2007-CA-01159

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TABLE OF AUTHORITIES

STATEMENT OF THE CASE

I. Course of Proceedings and Disposition before the School Board

Henry Simpson (Simpson), principal of Williams Sullivan High School, was terminated on March 3, 2005. (Record ("R")), Exhibit J-1). Simpson requested a hearing before the Holmes County School Board ("HCSB"). (R., Exhibit J-2).

A hearing was held on April 19, 2006, before the Honorable Mary Brown, hearing officer appointed by the HCSB. After a full hearing on the merits, the hearing officer recessed the proceedings until the transcription of the record in order to prepare her findings.

On July 5, 2006, the hearing officer published her Report. On July 19, 2006, the HCSB entered an Order affirming the decision of the Superintendent to terminate Simpson as a proper employment decision.

On August 3, 2006, Simpson appeal appealed this cause to the Chancery Court of Holmes County, Mississippi.

ii. Statement of Facts

Simpson was given notice of his termination as principal by Superintendent Stephen Bailey pursuant to Miss. Code Ann. §37-9-59. The reasons for his termination were:

1. The failure to maintain order, ensure safety for faculty, staff and students;

There have been numerous discipline problems, including but not limited to student fights. On February 24, 2006 a fire started in Ms. Alliston's 5th period class.

2. Failure to report acts of violence as required by board policy and state law.

(R., Exhibit J-3).

Simpson requested a hearing. The hearing convened on April 19, 2006. At the hearing testimony was elicited from Assistant Superintendent Powell Rucker that he was notified by the State Department of Education that there had been a fight, a fire and a shooting at Williams Sullivan High School on February 24, 2006.[1] Rucker, nor any other official in the Central Office had been informed of these occurrences by Simpson or any of his staff at the high school. (Transcript ("T"), p. 14-16).

Rucker testified that the procedure to be followed in case of a shooting is to shut down the school and call the sheriff's department. This was not done in this case. (T., p. 17-18).

Simpson admits that he was on campus on February 24, 2006. (T. 126-27). His only defense to the charges against him was that no one reported them to him, and therefore he had no knowledge of the incidents. (T., p. 127-30).

[1]The shooting was allegedly with a BB gun, and the pellets struck a school district employee and a State Department of Education employee.

SUMMARY OF THE ARGUMENT

The Superintendent has the authority to dismiss any licensed employee of the school district for incompetence, neglect of duty, immoral conduct, intemperance brutal treatment of a pupil or other good cause. Miss. Code Ann. §37-9-59. At hearing on termination of a certified school employee, the burden rests on the Superintendent to prove by a preponderance of the evidence that there are adequate grounds for dismissal. *Harris v. Canton Separate Public School Bd. Of Educ.*, 655 So.2d 898 (Miss. 1995); *Merchant v. Bd. of Trustees of Pearl Mun. Separate School Dist.*, 492 So.2d 959 (Miss. 1986).

In the case before the Court, the Superintendent established that it was the duty of Simpson as school principal to maintain order, ensure safety for faculty, staff and students. Simpson was the charged with the responsibility of ensuring that he and his staff maintained order. It is irrelevant that he was no one informed him of the incidents. He was responsible for making sure his staff knew what steps to take to make him aware of the incidents.

Simpson's right to due process was not violated. HCSB did not waive its right to terminate Simpson for conduct it became aware of after he was recommended for renewal, not withstanding the fact that this conduct occurred prior to the time he was recommended for re-employment.

Simpson's failure to properly train and instruct his staff in this regard is constitutes grounds for his termination. The decision of the HCSB was supported by substantial evidence and should be affirmed.

ARGUMENT

I. THE DECISION OF THE HOLMES COUNTY BOARD OF EDUCATION TO TERMINATE HENRY SIMPSON IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

It is uncontroverted that a fire, a fight and a BB gun shooting occurred on February 24, 2006 at Williams Sullivan School. After investigating the incident, the Superintendent determined that Simpson should be terminated for his failure to maintain order, ensure safety for faculty, staff and students.

The Superintendent met his burden of showing that Simpson had failed to effectively perform his duties. As principal, Simpson had the responsibility of ensuring that the high school was properly run. It was his duty to ensure that he had capable staff members in place to operate the school in his absence. He further was charged with the task of knowing what occurs on his campus.

Substantial evidence was presented that order was not maintained at the high school. After the serious incidents on February 24, the school was not shut down as required by school district policy. The sheriff's department was not contacted regarding the shooting.

Simpson's defense was: "No one reported these incidents to me." However, Simpson was for all practical purposes the captain of the ship. He was responsible for the operation of the high school. He cannot assert that he is absolved from responsibility from acts that occurred at high school because his subordinates did not report to him. Not did not properly perform his duties. He now attempts to abdicate responsibility by blaming his staff for not reporting the incidents to him.

Substantial evidence undergirds the decision of the HCSB to terminate Simpson. When such evidence exists, the decision of the school board may not be disturbed on appeal. *Harris v. Canton Separate Public School Bd. of Educ.*, 655 So.2d 898 (Miss. 1995).

Simpson failed as an administrator to ensure that he had staff capable of maintaining order at the high school. He has failed as an administrator in not having his finger on the pulse of his campus. While the penalty imposed for his failings may be harsh, those who seek command or positions of authority must be prepared to accept the consequences imposed for failure to perform their duty.

A school shooting is a serious matter. If Simpson had properly trained his staff, the school would have been shut down and the sheriff would have been promptly contacted. The offending parties might have been apprehended.

The HCSB had a duty to terminate Simpson, as it determined that he was not capable of maintaining order. Simpson was present when these acts occurred. For some unexplained reason, he did not know what was going on. He contends that was not his fault. However, any blame for the failure to follow proper procedures and maintain order must ultimately rest on his shoulders as the principal.

The decision of the HCSB to affirm the decision to terminate Simpson was supported by substantial evidence. This Court should affirm that decision.

II. SIMPSON'S RIGHT TO DUE PROCESS WAS NOT VIOLATED

Simpson had been renewed as principal prior to his notice of termination. Simpson contends that the School District is barred from using any actions that occurred before this renewal as grounds for terminating him for cause. Simpson does not cite any authority in support of this proposition.

When the School District became aware of Simpson's failure to follow District policy, it had a duty to act. The fact that the School District may have tolerated his sub-standard performance in the past, does not constitute a waiver of the District's power to rely on just cause to terminate an employment contract. *Hoffman v. Board of Trustees,* 567 So.2d 838, 842 (Miss. 1990). This is without merit.

III. HCSB DID NOT CONFESS DUE PROCESS VIOLATIONS

Simpson argues that the failure of the District to address the due process allegations in its brief in the court below constitutes a confession of the purported violations. Simpson's argument is without basis in law or fact.

Simpson did not clearly set forth facts and authority to place HCSB on notice that he was raising a due process issue in this matter. (Record excerpt, D, p. 14). The Chancellor found that it could conveniently examine the record, and perceive an unmistakable basis upon which to affirm the decision of the HSCB. (Record excerpt, D, p. 14).

There is absolutely no basis to the argument of Simpson that the HCSB confessed his due process violations. The fact is there were no such violations. Simpson offers smoke and mirrors to divert attention from the unmistakable fact that substantial evidence exists to support his termination. The Court should therefore affirm the decision of the Chancery Court.

CONCLUSION

When considering termination cases, the Chancery Court's scope of review is limited. The Court has a duty of deference to the school board as the ultimate legal authority for the school district. *Byrd v. Greene County School Dist.*, 633 So.2d 1018 (Miss. 1994).

There was no conflict in the evidence in this case. There was a fire, a fight and a shooting. The school was not shut down after the shooting. The County Sheriff was not contacted.

Simpson, as the principal of the high school, cannot blame others for his failings. It was his job to make sure that his staff performed appropriately, either by contacting him or other authorities. They did not.

There is substantial evidence to support the decision of the HCSB. Its decision was not arbitrary or capricious. It should therefore be affirmed.

Respectfully submitted,
The Holmes County School District; Holmes County Board of Education

By: _____
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