

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA02-1755

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2003

CYNTHIA A. BRYANT,
Petitioner,

v.

Cumberland County
No. 01 CVS 5060

CUMBERLAND COUNTY
BOARD OF EDUCATION,
Respondent.

Appeal by petitioner from final decision entered 10 July 2002 by Judge Gregory A. Weeks in the Superior Court in Cumberland County. Heard in the Court of Appeals 8 October 2003.

Cynthia A. Bryant, petitioner-appellant, pro se.

Tharrington Smith, L.L.P., by Carolyn A. Waller, for respondent-appellee.

HUDSON, Judge.

This is an appeal from the superior court's review of a decision by the Cumberland County Board of Education not to renew petitioner's contract. For the reasons discussed here, we affirm.

Background

In 1999, appellee Cumberland County Board of Education ("the board") contracted with petitioner Cynthia A. Bryant, a tenured teacher, to serve for two years as Supervisor for Exceptional Children's Programs, Preschool and Compliance. Petitioner worked under the direct supervision of Dr. James McKethan, Director of

Special services. During the first year of her contract, petitioner enjoyed a positive working relationship with Dr. McKethan.

During 2000, however, tensions arose between petitioner and Dr. McKethan regarding some of petitioner's assignments and responsibilities, particularly the shifting of some of her duties to other administrators. Pursuant to board policy, petitioner filed a grievance against Dr. McKethan 16 March 2001. On 19 April 2001, Dr. McKethan notified petitioner that he had given her unsatisfactory ratings in two of the major function areas of her performance evaluation. Petitioner's contract term was to end 20 June 2001, and on 27 April 2001, Cumberland County Superintendent Dr. William Harrison ("Dr. Harrison") informed petitioner that her contract would not be renewed. Petitioner sought review by the board of Dr. Harrison's decision. On 18 May 2001, the board heard petitioner's grievance against Dr. McKethan as well as her appeal of the contract decision.

Petitioner initially consented to combining the two matters in one hearing, but later objected to the process just before the hearing began. At the hearing, petitioner made a 20 minute oral argument and submitted lengthy written arguments, including 371 pages of supporting documents. At the conclusion of the hearing, the board elected not to renew or extend petitioner's contract, and further, was unable to substantiate any of her grievance allegations.

On 29 June 2001, petitioner filed a petition for judicial review of the board's decision. She alleged the board's decision 1) was based on unlawful procedure, 2) was not based on substantial evidence according to the whole record test, 3) was in retaliation for her exercise of her free speech rights and in violation of Title VII of the Civil Rights Act of 1964, 4) was arbitrary, capricious and an abuse of discretion, 5) was based on a false performance evaluation, and 6) was in excess of statutory authority. Judge Howard Manning heard the petition 12 February 2002, expressly rejected petitioner's free speech and Title VII claims and held that the record contained substantial evidence to support the board's decision not to renew petitioner's contract. However, Judge Manning ruled that the grievance and contract issues should have been addressed at separate hearings, and remanded the matter to the board.

On remand, the board heard petitioner's grievance on 29 April 2002 and the contract matter on 14 May 2002. Petitioner again made oral and written arguments, and each hearing lasted more than three hours. The board found no basis for petitioner's grievance against Dr. McKethan. At the contract hearing, petitioner argued that her non-renewal was the result of personal animus, was not made on a rational basis, and was the result of evaluations that failed to conform to board policy. The board upheld the superintendent's decision not to renew petitioner's contract, finding no evidence that the decision was arbitrary, capricious, discriminatory, or personal, and was instead based on legitimate, rational and

business-related reasons. After petitioner again appealed the contract matter, but not the grievance issue, to superior court, Judge Gregory Weeks upheld the board's decision, finding it in compliance with N.C. Gen. Stat. § 115C-287.1(d). Petitioner appeals.

Analysis

We first address the board's contention that petitioner's brief in this matter has so failed to comply with the Rules of Appellate Procedure that it mandates dismissal. "The Rules of Appellate Procedure are mandatory; failure to comply with these rules subjects an appeal to dismissal. Furthermore, these rules apply to everyone -- whether acting *pro se* or being represented by all of the five largest law firms in the state." *Bledsoe v. County of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d 316, 317 (1999) (internal citations omitted). Here, we agree that petitioner, acting *pro se*, violated numerous rules of appellate procedure. She exceeded the page limit for principal briefs and included some eight pages of single-spaced text which fails to comply with the indentation requirement. N.C. R. App. P. 28(g), (j). Further, her brief fails to include a statement of the grounds for appellate review or make appropriate reference to pertinent assignments of error, as the rules require. N.C. R. App. P. 28(b) (4), (6). In the appendix to her brief, petitioner has failed to identify which proceeding the transcript pages come from and the index does not correspond to page numbers in the appendix. Finally, petitioner filed, along with the official record on appeal, 462 pages of

various hearing transcripts which were not part of the official record, and which she failed to serve on the board. N.C. R. App. P. 7, 9. Even in the case of a *pro se* appellant, this Court has dismissed appeals for similar flagrant violations of the rules of appellate procedure. See *Dalenko v. Wake County Dep't of Human Servs.*, 157 N.C. App. 49, 578 S.E.2d 599 (2003). Although we could exercise our discretion to dismiss this appeal, under these circumstances we choose instead to consider the merits of petitioner's appeal under N.C.R. App. P. 2.

Petitioner first contends the superior court erred by failing to make findings of fact and conclusions of law regarding her allegation that her performance evaluation violated N.C. Gen. Stat. §§ 115C-333, 335 and board policy.

This issue was not presented at the original board hearing on 18 May 2001. Instead, petitioner first asserted that her evaluation violated statutes and board policy at the 14 May 2002 hearing before the board, on remand from the superior court. Judge Manning's order specified that the remand was to afford petitioner separate hearings, one on her grievance and the other "on the issue of whether or not the non-renewal of [petitioner's] contract as an administrator was in violation of G.S. 115C-287.10(d)." Further, Judge Manning made clear to the parties that his remand of the matter was for separate rehearings only, and that neither new evidence nor new issues could be introduced by either side. Thus, petitioner's new allegations about violations of N.C. Gen. Stat. §§

115C-333, 335 and board policy were not timely raised before the board and are not properly before this Court.

Petitioner next argues that the court applied an improper standard in reviewing the board's decision and finding that the decision was supported by substantial evidence. We hold that the superior court employed the proper standard of review and affirm its decision.

The decision of a local board of education is presumed correct and the petitioner bears the burden of proving otherwise. N. C. Gen. Stat. § 115C-44(b) (2001). The proper standard of review of a school board decision is the "whole record test." As we recently reaffirmed,

[t]he "whole record" test does not allow the reviewing court to replace the Board's judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it de novo. On the other hand, the "whole record" rule requires the court, in determining the substantiality of evidence supporting the Board's decision, to take into account whatever in the record fairly detracts from the weight of the Board's evidence. Under the whole evidence rule, the court may not consider the evidence which in and of itself justifies the Board's result, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn.

Smith v. Richmond County Bd. of Educ., 150 N.C. App. 291, 303-4, 563 S.E.2d 258, 268 (2002) (quoting *Thompson v. Board of Education*, 292 N.C. 406, 410, 233 S.E.2d 538, 541 (1977)). "Only when there is no substantial evidence supporting administrative action should the court reverse an agency's ruling." *Mendenhall v. North*

Carolina Dep't of Human Resources, 119 N.C. App. 644, 650, 459 S.E.2d 820, 824 (1995). In determining whether the superior court correctly applied this statute, this Court also employs the "whole record test." *Id.*

Under N.C. Gen. Stat. § 115C-287.10(d), a superintendent's "decision not to offer the school administrator a new, renewed, or extended contract may be for any cause that is not arbitrary, capricious, discriminatory, personal, or political." Thus, petitioner bore the burden in superior court of establishing that no substantial evidence supported the board's non-renewal of her contract, and that the board's decision was "not arbitrary, capricious, discriminatory, personal, or political." A review of the record reveals substantial evidence supporting both the board's and superior court's decisions.

Petitioner's 19 March 2001 evaluation specifies, among other problems, that she was almost three months late in publishing the Procedures and Guidelines for Exceptional Children's Services, that her preparation and presentation at a Monitoring Planning Committee meeting were substantially inadequate, and that she was the subject of complaints from co-workers and members of the public about her communication style. Petitioner also received unsatisfactory ratings in two of her major function areas on her 2000-2001 year-end performance evaluation. The record reveals substantial evidence of performance deficiencies supporting the board's decision.

Petitioner next argues that the court erred in failing to make findings about her claims that bias, personal animus, and retaliation in violation of her free speech rights motivated the board and petitioner's supervisor. This Court has previously discussed the responsibilities and requirements of a school board in acting on a superintendent's recommendation, as follows:

By statute and under traditional common-law principles, then, the superintendent and principal are agents of the board. The board cannot escape responsibility for its actions, based on the recommendations of its agents, by simply refusing to inquire into their agents' reasons. The board, if it acts on recommendations made on improper grounds, must accept responsibility therefor. This does not mean that the board must make exhaustive inquiries or formal findings of fact, only that the administrative record, be it the personnel file, board minutes or recommendation memoranda, should disclose the basis for the board's action.

Abell v. Nash County Bd. of Education, 71 N.C. App. 48, 53, 321 S.E.2d 502, 506 (1984) (internal citations omitted). Here, the board did disclose the basis for its action in choosing not to renew petitioner's contract, as reflected in the extensive record discussed above. The court concluded that the board's decision was not in violation of N. C. Gen. Stat. § 115C-287.10(d). The court was not required to make more specific findings in its order. This assignment of error is overruled.

In her final argument, petitioner contends that the court erred in remanding the matter to the board for separate hearings on her grievance and contract because separate hearings could not "undo the harm caused." We have repeatedly rejected arguments that

local school boards cannot remain unbiased when conducting a second or subsequent hearing on remand, and we have found no requirement that harm, if any, must be undone. *Taborn v. Hammonds*, 83 N.C. App. 461, 350 S.E.2d 880 (1986), *appealed after remand on other grounds*, 91 N.C. App. 302, 371 S.E.2d 736 (1988), *reversed on other grounds*, 324 N.C. 546, 380 S.E.2d 513 (1989); *Thompson v. Wake County Board of Education*, 31 N.C. App. 401, 230 S.E.2d 164 (1976), *reversed on other grounds*, 292 N.C. 406, 233 S.E.2d 538 (1977). We follow those decisions here and reject this argument.

For the reasons discussed above, we affirm the order of the trial court.

Affirmed.

Judges TIMMONS-GOODSON and ELMORE concur.

Report per Rule 30(e).