

RENDERED: July 15, 2005; 2:00 p.m.  
NOT TO BE PUBLISHED

## Commonwealth Of Kentucky

### Court of Appeals

NO. 2003-CA-001549-MR

FREDERICK MICHAEL CREUSERE

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE WILLIAM L. GRAHAM, JUDGE  
ACTION NO. 01-CI-01233

KENTUCKY EDUCATION  
PROFESSIONAL STANDARDS BOARD

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \*

BEFORE: GUIDUGLI AND TAYLOR, JUDGES; HUDDLESTON, SENIOR JUDGE.<sup>1</sup>

GUIDUGLI, JUDGE: Frederick Michael Creusere appeals from an opinion and order of the Franklin Circuit Court which affirmed an order of the Kentucky Education Professional Standards Board ("EPSB") revoking his teaching certificate. Creusere raises several arguments in support of his contention that the circuit

---

<sup>1</sup> Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

court committed reversible error on affirming the EPSB's order. For the reasons stated below, we affirm the order on appeal.

In approximately 1970, Creusere was issued a Kentucky teaching certificate. Sometime thereafter, Creusere moved to New Mexico where he taught school. After returning to Kentucky, the Kentucky certificate was reinstated.

In 1994, Creusere entered into a contract with the Henry County Board of Education ("the school Board") to coach baseball and ninth-grade girls' basketball at Henry County High School. At the end of the 1994-1995 school year, Creusere was evaluated by Principal Darrell Treece. Treece recommended that Creusere not be re-hired for the 1995-1996 school year.

Creusere appealed to the Local Evaluation Appeals Panel ("LEAP"). The LEAP concluded that Creusere's appeal was untimely and therefore did not consider it. Creusere appealed that decision to the State Evaluation Appeals Panel ("SEAP"), which agreed with LEAP that the appeal was not timely.

On April 7, 1995, the school Board mailed a letter to Creusere terminating his contract and immediately relieving him of his coaching and teaching duties at Henry County High School. It went on to inform him that he would not be re-hired for the 1995-1996 school year. As a basis for the termination, it cited conduct including insubordination, incompetency, neglect, and conduct unbecoming a teacher.

Creusere initiated a timely response to the termination and a hearing on the matter was conducted. The hearing panel reinstated Creusere for the remainder of the contract but again relieved him of all duties. The action was appealed to the Henry Circuit Court and this Court, each of which upheld the reinstatement for the remainder of the school year.

On July 25, 1995, the EPSB notified Creusere that it had probable cause to conduct a certificate revocation hearing. Thereafter, Creusere filed an action in Federal District Court for the Eastern District of Kentucky against defendants in Kentucky and New Mexico alleging violation of his civil rights. During the pendency of the action, the EPSB held the certificate revocation hearing in abeyance. When the federal action was dismissed in 1998, the EPSB proceeding continued.

During the intervening period, Creusere became employed with the Covington Independent Schools. On April 9, 1999, the EPSB amended its charges against Creusere to include alleged wrongful conduct occurring during Creusere's employment with the Covington Independent Schools. On May 5, 1999, the EPSB filed an emergency request to suspend Creusere's teaching certificate based on letters sent by Creusere allegedly threatening physical harm to himself and others. The EPSB chair

entered a temporary order immediately suspending the certificate.

Creusere filed a second federal lawsuit for the purpose of enjoining the emergency suspension and reinstating the teaching certificate. Injunctive relief was denied, and the action was stayed pending the outcome of the administrative proceedings.

The EPSB hearing was conducted in late September, 1999, and after a continuation at Creusere's request, it was completed in February, 2000. On May 31, 2001, the hearing officer issued a 192 page Recommended Order suspending Creusere's teaching certificate for a period of five years, with reinstatement conditioned on completion of anger management treatment and the termination of Creusere's threatening communication. The recommended suspension was based on findings of immorality, misconduct, willful neglect of duty, and a willful or careless disregard for the health, welfare or safety of others. Specifically, the hearing officer found that Creusere made a materially false statement on his job application when he indicated that he had not been refused a renewal of his contract in New Mexico; that he made racial slurs and cursed at students; and, that he made threats of physical violence. Numerous other inappropriate acts are contained in the record and need not be cited herein.

On August 20, 2001, the EPSB adopted the recommended order, but imposed a certificate revocation (rather than suspension) with a five year waiting period before reapplication.

Creusere appealed from the EPSB's order to the Franklin Circuit Court. He maintained that the EPSB's delay in conducting the proceedings against him should bar them from taking action; that he was subjected to double jeopardy (i.e., the action in Henry Circuit Court and the revocation hearing before the EPSB); and, that the EPSB exceeded its authority. Upon taking proof, the circuit court overruled the appeal and affirmed the order of the EPSB. This pro se appeal followed.

Creusere now argues that the Franklin Circuit Court committed reversible error in affirming the certificate revocation order of the EPSB. He raises a litany of alleged errors occurring before the EPSB and the circuit court, to wit: 1) that the hearing officer and Franklin Circuit Court erred by not shifting the burden of proof to the appellees; 2) that KRS 13B is unconstitutional, and that the circuit court erred in failing to conduct a de novo review of the evidence because "a denial of a career is a denial of a fundamental Constitutional Right"; 3) that he was denied due process; 4) that the circuit court erred in failing to find that the appellees' additions to or deletions from statutes were unconstitutional acts; 5) that

the school board's superintendent committed certain acts which constitute "an unconstitutional failure to perform legislature required duties"; 6) that the EPSB's delay in bringing charges was intentional and unnecessary and denied him the opportunity to prepare an adequate defense; 7) and 8) that court rulings were inconsistent; 9) that he received improper notice; 10) that the hearing officer was biased against Creusere; 11) that the EPSB's action was a veiled attempt to violate Creusere's First Amendment rights; 12) that the EPSB's actions were arbitrary and not supported by the evidence; and, 13) that the hearing officer abused her discretion by permitting improper testimony. In sum, Creusere seeks an order reversing the order of the Franklin Circuit Court and remanding the matter for restoration of his teaching certificate.

We must first note that Creusere has not complied with CR 76.12(4)(c)(v) which requires an argument which "shall contain at the beginning ... a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner." He has not shown where any of his arguments were raised below. As errors to be considered on appellate review must be precisely preserved and identified in the lower court,<sup>2</sup> we would be justified in summarily affirming the trial court on this issue.

---

<sup>2</sup> Skaggs v. Assad, 712 S.W.2d 947 (Ky. 1986).

More important, most of the arguments Creusere now raises were not addressed by the circuit court in its June 25, 2003, opinion and order. The duty of an appellate court is to address errors of law arising in the lower courts.<sup>3</sup> When an issue has not been addressed in the order on appeal, there is nothing for us to review. This is the basis of the well-worn adage that an appellant may not feed one can of worms to the trial court and another to the appellate court.<sup>4</sup> We are precluded from addressing issues which the trial court did not rule on and for which no specific request for findings was made.<sup>5</sup> Such a failure "constitutes a waiver and precludes appellate review."<sup>6</sup> Accordingly, we may not address the issues which were not ruled upon by the Franklin Circuit Court.<sup>7</sup>

Despite Creusere's failure to comply with proper appellate procedures, we have examined each of the issues addressed by the Franklin Circuit Court, and find no error. The circuit court first considered Creusere's contention that he was prejudiced by the EPSB's delay in conducting the certificate revocation proceedings. He maintained below, and now argues, that the EPSB's intentional and unnecessary delay in bringing

---

<sup>3</sup> Smith v. Riherd, 603 S.W.2d 494 (Ky. App. 1980).

<sup>4</sup> Neal v. Commonwealth, 95 S.W.3d 843 (Ky. 2003).

<sup>5</sup> Abuzant v. Shelter Ins. Co., 977 S.W.2d 259 (Ky. App. 1998).

<sup>6</sup> Id., citing Crain v. Dean, 741 S.W.2d 655 (Ky. 1987); see also CR 52.04.

<sup>7</sup> Light v. City of Louisville, 93 S.W.3d 696 (Ky. App. 2002); Public Service Commission v. Jackson County Rural Electric Cooperative, 50 S.W.3d 764 (Ky.App. 2000).

charges denied him legal representation and a loss of witnesses and documents. He contends that he was denied the opportunity to present an adequate defense. Though he does not so state, we assume that he seeks an order reversing or otherwise quashing the results of the EPSB action.

The circuit court correctly concluded that the hearing officer's findings on this issue were proper. The hearing officer noted that the statute of limitations found in KRS Chapter 413, and to which Creusere cites, applies to judicial proceedings but not administrative hearings. The hearing officer also concluded that even if the statutory period were applicable, the EPSB would have been in compliance because the action was brought within five years of the alleged misconduct. It is also worth noting that the delay was brought about when Creusere filed the action in federal court, and that the hearing officer and the circuit court opined that the EPSB's deference to the federal court was not unreasonable. We find no basis for tampering with the hearing officer's findings and conclusions on this issue, nor the circuit court's affirmation thereof.

The Franklin Circuit Court also addressed Creusere's contention that he was subjected to double jeopardy. Creusere maintained that it was improper for the revocation matter to be addressed by the Henry Circuit Court and Court of Appeals, while it also was being administratively examined by the EPSB. The

Franklin Circuit Court treated this argument under the doctrine of issue preclusion and estoppel rather than as a double jeopardy argument, and concluded that since the EPSB was not a party to the Henry Circuit Court action it was not estopped from bringing administrative charges against Creusere. This conclusion was proper,<sup>8</sup> and we find no error.

The final argument addressed by the Franklin Circuit Court was Creusere's contention that the EPSB exceeded its authority in bringing charges against him. In conjunction with this argument, Creusere maintained that the hearing officer should have been disqualified and that a mental health expert should not have been allowed to testify. On these latter issues, the Franklin Circuit Court opined that they fell within the sound discretion of the hearing officer and that no basis was found indicating an abuse of this discretion. We find the circuit court's reasoning persuasive.

On the question of whether the EPSB exceeded its authority, we also find no error. KRS 161.120 expressly gives the EPSB the authority to revoke teaching certificates and impose conditions for reapplication. The EPSB action was conducted in accordance with this authority, and its results met

---

<sup>8</sup> See generally, Sedley v. City of West Buechel, 461 S.W.2d 556 (Ky. 1971).

the substantial evidence standard on review by the Franklin Circuit Court.<sup>9</sup> As such, this argument is not persuasive.

For the foregoing reasons, we affirm the opinion and order of the Franklin Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT, PRO SE:

Frederick Michael Creusere  
Florence, KY

BRIEF FOR APPELLEE:

Robert E. Stopher  
Louisville, KY

C. Ed Massey  
Erlanger, KY

---

<sup>9</sup> Kentucky Unemployment Insurance Commission v. King, 657 S.W.2d 250 (Ky. App. 1983).