

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2008-CA-00126

CLAIBORNE COUNTY, MISSISSIPPI AND
THE CLAIBORNE COUNTY BOARD OF SUPERVISORS

APPELLANTS

VS.

CAUSE NO. 2008-CA-00126

EDDIE RAY PARKER

APPELLEE

REPLY BRIEF OF APPELLANTS

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

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
ARGUMENT	1
I. THE BOARD OF SUPERVISORS DID NOT ACT OUTSIDE THE SCOPE OF ITS POWERS TO LEGISLATE, ADMINISTER AND ADJUDICATE EMPLOYMENT MATTERS IN CLAIBORNE COUNTY GOVERNMENT	1
II. THE CLAIBORNE COUNTY BOARD OF SUPERVISORS’ DECISION TO TERMINATE PARKER WAS SUPPORTED BY SUBSTANTIAL EVIDENCE	4
III. THE BOARD OF SUPERVISORS’ DECISION TO TERMINATE PARKER WAS NEITHER ARBITRARY NOR CAPRICIOUS.....	6
CONCLUSION	8
ADDENDUM	9
Miss. Code Ann § 11-51-75 (1972).....	Addendum 1
Miss. Code Ann § 19-3-40 (1972).....	Addendum 2
Personnel Policies and Procedures Introduction.....	Addendum 3
Appeals Process for Disciplinary	Addendum 4
CERTIFICATE OF SERVICE	101

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Mississippi State Department of Health v. Southwest Mississippi Regional Medical Center,</i> 580 So. 2d 1328 (Miss. 1991).....	6
------------------------------------------------------------------------------------------------------------------------------------------	---

STATUTES

Miss. Code Ann. § 11-51-75 (1972).....	2
Miss. Code Ann. § 19-3-40 (1972)	1

ARGUMENT

In his Appellee's Brief, Mr. Parker asserts that the Circuit Court did not err in overturning the decision of the Claiborne County Board of Supervisors to uphold his termination, and he offers three arguments as bases for that assertion. First, he argues that the Board of Supervisors acted outside its scope and power to legislate, administer and adjudicate employment matters in Claiborne County government. Second, he argues that the decision of the Board of Supervisors was not supported by substantial evidence. Finally, he argues that the decision of the Board of Supervisors was arbitrary and capricious. None of those assertions, however, are true.

I. The Board of Supervisors Did Not Act Outside the Scope of Its Powers to Legislate, Administer and Adjudicate Employment Matters in Claiborne County Government.

Mr. Parker argues that the Board of Supervisors acted outside its authority by considering and upholding his termination. He argues that the County's Personnel Policies and Procedures preclude such review by the Board of Supervisors in his case. He points to a report by the Claiborne County Grievance Committee, dated April 14, 2006, addressed to the Board of Supervisors (*Appellee's Record Excerpts at 6; R. 000076*) and contends that the Board of Supervisors was "bound by the decision of the Personnel [Grievance] Committee" and that the matter was not properly before the Board of Supervisors. *Appellee's Brief at 11-12.*

The Board's powers to legislate, administer and adjudicate matters in county government are set forth in Miss. Code Ann. § 19-3-40 and are very broad¹. It is true that the Board has adopted Personnel Policies and Procedures that contain an appeal process for disciplinary

¹ A copy of Miss. Code Ann. §19-3-40 (1972) is attached in the Addendum to this Reply.

action.² R. 000053-000055. Mr. Parker was notified on April 5, 2006, that his employment was terminated effective that date. *Appellee's Record Excerpts at 15; R. 000085.* The "Claiborne County Grievance Committee" met with Mr. Parker and Chief Kelvin Shaifer "concerning the termination of Eddie Ray Parker" on or before April 14, 2006. *Appellee's Record Excerpts at 6; R. 000076.* Although required by Miss. Code Ann. § 11-51-75 (1972), Mr. Parker has never put forth any evidence in the record concerning whether that meeting was held in response to a written appeal by Mr. Parker or whether Mr. Parker actually followed any of the appeal procedures prior to that meeting.³ That committee prepared a memo dated Friday, April 14, 2006, addressed to the Board of Supervisors. *Id.* The memo indicates that copies were sent to Chief Shaifer, Mr. Parker, and Mr. Miller. *Id.* The memo indicates that the committee did not find "enough documentation or evidence to support insubordination (unwillingness to submit to authority) in this particular incident." *Id.* The memo concludes with a statement that "[t]he 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." *Id.* The following Tuesday, April 18, 2006, Mr. Parker sent a letter to the president of the Board of Supervisors stating that he had been terminated "due to alleged threats and alleged insubordination," that he had "received a letter from the grievance committee with their finding on the matter," and that he was "requesting an audience with the board to discuss this issue and hopefully resolve this matter." *Appellee's Record Excerpts at 7; R. 000077.*

The Personnel Policies and Procedures only grant an aggrieved employee the right to request a hearing before the Board of Supervisors "[i]n the absence of resolution by the three-member Appeals Committee" or "following the receipt of an unsatisfactory response from the

² A copy of the Appeal Process for Disciplinary Actions (R. 000053-000055) is attached in the Addendum to this Reply.

³ A copy of Miss. Ann. Code §11-51-75 (1972) is attached in the Addendum to this Reply.

appeals committee.” *R. 000054*. Clearly, the Grievance Committee did not believe that it had resolved Mr. Parker’s issues. If it had resolved Mr. Parker’s issues favorably to him, there would have been no reason to refer to his appeal rights⁴ and nothing from which he would want or need to appeal. Thus, it is specious to argue that the Grievance Committee made a determination that was binding on the Board of Supervisors and favorable to Mr. Parker. Although Mr. Parker asserts that he was terminated “due to alleged threats and alleged insubordination,” nothing in the committee’s April 14, 2006, memo addresses the issue of threats. Likewise, no remedy is mentioned, apart from “[t]he grieved employee[’s] ... option to request a hearing with the Board of Supervisors within 10 days after having met with the Grievance Committee.” *Appellee’s Record Excerpts at 6; R. 000076*.

In his brief Mr. Parker states, “On May 1, 2006, the Board of Supervisors commenced the hearing of *Mr. Parker’s appeal of his termination*.” *Appellee’s Brief at 11 (emphasis added)*. Moreover, he used the same language in his Bill of Exceptions, characterizing the proceeding before the Board as “Mr. Parker’s appeal [sic] of his termination.” *R. 000006*. Nevertheless, in an attempt to escape the consequences of the hearing that was held at his request, Mr. Parker asserts “the appeal to the Claiborne County Board of Supervisors was taken by the Fire Chief, Shaiffer [sic]” and argues that the matter was not properly before the Board because there is no “mechanism for a department of Claiborne County to appeal a decision of the Grievance Committee.” *Appellee’s Brief at 11, 12*. Although Mr. Parker recites in his April 18, 2006, letter that “I understand from Mr. James Miller that Mr. Kelvin Shaifer is appealing the decision of the grievance committee,” there is no evidence in the record that Chief Shaifer or the Fire Department actually initiated an appeal to the Board. The only written request in the record for a

⁴ Mr. Parker contends that he, alone, had the right to take an appeal to the Board of Supervisors under the appeal procedure set forth in the Personnel Policies and Procedures. *Appellee’s Brief at 7, 12*.

hearing before the Board is Mr. Parker's April 18, 2006, letter.⁵ Again, Mr. Parker, himself, describes the Board's response to his request as a "hearing of Mr. Parker's appeal of his termination." In short, there is no record evidence to contradict Mr. Parker's own assertion (in his Bill of Exceptions and his Appellee's Brief) that it was he who appealed the matter to the Board of Supervisors and asked for a resolution. Having brought the matter before the Board and having asked the Board to "resolve this matter," Mr. Parker is estopped from challenging the Board's authority to do what he requested, and the Circuit Court's conclusion that the Board violated its own procedures is incorrect.

II. The Claiborne County Board of Supervisors' Decision to Terminate Parker was Supported by Substantial Evidence.

Mr. Parker argues that "[t]here is absolutely no evidence to support a finding that Parker committed an act of violence or threatened to carry out an act of violence ... [or] was even so much as insubordinate." *Appellee's Brief at 12-13*. He argues that although Chief Shaifer said in his statement that he was afraid, he "gives no articulable basis for his fear...." *Appellee's brief at 13*. The police report (*R. 000088-000090*)⁶ indicates that someone called the Port Gibson police department at 10:15 a.m. on April 4, 2006, and reported that "Eddie Parker had left the fire station en route to his home to get his gun, to return to the fire station" and that Police Chief Jackson needed to go to the fire station "to intercept Parker." *R. 000089-000090*. The report further indicates that Police Chief Jackson was dispatched to the fire station because

⁵ Even assuming arguendo that Chief Shaiffer and/or Mr. Miller, the County Administrator, had requested a hearing before the Board, the Policies and Procedures applied to them as employees of the County, and, as such, the Appeals Process was equally available to them. The County Personnel Policies and Procedures, specifically state: The administration and enforcement of these uniform policies, to be applied to all employees directly compensated by the County Board of Supervisors, shall be the responsibility and duty of the County Board of Supervisors or its official designee, whether the county administrator, who may assign the day-to-day administration of such policies to a director of personnel, or the director of personnel who shall perform such day-to-day administration under the supervision of the Board of Supervisors. A copy of Personnel Policies and Procedures Introduction (R 000011) is attached in the Addendum to this Reply.

⁶ Mr. Parker failed to include the second and third pages of the report in his record excerpts.

Mr. Parker “was on his way home to get a gun.” R. 000088. Both the police report and the written statement of Fire Chief Shaifer (*Appellee’s Record Excerpts at 15-16; R. 000085-000086*) indicate that Police Chief Jackson arrived at the fire station before Mr. Parker returned and that Fire Chief Shaifer asked the police chief what was going on. Fire Chief Shaifer’s statement indicates that the police chief told him he was there because he had gotten a call from his office that “Mr. Parker was on his way home to get a gun and kill me [Shaifer].” *Appellee’s Record Excerpts at 15; R. 000085*. Fire Chief Shaifer’s statement further states that Julius Parker (Mr. Parker’s brother) arrived at the scene next and stated that he had made the call to the police. *Appellee’s Record Excerpts at 15; R. 000085*. Fire Chief Shaifer’s statement indicates that Mr. Parker’s mother arrived next and that Mr. Parker arrived, separately, right after her. *Id.* Fire Chief Shaifer’s statement indicates that when Mr. Parker got out of his car “his mother stop[ped] him from coming toward me and I heard him state (Mama that son of a bitch is going to respect me).” *Id.* Fire Chief Shaifer’s statement indicates that he [Shaifer] left work soon thereafter “because I did not feel safe around Mr. Parker.” *Id.*

For Mr. Parker to suggest that, under these circumstances, Chief Shaifer “gives no articulable basis for his fear...” and that “[t]here is absolutely no evidence to support a finding that Parker ... threatened to carry out an act of violence ... [or] was even so much as insubordinate” defies credulity. Mr. Parker’s brother called the police and told them that Mr. Parker was going home to get a gun, and both he and Mr. Parker’s mother were concerned enough to rush to the fire station during the middle of the morning to intercept Mr. Parker. Clearly, the actions of Mr. Parker’s mother and brother indicate they reasonably believed that Mr. Parker intended or had “threatened to carry out an act of violence,” and Fire Chief Shaifer had an “articulable basis for his fear” that day.

Mr. Parker glibly asserts that “[t]he police report of the incident states that Parker went

home to get his medication – not a gun.” *Appellee’s Brief at 13, 15*. The police report, however, merely indicates that that Mr. Parker “advised he asked Chief Shaifer can he go home to take his medication, not to go and get a gun.” *Appellee’s Record Excerpts at 18; R. 000088*. The report does not conclude that Mr. Parker actually went home for medication; it only records Mr. Parker’s after-the-fact denial that his intent when he left was to get a gun. His brother’s call to the police department, nevertheless, strongly suggests that it was.

Contrary to Mr. Parker’s assertion, the Board certainly had substantial evidence before it that “[r]easonable minds could ... accept ... as adequate to support the conclusion that Parker was insubordinate and/or threatened Shaifer.” *Cf. Appellee’s Brief at 13*. Thus, the Circuit Court’s conclusion that the Board lacked substantial evidence to uphold Parker’s termination is incorrect.

III. The Board of Supervisors’ Decision to Terminate Parker was Neither Arbitrary Nor Capricious.

Both parties agree that the terms "arbitrary" and "capricious," while not susceptible of a precise definition or mechanical application, have been defined by the Court as:

"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). Mr. Parker argues that the decision of the Board of Supervisors was arbitrary and capricious because, he contends, it was not supported by substantial evidence. *Appellee’s Brief at 14*. Thus, the rationale he offers for his assertion that the Board’s decision

was arbitrary and capricious is merely a reiteration of the arguments he made in support of his assertion that the decision was not supported by substantial evidence. For the reasons set forth above, that assertion is not correct. Indeed, the Circuit Court made no finding that the Board's decision was arbitrary or capricious. *Appellee's Record Excerpts at 41-42; R. 000204-000205.*

Contrary to Mr. Parker's assertion, the Board's decision was not 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." *Cf. Appellee's Brief at 17.* In its decision the Board clearly stated:

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 underlaying [sic] facts of the circumstance surrounding the termination of Mr. Eddie Ray Parker. The Board upholds the termination as its final decision. The vote was unanimous.

Appellee's Record Excerpts at 19; R. 000091. The Board clearly articulated the principles and rationale undergirding its decision, and Mr. Parker agrees that those principles are "honorable and admired." *Appellee's Brief at 15.* While Mr. Parker acknowledges that this Court has stated that a "disregard for the surrounding facts" can be evidence of capriciousness, he criticizes the County and the Board for mentioning in their brief "a tragic event involving the shooting of an attorney in Claiborne County" that occurred on March 17, 2006, less than five (5) months prior to the Board's decision. While it is true that event is not mentioned in the record in this case, it is a matter of public knowledge, of which this Court may take judicial notice, and it certainly is relevant to the question of whether the Board acted arbitrarily and capriciously in making its decision. The murder of the County Attorney, the near-fatal shooting of another county employee, and shots fired into the County Administrator's home, all within a few months of the Board's decision and relating to an employment dispute, are "surrounding facts" the Board could not disregard. Again, the Circuit Court did not find that the Board acted arbitrarily and

capriciously, and there is no basis in the record for Mr. Parker's arguments to the contrary.

CONCLUSION

The decision of the Claiborne County Board of Supervisors to uphold the termination of Mr. Parker was based on the Board's responsibility and need to have a workplace free of violence or the appearance of violence and aggression by employees. It was based upon clearly-articulated principles and evidence. In his appeal to the Circuit Court challenging that decision, Parker failed to establish that the Board of Supervisors acted outside the scope of its power, or that the decision was not supported by substantial evidence, or that the decision was arbitrary and capricious. Consequently, the Circuit Court erred in overturning the Board's decision and ordering backpay of wages and benefits to Parker. For the reasons set forth above and in their Brief of Appellants, Claiborne County, Mississippi, and the Claiborne County Board of Supervisors request that this Court reverse the Circuit Court's decision and order and enforce the decision of the Claiborne County Board of Supervisors upholding the termination of Mr. Parker.

RESPECTFULLY SUBMITTED, this the 30th day of September, 2008.

CLAIBORNE COUNTY, MISSISSIPPI and the
CLAIBORNE COUNTY BOARD OF SUPERVISORS

By: _____

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ADDENDUM

Miss. Code Ann § 11-51-75 (1972).....	Addendum 1
Miss. Code Ann § 19-3-40 (1972).....	Addendum 2
Personnel Policies and Procedures Introduction.....	Addendum 3
Appeals Process for Disciplinary	Addendum 4

§ 11-51-75. Appeal to circuit court from board of supervisors, municipal authorities.

Any person aggrieved by a judgment or decision of the board of supervisors, or municipal authorities of a city, town, or village, may appeal within ten (10) days from the date of adjournment at which session the board of supervisors or municipal authorities rendered such judgment or decision, and 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. The clerk thereof shall transmit the bill of exceptions to the circuit court at once, and the court shall either in term time or in vacation hear and determine the same on the case as presented by the bill of exceptions as an appellate court, and shall affirm or reverse the judgment. If the judgment be reversed, the circuit court shall render such judgment as the board or municipal authorities ought to have rendered, and certify the same to the board of supervisors or municipal authorities. Costs shall be awarded as in other cases. The board of supervisors or municipal authorities may employ counsel to defend such appeals, to be paid out of the county or municipal treasury. Any such appeal may be heard and determined in vacation in the discretion of the court on motion of either party and written notice for ten (10) days to the other party or parties or the attorney of record, and the hearing of same shall be held in the county where the suit is pending unless the judge in his order shall otherwise direct.

Provided, however, that no appeal to the circuit court shall be taken from any order of the board of supervisors or municipal authorities which authorizes the issuance or sale of bonds, but all objections to any matters relating to the issuance and sale of bonds shall be adjudicated and determined by the chancery court, in accordance with the provisions of Sections 31-13-5 to 31-13-11, both inclusive, of the Mississippi Code of 1972. And all rights of the parties shall be preserved and not foreclosed, for the hearing before the chancery court, or the chancellor in vacation. Provided, further, nothing in this section shall affect pending litigation.

Sources: Codes, Hutchinson's 1848, ch. 51, art. 5 (45, 46); 1857, ch. 59, art. 33; 1871, § 1383; 1880, § 2351; 1892, § 79; 1906, § 80; Hemingway's 1917, § 60; 1930, § 61; 1942, § 1195; Laws, 1940, ch. 245; Laws, 1955, Ex ch. 33; Laws, 1962, ch. 240, eff from and after passage (approved June 1, 1962).

§ 19-3-40. Power of board to adopt, modify, alter, or repeal orders, resolutions or ordinances not inconsistent with law.

(1) The board of supervisors of any county shall have the power to adopt any orders, resolutions or ordinances with respect to county affairs, property and finances, for which no specific provision has been made by general law and which are not inconsistent with the Mississippi Constitution, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi; and any such board shall likewise have the power to alter, modify and repeal such orders, resolutions or ordinances. Except as otherwise provided in subsection (2) of this section, the powers granted to boards of supervisors in this section are complete without the existence of or reference to any specific authority granted in any other statute or law of the State of Mississippi.

Such orders, resolutions or ordinances shall apply countywide except when the governing authorities of any municipality situated within a county adopt any order, resolution or ordinance governing the same general subject matter. In such case the municipal order, resolution or ordinance shall govern within the corporate limits of the municipality.

(2) This section shall not authorize the board of supervisors of a county to (a) levy taxes other than those authorized by statute or increase the levy of any authorized tax beyond statutorily established limits, (b) issue bonds of any kind, (c) change the requirements, practices or procedures for county elections or establish any new elective office, (d) use any public funds, equipment, supplies or materials for any private purpose, (e) regulate common carrier railroads, (f) grant any donation, or (g) without prior legislative approval, regulate, directly or indirectly, the amount of rent charged for leasing private residential property in which the county does not have a property interest; unless such actions are specifically authorized by another statute or law of the State of Mississippi.

Sources: Laws, 1988 Ex Sess, ch. 14, § 60; Laws, 1989, ch. 526, § 2; reenacted, 1990, ch. 418, § 2, eff from and after July 1, 1990.

Addendum 2

Personnel Policies and Procedures

Claiborne County, Mississippi

Introduction

Contained in this document are the Personnel Policies and Procedures of Claiborne County, Mississippi. These rules and regulations set forth the principles that are to be followed by Claiborne County in the administration of its personnel program.

Variations to the Claiborne County Personnel Policies and Procedures may be made from time to time upon proper motion and majority vote of the Board of Supervisors. No change in these rules or regulations shall become valid until submitted to and approved by a majority vote of the Claiborne County Board of Supervisors, and such action must appear in the minutes of the board meeting at which such action was taken.

The administration and enforcement of these uniform policies, to be applied to all employees directly compensated by the County Board of Supervisors, shall be the responsibility and duty of the County Board of Supervisors or its official designee, whether the county administrator, who may assign the day-to-day administration of such policies to a director of personnel, or the director of personnel who shall perform such day-to-day administration under the supervision of the Board of Supervisors.

D. Appeal Process for Disciplinary Action. After an employee has been presented with an official written reprimand, suspension notice or notice of demotion or dismissal, the employee may appeal such action in the following manner and in the following order.

1. Informal Conference with Immediate Supervisor. This is an informal conference between the employee and immediate supervisor designed to accomplish three things.
 - (a) Open lines of communication.
 - (b) Clear up any misunderstanding that may have led to or resulted from disciplinary action.
 - (c) Solve the problem through supervisory action if possible. While discussion here is informal, this is a formally recognized step in the appeals process and proceedings shall be recorded in note or memorandum form and placed in the employee's personal file.
2. Formal, Written Appeal to Immediate Supervisor. If the employee is not satisfied after step one, presented in D1. above, the employee may, within 10 days, file a written appeal, specifying the reasons for dissatisfaction. The immediate supervisor will respond to this written appeal in writing. Copies of the

written appeal and response shall be kept in the employee's personnel file in the office of the personnel director or in the office of the Board of Supervisors.

3. Formal, Written Appeal to Personnel Committee. If a resolution is not reached by the procedures in step D2 above, then the employee may file a written appeal, within ten (10) days, to a three-member appeals committee appointed by the Board of Supervisors. The appeals committee shall respond in writing to the specifics of the appeal and will articulate the County policy. Copies of the written appeal and response shall be filed in the employee's personnel file in the office of the Board of Supervisors.
4. Hearing Before the Full Board. In the absence of resolution by the three-member Appeals Committee, the aggrieved employee may request a hearing before the full Board of Supervisors of Claiborne County. Such a request must be made within ten (10) days following the receipt of an unsatisfactory response from the appeals committee. The request shall be in writing.

The aggrieved employee may be accompanied by representation at this hearing. At this hearing all charges and supporting data will be presented and the

aggrieved employee shall have the opportunity to respond in detail.

Upon hearing of charges and responses, the Board of Supervisors shall make a decision regarding the appropriate disposition of the matter. The decision of the Board shall be final.

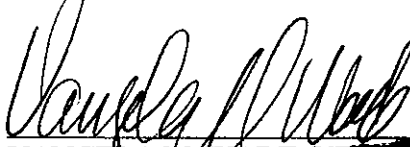
CERTIFICATE OF SERVICE

I do hereby certify that I have this date mailed, postage prepaid, by United States mail a true and correct copy of the foregoing Reply Brief of Appellants upon the following:

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SO CERTIFIED, this the 30th day of September, 2008.



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