

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-633

Filed: 7 April 2015

Union County, No. 13 CVS 2063

UNION COUNTY BOARD OF EDUCATION, Plaintiff,

v.

UNION COUNTY BOARD OF COMMISSIONERS, Defendant.

Appeal by defendant from judgment entered 10 October 2013 by Judge W. Erwin Spainhour in Union County Superior Court. Heard in the Court of Appeals 2 December 2014.

Schwartz & Shaw, P.L.L.C., by Richard Schwartz and Brian C. Shaw, for plaintiff-appellee.

Wyrick Robbins Yates & Ponton LLP, by K. Edward Greene and Tobias S. Hampson; and Perry, Bundy, Plyler, Long & Cox, LLP, by H. Ligon Bundy and Christopher Cox, for defendant-appellant.

Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, by Jill R. Wilson and Julia C. Ambrose; and the North Carolina School Boards Association, by Allison B. Schafer and Christine T. Scheef, on behalf of the North Carolina School Boards Association, amicus curiae.

Smith Moore Leatherwood LLP, by Elizabeth Brooks Scherer, Matthew Nis Leerberg, and Thomas E. Terrell, Jr., on behalf of the North Carolina Association of County Commissioners, amicus curiae.

McCULLOUGH, Judge.

The Union County Board of Commissioners (“defendant”) appeals from a judgment ordering it to appropriate additional funds to the Union County Board of

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Education's ("plaintiff") local current expense and capital outlay funds for the 2013-2014 fiscal year. For the following reasons, we grant a new trial.

I. Background

This case concerns funding provided by defendant to plaintiff for the 2013-2014 fiscal year. The School Budget and Fiscal Control Act (the "Act"), N.C. Gen. Stat. § 115C-422 *et seq.*, governs such funding.

In general, the Act requires that "[e]ach local school administrative unit shall operate under an annual balanced budget resolution[,]" N.C. Gen. Stat. § 115C-425(a) (2013), which shall include at least the following funds: the State Public School Fund; the local current expense fund; and the capital outlay fund. N.C. Gen. Stat. § 115C-426(c) (2013). Pertinent to this case,

The local current expense fund shall include appropriations sufficient, when added to appropriations from the State Public School Fund, for the current operating expense of the public school system in conformity with the educational goals and policies of the State and the local board of education, within the financial resources and consistent with the fiscal policies of the board of county commissioners. These appropriations shall be funded by revenues accruing to the local school administrative unit by virtue of Article IX, Sec. 7 of the Constitution, moneys made available to the local school administrative unit by the board of county commissioners, supplemental taxes levied by or on behalf of the local school administrative unit pursuant to a local act or [N.C. Gen. Stat. §§] 115C-501 to 115C-511, State money disbursed directly to the local school administrative unit, and other moneys made available or accruing to the local school administrative unit for the current operating expenses of the public school

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system.

N.C. Gen. Stat. § 115C-426(e).

The capital outlay fund shall include appropriations for:

(1) The acquisition of real property for school purposes, including but not limited to school sites, playgrounds, athletic fields, administrative headquarters, and garages.

(2) The acquisition, construction, reconstruction, enlargement, renovation, or replacement of buildings and other structures, including but not limited to buildings for classrooms and laboratories, physical and vocational educational purposes, libraries, auditoriums, gymnasiums, administrative offices, storage, and vehicle maintenance.

(3) The acquisition or replacement of furniture and furnishings, instructional apparatus, data-processing equipment, business machines, and similar items of furnishings and equipment.

(4) The acquisition of school buses as additions to the fleet.

(5) The acquisition of activity buses and other motor vehicles.

(6) Such other objects of expenditure as may be assigned to the capital outlay fund by the uniform budget format.

.....

Appropriations in the capital outlay fund shall be funded by revenues made available for capital outlay purposes by the State Board of Education and the board of county commissioners, supplemental taxes levied by or on behalf of the local school administrative unit pursuant to a local

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act or [N.C. Gen. Stat. §§] 115C-501 to 115C-511, the proceeds of the sale of capital assets, the proceeds of claims against fire and casualty insurance policies, and other sources.

N.C. Gen. Stat. § 115C-426(f).

Furthermore, plaintiff and defendant are encouraged under the Act “to conduct periodic joint meetings during each fiscal year[]” “[i]n order to promote greater mutual understanding of immediate and long-term budgetary issues and constraints[.]” N.C. Gen. Stat. § 115C-426.2 (2013). “In particular, the boards are encouraged to assess the school capital outlay needs, to develop and update a joint five-year plan for meeting those needs, and to consider this plan in the preparation and approval of each year's budget under [the Act].” *Id.* Concerning budgets, the Act outlines a process and timeline for the preparation, proposal, approval, and submission by plaintiff to defendant of each year’s budget; as well as defendant’s action on plaintiff’s proposed budget. *See* N.C. Gen. Stat. §§ 115C-427 to -429.

In the present case, on 15 April 2013, plaintiff submitted its proposed budget for the 2013-2014 fiscal year to defendant in accordance with the requirements of N.C. Gen. Stat. § 115C-429(a).¹ In the budget, plaintiff requested \$86,180,152 in local current expense funding and \$8,357,859 in capital outlay funding. Upon review of plaintiff’s proposed budget, on 17 June 2013, defendant adopted the county 2013-2014

¹ “Fiscal year” is defined in the Act as “the annual period for the compilation of fiscal operations. The fiscal year begins on July 1 and ends on June 30.” N.C. Gen. Stat. § 115C-423(4) (2013).

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budget ordinance. The budget ordinance included appropriations to plaintiff in the amount of \$82,260,408 for local current expense and \$3,000,000 for capital outlay, resulting in shortfalls of \$3,919,744 for local current expense and \$5,357,859 for capital outlay.

In response to the county 2013-2014 budget ordinance, on 18 June 2013, plaintiff adopted a resolution in which it determined “the amounts of money appropriated by [defendant] for the 2013-2014 school year to [plaintiff’s] local current expense fund and capital outlay fund [were] not sufficient . . . to support a system of free public schools[.]” Thus, plaintiff directed its Chairman, superintendent, and attorneys to take the appropriate steps under N.C. Gen. Stat. § 115C-431 to resolve the budget dispute. In reaching the determination that the appropriations by defendant were inadequate, plaintiff indicated that, in addition to considering the amount of funds appropriated by defendant and defendant’s ability to provide additional funding, it “considered the cumulative effect of the County of Union’s inadequate appropriations for current expense and capital outlay in the preceding fiscal years[.]”

In accordance with the procedures set forth in N.C. Gen. Stat. § 115C-431(a) and (b), plaintiff and defendant participated in a joint meeting on 24 June 2013 in an attempt to resolve the budget dispute. When the parties failed to reach an agreement at the joint meeting, the parties participated in mediation sessions on 24 June,

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28 June, and 31 July 2013. The mediation efforts concluded on 31 July 2013 with the mediator declaring an impasse.

The following day, 1 August 2013, plaintiff initiated this action against defendant pursuant to N.C. Gen. Stat. § 115C-431(c). In plaintiff's complaint, plaintiff sought "a determination of (i) the amount of money legally necessary from all sources and (ii) the amount of money legally necessary from [defendant], in order to maintain a system of free public schools as defined by State law and State Board of Education policy."

Defendant responded to plaintiff's complaint by answer filed 12 August 2013, the same day the case came on for trial in Union County Superior Court before the Honorable W. Erwin Spainhour.

Following a lengthy trial, on 10 October 2013, the jury returned a verdict finding that \$326,498,487 in current expense funding and \$89,184,005 in capital outlay funding was legally necessary from all sources in order to maintain a system of free public schools. The jury also found that an additional \$4,973,134 in current expense funding and an additional \$86,184,005 in capital outlay funding, beyond the amounts already appropriated by defendant, was legally necessary from defendant in order to maintain a system of free public schools.

The trial court entered judgment on the jury verdict ordering defendant "to appropriate to the local current expense fund of . . . [p]laintiff . . . the additional

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amount of \$4,973,134 for fiscal year 2013-2014, above that amount appropriated in the Union County Budget Ordinance adopted on June 17, 2013[]” and “to appropriate to the capital outlay fund of . . . [p]laintiff . . . the additional amount of \$86,184,005 for fiscal year 2013-2014, above that amount appropriated in the Union County Budget Ordinance adopted on June 17, 2013.” The trial court also authorized defendant, in accordance with N.C. Gen. Stat. § 115C-431, “to levy such taxes on property as it may choose to make up the difference, if any, when added to other revenues available for these purposes.” Defendant filed notice of appeal from the judgment on 17 October 2013.

II. Discussion

Defendant raises the following four issues on appeal: whether the trial court erred by (1) allowing plaintiff to argue an improper legal standard in its opening statements; (2) allowing plaintiff to present evidence of claimed needs outside the scope of plaintiff’s proposed budget for the 2013-2014 fiscal year; (3) denying defendant’s motions for a directed verdict; and (4) instructing the jury to apply a broad rather than restrictive definition of the amount legally necessary to maintain a system of free public schools in Union County.

1. Plaintiff’s Opening Statements

Defendant first argues the trial court erred by allowing plaintiff to argue an improper legal standard in plaintiff’s opening statements. As both parties agree, we

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review the trial court's decisions regarding opening statements for an abuse of discretion. *See State v. Speller*, 345 N.C. 600, 606, 481 S.E.2d 284, 287 (1997) ("The control of opening statements rests in the discretion of the trial court.").

During opening statements in this case, plaintiff stated the following while explaining the issues to be decided by the jury:

The issue that you're going to be asked to decide is the amount of money needed from the Commissioners to maintain the schools. It's not the amount of money needed to open the doors. That's not the standard. The standard is higher than that. We're going to open the doors. Come hell or high water, we're going to open the doors when those kids come. I'm going to get that off the table right now. So that's not an issue. But the standard is much higher than that, and the expectations are much higher than that. So the amount needed is now in your hands. It's up to you to determine. It's entirely up to you.

The Courts have made clear that the amount needed is not that which is absolutely necessary; it's that which is legally necessary, and reasonable and useful for the purposes sought. In making your decision, you have an opportunity to touch the future --

Upon hearing plaintiff's explanation of "the amount needed," defendant objected on the basis that plaintiff incorrectly stated the legal standard. The trial court, however, allowed plaintiff to continue without correction, stating, "[w]ell, it's [sic] opening statement. We'll see where -- what the evidence will show." Now on appeal, defendant contends the trial court erred because plaintiff's statement of the legal standard was similar to that rejected by our Supreme Court in *Beaufort Cnty. Bd. of Educ. v. Beaufort Cnty. Bd. of Comm'rs*, 363 N.C. 500, 681 S.E.2d 278 (2009).

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At the time *Beaufort* was decided, in any action brought to resolve a budget dispute pursuant to N.C. Gen. Stat. § 115C-431(c), “the trial court [was] charged to ‘find the facts as to the amount of money necessary to maintain a system of free public schools, and the amount of money needed from the county to make up this total.’ ” *Id.* at 503, 681 S.E.2d at 281 (quoting N.C. Gen. Stat. § 115C-431(c) (2007)).

In *Beaufort*, our Supreme Court addressed the constitutionality of the statutory framework in N.C. Gen. Stat. § 115C-431(c) for resolving budget disputes and reviewed whether the statutory framework was properly applied in the case. *Id.* at 502, 681 S.E.2d at 280. In doing so, the Court considered “the meaning of the terms ‘necessary’ and ‘needed,’ as used in [N.C. Gen. Stat. § 115C-]431(c), in light of Article IX, Section 2(2) of the State Constitution.” *Id.* at 505, 681 S.E.2d at 283. Upon recognizing the terms were “susceptible to reasonable interpretations of varying strictness,” and that, “[i]f a fact-finder were to interpret ‘necessary’ or ‘needed’ in [N.C. Gen. Stat. § 115C-]431(c) expansively, there [was] a danger that the resulting verdict could intrude on a county commission's funding discretion under Article IX, Section 2(2) . . . [.]” the Court adopted a restrictive interpretation of the terms “necessary” and “needed.” *Id.* at 505-06, 681 S.E.2d at 283. The Court explained that, “[s]o construed, [N.C. Gen. Stat. § 115C-]431(c)'s requirement that county commissions provide the minimum level of funding required by state law does not abrogate their discretionary authority to contribute more.” *Id.*

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Our Supreme Court then addressed whether the *Beaufort* trial court erred when it “instructed the jury that the word ‘needed’ in [N.C. Gen. Stat. § 115C-]431(c) means that which is reasonable and useful and proper or conducive to the end sought.” *Id.* at 507, 681 S.E.2d at 283 (quotation marks omitted). Having determined a restrictive interpretation of the terms “necessary” and “needed” was necessary to preserve the discretionary authority of county commissions, the Court held the instruction to the jury in *Beaufort* “conveyed an impermissible, expansive definition” and was in error. *Id.* Thus, the Court remanded the case for a new trial noting the following:

At that trial, the trial court should instruct the jury that [N.C. Gen. Stat. § 115C-]431(c) requires the County Commission to provide that appropriation *legally necessary* to support a system of free public schools, as defined by Chapter 115C and the policies of the State Board. The trial court should also instruct the jury, in arriving at its verdict, to consider the educational goals and policies of the state, the budgetary request of the local board of education, the financial resources of the county, and the fiscal policies of the board of county commissioners. *See* [N.C. Gen. Stat.] § 115C-426(e) (2007). Anything beyond this measure of damages impermissibly infringes upon the discretionary authority of the County Commission under Article IX, Section 2(2) of the State Constitution and may not be awarded by a jury.

Id. at 507, 681 S.E.2d at 283-84 (emphasis added).²

² Subsequent to the *Beaufort* decision and during the pendency of the current budget dispute, prior to the filing of this case, the General Assembly amended N.C. Gen. Stat. § 115C-431(c) to reflect the Court’s holding in *Beaufort*. Thus, N.C. Gen. Stat. § 115C-431(c) now charges the fact finder to

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As noted above, in this case, plaintiff stated to the jury during its opening statements that the standard to be applied in determining the amount of funding “is not that which is absolutely necessary; it’s that which is legally necessary, and reasonable and useful for the purposes sought.” Although, the standard communicated by plaintiff to the jury is similar to the one rejected in *Beaufort*, plaintiff contends its use of the “reasonable and useful” language was not inconsistent with *Beaufort* because the language was joined to the correct standard, “legally necessary,” by the conjunction “and” and therefore did not supersede what was “legally necessary.” While plaintiff’s argument is technically correct, we find plaintiff’s statement of the standard to the jury misleading and, therefore, hold the trial court erred in allowing plaintiff to communicate a standard that included language mirroring that rejected in *Beaufort*. Nevertheless, we hold the error was harmless.

In charging the jury in *Beaufort*, the trial court instructed the jury to apply a broad definition of “needed” and “necessary” to determine the amount of funding to be awarded. In the present case, however, the overly broad language rejected in *Beaufort* was only communicated to the jury in plaintiff’s opening statements. Following weeks of evidence, the trial court instructed the jury that it must apply the

determine the amount of money “legally necessary” as opposed to the amount of money “needed” and “necessary.” 2013 N.C. Sess. Laws 2013-141, sec. 1, eff. June 19, 2013.

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law it provides in the jury instructions and stated the proper legal standard as follows:

The issue to be decided by you, the jury, is as follows:

“What amount of money is *legally necessary* from all sources and what amount of money is *legally necessary* from the board of county commissioners in order to maintain a system of free public schools as defined by state law and State Board of Education policy?”

(Emphasis added.) The trial court then repeatedly emphasized the proper legal standard throughout its instructions to the jury without reference to the language rejected in *Beaufort*. Moreover, the trial court provided the jury with verdict sheets incorporating the correct legal standard. As a result of the trial court’s instructions and the verdict sheets, we hold defendant was not prejudiced by plaintiff’s improper statements during its opening statements to the jury.

2. Evidence

Defendant next argues the trial court erred by allowing plaintiff to present evidence of claimed needs outside the scope of plaintiff’s proposed budget for the 2013-2014 fiscal year.

Generally, we review the trial court’s decisions regarding the admissibility of evidence for abuse of discretion, *see State v. Shuford*, 337 N.C. 641, 649, 447 S.E.2d 742, 747 (1994), and “[e]videntiary errors are [considered] harmless unless . . . a different result would have been reached at trial.” *State v. Ferguson*, 145 N.C. App. 302, 307, 549 S.E.2d 889, 893, *disc. review denied*, 354 N.C. 223, 554 S.E.2d 650

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(2001). Yet, a trial court's rulings on relevancy are not technically discretionary and therefore are not afforded as much deference. *See Dunn v. Custer*, 162 N.C. App. 259, 266, 591 S.E.2d 11, 17 (2004).

On the day the case came on for trial, 12 August 2013, defendant filed a motion in limine in which defendant sought to exclude the following:

4. Any suggestion, information, documents, statements, or evidence of capital outlay needs that . . . [p]laintiff did not request . . . [d]efendant to fund in its 2013-2014 [fiscal year] budget, or information, documents, statement, or evidence of the future capital outlay needs of . . . [p]laintiff upon the grounds that . . . [p]laintiff is required by [N.C. Gen. Stat. §] 115C-521(b) to present its request for capital needs for each fiscal year with its annual budget, and [d]efendant has no duty to fund any item of [p]laintiff's capital needs until . . . [p]laintiff has made a request for such needs.

5. Any suggestion, information, documents, statements, or evidence that [d]efendant has failed to provide adequate funding for current expense and/or capital outlay in years preceding the 2013-2014 fiscal year, upon the grounds that the issue before the Court concerns whether . . . [d]efendant has adequately funded . . . [p]laintiff's proposed 2013-2014 budget request, in order for . . . [p]laintiff to "support a system of free public schools." Plaintiff has the annual right and duty under [N.C. Gen. Stat. §] 115C-431 to institute a proceeding each year for additional funding if it determines that [d]efendant has not adequately provided sufficient local funds to support a system of free public schools for that fiscal year. Once [p]laintiff has accepted the money appropriated by [d]efendant for a fiscal year and has adopted its own budget, it has acknowledged that it has been adequately funded for that fiscal year, and may not later contend that it was inadequately funded for that year.

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During arguments on the motion, defendant explained to the trial court that plaintiff indicated it had capital outlay needs beyond those in the proposed budget and that it would seek additional capital outlay funding beyond the \$5,357,859 portion of the proposed budget for capital outlay that defendant did not fund in the county budget ordinance. Defendant indicated “that’s what [the] motion is directed at; is [plaintiff’s] contention that they are entitled to present evidence and seek more than they requested in their . . . [proposed budget].” Defendant then asserted plaintiff was bound by the proposed budget for the 2013-2014 fiscal year.

In response, plaintiff looked to the language of N.C. Gen. Stat. § 115C-431(c) and argued the statute was specific and clear that “the issue to be submitted to the jury is that the jury finds the amount needed to maintain a system of free public schools[.]” Plaintiff then argued they should be able to present any evidence of the actual needs of the school system without regard to its proposed budget for the 2013-2014 fiscal year because there was nothing in N.C. Gen. Stat. § 115C-431(c) restricting the jury’s consideration to the proposed budget. Plaintiff stated N.C. Gen. Stat. § 115C-431 does not even mention the proposed budget as a consideration for the jury.

Upon considering the arguments, the trial court denied defendant’s motion, reasoning that N.C. Gen. Stat. § 155C-431(c) was very specific and any evidence relating to the amount of money legally necessary from all sources and the amount of

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money legally necessary from defendant to support the school system, regardless of whether plaintiff requested funding for it in the proposed budget, should be considered by the jury. Thereafter, over defendant's objections at trial, the trial court allowed plaintiff to present evidence outside the scope of its proposed budget for the 2013-2014 fiscal year.

In order to determine whether the trial court erred in allowing evidence outside the scope of plaintiff's proposed budget for the 2013-2014 fiscal year, we must determine the scope of the proceedings; specifically whether the proceedings are limited to the proposed budget. Upon review, we hold the budget dispute proceedings are limited to a consideration of the proposed budget for the fiscal year at issue and, therefore, the trial court erred in this case by allowing evidence outside the scope of plaintiff's proposed budget for the 2013-2014 fiscal year into evidence at trial.

In reaching this conclusion, we interpret N.C. Gen. Stat. § 115C-431(c) in the context of the Act. As this Court explained in *Baumann-Chacon v. Baumann*,

[t]he principal goal of statutory construction is to accomplish the legislative intent. The best indicia of that intent are the language of the statute . . . , the spirit of the act and what the act seeks to accomplish. Individual expressions must be construed as part of the composite whole and be accorded only that meaning which other modifying provisions and the clear intent and purpose of the act will permit. The Court may also consider the policy objectives prompting passage of the statute and should avoid a construction which defeats or impairs the purpose of the statute.

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212 N.C. App. 137, 140, 710 S.E.2d 431, 434 (2011) (quotation marks and citations omitted); *see also Shelton v. Morehead Mem'l Hosp.*, 318 N.C. 76, 81-82, 347 S.E.2d 824, 828 (1986) (“Legislative intent controls the meaning of a statute; and in ascertaining this intent, a court must consider the act as a whole, weighing the language of the statute, its spirit, and that which the statute seeks to accomplish.”).

As stated in N.C. Gen. Stat. § 115C-424, “[i]t [was] the intent of the General Assembly by enactment of [the Act] to prescribe for the public schools a uniform system of budgeting and fiscal control.” N.C. Gen. Stat. § 115C-424 (2013). In order to accomplish this goal, the Act provides a step-by-step budget process. In *Beaufort*, our Supreme Court summarized the process as follows:

The local school board first creates a budget setting out its estimate of the cost of providing education within its locale for the upcoming year and submits that budget to the county commission. *See* [N.C. Gen. Stat.] § 115C-429(a) (2007). The county commission then determines the amount of funds to be appropriated to the school board. *See* [N.C. Gen. Stat.] § 115C-429(b) (2007). If there is a dispute between the school board and the county commission, the two boards meet with a mediator in an effort to negotiate a compromise. *See* [N.C. Gen. Stat.] § 115C-431(a). If there is still no agreement, representatives from the two boards enter a formal mediation. *See* [N.C. Gen. Stat.] § 115C-431(b). If no agreement can be reached at the mediation, the school board may file an action in superior court. *See* [N.C. Gen. Stat.] § 115C-431(c).

363 N.C. at 503, 681 S.E.2d at 281.

N.C. Gen. Stat. § 115C-431(c), which governs a schools board’s suit against a county commission, provides the following:

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(c) Within five days after an announcement of no agreement by the mediator, the local board of education may file an action in the superior court division of the General Court of Justice. Either board has the right to have the issues of fact tried by a jury. When a jury trial is demanded, the cause shall be set for the first succeeding term of the superior court in the county, and shall take precedence over all other business of the court. However, if the judge presiding certifies to the Chief Justice of the Supreme Court, either before or during the term, that because of the accumulation of other business, the public interest will be best served by not trying the cause at the term next succeeding the filing of the action, the Chief Justice shall immediately call a special term of the superior court for the county, to convene as soon as possible, and assign a judge of the superior court or an emergency judge to hold the court, and the cause shall be tried at this special term. The judge shall find, or if the issue is submitted to the jury, the jury shall find the facts as to the following in order to maintain a system of free public schools as defined by State law and State Board of Education policy: (i) the amount of money legally necessary from all sources and (ii) the amount of money legally necessary from the board of county commissioners. In making the finding, the judge or the jury shall consider the educational goals and policies of the State and the local board of education, the budgetary request of the local board of education, the financial resources of the county and the local board of education, and the fiscal policies of the board of county commissioners and the local board of education.

All findings of fact in the superior court, whether found by the judge or a jury, shall be conclusive. When the facts have been found, the court shall give judgment ordering the board of county commissioners to appropriate a sum certain to the local school administrative unit, and to levy such taxes on property as may be necessary to make up this sum when added to other revenues available for the purpose.

N.C. Gen. Stat. § 115C-431(c).

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Plaintiff, just as it argued at trial, looks to this language and argues N.C. Gen. Stat. § 115C-431(c) is specific as to the issues to be decided by the jury and because there is no language restricting the jury's determination to those amounts sought in its proposed budget, all evidence related to its funding needs was properly admitted. Plaintiff further argues the General Assembly could have easily limited the proceedings to a consideration of those amounts in the proposed budget had it intended to so.

Although N.C. Gen. Stat. § 115C-431(c) does not explicitly state that the proceedings are limited to plaintiff's proposed budget, sub-section (c) does include plaintiff's proposed budget as one of the mandatory considerations for the fact finder in determining the amounts legally necessary to maintain a system of free public schools. *See* N.C. Gen. Stat. § 115C-431(c) ("In making the finding, the judge or the jury shall consider . . . the budgetary request of the local board of education . . ."). Moreover, it is evident from the remainder of N.C. Gen. Stat. § 115C-431 that the proposed budget is the principal focus of the entire dispute resolution process. Prior to the filing of a lawsuit under N.C. Gen. Stat. § 115C-431(c), N.C. Gen. Stat. §§ 115C-431(a) and (b) require plaintiff and defendant to attempt to settle the budget dispute at a joint meeting and, if necessary, through additional mediation efforts. N.C. Gen. Stat. § 115C-431(a), which sets forth guidelines for the joint meeting, states that "[a]t the joint meeting, the *entire school budget* shall be considered carefully and

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judiciously, and the two boards shall make a good-faith attempt to resolve the differences that have arisen between them.” N.C. Gen. Stat. § 115C-431(a) (emphasis added).

Based on the language of the N.C. Gen. Stat. § 115C-431, we hold the amounts requested in plaintiff’s proposed budget are what are at issue in a budget dispute under N.C. Gen. Stat. § 115C-431. This result seems common sense, as a budget dispute only arises when defendant does not fully fund plaintiff’s proposed budget.

We find further support for this conclusion when N.C. Gen. Stat. § 115C-431 is viewed in the context of the entire budget process, considering the respective roles of plaintiff and defendant.

N.C. Gen. Stat. § 115C-521(b), which is outside the Act but related to the budget process, provides the following:

It shall be the duty of the boards of education of the several local school administrative school units of the State to make provisions for the public school term by providing adequate school buildings equipped with suitable school furniture and apparatus. *The needs and the cost of those buildings, equipment, and apparatus, shall be presented each year when the school budget is submitted to the respective tax-levying authorities.* The boards of commissioners shall be given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped, and it shall be the duty of the several boards of county commissioners to provide funds for the same.

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N.C. Gen. Stat. § 115C-521(b) (2013) (emphasis added). Thus, as defendant argues, it is plaintiff's role to determine the capital outlay needs of the school system each year and to include those costs in their proposed budget each year. Defendant then reviews plaintiff's proposed budget and makes appropriations.

While plaintiff acknowledges that its role is to determine the amount of funding necessary, it argues the proposed budget is just an estimate and it is the fact finder who determines the amount legally necessary. Plaintiff argues limiting the evidence to the proposed budget in this case would have the effect of authorizing legally insufficient funding because the fact finder found funding beyond the amount requested in plaintiff's proposed budget was legally necessary. Plaintiff further contends that defendant was well aware of the school system's outstanding capital needs from prior years that were unfunded and therefore defendant had reasonable time to make funding decisions. We are not persuaded by plaintiff's arguments.

N.C. Gen. Stat. § 115C-521(b) makes clear that plaintiff must assess the capital needs of the school system and present those needs to defendant "each year." Each year is then treated individually in the budget process. By implication, if plaintiff does not initiate the dispute resolution process in N.C. Gen. Stat. § 115C-431, it has accepted that the appropriations by defendant were sufficient for that year. Unfunded requests from prior year's proposed budgets are not automatically carried forward and considered in subsequent years. If plaintiff wants those previously

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unfunded amounts considered, it must include them in the proposed budget for the 2013-2014 fiscal year.

Moreover, plaintiff's argument that limiting the evidence to those amounts requested in its proposed budget would authorize legally insufficient funding presumes that plaintiff requested an amount of funds below the amount legally necessary to maintain a system of free public schools. We do not accept this presumption. While plaintiff's proposed budget may be an estimate, it is not a blind guess and we do not accept plaintiff's suggestion that it underestimated the capital outlay needs of the school system by over \$80,000,000.

The purpose of the budget dispute resolution process outlined in N.C. Gen. Stat. § 115C-431 is to provide an expedited process to resolve budget disputes between a board of education and a board of county commissioners when the board of education's proposed budget is not fully funded. We hold N.C. Gen. Stat. § 115C-431(c) was never intended to open the door to allow the fact finder to consider evidence outside the scope of the proposed budget and award funding beyond that requested by the board of education, whose duty it is to request sufficient funding to maintain a system of free public schools.

3. Directed Verdict

At the conclusion of plaintiff's evidence, and again at the close of all the evidence, defendant moved for a directed verdict on the ground that plaintiff failed to

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present sufficient evidence for the jury to decide the amount of money legally necessary to maintain a system of free public schools. The trial court denied both motions.

In this third issue on appeal, defendant now contends the trial court erred in denying its motions for a directed verdict.

“The standard of review of directed verdict is whether the evidence, taken in the light most favorable to the non-moving party, is sufficient as a matter of law to be submitted to the jury.” *Davis v. Dennis Lilly Co.*, 330 N.C. 314, 322, 411 S.E.2d 133, 138 (1991) (citing *Kelly v. Int’l Harvester Co.*, 278 N.C. 153, 179 S.E.2d 396 (1971)).

In determining the sufficiency of the evidence to withstand a motion for a directed verdict, all of the evidence which supports the non-movant’s claim must be taken as true and considered in the light most favorable to the non-movant, giving the non-movant the benefit of every reasonable inference which may legitimately be drawn therefrom and resolving contradictions, conflicts, and inconsistencies in the non-movant’s favor.

Turner v. Duke Univ., 325 N.C. 152, 158, 381 S.E.2d 706, 710 (1989).

“[U]nder [N.C. Gen. Stat.] § 115C–431(c), a school board must present evidence of (1) the amount of money it needs to maintain its school system, and (2) the amount it needs from the county in order to have the necessary amount.” *Duplin Cnty. Bd. of Educ. v. Duplin Cnty. Bd. of Cnty. Comm’rs*, 201 N.C. App. 113, 122, 686 S.E.2d 169, 174 (2009). As the Court made clear in *Beaufort*, the amount of money “needed”

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or “necessary” is that amount “legally necessary” to support a system of free public schools. 363 N.C. at 507, 681 S.E.2d at 283.

In the present case, defendant argues “[plaintiff] failed to meet its basic burden of proof to show what amount was legally necessary to maintain a system of free public schools, and, thus, in turn failed to show how [defendant’s] funding fell short of the legally necessary level.” Defendant asserts plaintiff “simply failed to present evidence on the annual cost of providing a county-wide system of education both as to capital and current expenditures.”

Upon a review of the evidence, we disagree. Specifically, plaintiff presented evidence tending to show current expense funding was needed to meet state mandates and policies and capital outlay funding was needed to maintain and repair school facilities. However, having determined above that much of plaintiff’s evidence was outside the scope of plaintiff’s proposed budget for the 2013-2014 fiscal year and should not have been admitted into evidence at trial, we remand for a new trial; it is too difficult to distinguish what evidence in the weeks long trial was within the scope of plaintiff’s proposed budget.

4. Jury Instructions

In the final issue on appeal, defendant contends the trial court erred in issuing a broad rather than restrictive definition of the amount of money legally necessary to maintain a system of free public schools. Specifically, defendant argues the trial court

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erred by failing to issue requested instructions limiting the jury's consideration to the proposed budget for the 2013-2014 fiscal year and by instructing the jury that students performing below grade level were not obtaining a sound basic education. Because similar jury instructions are likely to be issued on retrial, we address defendant's arguments.

On appeal, this Court considers a jury charge contextually and in its entirety. The charge will be held to be sufficient if it presents the law of the case in such manner as to leave no reasonable cause to believe the jury was misled or misinformed. The party asserting error bears the burden of showing that the jury was misled or that the verdict was affected by an omitted instruction. Under such a standard of review, it is not enough for the appealing party to show that error occurred in the jury instructions; rather, it must be demonstrated that such error was likely, in light of the entire charge, to mislead the jury.

Hammel v. USF Dugan, Inc., 178 N.C. App. 344, 347, 631 S.E.2d 174, 177 (2006) (citations and quotation marks omitted).

Defendant first argues the trial court erred by not instructing the jury to limit its consideration to those amounts plaintiff requested in its proposed budget for the 2013-2014 fiscal year. We disagree.

A review of the trial court's instructions to the jury reveals that the instructions closely followed the language of N.C. Gen. Stat. § 115C-431 and were not overly broad. In fact, the trial court included language directing the jury to consider "the budgetary request of [plaintiff,]" among other factors provided in N.C. Gen. Stat.

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§ 115C-431(c). We hold these instructions were sufficient to present the law to the jury, and had the trial court properly limited the evidence to the scope of plaintiff's proposed budget, plaintiff's requested instruction would have been unnecessary.

Defendant also argues the trial court misled the jury when it misinterpreted the elements of a sound basic education set forth in *Leandro v. State of North Carolina*, 346 N.C. 336, 488 S.E.2d 249 (1997), and *Hoke Cnty. Bd. of Educ. v. State of North Carolina*, 358 N.C. 605, 599 S.E.2d 365 (2004). Specifically, defendant takes issue with the following instructions:

The North Carolina Constitution provides every child the constitutional right to a sound basic education

A student who is performing below grade level . . . is not obtaining a sound basic education in the subject matter being tested. A student who is performing at grade level or above . . . is obtaining a sound basic education

Defendant argues these instructions misled the jury to believe that “students were only being provided a sound basic education if they were performing at grade level, suggesting if any student was not so performing, [Union County] was not providing a sound basic education and, thus, failing to provide a system of free public schools.”

Upon review, we agree that this portion of the trial court's instructions likely misled the jury and was error. School funding cannot guarantee student performance; but only the opportunity for students to receive a sound basic education. That is why in *Leandro*, our Supreme Court expressly rejected the notion that our

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constitution provides every child the right to a sound basic education, noting “[s]ubstantial problems have been experienced in those states in which the courts have held that the state constitution guaranteed the right to a sound basic education[]” and “the framers of our Constitution did not intend to set such an impractical or unattainable goal.” 346 N.C. at 350-51, 488 S.E.2d at 257. Instead, the Court held “Article IX, Section 2(1) of the North Carolina Constitution requires that all children have the *opportunity* for a sound basic education” *Id* at 351, 488 S.E.2d at 257 (emphasis added).

III. Conclusion

Having determined the budget dispute resolution process outlined in N.C. Gen. Stat. § 115C-431 concerns plaintiff’s proposed budget for the 2013-2014 fiscal year, we hold the trial court erred in allowing evidence outside the scope of the proposed budget for the 2013-2014 fiscal year into evidence and remand for a new trial.

NEW TRIAL.

Judges CALABRIA and STROUD concur.