

IN THE SUPREME COURT OF MISSISSIPPI

SMITH COUNTY SCHOOL DISTRICT

APPELLANT

VS.

CAUSE NO. 2010-CA-00681

LAURA SHONTELLE BARNES

APPELLEE

BRIEF OF APPELLANT

ORAL ARGUMENT NOT REQUESTED

G. DAVID GANRER, MSB NO. [REDACTED]
ATTORNEY FOR APPELLANT
POST OFFICE BOX 789
RALEIGH, MISSISSIPPI 39153
(601) 782-9090

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of the 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. Mrs. Dianne Henderson, President, Smith County School Board.
2. Mr. Prentis Adcock, Member, Smith County School Board.
3. Mr. Randy Lowery, Member, Smith County School Board.
4. Mr. Hubert Hicks, Member, Smith County School Board.
5. Mrs. Renee Waits, Member, Smith County School Board.
6. Mr. Jimmy D. Hancock, Superintendent, Smith County School Board.
7. Mr. Jeff Duvall, Taylorsville Attendance Center Principal.
8. Mrs. Yvonne Dees, Taylorsville Elementary Principal.
9. Mrs. Laura Shontelle Barnes, Appellee.
10. Mr. Eugene C. Tullos, Attorney for Smith County School Board.
11. Mr. G. David Garner, Attorney for Smith County School District.
12. Honorable Joe D. Walker, Chancery Court Judge, Smith County, Mississippi.

Respectfully submitted,



G. DAVID GARNER
Attorney for Appellant

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STATEMENT OF ISSUE

The Chancery Court of Smith County, Mississippi erred in reversing the Smith County 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 Barnes.

STATEMENT OF THE CASE

The Chancery Court of Smith County, Mississippi overturned the Smith County School Board's termination of Barnes' contract as a certified employee at Taylorsville Elementary School. (RE 2) Feeling aggrieved, the School Board appeals the lower Court's decision.

STATEMENT OF FACTS

Laura Shontelle Barnes (Barnes) was a certified employee teaching first grade at Taylorsville Elementary in the Smith County School District. (HT 7) On May 7, 2009 Ms. Yvonne Dees, Elementary Principal, received reports that Barnes was demonstrating unusual and abnormal behavior in that she was lying on the floor of her classroom, her eyes were closed, and her classroom lights were out all while she had children in her classroom. (HT 9 and 10) Barnes would later admit this behavior (HT 10) but would not classify her behavior as abnormal or unusual even though she stated that she had never demonstrated such behavior prior to May 6, 2009. (HT 52)

Barnes testified that she was in pain on May 6 due to a cyst on her ovary. (HT 39) She admitted that she went home on May 6 and took pain medication (HT 47) prescribed for tooth pain. (HT 56) Despite her debilitating pain, she did not go to the doctor or seek medical

treatment for the pain which she complained of on May 6. (HT 44 and 47)

Dees reported Barnes' behavior and her findings to Mr. Jeff Duvall, Attendance Center Principal. (HT 9, 13, and 22) Mr. Duvall conferred with Assistant Superintendent Magee (HT 29) and the decision was made to require Barnes to submit to a drug test (HT 25) pursuant to the District's Drug Testing Policy. (HT 25 RE 4)

On May 7, 2009, Barnes returned to school and was informed that based on her behavior and reasonable suspicion she would be required to submit to a drug test. (HT 25) Barnes was upset but agreed to submit to the test. (HT 11) While traveling with other school personnel to the testing facility, Barnes received a phone call from her attorney and, after conferring with her attorney, refused to submit to a drug test. (HT 11 and 24) Barnes at all times was aware of the District's drug testing policy. (HT 49)

Based upon Barnes' actions and after conferring with other administrators, Superintendent Hancock terminated Barnes for her refusal to submit to a drug test when requested to do so upon reasonable suspicion. (HT 31; RE 3 and 14) Notice was given to Barnes of her termination and she elected to have a hearing before the Smith County School Board. (RE 3) A hearing was held on or about July 17, 2009 and the Board after due consideration entered its order affirming Barnes' termination. (RE 12)

After learning of the Board's decision, Barnes petitioned the Chancery Court for review. Joe D. Walker, Chancery Court Judge, on March 10, 2010, entered Judgment for Barnes. (RE 2) Feeling aggrieved the Smith County School Board appeals the Chancery Court's Final Judgment.

SUMMARY OF THE ARGUMENT

The Chancery Court erred in reversing the Board's termination decision since its order was based on substantial evidence, was not arbitrary or capricious; or was not in violation of some statutory or constitutional right. *Miss. Code Ann. 37-9-113(3)(a)-(c)*. The facts are undisputed that Barnes on the subject day was behaving as she never had in the past (HT 52) and that her behavior was such as to cause Administrators to reasonably suspect she may be using drugs. (HT 25) Barnes was requested to submit to a drug test and she refused. (HT 11 and 24) Her refusal under the terms of the District's policy warrants discipline up to and including immediate termination of employment. (RE 6)

Given the undisputed facts, the clear language of the policy, and the exercise of all of her statutory and constitutional rights, the Board's decision was lawful and should have been affirmed by the Chancery Court.

ARGUMENT

Smith County School District may terminate a certified employee for incompetence, neglect of duty, immoral conduct, intemperance, brutal treatment of a pupil or other good cause pursuant to Section 37-9-59 of the *Mississippi Code Annotated*. This statute further provides that the certified employee be provided notice of the charges warranting termination and given the opportunity to a due process hearing before the school board. *Id.*

Barnes was terminated for her failure to submit to a drug test based upon reasonable suspicion pursuant to the District's drug testing policy. (RE 3) She was so advised and upon her request was afforded a due process hearing before the Board. (HT 1-61) At the hearing, Barnes admitted that her behavior was different from any other time prior to the subject date (HT 52),

that she was aware of the District's drug testing policy (HT 49), and that she refused the drug test (HT 11 and 24). Having heard all of the evidence presented by the Administration and Barnes, the Board issued its order of terminating Barnes for her failure to submit to a drug test. (RE 12)

Barnes exercised her right of judicial review by appealing the Board's decision to the Chancery Court of Smith County.

Miss. Code Ann. Section 37-9-113(3)(a)-(c) sets forth the standard of review of the Chancery Court in this matter:

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.

The Chancery Court erred in reversing the Board's decision since the Board's decision was supported by substantial evidence. "Substantial evidence means more than a scintilla or a suspicion." *St. Dominic-Jackson Mem'l Hosp. v. Miss. State Department of Health*, 910 So. 2d 1077, 1082 (Miss. 2005) (quoting *Miss. Department of Health v. Natchez Cemty. Hosp.*, 743 So. 2d 973, 977 (Miss. 1999)).

There was much more than a scintilla of evidence to support termination when Barnes herself admitted her refusal to take a drug test (HT 11 and 24); and that she was at all times fully aware of the district's drug testing policy which provides for termination should an employee

refuse to submit to a drug test when so requested. (HT 49 and RE 4) Thus, the Chancery Court cannot find based upon the record that the Board's decision was unlawful since it was supported not only by substantial evidence but also undisputed evidence.

Likewise, the Chancery Court erred in reversing the Board's decision because the Board's action was not arbitrary and capricious. In order for the Board's decision to be "arbitrary" it must be done without reason or judgment and depending on the will alone. *Burks v. Amite County Sch. Dist.*, 708 So. 2d 1366, 1370 (Miss. 1998). Given the undisputed evidence of Barnes' refusal (HT 11 and 24), her awareness of the District's drug testing policy (HT 49), and the policy's clear language concerning the consequences of refusing a drug test (RE 4); the Board's action was a reasonable conclusion to the circumstances of an employee who, when requested to do so based upon reasonable suspicion, refused to submit to a drug test. Thus, the Board's decision was well reasoned and not random.

Finally, the Chancery Court based upon the record cannot find that the Board in reaching its decision violated Barnes' statutory or constitutional rights. The District fully complied with the relevant statutory provisions in providing Barnes notice of her termination and her rights to a due process hearing. She was at all times represented by legal counsel and even acted upon the advice of counsel when she refused her drug test. (HT 11 and 24, RE 4)

CONCLUSION

Appellant Smith County School District seeks the reversal of the Chancery Court's Judgment reversing the School Board's termination of Barnes and the issuance of a Judgment affirming the School Board's decision to terminate Barnes as a certified employee with the Smith County School District.

Respectfully submitted,

SMITH COUNTY SCHOOL DISTRICT,
APPELLANT

By: *G. David Garner*
G. DAVID GARNER, MSB NO [REDACTED]
Attorney for Smith County School District
Post Office Box 789
Raleigh, Mississippi 39153
(601) 782-9090

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 the Appellant's Brief to the following:

Honorable Joe D. Walker
Chancery Court Judge
Post Office Box 909
Monticello, Mississippi 39428

Eugene C. Tullos, Esq.
Tullos & Tullos
Post Office Box 74
Raleigh, Mississippi 39153

This the 23rd day of November, 2010.

G. David Garner
G. David Garner