

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-001343-MR

RALPH CORTEZ BUTLER, II

APPELLANT

v.

APPEAL FROM METCALFE CIRCUIT COURT
HONORABLE PHILLIP R. PATTON, JUDGE
ACTION NO. 00-CI-00074

MATTHEW SOUTH; JULIE ENNIS;
ROBERT L. BELL; TERRY L. EDWARDS;
STEVE THOMPSON; AND
METCALFE COUNTY BOARD OF EDUCATION

APPELLEES

OPINION
AFFIRMING

*** **

BEFORE: DYCHE, JOHNSON AND SCHRODER, JUDGES.

JOHNSON, JUDGE: Ralph Cortez Butler, II has appealed from an order entered by the Metcalfe Circuit Court on March 28, 2002, granting the appellees, the Metcalfe County Board of Education and its members, summary judgment on Butler's complaint seeking backpay for the four-year period that he was suspended from his teaching position. Having concluded that there is no genuine issue as to any material fact and that the appellees were entitled to judgment as a matter of law, we affirm.

Butler became employed by the Metcalfe County Board of Education as a substitute teacher in the mid 1980's. Approximately a year and a half later, Butler was hired as a full-time teacher in the elementary school and also served as tennis coach at the high school and assisted the high school basketball coach. In the 1994-95 school year, Butler was assigned to teach at the newly-opened middle school. In May 1995 several female students at the middle school made allegations that Butler had engaged in inappropriate sexual contact with them. In May 1995 the state police conducted an investigation at the school. Due to this situation, Butler did not return to teaching at the middle school for the rest of that school term, which ended on May 31, 1995. In July 1995 Butler was indicted on 19 misdemeanor counts of sexual abuse in the third degree.¹

As time approached to start a new school year, Butler met with the Metcalfe County School District Superintendent at that time, Elam Carlton, concerning his status as a teacher. Based on their conversations, Butler decided with Carlton's concurrence to take a voluntary leave of absence. The parties' discussions were reflected in a letter written by Butler's attorney to the school district's attorney dated August 4, 1995,

¹ Kentucky Revised Statutes (KRS) 510.130.

and signed by both Butler and Carlton on August 7, 1995. The letter stated as follows:

Per our discussions this week and particularly Friday, I have been advised by Cortez Butler that he would prefer a leave of absence with pay. The School Board is apparently not willing to voluntarily do this.

Mr. Butler is not guilty of any of these charges. I am confident that a jury will find him not guilty. I look forward to the opportunity to try this case. Accordingly we have made a motion to set this case for trial immediately.

In the interim, Mr. Butler is willing to take a leave of absence without pay. Upon a return of not guilty or otherwise favorable decision in this case, he would request his immediate reinstatement and back pay.

I certainly believe that this letter conforms to our discussions. In the event, however, that there is any problem with this please let me know immediately.

I have forwarded this letter to Mr. Butler and have asked him to sign it and turn it over to the Superintendent of the Metcalfe County Board of Education. Its terms and conditions will be effective on that delivery. Thank you for your courtesies.

On August 7, 1995, the school district's attorney sent Butler's attorney a letter in response to the August 4th letter, which stated as follows:

Your letter of August 4, 1995, is acknowledged. I've been advised that Mr. Butler has signed a copy and has delivered it to the Superintendent.

There is one sentence in your letter which I, as attorney for the school board, will clarify. It is the second sentence of the first paragraph in which you state: "The School Board is apparently not willing to voluntarily do this." I wish to emphasize that the school board was not consulted concerning the leave of absence of Mr. Butler, with or without pay. It was upon my advice to the Superintendent that, under the law, Mr. Butler could not be granted a leave of absence with pay that you were advised that the district would not grant Mr. Butler a leave of absence with pay [sic]. Kentucky law will not permit the payment of public funds without services being performed to earn them unless they have been wrongfully withheld. In short, please advise Mr. Butler that the school board was not involved in the decision.

I certainly appreciate your cooperation in this matter and think that it has been resolved for the best interests of both Mr. Butler and the Metcalfe County School District.

In a meeting on August 8, 1995, the Superintendent's report, which included a statement that Butler was taking a voluntary leave without pay, was presented to the Metcalfe County School Board.

Due to procedural complications, Butler's trial on the sexual abuse charges was not held until July 1999. He was found not guilty. Following his acquittal, Butler sought reinstatement from the Metcalfe County School Board and compensation representing backpay for the four years he was on leave. Butler was permitted by Superintendent Carlton to return to teaching in August 1999, but after approximately two weeks he

was granted disability retirement based on a diagnosis that he was suffering from posttraumatic stress syndrome related to the situation involving the sexual abuse allegations. The Board of Education rejected Butler's request for backpay.

On May 25, 2000, Butler filed a civil complaint based on breach of contract against the Metcalfe County Board of Education and the then-serving four members of the Board in their official capacity as Board members. Butler alleged that in May 1995 Superintendent Carlton told him that if no wrongdoing was found in connection with the sexual abuse allegations, he would be reinstated with full benefits. Butler sought compensatory damages consisting of backpay for wages, sick pay, retirement, and personal days earned for the period from May 1995 to May 1999. The defendants filed an answer denying the existence of a contract and asserting various defenses. The parties conducted discovery including taking the depositions of Butler and Superintendent Carlton.

On February 21, 2002, the appellees filed a motion for summary judgment pursuant to CR² 56.02. They argued that the members of the Board never granted Butler a leave of absence with pay and never agreed to or ratified a contract to provide him backpay, and that any such action would violate Section 3 of the Kentucky Constitution. Following Butler's response and a

² Kentucky Rules of Civil Procedure.

hearing, the trial court granted the motion stating that while the letters raised a factual issue as to the existence of a contract, that such a fact was not a material fact because the appellees were entitled to judgment as a matter of law based on their constitutional argument. The trial court summarily denied Butler's CR 59.05 motion to alter, amend, or vacate the judgment. This appeal followed.

The standard of review on appeal of an order granting summary judgment is whether the trial court correctly found that there was no genuine issue as to any material fact and that the moving party was entitled to judgment as a matter of law.³ Summary judgment is not considered a substitute for a trial, so the trial court must review the evidentiary record not to decide any issue of fact, but to determine if any real factual issue exists and whether the nonmovant cannot prevail under any circumstances.⁴ The trial court must view the record in a light most favorable to the nonmovant and resolve all doubts in his favor.⁵ Since factual findings are not at issue, there is no requirement that the appellate court defer to the trial court.

³ Palmer v. International Association of Machinists, Ky., 882 S.W.2d 117, 120 (1994); CR 56.03.

⁴ City of Florence v. Chipman, Ky., 38 S.W.3d 387, 390 (2001); Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476, 480 (1991).

⁵ Commonwealth v. Whitworth, Ky., 74 S.W.3d 695, 698 (2002); Lipsteuer v. CSX Transportation, Inc., Ky., 37 S.W.3d 732, 736 (2000).

The appellate review is de novo.⁶ We further note that the interpretation of the constitution or statutes is a legal issue.⁷

Butler contends that the trial court erroneously held that the Kentucky Constitution barred his claim. Section 3 of the Kentucky Constitution provides in relevant part that "no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services." Emoluments include profit from office, employment, or labor; compensation; or perquisites, fees or salary.⁸ In Roland v. Jefferson County Fiscal Court,⁹ this Court stated that Section 3 prohibited "the payment of public funds except for the actual performance of public services."

Butler maintains that compensating him for the period he was on leave of absence would fall within the provisions of Section 3 as being "in consideration of public services" because he waived his right to a statutory hearing concerning his employment status, remained a teacher with the Metcalfe County School District, and agreed to resume his teaching duties following the eventual favorable outcome of his criminal charges. First, "consideration" in Section 3 "is not used in a

⁶ See Barnette v. Hospital of Louisa, Inc., Ky.App., 64 S.W.3d 828, 829 (2002); and Lewis v. B & R Corp., Ky.App., 56 S.W.3d 432, 436 (2001).

⁷ See generally Williams v. Wilson, Ky., 972 S.W.2d 260 (1998).

⁸ See State Board of Charities & Corrections v. Hays, 190 Ky. 147, 227 S.W. 282, 287 (1920).

⁹ Ky.App., 599 S.W.2d 469, 471 (1980).

contractual sense, but it means because, or on account, of public services rendered.”¹⁰ In Barnes v. Adams,¹¹ the Court held that a teacher could not be compensated for time spent on an educational leave of absence because any benefit the public would receive from her additional education would be so exceedingly remote that it would be unreasonable to hold the expenditure is for a public purpose within the meaning of Section 3.¹² Butler has not shown that he was entitled to compensation or benefits during his leave of absence because his leave was for activity in consideration of public services or for public benefit, and thus such payment would violate Section 3.¹³ As a result, the trial court properly held that the appellees were entitled to judgment as a matter of law because Butler’s claim was prohibited by the Kentucky Constitution.

Even if providing Butler backpay would not be unconstitutional, the appellees maintain that Superintendent Carlton had no authority to agree to grant Butler compensation during his leave of absence. They claim that under KRS 161.770

¹⁰ Talbott v. Thomas, 286 Ky. 786, 151 S.W.2d 1, 9 (1941) (Miller and Malin, Special Judges (concurring opinion)).

¹¹ Ky., 305 S.W.2d 754 (1957).

¹² But see Opinion of the Attorney General (OAG) 88-29 (rendering opinion that KRS 161.770 allowing compensation for leave for educational purposes with commitment to return to teaching for no less than two years is constitutional); KRS 161.770(4).

¹³ In fact, the record indicates that Butler was employed at TCI Communications as a salesman and regional sales director, and Welch Tennis between 1995 and 2001, with gross income between \$13,000 and \$41,000.

a board of education has the exclusive authority over leaves of absence. KRS 161.770 provides in part as follows:

(1) Upon written request of a teacher or superintendent, a board of education may grant a leave of absence for a period of not more than two (2) consecutive school years for educational or professional purposes, and shall grant such leave where illness, maternity, adoption of a child or children, or other disability is the reason for the request. Upon subsequent request, such leave may be renewed by the board. A board of education may pay a sum of money equivalent to all or any portion of salary to a teacher or superintendent who has been granted leave for educational or professional purposes if the person taking said leave agrees in writing to return to employment with the board for no less than two (2) years.

. . .

(4) Payments to any teacher or superintendent under this section by a local district are intended and presumed to be for and in consideration of services rendered and for the benefit of the common schools and such payments do not affect the eligibility of any school district to share in the distribution of funds from the public school funds as established in KRS Chapter 157.

Butler counters that under the sweeping changes created under the Kentucky Education Reform Act (KERA) in 1990, school superintendents were given expanded powers over personnel decisions. Butler cites to several statutory provisions including: (1) KRS 160.380(2)(a), which states that "[a]ll appointments, promotions, and transfers of principals,

supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken;" (2) KRS 160.370, which states the superintendent "shall have general supervision . . . and the management of business affairs. He shall be responsible for the hiring and dismissal of all personnel in the district;" and (3) KRS 160.390(1), stating in part that the superintendent "shall be responsible for all personnel actions including hiring, assignments, transfer, dismissal, suspension, reinstatement, promotion, and demotion and reporting the actions to the local board." Butler asserts that these provisions gave Superintendent Carlton the authority to enter into a contractual agreement with him to provide compensation for the period he was on leave of absence without the need for approval of the contract by the Board of Education.

We agree with the appellees that Butler's position is flawed. Although KERA did significantly alter the relationship and authority of public education administrators by expanding the powers of school superintendents, especially in the area of personnel decisions, Butler's position is too expansive. First, KRS 161.770 was reenacted with the new provisions as part of KERA. Second, KRS 161.770 is more specific than the statutes cited by Butler in dealing with leaves of absence and compensation during such periods. The statutes involving the

authority of superintendents mention appointments, promotions, transfers, hiring, dismissals, reinstatement, and suspensions, but not leaves of absence with compensation or reinstatements with backpay.

Generally, a specific statute will take precedence over a general statute dealing with the same subject matter.¹⁴ KRS 161.770(1) allows for paid leaves of absence only in a few instances and KRS 161.770(4) recognizes the prohibition in Section 3 of the Kentucky Constitution.¹⁵ To construe KRS 160.370-.390 to give superintendents broad authority over granting compensation during leaves of absence would ignore the apparent intent of KRS 161.770 to allow compensation for a leave of absence in limited situations. Butler was advised of this view by the Board of Education's attorney in the August 7, 1995, letter. We are not convinced that Superintendent Carlton, or even the school board, had the authority to grant Butler a leave of absence with pay or to agree to provide backpay following Butler's return from a leave of absence under the situation in this case. A school board is not accountable for the failure of

¹⁴ See Destock # 14, Inc. v. Logsdon, Ky., 993 S.W.2d 952, 959 (1999); and Withers v. University of Kentucky, Ky., 939 S.W.2d 340, 345 (1997).

¹⁵ Other than the Attorney General's opinion in OAG 88-29, the courts have not addressed the constitutionality of the current version of KRS 161.770, and the parties have not raised that issue.

a superintendent to properly apply a statute.¹⁶

In conclusion, regardless of any alleged agreement between Butler and Superintendent Carlton, Butler has no cause of action for the relief requested against these appellees. Thus, the trial court correctly ruled that there was no genuine issue as to any material fact and that the appellees were entitled to judgment as a matter of law.

For the foregoing reasons, the order of the Metcalfe Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

David F. Broderick
P. Kevin Hackworth
Bowling Green, Kentucky

BRIEF FOR APPELLEE:

Michael A. Owsley
Brett A. Reynolds
Bowling Green, Kentucky

¹⁶ See Ramsey v. Board of Education of Whitley County, Ky.App., 789 S.W.2d 784, 787 (1990).