

IN THE SUPREME COURT OF MISSISSIPPI

SMITH COUNTY SCHOOL DISTRICT

APPELLANT

VS.

CAUSE NO. 2008-CA-00830

LARRY CAMPBELL

APPELLEE

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BRIEF OF APPELLANT

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APPEAL OF THE FINAL JUDGMENT OF THE  
SMITH COUNTY CHANCERY COURT  
OVERTURNING THE SMITH COUNTY SCHOOL BOARD'S  
NON-RENEWAL OF A PART TIME EMPLOYEE CONTRACT

ORAL ARGUMENT IS NOT REQUESTED

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APPELLEE

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed person 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 disqualifications 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 D. Hancock, Superintendent, Smith County School District.
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 the Smith County School District.
10. Honorable J. Larry Buffington, Chancery Judge, Smith County, Mississippi.
11. Mr. Larry Campbell, Appellee.
12. Mr. Tim Hancock, Attorney for Appellee.

Respectfully submitted,



G. David Garner  
Attorney for Appellant

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### **STATEMENT OF ISSUES**

FIRST ISSUE: The Chancery Court failed to apply the proper standard of review in reaching its decision to reinstate Mr. Campbell to his part time position at Taylorsville Attendance Center.

SECOND ISSUE: The Chancery Court erred in reversing the School Board's decision because the Board's decision was supported by substantial evidence; was not arbitrary or capricious; nor was it in violation of some statutory or constitutional right of Campbell's.

### **STATEMENT OF CASE**

The Chancery Court of Smith County, Mississippi overturned the Smith County School Board's nonrenewal of Campbell's part time contract as a lead teacher at Taylorsville Attendance Center. (R.E. 2) Feeling aggrieved, the School Board appealed the lower Court's decision.

### **STATEMENT OF FACTS**

Larry Campbell was a long term certified employee of the Smith County School District who retired in 2005. (H. T. at 43) In school year 2005-2006 Mr. Campbell returned to the District as a part time lead teacher in charge of discipline and other duties. (H. T. at 7 and 8). He was the only part time certified employee in the district with duties as lead teacher, assistant principal, and coach. (H. T. at 15 and 16). At the time for contracts to be renewed the Superintendent recommended to the School Board that Mr. Campbell's contract as a part time employee, with the same duties, be renewed for the 2006-2007 school year. (H. T. at 8 and 9). When no member of the Board seconded the motion to accept the Superintendent's recommendation, the motion died and Mr. Campbell's contract was effectively non-renewed. (H. T. at 19, 20) The Board explained to the Superintendent that the position needed to be a full time

position. ( H. T. at 12, 20)

Mr. Campbell was given the proper notice of his non-renewal and thereafter he requested a hearing. Upon notice of Mr. Campbell's request, the Board appointed Honorable John G. Compton as the Hearing Officer, and a hearing was held March 10, 2006. Following the hearing, the Hearing Officer made a written report to the School Board.

After due consideration, the Board found that the non-renewal was proper in that (1) Mr. Campbell was recommended by the Administration for a part time position as lead teacher for Taylorsville Attendance Center in charge of discipline and other administrative duties and also coaching boys' basketball; (2) the District does not have any other part time lead teachers, assistant principals and/or coaches; and (3) the Board, in order to better serve students, desired to fill the position for which Mr. Campbell was recommended with a full time employee who is certified for the responsibilities of that position. The Board specifically held in its ruling that it had no criticism of Mr. Campbell's job performance nor had it found that he acted improperly in any way. ( R. E. 9).

After learning the Board's decision, Mr. Campbell petitioned the Chancery Court for review. J. Larry Buffington, Chancery Judge, on January 30, 2008, entered Judgment for Mr. Campbell. Feeling aggrieved the Board appeals the Chancery Court's Final Judgment.

### **SUMMARY OF ARGUMENT**

In its Final Judgment the lower court considered matters that were beyond the record in violation of the standard of review which limits the court to the record made before the school board or hearing officer. ( R. E. 2). Because it exceeded the permissible scope of review by considering matters such as retirement, the approach of other school districts, and whether or not

Campbell would be offered a full time employment contract, the lower court's ruling should be reversed. Amite County School District. v. Floyd, 935 So.2d 1034, 1039 (Miss. App. 2005).

The School Board made it very clear from the meeting when Mr. Campbell's part time contract was recommended for renewal that it believed that the position should be full time. ( H. T. at 12, 20). There were no other part time employees in the district with similar duties and responsibilities. (H. T. at 15). The Board felt that a full time position in the best interest of the students. ( H. T. at 20). This decision was supported by substantial evidence; was not arbitrary or capricious; and was not in violation of some statutory or constitutional right of the employee. Accordingly, pursuant to Section 37-9-113 (3), the lower court should have affirmed the School Board's nonrenewal of Campbell's part time contract.

### **ARGUMENT**

**A. FIRST ISSUE:** The Chancery Court failed to apply the proper standard of review in reaching its decision to reinstate Mr. Campbell to his part time position at Taylorsville Attendance Center.

Section 37-9-113 (3) of Mississippi Code Annotated sets forth the Chancery Court's scope of review. It provides in relevant part:

(3) 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.....

The Court's Final Judgment on its face reveals that the Chancery Judge clearly went beyond the "record made before the school board or hearing officer". For example, the Final Judgment makes the following references to matters that were improper for the Court to

consider:

1. On the second unnumbered page of the Final Judgment in the third paragraph the Court writes, "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 and are after 45 days then rehired on a half-time basis at half-time salary. This has allowed school districts to retain good, qualified educators and coaches with many years of experience at an amount less than what a new person in the system would receive."
2. On the third unnumbered page of the Final Judgment in the first paragraph the Court writes, "The second course of action is whether once they have established that position for a part-time employee, can they fail to renew solely based on the Board stating at the non-renewal hearing that they wanted to make the part-time position a full time position and, if they did, would the same have to have been offered to Mr. Campbell."

( R. E. 2).

These issues dealing with retirement; what other districts around the states do; and whether or not the District would offer Mr. Campbell a full time position were never raised by either party in the record and thus were improper for the Court to consider.

In Amite County School Dist. v. Floyd, 935 So.2d 1034, 1039 (Miss.App., 2005), the Court held, "As an initial matter, we find that the chancellor improperly looked beyond the record before the school board in making his ruling. Section 37-9-113 (3) limits the chancery



court to a review of the record made before the school board or hearing officer in determining whether the board's decision was arbitrary or capricious. The review is limited to the record made before the school board or hearing officer. We must apply the same standard of review." citing, Harris v. Canton Separate Pub. Sch. Bd. of Educ., 655 So.2d 898, 901 (Miss. 1995).

Because the lower court failed to apply the correct standard of review in reaching its decision, the lower court's Judgment should be reversed.

**B. SECOND ISSUE:** The Chancery Court erred in reversing the School Board's decision because the Board's decision was supported by substantial evidence; was not arbitrary or capricious; nor was it in violation of some statutory or constitutional right of Campbell's.

The lower court seems to place emphasis on the fact that Mr. Campbell was a good employee. That fact is not in dispute. The reason for Mr. Campbell's nonrenewal had to do with his being recommended for a part time position when the Board desired to have a full time employee performing the duties for which Mr. Campbell was assigned.

In accordance with Section 37-9-113 of the Mississippi Code Annotated, the Chancery Court shall only overturn the decision of the School District if the decision 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. The Courts have held, "In cases of nonrenewal, the school board is required only to demonstrate that a "demonstrable reason" exists for the decision not to renew. Calhoun County Bd. of Educ. v. Hamblin, 360 So.2d 1236, 1240 (Miss. 1978).

Cliff Currie testified that the Board wanted a full-time employee to "better serve the students." (H. T. at 20, 27, and 29). The Superintendent testified that when the recommendation to renew Mr. Campbell's contract was made at a regular meeting of the Board that no member

would second the motion to accept his recommendation and that he was told by the Board that the position should be full time. ( H. T. at 12, 19, and 20). The demonstrable reason was that the school board wanted the full-time employee to better serve the students. Certainly wanting a full time employee in the position with the array of duties assigned to Mr. Campbell was a sound, reasoned judgment. The district had no other such employees. (H. T. 15). This decision was clearly not arbitrary or capricious.

Likewise the Board's decision was not in violation of some statutory or constitutional right of the employee. The district fully complied with Section 37-9-109 of the Mississippi Code in providing notice and an opportunity to be heard at a fair and impartial hearing while being represented by legal counsel. The lower court's decision was not based on a violation of these rights but rather on the actions of the Board to hire a full time employee over a part time employee. The lower court seems to make some conclusion that once the district hires someone on a part time basis then it cannot at a later date change the position to full time employment. Such a position sounds of tenure which Section 37-9-101 specifically states that "the intent of the Legislature is not to establish a system of tenure".

The substantial evidence that the lower court finds to be lacking is found in the record wherein the Board President clearly indicated the desire of the Board when he testified that no second was made to the motion to renew the part time contract of Mr. Larry Campbell. ( H. T. at 19). The substantial evidence is that the Board wanted a full time position filled with a full time employee.

### **CONCLUSION**

Appellant Smith County School Districts seeks the reversal of the Chancery Court's Final

Judgment overturning the School Board's nonrenewal of Mr. Campbell's part time contract and the issuance of a Judgment affirming the School Board's decision to nonrenew Mr. Campbell's part time contract.

Respectfully submitted,

**SMITH COUNTY SCHOOL DISTRICT,  
APPELLANT**

A handwritten signature in cursive script, appearing to read "G. David Garner".

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CERTIFICATE OF SERVICE

The undersigned counsel of record for Appellant does hereby certify that I have this day mailed via first class mail, postage prepaid, a true and correct copy of Appellant's Brief to the following:

Honorable J. Larry Buffington  
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Post Office Box 924  
Collins, Mississippi 39428-0924

Mr. Tim Hancock  
Attorney for Appellee  
Post Office Box 963  
Jackson, Mississippi 39205

This the 17<sup>th</sup> day of November, 2008.



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G. DAVID GARNER