

IN THE SUPREME COURT OF MISSISSIPPI

SMITH COUNTY SCHOOL DISTRICT

APPELLANT

VS.

CAUSE NO. 2008-CA 00830

LARRY CAMPBELL

APPELLEE

BRIEF OF APPELLEE

APPEAL OF THE FINAL DECISION OF THE SMITH COUNTY CHANCERY COURT
OVERTURNING THE SMITH COUNTY SCHOOL BOARD'S
NON-RENEWAL OF A LISCENSED EMPLOYEE RECOMMENDED BY THE SUPERINDENT

ORAL ARGUMENT NOT REQUESTED

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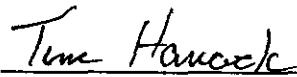
APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following 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. Mr. Hubert Hicks, President, Smith County School Board
2. Mr. Prentis Adcock, Member, Smith County School Board
3. Mr. Cliff Currie, Member, Smith County School Board
4. Mrs. Diane Henderson, Member, Smith County School Board
5. Mr. Randy Lowery, Member, Smith County School Board
6. Mr. Jimmy Hancock, Superintendent, Smith County School Board
7. Mr. Jeff Duvall, Taylorsville Attendance Center Principal
8. Mr. Warren Woodrow, Former Superintendent, Smith County School District
9. Mr. G. David Garner, Attorney for Smith County School District
10. Tim Hancock, Attorney for Appellant
11. Mr. Larry Campbell, Appellee
12. Honorable J. Larry Buffington, Chancery Judge, Smith County

Respectfully submitted,



Tim Hancock

Attorney for Appellee

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STATEMENT OF ISSUES

DID THE CHANCELLOR APPLY THE CORRECT STANDARD, WAS THE DECISION OF THE CHANCELLOR APPROPRIATE IN FINDING THAT THE DECISION OF THE SCHOOL BOARD WAS NOT BASED ON THE EVIDENCE AND WAS ARBITRARY AND CAPRICIOUS, AND DID THE CHANCELLOR IMPROPERLY CONSIDER EVIDENCE OUTSIDE THE RECORD?

STATEMENT OF THE CASE

Larry Campbell, the appellee herein, was employed as a teacher by the Smith County School District. His Principal and Superintendent recommended to the Smith County School Board that his contract should be renewed for the next school year. The School Board failed to approve the recommendation and Mr. Campbell requested a hearing as authorized by law. Three members of the School Board voted not to renew Mr. Campbell's contract, one voted to renew his contract, and one member abstained. (Page 16 of Record) Mr. Campbell appealed the decision to the Chancery Court of Smith County, and the Chancellor found that the decision of the School Board was not supported by any substantial evidence and the decision not to renew Mr. Campbell's contract was arbitrary and capricious. The case is now before this Court on the School Board's appeal of the decision of the Chancellor.

STATE OF THE FACTS

Mr. Larry Campbell, the appellee and widely known as Coach Taylor, was employed for 33 years by the Smith County School District and served as the Assistant Principal and boys' basketball coach at Taylorsville High School. His contract for the 2004-2005 school year provided for an annual salary of \$55,000. At the conclusion of the school year Mr. Smith elected to retire. However, the Principal and the

Superintendent asked him to return on a part time basis. He agreed to do so and the Smith County School Board approved a contract for the 2005-2006 school year at a salary of \$25,000. During the school year he performed the duties of lead teacher, he handled the disciplinary problems and issues for the Principal and Superintendent, and he coached the boys' basketball team.

In the spring of the 2006 school year the Principal recommended the renewal of Mr. Campbell's contract for the 2006-2007 school year. The Superintendent of the Smith County School District also recommended the renewal of Mr. Campbell's contract. The Superintendent submitted the names of all the individuals whom he recommended for employment to the School Board which removed Mr. Campbell's name from the list and the voted to renew the contract of everyone else recommended by the Superintendent, including other individuals who had contracts for part time service. One school board member moved to renew Mr. Campbell's contract, but the motion was not seconded.

Mr. Campbell requested a hearing before the School Board which appointed a Hearing Officer who conducted the hearing and received the evidence.

The testimony, more fully set forth in the ARGUMENT portion of this brief, was by the Principal, the Superintendent, the Athletic Director, Mr. Campbell, and Mr. Hicks, a member of the School Board that voted to renew Mr. Campbell's contract. The testimony indicated that Mr. Campbell performed as lead teacher, that he handled the disciplinary problems and issues for the Principal and the Superintendent, and he coached the boys' basketball team. The undisputed testimony was that Mr. Campbell was well respected by the students, by the community, by the faculty, and by the administration, that he performed the duties that he had performed in years previously, that he performed

all his duties, that no one had indicated a need for someone to be in the position full time, and that Mr. Campbell was present more than some teachers that worked under full time contracts.

The only evidence that was submitted to justify the nonrenewal of Mr. Campbell's contract was the testimony of Mr. Currie, the President of the School Board who testified that he had only been to Taylorsville High School two times, that he did not know Mr. Campbell, that he did not have any knowledge as to the assistance that Mr. Campbell provided to the Principal, that he did not know if Mr. Campbell was not at the school at any time that a full time person would be there, that he did not have any problems with Mr. Campbell's performance, and that he could not indicate any duties that a full time employee would perform that Mr. Campbell was not performing.

Mr. Currie also testified that Mr. Campbell was the only person that the Superintendent had recommended for renewal that had not been approved by the School Board and that the School Board had renewed the contract of the other people who had a contract for part time service, that the School Board had not had a recommendation to employed a person on a full time basis to perform the duties performed by Mr. Campbell, and that no person would be employed on a full time basis if not recommended by the Superintendent.

The Reverend Hicks, another member of the School Board, testified that he visited Taylorsville High School monthly, that Mr. Campbell was always performing his duties, that there had been no problem resulting from Mr. Campbell having a part time contract, that no one knows more about a teacher than the Principal, and the Principal had recommended the renewal of Mr. Campbell's contract.

The Report of the Hearing Officer stated that "Larry Campbell was serving as a "part time" employee although he was performing the same duties he performed when he was a full- time employee." (Page 12 Of Record) The Report also stated that "There is nothing in the record that reflects negatively on Mr. Campbell' job performance or character. Mr. Campbell's record with the Smith County School District is unblemished." (Page 13 of record)

The Report of the Hearing Officer and the transcript of the hearing were considered by the School Board with the result being one member voting to renew Mr. Campbell's contract, one member abstaining, and three members voting not to renew his contract. In doing so, the School Board stated that "The Board has no criticism of Mr. Campbell's job performance nor has he acted improperly in any way." (Page 15 of Record) The School Board simply stated that it desired to fill the position which had been held by Mr. Campbell with a full time employee and acknowledged that the school district did utilize some part time employees but does not have any other part time lead teachers, assistant principals and/or coaches. (Page 15 of Record) That finding is not in accordance with the record which shows, without contradiction, that a Deputy Superintendent, the person in charge of federal programs, and the music teacher were part time.

The Chancellor, in reviewing the record, found that the decision of the School Board was not supported by credible evidence and that the decision of the School Board was arbitrary and capricious. The case is now before this Court on an appeal by the Smith County School District.

SUMMARY OF ARGUMENT

After many years of serviced as a licensed teacher for the Smith County School District, Mr. Campbell elected to retire. The next year the Smith County School District requested that he return to the school and serve in a part time capacity. Mr. Campbell signed a contract to that effect as authorized by the Mississippi Public Employees' Retirement System. He performed well in that capacity and was employed as a lead teacher and also as part of his teaching contract he handled disciplinary matters for the Superintendent and Principal and coached the boys' basketball team.

The Principal of the Smith County School District made his recommendation to the Superintendent that Mr. Campbell's contract should be renewed for the next school year. The Superintendent made the same recommendation to the School Board. With the exception of Mr. Campbell, the School Board approved the recommendations of the Superintendent as to the reemployment of all those recommended, including other part time employees such as the Deputy Superintendent, the person over federal programs, and other individuals.

Unlike situations in which the Principal and/or Superintendent has recommended against the renewal of a contract, Section 37-9-17, Miss. Code, mandates that if a Superintendent recommends the employment of a particular person "unless good reason to the contrary exists, the board shall elect the employees so recommended."

Mr. Campbell performed all of his duties; he was respected by the students, by the faculty, and by the community. In fact, the record is undisputed that there was no question or concerns with Mr. Campbell's performance. The Hearing Officer found that "There is nothing in the record that reflects negatively on Mr. Campbell's job

performance or character. Mr. Campbell's record with the Smith County School District is unblemished." (Page 13 of Record) There was no evidence that the school district was having any financial difficulties or that there was a need for a reduction in force. The only reason given by the School Board to justify its position was that Mr. Campbell was part time. However, there was no evidence that the School Board had requested Mr. Campbell to fill the position full time or that the School Board would employ an individual full time unless requested by the Superintendent, and in fact, the School Board had voted to renew the contract of other part time personnel including the Deputy Superintendent, the person over Federal Programs, and others.

In fact, the Hearing Officer ruled that "There was no testimony that there were any problems at Taylorsville High School because Mr. Campbell was working 'part time'. The administration had no complaints with Mr. Campbell working part time." (Page 13 of Record)

The Chancellor did not consider any improper evidence, he applied the correct standard and properly found that the decision of the School Board was not supported by any substantial evidence and was both arbitrary and capricious (Page 32 of Record), and the decision of the Chancellor requiring the Smith County School Board to renew Mr. Campbell's contract for the 2006-2007 school year was correct and should be affirmed.

ARGUMENT

Mr. Larry Campbell, widely known as Coach Campbell, was employed for 33 years by the Smith County School District and served as the boy's basketball coach and

Assistant Principal at Taylorsville High School. His contract for the 2004-2005 school year provided for an annual salary of approximately \$55,000.00. (Page 88 of Record)

After twenty five years of service a school employee is entitled to retire and receive a monthly retirement check from the State of Mississippi's Public Employees Retirement System. Section 25-11-111, Miss. Code. Mr. Campbell decided to retire at the conclusion of the 2004-2005 school year. Section-25-11-127, Miss. Code allows an individual who has retired from the Public Employees' State Retirement System to continue to receive his monthly retirement check and to continue his employment on a part time basis.

The Superintendent of the Smith County School District and the Principal at Taylorsville High School requested that Mr. Campbell continue to work on a part time basis during the 2005-2006 school year, and he agreed to do so. The school board approved Mr. Campbell's contract for the 2005-2006 school year, and he was paid a salary of approximately \$25,000 to serve in a part time position. (Page 89 of Record)

The Superintendent of Education, Mr. Warren Woodrow, and Mr. Jeffery Duvall, the Principal of Taylorsville High School, recommended the renewal of Mr. Campbell's contract to the Smith County School District for the 2006-2007 school year. The Reverend Hubert Hicks, the member of the school board that represents the district in which Taylorsville High School is located, made a motion to renew Mr. Campbell's contract but the motion was not seconded, and Mr. Campbell was not offered a contract for the 2006-2007 school year.

The "Education Employment Procedures Law of 2001," is codified as Section 37-9-101, et seq., Miss. Code. Section 37-9-103, Miss. Code, states that the rights contained

therein pertain to any teacher, principal or other professional personnel that has been employed by a school district for two or more years. Section 37-9-111, Miss. Code, provides that any such school employee whose contract has not been renewed for the next school year is entitled to a hearing which is to be conducted before either the school board or a hearing officer appointed for that purpose.

As Mr. Campbell's contract was not renewed for the 2006-2007 school year he requested a hearing, and the school board appointed a Hearing Officer to hear the matter. Section 37-9-111, Miss. Code, provides that if the hearing is conducted before a hearing officer stenographic notes of the hearing are required and the school board is to consider the record made before the hearing officer. Section 37-9-101, Miss. Code established the standard that was required to have been met before the school district could vote to not renew Mr. Campbell's contract. The statute required that the decision to not renew Mr. Campbell's contract must be "a proper employment decision and not contrary to law," and it provided that in order to not renew Mr. Campbell's contract the decisions had "to be based upon valid educational reasons or noncompliance with school personnel policies." Section 27-9-111, Miss. Code states that the school board is required to make its decision based "solely upon the evidence presented at the hearing".

Mr. Campbell was granted a hearing before a Hearing Officer. The record was presented to the School Board for its decision, and the school board voted not to renew Mr. Campbell's contract for the 2006-2007 school year. Three members voted not to renew Mr. Campbell's contract, one member voted to renew his contract, and one member abstained. (Pages 10-16 of Record)

Section 37-9-113, Miss. Code allows for judicial review of the decision of the school board by way of an appeal to the Chancery Court, and the “scope of review of the chancery court in such cases shall be limited to a review of the record made before the school board or hearing officer to determine if the action of the school board is unlawful for the reason that it was (a) Not supported by any substantial evidence; (b) Arbitrary or capricious; or (c) In violation of some statutory or constitutional right of the employee.”

Cases usually before this Court concern situations in which the principal or superintendent have recommended that a teacher’s or administrator’s contract not be renewed. In this case, as shown by the testimony stated herein and as contained in the record, both the Principal of Taylorsville High School and the Superintendent of Education of the Smith County School District recommended that Mr. Campbell’s contract be renewed for the 2006-2007 school year.

Thus, this case is governed by Section 37-9-17, Miss. Code. which provides that on or before April 1 of each year “the principal of each school district shall recommend to the superintendent of the local school district the liscensed employees or noninstructional employees to be employed for the school involved except those licensed employees or noninstructional employees who have been previously employed and who have a contract valid for the ensuing school year. If such recommendations meet with the approval of the superintendent, the superintendent shall recommend the employment of such licensed employees or noninstructional employees to the local school board, and, unless good reason to the contrary exists, the board shall elect the employees so recommended.” (Emphasis added)

The record shows that at the hearing conducted by the Hearing Officer Mr. Warren Harold Woodrow, the Superintendent of Education for the Smith County School District testified that Larry Campbell was currently employed as the lead teacher at Taylorsville High School (Page 50 of Record) and coached the boy's high school basketball team (Page 50 of Record). The Superintendent testified that Larry Campbell had been employed by the School District for 33 or 34 years. (Page 51 of Record)

The Superintendent testified that Mr. Taylor had retired from his full time position prior to the 2005-2006 school year, and that he had recommended to the school board that Mr. Campbell be rehired for his current position for the 2006-2007 school year as lead teacher in charge of discipline along with other administrative duties. (Page 52 of Record)

Superintendent Woodrow gave the following testimony:

- Q. What was the basic difference in his duties between the time he was part-time and when he was full time?
- A. I cannot think of any difference in his duties. They remained the same.
- Q. Do you know of any duties he did not perform after becoming full time that he performed when he was full time?
- A. I think he performed the same duties.
- Q. Okay. And this past year while he was part-time, do you know what hours he was at the school?
- A. Coach would generally come in at 9:00 and work until—during basketball season sometimes until late in the evenings. He had practice and ball games, so it varied. But oftentimes, 9:00, 10:00 at night.
- Q. Have you had any complaints about him?
- A. No, sir.
- Q. And how would you evaluate his performance?
- A. He's a good employee, very loyal employee. He has the respect of his peers and the students.
- Q. How about his discipline?
- A. Good.

(Pages 53-54 of Record)

Superintendent Woodall also testified that the school board did renew the contracts of some other part time employees. (Pages 54-55 of Record)

The Superintendent also testified as follows:

Q. —employee? If they—if you have to hire someone else to take Mr. Campbell's place, you'll be dealing with an unknown. You won't know whether or not they'll turn out to be any good or not, do you?

A. Exactly right.

Q. And at the present time, you have an employee, Mr. Campbell, who you're satisfied with and is doing a good job; if that correct?

A. Yes, sir.

Q. Okay. You think Mr. Campbell was an asset to the school?

A. Yes, sir.

Q. Do you think he's an asset to the community?

A. Yes, sir.

Q. Is the school better off with his being there?

A. In my opinion.

Q. Is that yes?

A. Yes, sir.

(Pages 55-56 of Record)

Superintendent Woodall also testified that the school district also employed a part-time Assistant Superintendent that is in charge of federal programs and one part time teacher.

(Page 59 of Record)

Superintendent Woodall also testified:

Q. Is Mr. Campbell considered a principal, or Coach Campbell considered a principal?

A. He—I'm going to have to explain a little bit more. He had been employed for the last probably 10 or 12 years as an assistant principal at Taylorsville School. He had been filling that same role as a part-time person.

(Page 60 of Record)

Mr. Jeffrey Duvall testified and stated that he is employed as the Attendance Center Principal at Taylorsville High School. (Page 77 of Record) When asked about his knowledge of Mr. Campbell, he testified:

A. When I was employed before as a coach in '98 and '99, we coached together and worked together, and he was actually the assistant principal when I was a teacher. And I came back a year-and-a half ago and became the principal, and he was my assistant.

Q. Okay. What were his duties this year?

A. He helped with discipline. He was the basketball coach. Same things he did before he left, you know.

Q. Okay. Was there anything that he didn't do this year that he did last school year?

A. No.

Q. Okay. Well, tell me about his discipline. How did he conduct that? How did he carry that out?

A. Just in general, pretty much you could turn discipline over to him. If I had to, if I wasn't there, it was comfortable knowing he was there. He was—he was fair with all the kids. Went by the handbook. Did everything he was supposed to do.

He and I were a lot alike when it comes to our philosophy of discipline. I guess that's why we work so well together.

Q. Did you have any disciplinary problems with him being there as—

A. Say that again, now.

Q. Did his being there cause any disciplinary problems?

A. No, sir.

Q. Did it assist in discipline?

A. Yes, sir.

Q. How would you evaluate his actions regarding discipline?

A. I don't quite understand what you're—

Q. Okay. What kind of job did he do?

A. He did an excellent job.

Q. Okay. Did you ever have any complaints?

A. None.

Q. Okay. Did you ever have any problems because he wasn't fair?

A. No.

Q. Okay. How about his interaction with other faculty members, how was that?

A. Again, I think it was good. I never had a complaint from a teacher. They—they seemed to like the fact that he was there in the support system. Never had one negative comment about him from a staff member.

Q. Okay. Was he respected by the other staff?

A. Definitely.

Q. How about the kids?

A. Yes.

- Q. Okay. What do the kids think about Mr. Campbell?
- A. Have a little fear of him and a lot of respect for him.
- Q. Okay. Were his actions this year as a part-time employee really any different than when he was a full-time employee?
- A. No.
- Q. And so, you- is it fair to say you basically got full time service for part-time pay?
- A. Yes.
- Q. Okay. And you recommended him back?
- A. Yes, sir.
- Q. You think he is an asset to the school?
- A. Yes, sir.

(Pages 77-80 of Record)

Principal Duvall also testified as follows:

- Q. All right. And Coach Campbell's a very conscientious man, isn't he?
- A. Yes, sir.
- Q. And he's served this District with distinction for a long time, hasn't he?
- A. Yes, sir.
- Q. As so, he was going to fulfill his duties and responsibilities no matter how we classified him, part-time or full-time?
- A. Correct.

(Page 82 of Record)

Mr. Shannon White, the athletic director and head football coach at Taylorsville High School (Page 83 of Record) testified that Mr. Campbell coached the varsity basketball team. (Page 84 of Record) Mr. White was asked about Mr. Campbell and testified as follows:

- Q. Okay. How would you evaluate his coaching at the high school?
- A. I think he is an outstanding coach.
- Q. Okay. And did you see him in his day-to day activities there at the school?
- A. Yes.
- Q. What would you say as far as his respect among the other teachers?
- A. I think it's very good.
- Q. Okay. What about the students?
- A. I think it's outstanding?
- Q. Okay. Did you have any complaints about him?
- A. None.
- Q. Okay. And would you like to see him back next year?

A. Absolutely.

Q. Even in a part-time position, the same position that he's holding this year?

A. Yes.

(Pages 84-85 of Record)

Mr. Larry Campbell testified that he had been employed by the Smith County School District for 34 years, had worked as a science teacher, coached football, basketball, track, and as an administrator, and had been employed at Taylorsville High School for approximately 18 years, had worked full time through last year. (Page 86 of Record) Mr. Campbell testified that his son, Jason Campbell, had been drafted into the NFL, and he wanted to spend some quality time with him. (Page 87 of Record) But, Mr. Campbell testified that he was asked to come back by Principal Duvall because he had a great relationship with the faculty and he had something to offer to the students.

When asked about his duties this year, Mr. Campbell testified:

A. I—I worked as lead teacher, assistant principal, and head boy's basketball coach. I'd come in at 9:00 in the morning; serve all the way through the day. And when basketball season started, we'd spend afternoons—we start practice at 1:00, practice to about 4:30 every afternoon.

Q. Okay. And when you're there in the morning, what are you doing?

A. Monitoring the halls and discipline problems of the school.

Q. Okay. Are you basically in charge of discipline at the school?

A. Yes, sir.

Q. Okay. And have you had any complaints about the discipline?

A. Not that I know of.

Q. How you get along with the faculty?

A. Great.

Q. How do you get along with the students?

A. Great as a whole. I think we have a great relationship.

Q. Okay. Now, what was your salary last year?

A. Pretty close to 55,000.

Q. What is it this year?

A. 25,000.

Q. Okay. So you're basically working for half the pay that you made last year?

A. That's correct.

Q. Are you spending more than half of the time there?

A. I'm spending more than half of the time there.

- Q. Okay. How much less time are you spending at the school this year than you were last year?
- A. Well, if you come in—usually we'd come in at 7:00 at full time. And, of course, the students, they don't come in to—well, the duties start at 7:30. But coming in at 9:00, you know, that's the only time that I have different.
- Q. What time do classes start?
- A. Class start at 7:55.
- Q. Okay. So you're really only missing one hour of classes?
- A. Right.
- Q. Okay. Does that still give you time to take care of disciplinary problems throughout the day?
- A. Yes.
- Q. Okay. And do other teachers refer disciplinary problems to you?
- A. All the time.
- Q. Do you have adequate time to perform those duties between 9:00 and when you leave for the day?
- A. I have adequate time. Usually I work from 9:00 to 2:30, but, you know, I'm there at the school. And other than needing to just take off, I'm there for the duration of the time. I just help out
- Q. What time do classes end?
- A. Classes end at 2:55
- Q. And what time is basketball practice?
- A. We start at 1:30.
- Q. And when does it end?
- A. End about 4:30 in the afternoon.
- Q. Okay. So you're actually there longer than most of the teachers?
- A. Right.
- Q. Okay. You go to the games at night, of course?
- A. Of course. Right.
- Q. Okay. What time are you usually at the games?
- A. We usually start our games at 6:00.

(Pages 88-91 of Record)

Mr. Campbell also testified that nobody had ever expressed any concerns about the number of hours he was at the school, and none of the school board members had ever told him they wanted him to be full time. (Page 92 of Record) He also testified that none of the school board members had ever come to the school to watch what he was doing and none ever came to evaluate him. (Page 93 of Record) Mr. Campbell also testified that the school board had renewed the part time contract of Ms. Priscilla Magee,

the Assistant Superintendent, and Ms. Margaret Hoover, the music teacher. (Pages 93-94 of Record)

Mr. Campbell also testified that 340 citizens had signed a petition requesting that he remain in his present position. (Pages 96-97 of Record) Mr. Campbell also testified that he is black, that the school board is made up of four white and one black member, and that the other individuals who were brought back on a part time basis are white. (Page 94 of Record)

The only evidence presented to the School Board in an attempt to justify the decision not to accept the recommendation of the Superintendent and to renew Mr. Campbell's contract was the testimony Mr. Cliff Currie, the President of the Smith County School Board, who testified that he thought the school board did not accept the Superintendent's recommendation to rehire Mr. Campbell because they wanted a full-time employee to serve the students. (Page 63 of Record) Mr. Currie testified that he had been on the school board for a little over a year and he did not personally know Mr. Campbell. (Page 63 of Record) Mr. Currie testified that he did not go to Taylorsville High School very often and had probably been to it twice since becoming a school board member and did not talk to Mr. Campbell on those occasions. (Page 64 of Record) Mr. Currie also testified that he did not have any personal knowledge as to how Mr. Campbell helps the Principal. (Page 65 of Record)

Mr. Currie also testified as follows:

Q. I'm asking you of your own personal knowledge, when is he not there that full time person would be there?

A. Well, I can't answer that.

Q. Okay. What duties is he not performing that someone in a full-time position there would be performing, to your own personal knowledge?

- A. We have no problem with Mr. Campbell's performance. We just feel that we need somebody there full-time that's there all the time, from opening of school to the end of school.

(Page 66 of Record)

Mr. Currie also testified that since he had been on the school board Mr. Campbell was the only person that had been recommended by the Superintendent that the board had not renewed their contract. (Page 71 of Record) Mr. Currie also testified that the board had rehired other people who served on a part time basis. (Page 72 of Record)

Mr. Currie also testified:

- Q. At the present time, do you have any recommendation from the Superintendent to hire a full-time assistant principal at Taylorsville High School?
- A. No, sir.
- Q. Okay. And without that recommendation, you won't be hiring as assistant principal, will you?
- A. That's correct.
- Q. Okay. So if you say that you're not going to renew Mr. Campbell's contract because he's part-time and you want a full-time person there, in all likelihood, if the Superintendent doesn't recommend somebody full-time, you're not going to have anybody full-time, are you?
- A. Well, all we can do is request the Superintendent that we want someone. That's all we can do. And he has to recommend it.

(Page 75 of Record)

That Mr. Curry's testimony did not present evidence sufficient to establish good reason not to renew Mr. Campbell's contract is evident by the testimony of the Reverend Hubert Hicks, another member of the school board, who testified that he had visited Taylorsville High School probably on a monthly basis and Mr. Campbell was always there carrying on his duties. (Page 101 of Record) The Reverend Hicks testified that there was no problem because Mr. Campbell had a part time contract. (Page 103 of

Record) He did not know of any problem the school had suffered because Mr. Campbell had a part time contract. (Page 103 of Record) Reverend Hicks also testified that no one knows more about a teacher than the Principal and the Principal had recommended that Mr. Campbell be reemployed, and he testified that board members do not have any better or more knowledge as to how a teacher or administrator is performing his job than the Superintendent, and the Superintendent had also recommended that Mr. Campbell be reemployed. (Page 104 of Record)

The Reverend Hicks also testified that he represented that part of Smith County where the Taylorsville School is located, (Page 107 of Record) that he made a motion to reemploy Mr. Campbell, but his motion did not receive a second, and a vote was not taken as to whether Mr. Campbell's contract would be renewed. (Page 100 of Record)

The Principal and the Superintendent of Education for the Smith County School District both recommended to the school board that Mr. Campbell's contract be renewed. Section 37-9-17, Miss. Code states that under those circumstances the school board is required to reemploy Mr. Campbell "unless good cause to the contrary exists." Even if the Principal and Superintendent had not recommended the reemployment of Mr. Campbell he would be entitled to reemployment unless the record shows that his "nonreemployment is a proper employment decision and not contrary to law" and, additionally, the statute requires that a decision by the school board not to renew Mr. Campbell's employment must be "based upon valid educational reasons or noncompliance with school district personnel policies" Section 37-9-101, Miss. Code.

Mr. Campbell is not alleged to have violated any district personnel policies. In fact, Mr. Currie, a member of the school board who voted not to renew Mr. Campbell's

contract testified that “We have no problem with Mr. Campbell’s performance.” (Page 66 of Record)

Mr. Campbell does the same job and performs the same duties he did when he was employed full time, and the school district saved \$25,000 by his employment on a part time basis. There was no testimony as to any duties that he did not perform. The only difference between in his part time employment is that he arrives at the school at 9:00 a.m. and classes start at 7:55, he did not have a class during that time, he stayed later than most other school personnel, he worked longer hours than most teachers, he is an asset to the students, the faculty, the school, and the community, and the board voted to renew the contracts of other part time employees. That fact alone renders the vote of the majority of the members of the Smith County School Board to nonrenew the contract of Mr. Campbell arbitrary and capricious.

The fact that Mr. Campbell is black, that the one black member of the School Board voted to renew his contract, that four members of the School Board are white, that three of the four white School Board members voted not to renew Mr. Campbell’s contract, and that the white school members voted to renew the part time contracts of all white employees certainly renders their decision suspect.

The appellant’s reliance on Calhoun County Board of Education v. Hamblin, 360 So.2d 1236 (Miss. 1978) is misplaced. First, in that case the Superintendent did not recommend and in fact recommended against the renewal of a teacher’s contract. In the case now before this Court, the Principal, the Athletic Director, and the Superintendent all recommended the renewal of Mr. Campbell’s contract. Second, because the Principal recommended to the Superintendent that Mr. Campbell’s contract should the

renewed and the Superintendent recommended the renewal to the school board, a different standard applies, and this case falls within the purview of Section 37-9-17, Miss. Code, which provides that if such recommendations meet with the approval of the principal and has the approval of the superintendent, the superintendent shall recommend the employment of such licensed employees or noninstructional employees to the school board, and, unless good cause to the contrary exists, the board shall elect the employees so recommended. ” (Emphasis added) It is submitted that the statutory language, unlike that in situations in which the Principal and Superintendent do not recommend the renewal of an existing contract, places the burden of proof on the school board, a burden which, as shown elsewhere in the brief, the school board did not meet. Third, the above referenced case was based upon the “Public School Fair Dismissal Act of 1976” and this Court stated in the above cited case that “the lower court apparently was of the opinion, that the burden was on the School Board to show good cause before denying reemployment to the employee” In construing the “Public School Dismissal Act of 1976” this Court stated that “We hold that , under the pertinent statutes applicable here, appellee had a platform in which to defend his good name, reputation, honor or integrity. In summary, the intent of the legislature was to grant a teacher the limited right to notice and an opportunity to be heard by the School Board, e. g., to present the employee’s position but not to place restrictions on what decision the School Board might make.”

The “Public School Fair Dismissal Act” was repealed in 1997 and replaced by the “School Employment Procedures Laws of 1977,” Laws 1977, Chapter 489 which was repealed in 2001 and replaced by the “Education Employment Procedures Law of 2001” now codified as Section 37-9-101, et seq., the legislation that was in place at the time of

the nonrenewal of Mr. Campbell's Contract. Section 37-9-101, Miss. Code (as amended) reads:

It is the intent of the Legislature to establish procedures to provide for accountability in the teaching profession; to provide a mechanism for the nonrenewal of licensed educational employees in a timely, cost-effective and fair manner; to provide public school employees with notice for not offering an employee a renewal of his contract; to provide an opportunity for the employee to present matters in extenuation or exculpation; to provide employees with an opportunity for a hearing to enable the board to determine whether the recommendation of nonemployment is a proper employment decision and not contrary to law and to require nonrenewal decisions to be based upon valid educational reasons or noncompliance with school district personnel policies. It is the intent of the Legislature not to establish a system of tenure.

The statute, by its own language, refers to situations in which a superintendent makes a recommendation to not renew the contract of licensed school personnel. That is not the situation in the instant case. In the case now before this Court, the Principal and Superintendent did recommend the renewal of Mr. Campbell's contract, and Section 37-9-17, Miss. Code, mandates that unless the record before the school board proves "good reason to the contrary exists, the board shall elect the employees so recommended." In referencing Section 37-9-17, Miss. Code, this Court has specifically stated that "The statute mandates that the Board accept the superintendent's recommendation unless good cause exists to the contrary." Smith v. Dorsey, 530 So.2d 5 (Miss. 1988).

In this case the School Board did not institute a policy relating to the employment of licensed personnel but dealt only with Mr. Campbell while renewing the contracts of other part time personnel such as the Deputy Superintendent and the music teacher. This Court has cautioned against individualized decisions made by the School Board noting that "school boards should not be involved in day-to-day personnel activities, but rather should be policy making bodies." Smith v. Dorsey, 530 So.2d 5 (Miss. 1988).

Even in situations in which the Superintendent does not recommend the renewal of the contract of a licensed employee, the employee is entitled to a renewal of his contract unless the “nonemployment is a proper employment decision and not contrary to law” and it requires that a decision to nonrenew a contract, even when the Superintendent has recommended that the contract not be renewed “to be based upon valid educational reasons or noncompliance with school district personnel policies.”

The appellant does not and has never contended that the appellee, Mr. Campbell, failed to comply with any school district personnel policy. In fact, the School Board stated in its order in which it voted not to renew his contract that “The Board has no criticism of Mr. Campbell’s job performance nor has he acted improperly in any way.” (Page 15 of Record)

The decision of the school board was not supported by substantial evidence and was both arbitrary and capricious. “An act is arbitrary when it is not done according to reason or judgment, but depending on will alone.” Burks v. Amite County School District, 708 So.2d 1366 (Miss. 1998). “Capricious is defined as any act done without reason, in a whimsical manner implying either a lack of understanding of or a disregard for the surrounding fact and settled controlling principals.” Id.

Mr. Currie testified that since he had been on the school board Mr. Campbell was the only person that had been recommended by the Superintendent that the board had not renewed their contract. He also testified that the board had rehired all other individuals whom the Superintendent had recommended that had been employed on a part time basis. Ironically, all the part time personnel who had their contract renewed were white. The School Board did not have or adopt any policy relating to part time employees and the

decision to treat Mr. Campbell differently is certainly suspect and is an indication that the decision was arbitrary and capricious.

The Smith County School Board, the appellant herein, contends that the decision of the Chancellor should be reversed because of a sentence in the written opinion which reads: "Because of the changes made in the retirement system for school personnel in the State of Mississippi it has become common practice, and the Court takes judicial notice, that school districts around the state have employees who retire after 45 days and then rehired on a half-time salary. This has allowed school districts to retain good, qualified educators and coaches with many years experience at an amount less than what a new person in the system would receive."

Rule 201, Mississippi Rules of Evidence provides that a court may take judicial notice of facts which are not subject to reasonable dispute because they are known within the territorial jurisdiction of the court or of a fact that is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

It is common knowledge and has repeatedly been reported on television and in newspapers that there is a present shortage of at least 2500 hundred licensed teachers in Mississippi and that thousands more are eligible to retire at any time. The Legislature has noted the "critical shortage" of teachers in enacting the "Critical Needs Scholarship Program", Section 37-159-3, et. seq., Miss. Code. See also Section 37-149-7 Miss. Code; Section 37-19-7, Miss. Code; Section 37-151-10, Miss. Code; 37-143-11, Miss. Code also recognizing a teacher shortage in Mississippi. Public school teachers participate in the Public Employees' Retirement System, and after 25 years of service they are entitled by law to be reemployed and to "work up to one-half (1/2) of required

number of working days or up to one-half of the equivalent number of hours and receive up to one-half (1/2) for the salary of the position.” Section 25-11-127, Miss. Code. The statement of which the appellant complains was one for which the Chancellor could take judicial notice.

Furthermore, Rule 201 provides that a party, upon timely request, is entitled to an opportunity to be heard as to the propriety of taking judicial notice, even after judicial notice has been taken, and the tenor of the matter noticed. The appellant did not proffer any evidence to the contrary to the statement for which it now complains, and the issue is procedurally barred on appeal as a Chancellor cannot be held in error for taking judicial notice where a party fails to avail itself of the opportunity to request a hearing to proffer evidence to the contrary. McWilliams v. McWilliams, 994 So.2d 841,845 (Miss. 2008), Kennedy v. Kennedy, 662 So.2d 179, 183 (Miss. 1995).

Moreover, the statement of which the appellant complains was not critical to the decision of the Chancellor and was more in the nature of dicta. It did not result in any prejudice to the appellant, the ruling would have been the same, and the Chancellor’s decision should be affirmed.

The appellant is also critical of the statement of the Chancellor relating to whether Section 37-9-101, Miss. Code, which provides licensed school employees with the right to a hearing, applies to such personnel having a contract for part time service. The appellant provided Mr. Campbell with a hearing and has never contended that Mr. Campbell was not entitled to the rights and protection afforded by Section 37-9-17 and Sections 37-9-101, et. seq., and that issue is not now presented and should not now be considered. As stated by this Court in Desoto County School Board v. Garrett, 508 So.2d

1091 (Miss. 1987): "Where assignments of error are unsupported by argument or authority, we do not as a general rule consider them."

Further, the statute refers to "licensed employees," It makes no distinction between full time and part time employees, and Mr. Campbell is entitled the full protection of the statute.

As the Superintendent recommended the renewal of Mr. Campbell's contract to the School Board this case falls with the statutory requirements of Section 37-9-17, Miss. Code. "The statute mandates that the Board accept the superintendent's recommendation unless good cause exists to the contrary. Smith v. Dorsey, 530 So.2d 5 (Miss. 1988).

Good cause was not shown for the failure to renew Mr. Campbell's contract, there was no policy regarding contracts for people working part time, Mr. Campbell was treated differently than other employees have contracts for part time service, there was no evidence to support the decision not to renew his contract, the decision not to renew his contract was arbitrary and capricious, and the decision of the Chancellor should be affirmed.

CONCLUSION

The decision not to renew Mr. Campbell's contract was arbitrary and capricious and was not supported by any substantial evidence, was not based on any valid educational reason, and the decision of the Chancellor should be affirmed.

Respectfully submitted

A handwritten signature in black ink that reads "Tim Hancock". The signature is written in a cursive, flowing style.

Tim Hancock
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CERTIFICATE OF SERVICE

I certified that I have this day mailed, via the United Postal Service, postage prepaid, a true and forging copy of the Memorandum of Law filed on behalf of Larry Campbell to:

Honorable J. Larry Buffington
Chancery Court Judge
P.O. Box 924
Collins, MS 39428-0924

David Garner, Esq.
P.O. Box 789
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This the 5th day of February, 2009.



Tim Hancock
Attorney for Larry Campbell