

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CIVIL CAUSE NO.: NO. 2008-CA-00126

**CLAIBORNE COUNTY, MISSISSIPPI AND
THE CLAIBORNE COUNTY BOARD OF SUPERVISORS
APPELLANTS**

VS.

**EDDIE RAY PARKER,
APPELLEE**

APPELLEE'S BRIEF

**APPEAL FROM THE CIRCUIT COURT OF
CLAIBORNE COUNTY, MISSISSIPPI**

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CERTIFICATE OF INTERESTED PARTIES

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THE CLAIBORNE COUNTY BOARD OF SUPERVISORS,
APPELLANTS**

VS.

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APPELLEE**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Eddie Ray Parker, Employee/Appellee
2. Claiborne County Board of Supervisors, Employer/Appellants
3. Kelvin Shaifer, Fire Chief, Claiborne County, Mississippi Fire Department
4. Vangela M. Wade, Attorney for the Employer/Appellants
5. Ashley E. Cannady, Attorney for the Employer/Appellants
6. A. Michael Espy, Attorney for the Claiborne County Board of Supervisors
7. Amy D. Saling, Attorney for Employee/Appellee
8. Stephanie L. Vest, Former Attorney for the Employee/ Appellee
9. Glenn S. Swartzfager, Former Attorney for the Employee/Appellee
10. Honorable Lamar Pickard, Circuit Court Judge Claiborne County

This the 16th day of September, 2008.


AMY D. SALING (MSB NO. [REDACTED])

Attorney of Record for Appellee,
Eddie Ray Parker

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I. STATEMENT OF ISSUES

1. The Circuit Court did Not Err in Overturning the Claiborne County Board of Supervisor's Decision to Terminate Eddie R. Parker;
 - A. The Board of Supervisors Acted Outside Its Scope and Power to Legislate, Administer and Adjudicate Employment Matters in Claiborne County Government.
 - B. The Board of Supervisors' Decision to Terminate Eddie R. Parker was not Supported by Substantial Evidence.
 - C. The Board of Supervisors' Decision to Terminate Eddie R. Parker was Arbitrary and Capricious.

II. STATEMENT OF THE CASE

1. PROCEDURAL HISTORY

Lieutenant Eddie Ray Parker, worked for many years with the Claiborne County Fire Department. On or about April 5, 2006, the Appellant was fired from his employment with the Claiborne County Fire Department for alleged insubordination. (R. 000075, RE. 5).

Pursuant to Rule VI of the Personnel Policies and Procedures for Claiborne County, Mississippi, Lt. Parker appealed the decision to fire him to the three-member personnel committee (also known as the "Grievance Committee"). On April 14, 2006, The Personnel Committee found that "the documentation and information presented to us from Mr. Parker's file is not enough documentation or evidence to support insubordination (unwillingness to submit to authority) in this particular incident." (R. 000076, RE. 6).

On May 1, 2006, the Board of Supervisors commenced a hearing regarding the Mr. Parker's termination, but adjourned upon his request to obtain assistance of counsel. On or about July 14, 2006, the Claiborne County Board of Supervisors reconvened the hearing, and heard from Eddie Ray Parker and Chief Kelvin Shaifer regarding Mr. Parker's termination. In addition, the Claiborne County Board of Supervisors considered the Affidavit of Allen Burkes, the April 4, 2006, written statement of Kelvin Shaifer, the written statement of R. P. Segrest, and the report of Officer Calvin Jackson of the Port Gibson Police Department.

In a unanimous decision, the Claiborne County Board of Supervisors upheld Mr. Parker's termination on August 1, 2006. (R. 000091, RE. 19). On or about August 10, 2006, Eddie Ray Parker, filed a Notice of Appeal with the Claiborne County Circuit Clerk. (R. 000003, RE. 1). The Bill of Exceptions was subsequently filed with the Court on November 10, 2007, as the record of

the Board's decision, and requested that the Circuit Court to overturn the Board's decision to terminate him. The Board filed its response to Parker's Bill of Exception on January 17, 2007. (R. 000107, RE. 28). On December 12, 2007, the Circuit Court overturned the Board's decision to terminate Parker and awarded judgment against Claiborne County for Parker's full back pay and benefits. (R. 000204-205, RE. 41-42).

Claiborne County, Mississippi, and its Board of Supervisors perfected their appeal on January 11, 2008. (R. 000206, RE. 43).

2. STATEMENT OF THE FACTS

Eddie Ray Parker is a veteran fire fighter employed by Claiborne County, Mississippi. He worked his way through the department and achieved the rank of Lieutenant. (R. 000075, RE. 5). The chief of the fire department, Kelvin Shaifer did not like the fact that Parker had a beard. (R. 000085, RE. 15). After Shaifer warned Parker that his failure to shave his beard could result in termination his employment, Parker produced a physician's statement stating that he could not keep his beard in compliance with Shaifer's demands because of a skin condition. (R. 000086, RE. 16).

On April 4, 2006, Shaifer and James Miller, former Claiborne County Administrator, met with Parker regarding his noncompliance with Shaifer's demands regarding his beard. (R. 000085, RE. 15). Upon conclusion of the meeting, Shaifer returned to the fire department and began meeting with Phil Segrest. (R. 000085, RE. 15). During the meeting, Parker knocked on the door and announced that he was "pissed." Chief Shaifer stated that he would speak with Parker later. Parker then asked if he could go home and get something. (R. 000085, RE. 15). Shaifer told Parker it was okay. (R. 000087, RE. 17).

Parker left, and when he returned, he was met by the Chief Jackson, Chief of Police of Port

Gibson, Mississippi. (R. 000085, RE. 15). Shaifer went back into the fire department, and nothing else happened.¹ (R. 000085, RE. 15). The following day, Shaifer fired Parker from his employment. (R. 000085-000086, RE. 15-16).

Claiborne County has adopted certain personnel policies in a policy document entitled Personnel Policies and Procedures for Claiborne County, Mississippi which is dated October 1, 1989. Pursuant to Rule VI of the Personnel Policies and Procedures for Claiborne County, Mississippi, Lt. Parker appealed the decision to fire him to the three-member personnel committee, also known as the Grievance Committee. That committee is a three-person committee created by Rule VI of the Personnel and Policy Procedures for Claiborne County, Mississippi.² (R. 000095, RE. 20). The Grievance Committee found that “the documentation and information presented to us from Mr. Parker’s file is not enough documentation or evidence to support insubordination (unwillingness to submit to authority) in this particular incident.” (R. 000076, RE. 6). In spite of this finding, however, Claiborne County refused to reinstate Mr. Parker to his employment as mandated by the Grievance Committee. On or about April 18, 2006, Eddie Ray Parker wrote Charles Short, the President of the Claiborne County Board of Supervisors and requested an audience with the Board after it became obvious that it would not abide by the rules and regulations set forth in the Personnel Policies and Procedures for Claiborne County, Mississippi, and reinstate him to his employment.

¹In a blatant attempt to prejudice the Court, the Appellant refers to a tragic event involving the shooting of an attorney in Claiborne County. See Brief of Appellants at p. 5, n.2. Nothing regarding the tragic shooting of Mr. Burrell is contained in the record before this Court, was not a part of the record before the circuit court, and indeed was not referenced by the Board of Supervisors in its decision. The Court should therefore disregard the reference made to this event by the Appellants in their brief.

²In their brief the Appellants assert that the Grievance Committee is merely advisory in nature. However, that assertion is wholly unsupported by the record or the law in this case.

(R. 000077, RE. 7). On May 1, 2006, the Board of Supervisors commenced the hearing of Mr. Parker's appeal of his termination, but adjourned upon his request to obtain the assistance of a lawyer. On or about July 14, 2006, the Claiborne County Board of Supervisors reconvened the hearing and heard from Eddie Ray Parker, and Chief Kelvin Shaifer regarding Mr. Parker's termination. (R.000091, RE. 19). The Claiborne County Board of Supervisors considered the Affidavit of Allen Burkes, the April 4, 2006, written statement of Kelvin Shaifer, the written statement of R.P. Segrest, and the report of Officer Calvin Jackson of the Port Gibson Police Department. (R. 000091. RE. 19).

Counsel for Mr. Parker on several different occasions, namely May 25, 2006, June 7, 2006, June 21, 2006 and July12, 2006 demanded that the Appellant be reinstated to his employment pursuant to the ruling of the Personnel Committee, but Claiborne County refused. (R. 000078-000082, RE. 8-12). In a unanimous decision, the Claiborne County Board of Supervisors upheld Mr. Parker's termination on August 1, 2006. (R. 000091, RE. 19).

The decision of the Board of Supervisors was not supported by substantial evidence and was arbitrary and capricious. Personnel Policies and Procedures for Claiborne County, Mississippi, provide for an appeal of a grievance of an employee of Claiborne County to the Personnel Committee from an adverse decision. As shown in the Bill of Exceptions filed in this matter, the Personnel Committee found that "the documentation and information presented to us from Mr. Parker's file is not enough documentation or evidence to support insubordination (unwillingness to submit to authority) in this particular incident." Moreover, the Personnel Policies and Procedures for Claiborne County, Mississippi, do not provide for an appeal by a department of Claiborne County of a decision of the Personnel Board. In this instance, the appeal to the Claiborne County Board of

Supervisors was taken by the Fire Chief, Shaifer.

On or about August 10, 2006, Eddie Ray Parker filed a Notice of Appeal with the Claiborne County Circuit Clerk. (R. 000003, RE. 1). The Bill of Exceptions was subsequently filed with the Court on November 10, 2007, as the record of the Board's decision, and requested that the Circuit Court to overturn the Board's decision to terminate him. (R. 000005, RE 2). The Board filed its response to Parker's Bill of Exception on January 17, 2007. (R. 000107, RE 28).

There is absolutely no evidence to support a finding that Mr. Parker committed an act of violence or threatened to carry out an act of violence towards Shaifer in any manner whatsoever, nor does any of the evidence indicate that Parker was even so much as insubordinate. Therefore, on December 12, 2007, the Circuit Court overturned the Board's decision to terminate Parker and awarded judgment against Claiborne County for Parker's full back pay and benefits. (R. 000204, RE. 41).

III. SUMMARY OF THE ARGUMENT

The standard of review for this case is substantial evidence, the same standard which applies in appeals from decisions of administrative agencies and boards. The Court is to determine whether or not the acts and orders of the board are reasonable and proper or arbitrary or capricious or beyond the power of the board to make or whether they violate any constitutional right of the complaining party. In this case, the Board of Supervisors not only acted beyond the scope of their power and violated the constitutional right of the complaining party but also came to a decision which was arbitrary and capricious when deciding to terminate Eddie Ray Parker from his employment with the Claiborne County Fire Department.

Personnel Policies and Procedures for Claiborne County, Mississippi provide for an appeal of a grievance of an employee of Claiborne County to the Personnel Committee from an adverse decision. The Personnel Committee found that "the documentation and information presented to us from Mr. Parker's file is not enough documentation or evidence to support insubordination (unwillingness to submit to authority) in this particular incident." Moreover, the Personnel Policies and Procedures for Claiborne County **do not** provide for an appeal by a department of Claiborne County of a decision of the Personnel Board.

Furthermore, even if the Board of Supervisors had the authority to render a decision regarding the termination, its decision in this instance was not supported by substantial evidence.

There is absolutely no evidence presented in the record to support a finding that Parker committed an act of violence or threatened to carry out an act of violence towards Shaifer in any manner whatsoever, nor does any of the evidence indicate that he was even so much as insubordinate. In the present case, the evidence was inadequate to support the conclusion of the Board of Supervisors.

IV. ARGUMENT

1. Standard of Review.

A bill of exceptions is a prerequisite to vesting circuit court with subject matter jurisdiction in all appeals from county boards of supervisors, regardless of issues presented. *McIntosh v. Amacker*, 592 So.2d 525 (Miss. 1991). The standard of a circuit court's review of a bill of exceptions is well-settled. The Supreme Court has stated it as follows:

The standard of review for this case is substantial evidence, the same standard which applies in appeals from decisions of administrative agencies and boards. *Barnes v. Board of Supervisors*, 553 So.2d 508, 511 (Miss.1989). "The decision of an administrative agency is not to be disturbed unless the agency order was unsupported by substantial evidence; was arbitrary or capricious; was beyond the agency's scope or powers; or violated the constitutional or statutory rights of the aggrieved party." *Board of Law Enforcement Officers Standards & Training v. Butler*, 672 So.2d 1196, 1199 (Miss.1996). Substantial evidence has been defined as "such relevant evidence as reasonable minds might accept as adequate to support a conclusion" or to put it simply, more than a "mere scintilla" of evidence. *Johnson v. Ferguson*, 435 So.2d 1191, 1195 (Miss.1983).

Wilkinson County Bd. of Supervisors v. Quality Farms, Inc., 767 So.2d 1007, 1010 (Miss. 2000) (quoting *Hooks v. George County*, 748 So.2d 678 (Miss. 1999)).

The Court in *Wilkinson* went on to quote *Thornton v. Wayne County Election Comm'n*, 272 So.2d 298, 301 (Miss. 1973), wherein the Court held:

We have repeatedly held that an appeal from a board of supervisors or city by a bill of exceptions, as is provided by Section 1195, Mississippi Code 1942 Annotated (Supp.1972), is an appeal to an appellate court and the circuit court is bound by the record made before the board.

Thornton, 272 So.2d at 301. Section 11-51-75, governing appeals from municipal authority judgments, requires that the circuit court shall decide such a case "as presented by the bill of exceptions as an appellate court ..." Miss.Code Ann. § 11-51-75 (1972). The statute also provides that the appealing party "may embody the facts, judgment and decision in a bill of exceptions which shall be signed by the person acting as president of the board of supervisors or of the municipal authorities." *Id.*

Wilkinson, 767 So.2d at 1011 (Miss. 2000) (quoting *Thornton v. Wayne County Election Comm'n*, 272 So.2d 298, 301 (Miss. 1973)).

The Court is to “determine whether or not the acts and orders of the board are reasonable and proper or arbitrary or capricious or beyond the power of the board to make or whether they violate any constitutional right of the complaining party. *Thornton*, 272 So.2d at 301-02 (Miss. 1973) (citing *Board of Supervisors of Clay County v. McCormick et al.*, 207 Miss. 216, 42 So.2d 177 (1949)). See also *Ladner v. Harrison County Bd. of Sup'rs*, 793 So.2d 637, 638 (Miss. 2001); *Barnes v. Bd. of Supervisors, DeSoto County*, 553 So.2d 508, 511 (Miss.1989); *A & F Properties, LLC v. Madison County Bd. of Sup'rs*, 933 So.2d 296, 300 (Miss. 2006).

2. The Circuit Court Did Not Err in Overturning the Claiborne County Board of Supervisors Decision to Terminate Parker.

On December 12, 2007, the Circuit Court overturned the Board’s decision to terminate Parker and awarded a judgment against Claiborne County for Parker’s full back pay and benefits. (R. 000204, RE. 41). In this case the Circuit Court acted and rendered a decision consistent with the scope of its authority as an appellate court. The standard of review for this case is substantial evidence, the same standard which applies in appeals from decisions of administrative agencies and boards. *Barnes v. Board of Supervisors*, 553 So.2d 508, 511 (Miss.1989). The Circuit Court held that the Claiborne County Board of Supervisors ‘s decision that Mr. Parker threatened Fire Chief Kelvin Shaifer, or acted in a violent or aggressive manner against Chief Shaifer or other co-workers was not supported by substantial evidence. Substantial evidence has been defined as “such relevant evidence as reasonable minds might accept as adequate to support a conclusion” or to put it simply, more than a “mere scintilla” of evidence. *Johnson v. Ferguson*, 435 So.2d 1191, 1195 (Miss.1983).

A. The Board of Supervisors Acted outside Its Scope and Power to Legislate, Administer and Adjudicate Employment Matters in Claiborne County Government.

In *Bobbitt v. The Orchard, Ltd.*, 603 So.2d 356 (Miss. 1992), the Court held that where there is an employee manual setting forth disciplinary proceedings for all employees, the employer is held to it absent an express disclaimer.

In *Bobbitt v. The Orchard, Ltd.*, 603 So.2d 356, 357 (Miss. 1992), the court held that when an employer publishes and disseminates to its employees a manual setting forth the proceedings which will be followed in event of an employee's infraction of rules, and there is nothing in the employment contract to the contrary, then the employer will be required to follow its own manual in disciplining or discharging employees for infractions or misconduct specifically covered by the manual.

Under *Bobbitt*, an employer may alter an employee's at-will status by establishing a specific disciplinary scheme in an employee manual which it publishes to its employees. *Id.*

Senseney v. Mississippi Power Co., 914 So.2d 1225, 1228-1229 (Miss.Ct.App. 2005).

In *Southwest Mississippi Regional Medical Center v. Lawrence*, 684 So.2d 1257, 1264 (Miss. 1996), the Court found that Southwest Mississippi Regional Medical Center was required to provide workers' compensation benefits because it specifically stated that employees would be covered in the employee handbook. The Court in *Lawrence* stated, Southwest is bound by the promise of such coverage. *Id.*

In the present case, there was no express disclaimer contained anywhere in the Personnel Policies and Procedures for Claiborne County, Mississippi that would limit the applicability of the holding in the *Bobbitt* decision. See *Perry v. Sears, Roebuck & Co.*, 508 So.2d 1086, 1088 (Miss. 1987) (express disclaimer in employee handbook did not change at-will employment status).

Moreover, the Personnel Policies and Procedures for Claiborne County, Mississippi, do **not** provide for an appeal by a department of Claiborne County of a decision of the Personnel Board.

In this instance, the appeal to the Claiborne County Board of Supervisors was taken by the Fire Chief, Shaiffer. Therefore, pursuant to the Personnel Policies and Procedures for Claiborne County, Mississippi, Claiborne County was bound by the decision of the Personnel Committee.

Mr. Parker wrote the Board of Supervisors and requested an audience with the Board after it became obvious that it would not abide by the rules and regulations set forth in the Personnel Policies and Procedures for Claiborne County, Mississippi, and reinstate him to his employment. Counsel for the Appellant on three different occasions demanded that the Appellant be reinstated to his employment pursuant to the ruling of the Personnel Committee, but Claiborne County refused. Therefore, the decision made by the Board of Supervisors to uphold Mr. Parker's termination was beyond the power of the Board to make, was unreasonable, and was arbitrary and capricious. *See Thornton v. Wayne County Election Commission*, 272 So.2d 298 (Miss. 1973); *Board of Supervisors of Clay County v. McCormick et al.*, 207 Miss. 216, 42 So.2d 177 (1949).

Appellant argues that the Personnel Policies provide that the Board is the final arbiter of employment grievances and disciplinary matters specifically, in the absence of resolution by the three-member Grievance Committee. However, this argument is faulty in that there was a resolution by the three-member Grievance Committee. The Grievance Committee found that "the documentation and information presented to us from Mr. Parker's file is not enough documentation or evidence to support insubordination (unwillingness to submit to authority) in this particular incident." (R. 000076, RE. 6). Contrary to the decision of the Personnel Committee and despite the lack of evidence and documentation to support termination, Claiborne County refused to reinstate Mr. Parker.

In the decision of the Personnel Committee, they stated that the **grieved employee** is always

awarded the option to request a hearing with the Board of Supervisors within 10 days after having met with the Grievance Committee. (emphasis added). It is only after it became obvious that Claiborne County would not abide by the rules and regulations set forth in the Personnel Policies and Procedures for Claiborne County, Mississippi, and reinstate him to his employment and upon information that Mr. Shaifer was appealing the decision of the Grievance Committee that Mr. Parker requested an audience with the Board to discuss the issue. The Personnel Policies and Procedures did not provide mechanism for a department of Claiborne County to appeal a decision of the Grievance Committee. Had the Board of Supervisors wished to provide a mechanism for a department to appeal such a decision it could have very easily included such language in the Personnel Policy and Procedures, but, for whatever reason, it did not.

Thus, when the Board of Supervisors upheld Parker's firing, it acted outside its scope and power and was rightly overturned by the Circuit Court of Claiborne County, Mississippi.

B. The Board of Supervisors' Decision to Terminate Eddie R. Parker was not Supported by Substantial Evidence.

As previously stated, it is our position that the Board of Supervisors acted outside its scope and power in this matter. Furthermore, even if the Board of Supervisors had the authority to render a decision regarding the termination, its decision in this instance was not supported by substantial evidence. "Substantial evidence has been defined as 'such relevant evidence as reasonable minds might accept as adequate to support a conclusion' or to put it simply, more than a 'mere scintilla' of evidence." *Wilkinson County Bd. of Supervisors v. Quality Farms, Inc.*, 767 So.2d 1007, 1010 (Miss. 2000)(quoting *Hooks v. George County*, 748 So.2d 678 (Miss. 1999)). In the present case, the evidence was inadequate to support the conclusion of the Board of Supervisors.

There is absolutely no evidence to support a finding that Parker committed an act of violence

or threatened to carry out an act of violence towards Shaifer in any manner whatsoever, nor does any of the evidence indicate that Parker was even so much as insubordinate. The police report of the incident states that Parker went home to get his medication -- not a gun. (R. 000088, RE. 18). More importantly, however, the statement of Shaifer himself, does not aver that Parker threatened him. Indeed, the only thing Shaifer's statement says is that he was afraid, but he gives no articulable basis for his fear and never states that Parker threatened him in any manner. (R. 000085, RE. 15).

The statement of R. P. Segrest, who was present in the room with Shaifer and Parker, states that all Parker said was that he had to go home for something, and Shaifer said that was alright. (R. 000087, RE. 17). Segrest's statement clearly shows that Shaifer's fear was not only inarticulable, but completely unfounded. Even the double, and in some places triple, hearsay affidavit of Allen Burks does not support the finding of the Board. It still does not state that Parker ever threatened Shaifer, nor does it state that he made such a suggestion to his brother who allegedly called the police. (R.000083-000084, RE. 13-14). Again, there was no evidence presented that Parker suggested any threat of violence to anyone including Parker's mother, brother or Shaifer.

The above does not even constitute a scintilla of evidence upon which the Board could base its decision, and it most certainly does not constitute substantial evidence as it is required by the law. Reasonable minds could not accept this evidence as adequate to support the conclusion that Parker was insubordinate and/or threatened Shaifer. *Wilkinson County Bd. of Supervisors v. Quality Farms, Inc.*, 767 So.2d 1007, 1010 (Miss. 2000); *Hooks v. George County*, 748 So.2d 678 (Miss. 1999).

The Board's argument regarding the circuit court's findings is completely unfounded and without merit. The circuit court applied the proper standard of review and properly came to the

same conclusion as the Grievance Committee, namely that the actions taken by the Board were not supported by substantial evidence. Therefore, the decision of the Claiborne Board of Supervisors upholding the termination of Mr. Parker was properly overturned.

C. The Board of Supervisors' Decision to Terminate Eddie R. Parker was Arbitrary and Capricious.

While not precisely defined or subject to mechanical application, the terms "arbitrary" and "capricious" have been analyzed by the Court using the following definitions:

"Arbitrary" means fixed or done capriciously or at pleasure. An act is arbitrary when it is done without adequately determining principle; not done according to reason or judgment, but depending upon the will alone, -absolute in power, tyrannical, despotic, non-rational, -implying either a lack of understanding of or a disregard for the fundamental nature of things.

"Capricious" means freakish, fickle, or arbitrary. An act is capricious when it is done without reason, in a whimsical manner, implying either a lack of understanding of or a disregard for the surrounding facts and settled controlling principles....

Mississippi State Department of Health v. Southwest Mississippi Regional Medical Center, 580 So. 2d 1328 (Miss. 1991).

In this case, the decision of the Board of Supervisors was not supported by substantial evidence and is arbitrary and capricious as these terms are defined above. Personnel Policies and Procedures for Claiborne County, Mississippi, provide for an appeal of a grievance of an employee of Claiborne County to the Personnel Committee from an adverse decision. The Grievance Committee found that "the documentation and information presented to us from Mr. Parker's file is not enough documentation or evidence to support insubordination (unwillingness to submit to authority) in this particular incident." (R. 000076, RE. 6). In spite of this, Claiborne County refused to reinstate Parker. In direct opposition to this finding the Board upheld the termination of Parker.

The harsh discrepancy between the Committee and the Board alone should cause concern on the outcome of the Board's decision. On December 12, 2007 an Order was entered in this case by the Circuit Court of Claiborne County, Mississippi which stated, "this Court finds that the Claiborne County Board of Supervisors' decision that Mr. Parker threatened Fire Chief Kelvin Shaifer, or acted in a violent or aggressive manner against Chief Shaifer or other co-workers was not supported by substantial evidence." (R. 000204-205 RE. 41-42).

The Board's statement in support of its unanimous decision to uphold Parker's termination is stated as follows:

Claiborne County has zero tolerance for act or threats of violence, appearance of violence, insubordination or aggression towards Supervisors or Co-Workers. The County workplace will be free of violence, aggression, insubordination as far the County Administration can control. Based on this and the underlying facts of the circumstance surrounding the termination of Mr. Eddie Ray Parker, the Board upholds the termination as its final decision.

(R. 000091, RE. 19).

While the Board's policy for zero tolerance for violence and insubordination in the workplace is honorable and admired, there is absolutely no evidence in the case at hand to support its finding that Parker committed an act of violence or threatened to carry out an act of violence towards Shaifer or any other employer or employee in any manner whatsoever, nor does any of the evidence indicate that Parker was even so much as insubordinate.

The police report states that Parker went home to get his medication – not a gun, the statement of Shaifer, himself, does not aver that Parker threatened him. (R. 000088, RE. 18). The only thing Shaifer's statement says is that he was afraid, but he gives no articulable basis for his fear and never states that Parker threatened him in any manner. (R. 000085, RE. 15). The statement of R. P. Segrest, who was present in the room with Shaifer and Parker, states that all Parker said was

that he had to go home for something, and Shaifer said that was alright. (R. 000087, RE. 17). Segrest's statement clearly shows that Shaifer's fear was not only inarticulable, but completely unfounded. Further, the affidavit of Allen Burks does not support the finding of the Board. It still does not state that Parker ever threatened Shaifer, nor does it state that he made such a suggestion to his brother who allegedly called the police. (R. 000083-000084, RE. 13-14). Nothing in the record states that Parker's mother and brother came to his workplace because of their fear or, concern that Parker was about to engage in violent, or murderous activity against Shaifer as the Board alleges. No statements by either of these individuals were under the scope of review of the Court. A statement regarding their presence at the fire department is nothing more than mere speculation.

The Board also alleges that "Parker's mother placed herself in his path as he attempted to approach Chief Shaifer in a physically threatening manner" and also that Parker used profanity when he yelled as he approached Chief Shaifer. (See Brief of Appellant at p. 17). As shown above, the threatening nature of this meeting is not substantiated by any of the evidence presented. In Mr. Shaifer's own statement Mr. Shaifer says "After Eddie Ray Parker exited his vehicle, his mother stopped him from coming toward me and I heard him state..." (R. 000085, RE. 15). Not even in Mr. Shaifer's own statement does he suggest that this was a violent or threatening situation. There is no evidence that Parker approached Shaifer in a threatening way or that Parker yelled profanities at Mr. Shaifer.

Furthermore, the evidence simply does not show that Parker's actions at any point and time constituted threatening violent, threatening or insubordinate behavior. Just as the Personnel Committee and the Circuit Court held, there is not substantial evidence to support the Board's

decision to terminate Parker. The Board's decision to terminate Parker therefore falls completely within the Court's definition of "arbitrary" and "capricious." The decision was made in a "non-rational manner, in disregard for the surrounding facts and settled controlling principles, implying a lack of understanding or disregard for the fundamental nature of things." Therefore, the decision to terminate Parker was not based on substantial evidence and established principles, was arbitrary and capricious, and this Court should affirm the Circuit Court's decision.

V. CONCLUSION


On April 4, 2006, Eddie Ray Parker was terminated from his employment with the Claiborne County Fire Department where he had been a loyal employee for over twenty years. Mr. Parker was terminated for alleged violence and insubordination. Despite the decision of the three member Personnel Committee or "Grievance Committee" that the documentation and evidence in Mr. Parker's file was not enough to support his termination, the Board of Supervisors, acting outside the scope of their authority, upheld Parker's termination. In their decision, the Board of Supervisors discussed their zero tolerance for acts or threats of violence, and insubordination in the workplace. Though this policy is admirable, there is absolutely no evidence to support the Boards position that Parker displayed any acts or threats of violence or insubordinate behavior that would substantiate his dismissal from the fire department. Not only was the Board's decision regarding Parker's termination not based on substantial evidence, they acted outside of the scope of their authority and failed to handle this matter according to their own procedures set out in the Personnel Policies and Procedures For Claiborne County, Mississippi.

On appeal, the Circuit Court of Claiborne County overturned the Board's decision finding that the Claiborne County Board of Supervisor's decision that Mr. Parker threatened Fire Chief Kelvin Shaifer, or acted in a violent or aggressive manner against Chief Shaifer or other co-workers was not supported by substantial evidence. The Board has failed to provide any evidence that their decision was based on substantial evidence, was not arbitrary and capricious and was not beyond the scope of their power and authority. Therefore, for the reasons set forth above, Appellee requests that the decision of the Circuit Court of Claiborne County be upheld and the Board of Supervisors' decision to terminate Eddie Ray Parker overruled.

RESPECTFULLY SUBMITTED, this the 16th day of September, 2008.

EDDIE RAY PARKER, APPELLEE

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CERTIFICATE OF SERVICE

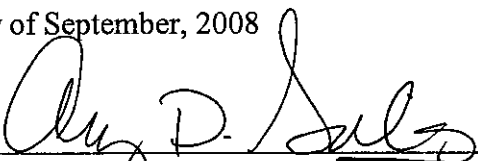
I, Amy D. Saling, the undersigned counsel of record for the Appellee, do hereby certify that I have this date mailed, postage prepaid, by United States mail a true and correct copy of the foregoing Brief of Appellee upon the following:

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