not. The position in question was one for which the applicant would supervise the janitorial staff. The board determined that this task could be performed by a non-certificated person without causing any detriment to the quality of service.

The second issue involves the question of whether any property rights were created by the Gulfport School District's policy regarding layoffs or reductions in force. Pitts' argument is essentially one of tenure. Pitts claims that because he was "passed over" for other open administrative positions, he was not given "priority consideration" as stipulated in the board's preceding policies. In establishing non-renewal procedures, it was the legislature's intent "not to establish a system of tenure or require that all decisions of non-reemployment be based upon cause" Miss. Code Ann § 37-9-101. Dispositive of this issue, however, is the fact that this provision ceased to be effective prior to the beginning date of Pitts' 1992-93 contract term. Therefore, even if a property interest did exist at one point, it was extinguished with the execution of the 1992-93 contract.

Based on the foregoing analysis, we affirm the decision of the chancellor.

**THE JUDGMENT OF THE HARRISON COUNTY CHANCERY COURT IS AFFIRMED.
COSTS ARE ASSESSED TO THE APPELLANT.**

**FRAISER, C.J., AND BRIDGES, P.J., COLEMAN, DIAZ, KING, McMILLIN, PAYNE,
AND SOUTHWICK, JJ., CONCUR. THOMAS, P.J., NOT PARTICIPATING.**