

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

BRIEF OF APPELLANTS

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

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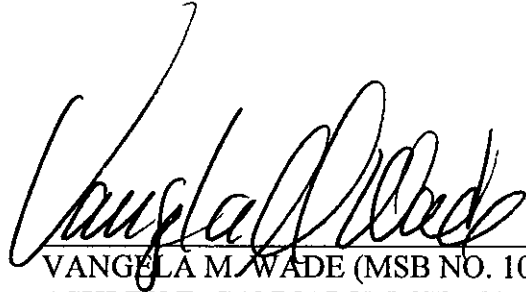
CERTIFICATE OF INTERESTED PERSONS

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 Claiborne County Board of Supervisors
7. Stephanie L. Vest
Attorney for the Employee/Appellee

8. Glenn S. Swartzfager
Attorney for the Employee/Appellee
9. Honorable Lamar Pickard, Circuit Court Judge
Claiborne County

This the 23rd day of July 2008

A handwritten signature in black ink, appearing to read 'Vangela M. Wade', written over a horizontal line.

VANGELA M. WADE (MSB NO. 10304)
ASHLEY E. CANNADY (MSB NO. 101253)

Attorneys of Record for Appellants

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STATEMENT OF ISSUES

1. Whether the Circuit Court Erred in Overturning the Claiborne County Board of Supervisors' Decision to Terminate Eddie R. Parker:
 - A. The Board of Supervisors' Decision to Terminate Eddie R. Parker was Supported by Substantial Evidence.
 - B. The Board of Supervisors' Decision to Terminate Eddie R. Parker was Neither Arbitrary Nor Capricious.
 - C. The Board of Supervisors Acted Within Its Scope and Power to Legislate, Administer and Adjudicate Employment Matters in Claiborne County Government.

STATEMENT OF THE CASE

I. PROCEDURAL HISTORY

On April 4, 2006, Fire Chief Kelvin Shaifer (hereinafter, "Chief Shaifer") terminated Appellee Eddie Ray Parker (hereinafter, "Parker") effective April 5, 2006, for insubordination. (R. 000005, 00075, 00085, 000124). Thereafter, pursuant to Rule VI of the Personnel Policies and Procedures for Claiborne County, Mississippi (hereinafter, "Policies and Procedures"), Parker requested a hearing before the Claiborne County Employee Grievance Committee.¹ (R. 000005).

On April 14, 2006, the Grievance Committee determined Chief Shaifer lacked "sufficient documentation or evidence of insubordination" to terminate Parker (R. 000005, 00076). On April 18, 2006, Parker requested an "audience with the Board to resolve the matter." (R. 000005, 00077). On May 1, 2006, the Board commenced the hearing of Parker's appeal of his termination, but adjourned at his request to obtain the assistance of a lawyer. (R. 000006, 000083, 000084). On or about July 14, 2006, the Board reconvened the hearing and heard testimony from Parker and Chief Shaifer. (R. 000096). In addition to oral testimony, the Board considered the Affidavit of Allen Burks (R. 000083); the written statement of Chief Shaifer (R. 000085 - 86); the written statement of R.P. Segrest (R. 000087); and the report of Chief Calvin Jackson of the Port Gibson Police Department (R. 000088 - 90). After the Board took the matter under consideration.

On August 1, 2006, the Board unanimously upheld Parker's termination. (R. 000006, 000091). Parker filed a Notice of Appeal in the Circuit Court of Claiborne County, Mississippi on or about August 10, 2006. (R. 000092). On November 10, 2007, Parker filed the Bill of

¹ The October 1989 Policies and Procedures for Claiborne County, Mississippi refers to the three-member ad-hoc committee as "Appeals Committee" and "Personnel Committee." However, the term "Grievance Committee" is used by all parties and is reflected as such in the Bill of Exceptions filed before the lower

Exceptions, as the record of the Board's decision, and requested that the Circuit Court overturn the Board's decision to terminate him. (R. 000005). The Board filed its response to Parker's Bill of Exceptions on January 17, 2007. (R. 000107). 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). The Circuit Court did not order Parker's reinstatement. *Id.*

Aggrieved by the Circuit Court's decision, Claiborne County, Mississippi and its Board of Supervisors perfected this appeal on January 11, 2008. (R. 000206).

II. STATEMENT OF THE FACTS

Prior to his termination, Claiborne County employed Parker as a fireman. Pursuant to the fire department's standard operating guidelines, County firemen are required to maintain clean or close shaven faces, to allow the seal of the self contain breathing apparatuses (SCBA) to fit properly to the face, to avoid smoke inhalation and injury. (R. 000085). However, Parker refused to adhere to the safety guidelines, which resulted in written and verbal reprimands from Chief Shaifer. In an effort to compromise with Parker, a veteran fire fighter, Chief Shaifer offered him a choice of shaving his beard or "cut his beard with clippers and keep it neat and professional looking, but he refused." (R. 000085). Chief Shaifer warned Parker that his failure to comply with the safety guidelines could result in termination of his employment with the County. Still, Parker refused to comply with either option. Instead, he offered Chief Shaifer a physician's slip indicating that he had a skin condition that became aggravated by shaving. Chief Shaifer was concerned with Parker's safety as well as that of other firemen, who might be required to risk their own safety, in the event Parker succumbed to smoke inhalation resulting from ill fitting SCBA.

On the morning of April 4, 2006, James Miller, former Claiborne County Administrator ("Miller"), and Chief Shaifer met with Parker to discuss his noncompliance with the fire department's policy. (R. 000085). However, the meeting seemed to increase Parker's anger with Chief Shaifer for requiring that he adhere to workplace rules.

When the meeting concluded, Chief Shaifer returned to the fire station and found Phil Segrest ("Segrest") waiting to meet with him. (R. 000085). Chief Shaifer invited Segrest, a private citizen and consultant to the County fire department, into his office and closed the door. (R. 000085, 000087). The two men began to discuss fire department issues. (R. 000085, 000087). They heard a loud beating on the door. (R. 000085, 000087). Before Chief Shaifer could respond, Parker swung open the door and burst into the office. (R. 000085, 000087). Chief Shaifer asked Parker why was he beating on the door; Parker responded that he was "pissed off". (R. 000085, 000087, 000088). Chief Shaifer responded, "Ok; what can I do for you[?]" (R. 000085, 000087, 000088). To which Parker responded that he wanted to talk with him. (R. 000085, 000087, 000088). Chief Shaifer, confirming the obvious, responded that he was meeting with Segrest but would speak with him afterwards. (R. 000085, 000087, 000088). Parker then asked if he could go home and get something. (R. 000085, 000087). Immediately after Parker left the room, Chief Shaifer asked Segrest to leave the premises, because he did not know what to do should Parker return because of his "rude, loud and disrespectful demeanor." (R. 000085).

After Segrest departed the fire station, Chief Shaifer went to his own truck to look for some paperwork. (R. 000085). At that point, Calvin Jackson, the Police Chief for the City of Port Gibson, Mississippi ("Chief Jackson"), drove "really fast" onto the parking lot. (R. 000085). Chief Jackson told Chief Shaifer that he had received a call from his office that Parker "was on his way home to get a gun and kill [Chief Shaifer]." (R. 000085, 000088, 000089).

Chief Shaifer asked if he knew who made the call; Chief Jackson responded that he did not know. (R. 000085). At that moment, Parker's brother, Julius Parker, drove into the parking lot. (R. 000085). Chief Shaifer asked Julius Parker who called the police; Julius Parker responded, "I did." (R. 000083, 000085). Within seconds, Parker's mother arrived, followed by Parker. (R. 000085). Parker exited his vehicle and moved toward Chief Shaifer, his mother jumped in front of him, and Parker yelled, "Mama that s-n of a b---h is going to respect me." (R. 000085). At that point, Chief Shaifer went back into the fire station but left soon after because he did not feel safe. (R. 000085). Later that day, he went to the police station to ask for a report regarding the incident and then went to see the Claiborne County Sheriff, Frank Davis ("Sheriff Davis"), to report the incident. (R. 000085).

On the following day, April 5, 2006, Chief Shaifer telephoned Sheriff Davis to request that he send a deputy to the station, because he plan to terminate Parker. (R. 000085). Wary of Parker's reaction based on the events of the previous day, Chief Shaifer did not want to take a chance that "something would happen that would cause injuries or death to either party."² (R. 000085 - 86). Sheriff Davis and his deputies stood by while Chief Shaifer gave Parker the letter of termination. (R. 000086). The termination letter, dated April 4, 2006, indicated that Chief Shaifer terminated Parker because of his behavior of that day stating:

"Your behavior Tuesday, April 4, 2006 will not be tolerated here at Claiborne County Fire Department. You displayed the highest form of insubordination I have every [sic] seen by disrespecting Mr. Phil Segrest and myself while we were in a private meeting. Your behavior was so horrific that it terrified Mr. Segrest, as well as, your co-workers. . . ."

² Chief Shaifer's concerns reflected the events of March 17, 2006, when a former County employee Carl Brandon murdered County Attorney Allen Burrell on the city street and shot into the home of then County Administrator James E. Miller, then proceeded to the County Road Department where he shot and caused near fatal injury to a Secretary, Loretha Rollins-Porter. Each of these persons were involved in a previous County case, *Brandon v. Claiborne County, Mississippi*, 828 So.2d 202 (Miss. Ct. App. 2002), which emanated from a sexual harassment claim against Mr. Brandon that resulted the County's termination of his employment.

(R. 000075).

Thereafter, Parker requested a hearing before the Grievance Committee, pursuant to Rule VI of the Personnel Policies and Procedures for Claiborne County, Mississippi. (R. 000095). The Grievance Committee is a three-person committee formed by the Board. (R. 000054). The members are managers or supervisory level employees asked to sit for a specified period of time or for a specific employee grievance matter. The Grievance Committee makes recommendations but does not have the authority to take action impacting ultimate employment decisions. Only the Board can make final decisions regarding hiring, promoting, compensating, disciplining and terminating County employees. On April 14, 2006, the Grievance Committee determined, "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)³ in this particular incident. 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." (R. 000076). In a letter dated April 18, 2006, to Mr. Charles Shorts, President of the Board of Supervisors, Parker stated that he believed Chief Shaifer planned to appeal the Grievance Committee's finding and requested an "audience" with the Board to resolve the matter." (R. 000077).

On May 1, 2006, the Board commenced the hearing of Parker's appeal of his termination, but adjourned upon his request to obtain the assistance of a lawyer. (R. 000083 - 84). On or about July 14, 2006, the Board reconvened the hearing and heard testimony from Parker and Chief Shaifer. (R. 000096). In addition to the oral testimony, the Board considered the Affidavit

³ The Grievance Committee apparently adopted its own definition of "insubordination" in order to excuse Parker's clear disrespect of both Chief Shaifer and Mr. Segrest, a private citizen. In fact, the Policies and Procedures do not specifically define "insubordination." However, the Policies and Procedures indicate that disciplinary actions may result from "[w]anton[ly] offensive conduct of language toward the public, a superior, or fellow employees." (R. 000047).

of Allen Burkes (R. 000083); the April 4, 2006, written statement of Chief Shaifer (R. 000085); the written statement of R.P. Segrest (R. 000087); and the report of Officer Calvin Jackson of the Port Gibson Police Department (R. 000088 - 89).

On August 1, 2006, the Board unanimously upheld Parker's termination.⁴ (R. 000091).

The Board's Order states:

Claiborne County has zero tolerance for acts 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 [t]he Board upholds the termination as its final decision."

(R. 000091).

⁴ As a rule, the Claiborne County Board of Supervisors hears and discusses personnel issues involving employee disciplinary and termination matters only during executive session. These issues are confidential and therefore are not placed on the minutes of the Board as all minutes are made available to the public. During open session the Board announces it will hear the matter in executive session. Upon concluding discussions or taking action, the Board ends the executive session and announces only its decision in open session. In some instances, like that of the Appellee, the Board may take matters under advisement following the discussion in executive session and render a subsequent decision.

SUMMARY OF THE ARGUMENT

In its appellate review, this Court, like the Circuit Court below, is bound by the substantial evidence standard of review for matters on appeal from the decisions of the County Board of Supervisors and other administrative boards. In this case, after considering the totality of the evidence and testimony presented, the Board of Supervisors upheld Parker's termination.

The Board considered oral testimony of Parker and Chief Shaifer as well as all of the statements and documents that Parker filed in support of his Bill of Exceptions. Thus, the Board's decision was based on the totality of the evidence presented, and it reflected deliberate focus and purpose founded in the need to have a workplace free of violence and inappropriate aggression that could lead to violence. This is evidenced in the Board's statement in support of its unanimous decision to terminate Parker:

Claiborne County has zero tolerance for acts 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 as the County Administration can control. Based on this and the underling facts and the circumstance surrounding the termination of Mr. Eddie Ray Parker, the Board up holds the termination as its final decision.

Parker claimed that he never threatened Chief Shaifer, however, the record is replete with evidence that Parker engaged in insubordinate and aggressive behavior resulting in termination of his employment. As such, it is clear the Board of Supervisors' decision to terminate the Parker is supported by substantial evidence, and Parker cannot meet his burden of proof.

ARGUMENT

I. STANDARD OF REVIEW

When reviewing a board's decision, a reviewing court can only consider the case as made by the bill of exceptions. *Wilkinson County Board of Supervisors v. Quality Farms, Inc.*, 767 So. 2d at 1011 (citing *Stewart v. City of Pascagoula*, 206 So. 2d 325, 328 (Miss. 1968)). When appealing a decision of a board of supervisors, Miss. Code Ann. § 11-51-75 (1972) states that the person aggrieved "may embody the facts, judgment and decision of the board of supervisors in a bill of exception." The circuit court is bound by the record made before the board. *Wilkinson County, supra*, 767 So. 2d at 1009.

Moreover, the law is well settled that on appeal of an order from a board of supervisors, the reviewing court shall not disturb the board's decision unless it is:

- Unsupported by substantial credible evidence;
- Arbitrary or capricious;
- Beyond the board's scope or powers; or
- In violation of the aggrieved party's constitutional or statutory rights.⁵

Brandon v. Claiborne County, Mississippi, 828 So.2d 202, 205 (Miss. 2002); *Ladner v. Harrison County Board of Supervisors*, 793 So. 2d 637, 638 (Miss. 2001); *Wilkinson County supra.*, 767 So. 2d 1007, 1009 (Miss. 2000) (citing *Hooks v. George County*, 748 So. 2d 678, 680 (Miss. 1999)). In fact, "courts may interfere only where the action of the board is arbitrary or capricious and is without support in the substantial credible evidence." *Cook v. Board of Supervisors of Lowndes County*, 571 So. 2d 932, 936 (Miss. 1990). "When this Court finds that the lower court has *exceeded its authority* in overturning [a Board's] decision, we will reverse and reinstate the [Board's] decision." *Board. of Law Enforcement Officers Standards and Training v. Butler*, 672 So.2d 1196, 1199 (Miss. 1996); *Mississippi Commission on*

⁵ Parker did not contend in either his Bill of Exception or brief before the lower court that the Board's decision violated a constitutional right. Accordingly, Appellants will not address this particular basis for

Environmental Quality v. Chickasaw County Board of Supervisors, 621 So.2d 1211, 1215 (Miss. 1993).

II. The Circuit Court Erred in Overturning the Claiborne County Board of Supervisors' Decision to Terminate Parker.

As appellate courts, neither this Court nor the Circuit Court stand in the shoes of fact finders. *Mississippi Department of Corrections v. Harris*, 831 So.2d 1190, 1192 (Miss. Ct. App. 2002). Rather, in the appellate role, both are charged with determining whether the Board could properly have evaluated the contested evidence in a manner that supports their decision. *Id.*; *Mississippi Public Service Commission v. Merchants Truck Line, Inc.*, 598 So.2d 778, 782 (Miss. 1992). This Court must consider only the record evidence, the same presented to the lower court, and apply the substantial evidence standard of review to determine whether the lower court erred in its decision to overturn the Board's decision to terminate Parker. *Wilkinson County, supra*, 767 So. 2d at 1011 (*Stewart v. City of Pascagoula*, 206 So. 2d 325, 328 (Miss. 1968)). The substantial evidence standard of review is not an especially large quantum. *Id.* In fact, it is less than a preponderance, but more than a scintilla, a idiom judicially adopted to mean a mere trace or minute amount. *Id.*

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

When opposing views are presented to the Board, the Board sits as the trier of fact and is entitled to determine which evidence it will give the most weight. *Everett v. Board of Trustees of Meridian Municipal Separate Sch. Dist.*, 492 So.2d 277, 283 (Miss. 1986). The Board, as the trier of fact, sits in the best position to evaluate and weigh the truthfulness of each witnesses' testimony. *Andrew Jackson Life Ins. Co. v. Williams*, 566 So.2d 1172, 1179 (Miss. 1990). The demeanor, tone of voice, attitude and appearance of the witnesses are inspected and reviewed by

overturning a board's decision.

the Board. It not only has the right and duty to determine the truth or falsity of the witnesses, but also has the right to evaluate and determine what portions of the testimony of any witness it will accept or reject. *Id.*; *Travelers Indem. Co. v. Rawson*, 222 So.2d 131, 134 (Miss. 1969). “The reviewing court cannot *substitute its judgment* for that of the [Board] or *reweigh its judgment* for that of the [Board] or reweigh the facts of the case. *Butler supra*, 672 So.2d at 1199 (emphasis added).

The Circuit Court's assertion that the Board lacked substantial evidence to uphold Parker's termination is without merit. In fact, Parker's own Bill of Exceptions established the evidence considered by the Board. As indicated in paragraph 7 of Parker's Bill of Exceptions, the Board heard from both Parker and Chief Shaifer and also considered the following:

- Affidavit of Allen Burkes;
- April 4, 2006 written statement of Kelvin Shaffer;
- Written statement of R.P. Segrest ; and
- Report of Officer Calvin Jackson of the Port Gibson Police Department.

(R. 000006, 000121). It is unreasonable to contend that all of this evidence considered by the Board did not constitute substantial evidence. That the Circuit Court disagreed with or disliked the evidence considered by the Board was neither the issue nor the standard of review on appeal of the Board's decision. The lower court improperly reweighed the evidence by finding “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). The Circuit Court, in making its decision, appeared to have created a heightened standard of review, that not only exceeded the long established standard of review set by this Court, but totally disregarded the evidence relied upon by the Board. Acknowledgment of the proper standard of review is indicated by the lower court when it states:

“[T]his court does not have the authority to second guess the Board of Supervisors to determine whether or not their decision was right or wrong. The only thing that this court can do is determine whether or not they have the authority to do what they did. In other words, whether or not they followed the law.”

(T. 6)

Notwithstanding the lower court's pronouncement during its hearing of this matter, its ruling reversing the Board is completely contrary to the proper standard of review.

The lower court could not have properly determined, without erroneously reweighing the facts of the case, that the evidence relied upon by the Board was not more than a mere scintilla of evidence. Finding the Board's decision was not supported by substantial evidence clearly indicates that the lower court inappropriately substituted its judgment for that of the Board. (T. 17-18, R.000204)

The issue is whether the Board's decision was supported by "such relevant evidence as reasonable minds might accept as adequate to support a conclusion." *Hooks v. George County, Mississippi*, 748 So. 2d 678, 680 (Miss. 1999). Specifically, the Board must have relied on more than a "'mere scintilla' of evidence." *Id.* (quoting *Johnson v. Ferguson*, 435 So. 2d 1191, 1195 (Miss. 1983)). In this case, the Board heard testimony from Chief Shaifer and Parker regarding the actions preceding Parker's termination. The Board also considered Chief Shaifer's April 4, 2006 written statement detailing the events that occurred on that day. (R. 000085, 000196). In addition, the Board considered the written statement of R.P. Segrest giving his personal account of what he witnessed in Chief Shaifer's office on the morning before Parker's termination. According to Segrest, a local citizen and business owner in Claiborne County:

"On the morning of April 4, 2006 I was in a closed door meeting in the Fire Chief's Office to discuss fire equipment issues. During the discussions a loud beating on the door interrupted us. The Chief and I continued to talk without acknowledging the interruption. Within thirty seconds the door opened and Mr. Parker came into the office. The Chief asked what he wanted. Mr. Parker

announced in a loud voice that he was "pissed". The Chief said that he would discuss it with him when he was finished with the meeting he was having. Mr. Parker asked how long that would be. The Chief told him that he was not sure. Mr. Parker then said he had to go home for something. The Chief told him that was all right and Mr. Parker left the office."

(R. 000087, 000198). Based on Segrest's letter alone it is clear that, as an employee, Parker subjected Chief Shaifer and Segrest to offensive behavior and language, certainly constituting insubordinate behavior.

Chief Shaifer terminated Parker because of the insubordinate behavior that culminated on the morning of April 4, 2006, when he burst into the office interrupting the Chief's meeting with Segrest. Chief Shaifer described Parker's behavior as loud, rude and disrespectful. (R. 000085, 000196). In his April 4, 2006, letter terminating Parker, Chief Shaifer stated:

"Your behavior Tuesday, April 4, 2006 will not be tolerated here at Claiborne County Fire Department. You displayed the highest form of insubordination I have [ever] seen by disrespecting Mr. Phil Segrest and myself while we were in a private meeting. Your behavior was so horrific that it terrified Mr. Segrest, as well as, your co-workers. Therefore, your employment with the Claiborne County Fire Department is terminated effective April 5, 2006."

(R. 000075, 000124). Additionally, the Board heard testimony regarding the police department's response to a call warning of Parker's intention to harm Chief Shaifer, Parker's brother and mother arriving at the fire department in obvious concern that Parker indeed planned to take some action against Chief Shaifer. Moreover, the Board of Supervisors certainly considered the fact of Parker's mother had to restrain him from approaching Chief Shaifer as well as the profane assertion that Chief Shaifer, or "that s-n of a b---h is going to respect me." The Board in its adjudicative capacity could surely apply reasoning that Parker had gone home for more than his medicine as he later told Chief Jackson. (R.000088). The Board relied on more than conjecture and supposition when making its decision to uphold Appellant's termination. Without regurgitating every statement embodied in Paragraph 7 of Parker's Bill of Exceptions, the Board clearly based its decision on substantial evidence or

"such relevant evidence as reasonable minds might accept as adequate to support a conclusion."

Johnson, supra, 435 So. 2d at 1195.

B. The Board of Supervisors' Decision to Terminate Parker was Neither Arbitrary Nor Capricious.

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). The Board's decision to terminate Parker would be considered arbitrary if "it is not done according to reason and judgment, but depending on will alone." *Mississippi State Department of Health v. Natchez Community Hospital*, 743 So.2d 973, 977 (Miss. 1999) (citing *Burks v. Amite County School District*, 708 So.2d 1366, 1370 (Miss. 1998)).

In this case, it can hardly be said that the Board's actions were *non-rational* or *freakish*. The Board considered oral statements from Parker and Chief Shaifer and all of the statements and documents included by Parker in the Bill of Exceptions. Thus, the Board's decision was based on the totality of the evidence presented and it reflects deliberate focus and purpose founded in the need to have a workplace free of violence and inappropriate aggression that could lead to violence. This is evidenced in the Board's statement in support of its unanimous decision to uphold Appellant's termination:

"Claiborne County has a 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). Without a doubt, the Board considered Parker's conduct and determined it unacceptable behavior for a County employee. Moreover, the Board considered Parker's conduct indicative of the type of aggression, insubordination and the appearance of violence that it does not wish to encourage, foster or cultivate in the County workplace. Ultimately, the Board's decision to uphold Parker's termination was based on the "underlying facts of the circumstance surrounding the termination" and was neither arbitrary nor capricious.

In previous cases involving employee violation of safety rules and engaging in threatening behavior, this Court has ruled that the employer decision maker's decision to terminate were based on substantial evidence. In *Flowers v. Mississippi Department of Human Services*, 764 So. 2d 493, (Miss. 2000), an employee appealed an order of the Employee Appeals Board upholding her termination for violating safety policies where there existed a threat to life and human safety. Employee worked as a counselor aide at Oakley Training School and was responsible for maintaining a periodic count of the residents in one of the school housing units. She failed to properly conduct the counts allowing a resident to escape and go unnoticed until he was caught several miles from the facility trying to steal a car.

This Court held that the decision to terminate the employee was not arbitrary or capricious since there was substantial evidence that the employee's counts for the night of the resident's escape were inaccurate and that she delegated her duty to conduct the counts to a security officer and these omissions allowed the escaped resident to go unreported long enough for him to get miles from the facility and threaten the property and safety of a local resident. *Id.* at 495. This Court also held that since the employee's actions constituted a dereliction of duty

which violated “*safety rules where there exists a threat to life or human safety*” and this type of offense was punishable by termination under the Mississippi State Personnel Board Policy and Procedures Manual, the decision to terminate employee was based on substantial evidence and established principles. *Id.*

In *Mississippi Transportation Commission v. Anson*, 879 So. 2d 958 (Miss. 2004), employee was terminated for threatening his coworkers in violation of the Mississippi State Employee Handbook. Employee pointed his finger in a coworker’s face and called her a “*witch from hell*” warned her to “*stay out of his business*,” “*watch her back*,” and “*never show her face*.” *Id.* at 962. He called another coworker at home about work issues and used profanity. This Court held that a reasonable person could accept the evidence that the employee pointed his finger in a coworker’s face and told her to “*stay out of his business*” coupled with the testimony that he told her to “*watch her back*,” and “*never show her face*,” as adequate evidence that the employee violated the handbook policy that prohibited threatening or coercing employees which warranted dismissal. *Id.* at 963-64.

When determining whether the termination was arbitrary or capricious, the Court held that the statement “*watch your back*” in its plainest sense is a threat. *Id.* at 964. Even when contradictory evidence was presented, this Court held the conflicting evidence implied that he threatened his coworkers causing them emotional distress. *Anson* also noted that the Employee Appeals Boards was empowered to accept the testimony of one witness over the other and such a decision is supported by substantial evidence, thus, the decision to terminate the employee was not arbitrary or capricious. *Id.* at 964.

Considering the holdings in *Anson* and *Flowers*, the type of evidence considered by the Board in this case was equally sufficient to reach and exceed the level of “substantial.” Like *Anson* and *Flowers*, Parker violated County Policies and Procedures which prohibit

insubordinate, coercive and aggressive behavior. (R. 000050). Point of fact, Parker exhibited “loud, rude and disrespectful” behavior when he burst into Chief Shaifer’s office while he was in a meeting with Segrest yelling “*I’m pissed*” and demanding to talk with Chief Shaifer immediately. (R. 000085). On the same morning, Parker’s brother and mother came to his workplace because of their fear or, at the least concern, that Parker was about to engage in violent, if not murderous, activity against Chief Shaifer. (R. 000085). Like the employee in *Anson*, Parker used profanity when he yelled, “*Mama that son of a bitch is going to respect me.*” (R. 000085). Parker’s mother placed herself in his path as he attempted to approach Chief Shaifer in a physically threatening manner. Like *Anson*, there is substantial evidence to support the termination of Parker for violating the Policies and Procedures which prohibited him from threatening his supervisor. *Anson* at 964 (“Even a reading of the cold record reveals that both Dobson and Davis perceived Anson’s statements and conduct as threatening. The statement “watch your back” in its plainest sense is a threat. Davis and Dobson based their perception of the threats on Anson’s attitude toward them at the time of the incident.”).

Furthermore, the evidence also showed that Parker’s offense was a Group III offense under the Personnel Policies and Procedures, because his actions constituted “*threatening or coercing employees or supervisors*” and “*acts of physical of violence or fighting*”, and this type of offense is punishable by termination. Like *Flowers*, a case which held that termination is not arbitrary and capricious where there is substantial evidence to support a violation of policies, in this case there is substantial evidence that Parker violated the Policies and Procedures, and the violation was punishable by immediate termination. Therefore, the decision to terminate Parker was based on substantial evidence and established principles and was not arbitrary and capricious, and this Court should affirm the Board’s decision to terminate Parker.

C. The Board of Supervisors Acted Within Its Scope and Powers to Legislate, Administer and Adjudicate Employment Matters in Claiborne County Government.

The Board acted in its adjudicative capacity when reviewing and rendering a final decision regarding Appellant's continued employment with Claiborne County. The Board's review was not upon its own motion, but at Appellant's request. Therefore, Appellant wrongfully contends the Board acted outside its scope and powers when upholding Parker's termination. In fact, the Board's scope and powers to legislate, administer and adjudicate matters in County government are firmly established by law. Termed the *Home Rule*, Miss. Code Ann. § 19-3-40 (Supp. 1990), gives County Boards of Supervisors:

"the power to adopt any order, 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."

Nowhere can the Board's authority be more apparent than in personnel matters. Employment with the County is a County affair, and the Board has not only promulgated policies and procedures, but established itself as the final arbiter of County personnel matters. In point of fact, the Policies and Procedures for Claiborne County, Mississippi explicitly states:

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 who shall perform such day-to-day administration under the supervision of the Board of Supervisors.

(R. 000011). "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. .." *Id.* These

Personnel Policies also delineate the Board as the final arbiter of employment grievances and disciplinary matters. Specifically, "[i]n 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. . . .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*" *Id.* at 2, (emphasis added).

Although the Grievance Committee did not agree with Chief Shaifer's decision to terminate Parker, the Grievance Committee did not recommend Parker's return to work. Moreover, the Grievance Committee reminded Parker 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." (R. 000076). As embodied in Paragraph 5 of the Bill of Exceptions, Appellant requested an "audience with the Board to discuss this issue and hopefully resolve this matter." (R. 000077). Parker asked the Board to hear the matter. Therefore, he is now precluded from claiming that the Board was without scope or power to render a decision, even if it resulted in an unfavorable decision.

Parker has argued the Policies and Procedures do not allow the department head initiating a personnel action to appeal a conflicting decision rendered by the Grievance Committee. First, there is nothing in the Bill of Exceptions purporting that anyone other than Parker requested a hearing of his termination. However, Claiborne County objected to Parker raising this argument in his Memorandum in Support of Bill of Exceptions as it was improperly before the lower court and should not be addressed by this Court. *Wilkinson, supra*, 767 So. 2d at 1011. Without waiving this objection, Appellants respectfully direct this Court to the Personnel Policies that explicitly states: "*[t]he Claiborne County Personnel Policies and Procedures should apply to all County Personnel whose compensation falls under the*

Claiborne County Board of Supervisors." Rule I, General Provisions, p 7. (R. 000017).

Certainly, Chief Shaifer and Parker are employed and compensated by the Board. Moreover, it is implicit that an aggrieved party can appeal; otherwise, the policy would be illusory.

Consequently, Parker cannot argue that the Board acted contrary to this Court's limited dictate in *Bobbitt* and its progenies as that argument would be sorely misplaced. The Board followed the procedures set forth in the Personnel Policies. Parker requested a hearing before the Grievance Committee. The Grievance Committee gave its opinion, but not a recommendation. Parker requested a hearing before the Board to resolve the matter of his termination. The Board reviewed the matter and determined it would uphold Parker's termination. The Board is not bound by the Grievance Committee's opinion. Specifically, "[i]n 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." (R. 000054). Ultimately, "[t]he decision of the Board of Supervisors shall be binding on all parties." (R. 000055).

CONCLUSION

On April 4, 2006, Parker acted in poor judgment, exhibiting behavior that Chief Shaifer deemed "horrific" and "insubordinate." As Parker's immediate supervisor, Chief Shaifer had not only an implied responsibility, but an explicit responsibility to supervise and discipline employees in his department. Specifically, Chief Shaifer must maintain civility of employees under his command. As a fireman, Parker was under Chief Shaifer's command, and Chief Shaifer believed Parker's termination was appropriate. Nonetheless, as stated in the Policies and Procedures, the Board of Supervisors has the ultimate decision making and disciplinary authority over all employees in Claiborne County government. Parker is not and was not an exception. The Board's decision to uphold Parker's termination 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.

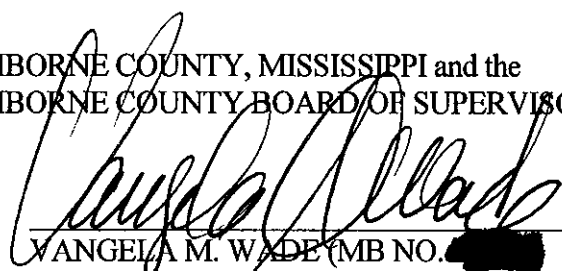
Parker has failed to establish that the Board's decision was not based on substantial evidence. Accordingly, the decision was not arbitrary and capricious or beyond the Board's scope and power. The Board of Supervisors is the ultimate authority and decision-making body in county government. As such, County personnel matters are squarely within the Board's purview, and its decision to uphold Parker's timely termination should not be disturbed.

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, Appellants request that this Court reverse the Circuit Court's decision and order and enforce the Claiborne County Board of Supervisors' decision to terminate Eddie Ray Parker.

RESPECTFULLY SUBMITTED, this the 23rd day of July, 2008.

CLAIBORNE COUNTY, MISSISSIPPI and the
CLAIBORNE COUNTY BOARD OF SUPERVISORS

By:


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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 Brief of Appellants upon the following:

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SO CERTIFIED, this the 23rd day of July, 2008


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