Cite as 2013 Ark. App. 366

ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-13-34

	Opinion Delivered May 29, 2013
SUZANNE PROCTOR APPELLANT	APPEAL FROM THE LONOKE COUNTY CIRCUIT COURT [NO. CV-2001-712]
V.	
CABOT SCHOOL DISTRICT APPELLEE	HONORABLE BARBARA ELMORE, JUDGE
	AFFIRMED

WAYMOND M. BROWN, Judge

Appellant appeals the circuit court's decision to affirm the appellee's termination of appellant's employment, pursuant to the Teacher Fair Dismissal Act.[1] On appeal, appellant argues that appellee's decision to terminate appellant for not obtaining advance approval before taking personal leave and/or not notifying the superintendent that she would be absent beforehand is not supported by substantial evidence because there was no personnel policy requiring appellant to seek or obtain advance approval prior to taking leave and no personnel policy requiring appellant to notify the superintendent when she would be out of the school building. We affirm.

On September 9, 2011, appellant received a letter from the superintendent of Cabot School District, notifying her that she was suspended and being recommended for termination

[1]Ark. Code Ann. §§ 6-17-1501-1510 (Repl. 2011).

due to her absence from her school building on September 1, 2, and 6, 2011.[2] On October 7, 2011, by and through her attorney, appellant informed appellee that she was appealing the recommendation and requesting a hearing. On October 12, 2011, a hearing was held before the Cabot School Board (Board), which specifically found that appellant had been absent for three student contact days without notifying the district in violation of school district policy, thereby causing the school to be without a certified principal for two days which placed the students, faculty, and building in jeopardy.[3] In turn, the Board accepted the superintendent's recommendation and voted to terminate appellant's employment.

Appellant filed an appeal against appellee[4] in the Lonoke County Circuit Court on November 21, 2011, alleging that the Board's action was contrary to the Arkansas Teacher Fair Dismissal Act, seeking to overturn the Board's decision, and asking to be reinstated.[5] The circuit court subsequently issued a final order on September 17, 2012, affirming the Board's findings and its vote to terminate appellant's employment. This appeal followed.

Our standard of review in matters involving the Teacher Fair Dismissal Act is limited to whether the circuit court's decision was clearly erroneous.[6] A finding is clearly erroneous when, although there is evidence to support it, the reviewing court from the entire evidence

[2]These absences coincided with Labor Day weekend.

[3]The Board also found that appellant had not been deceptive and had not been previously absent without notifying the district. No evidence had been presented and no arguments had been made with regard to any previous instances of appellant being absent without notifying the district.

[4]The Cabot School Board was also listed as a respondent in appeal to the circuit court though it is not listed as a party in appellant's appeal to this court.

[5]Appellant also requested back pay, damages for wrongful termination, and attorney's fees.

[6] *Timpani v. Lakeside School Dist.*, 2011 Ark. App. 668, at 10-11, 386 S.W.3d 588, 594 (citing *Russell v. Watson Chapel Sch. Dist.*, 2009 Ark. 79, 313 S.W.3d 1; *Fayetteville Pub. Schs. v. Dial*, 2010 Ark. App. 296).

is left with a firm conviction that an error has been committed.[7] Facts in dispute and determinations of credibility are within the province of the fact-finder.[8]

The Teacher Fair Dismissal Act requires just and reasonable cause that is not arbitrary or capricious in support of a teacher's termination.[9] The Act provides that a teacher's termination by a school district shall be void unless the school district substantially complies with the provisions of the Act and the school district's applicable personnel policies.[10] The decision to terminate a teacher pursuant to the TFDA is a matter within the discretion of the school board, and the reviewing court cannot substitute its opinion for that of the school board in the absence of an abuse of that discretion.[11]

We must break down appellant's argument into parts. Appellant argues first that the appellee's decision to terminate her for not obtaining advance approval before taking personal leave is arbitrary and capricious. A reason will be considered arbitrary and capricious only if it is not supportable on any rational basis.[12] In their joint motion to review and render a decision from the record,[13] both parties requested that the trial court make its findings and

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[7] *Id.*

[8] *Id.*

[9] Ark. Code Ann. § 6-17-1503(a)(1) (Repl. 2011).

[10] Ark. Code Ann. § 6-17-1503(c) (Repl. 2011).

[11] *Olsen v. East End School Dist.*, 84 Ark. App. 439, 444, 143 S.W.3d 576, 580 (2004)(citing *Helena–West Helena Sch. Dist. v. Davis*, 40 Ark. App. 161, 843 S.W.2d 873 (1992)).

[12] *Jackson v. El Dorado School Dist.*, 74 Ark. App. 433, 438, 48 S.W.3d 558, 562 (2001) (citing *Lee v. Big Flat Pub. Schs.*, 280 Ark. 377, 658 S.W.2d 389 (1983)).

[13] This joint motion was filed on August 14, 2012.

ruling based upon the record of the proceedings below without the necessity of further hearings. No other evidence was admitted. Therein, the parties stated "[i]t is the parties' belief that the facts, issues and arguments were presented fully and completely at the hearing before the Cabot School Board." Because the circuit court accepted no other evidence beyond that submitted at the school board hearing in making its decision, we use that information, as made available to us in the record, in our review. The circuit court used, as a rational basis for support of appellant's termination, facts gathered from testimony that appellant (1) was in fact absent, (2) knew there would be no administrator in the building on two of the three days she would be absent due to her having previously granted permission to the assistant principal to be absent on those days, (3) had formerly complied with the prior-approval requirement, and (4) knew the policy existed. We cannot find the circuit court's decision to be clearly erroneous.

Appellant argues next that the Board's decision was not supported by substantial evidence. In support of this argument, appellant argues (1) that the prior-approval requirement referred to in the district superintendent's email was not written school personnel policy and (2) that the personnel policies cited by the district as the basis for her termination did not apply to principals. The record does not support either of appellant's arguments. The fact that appellant had never before been absent without notifying the district prior, even before the superintendent's email, shows that the prior-approval requirement was an existing policy that she knew applied to her as a principal.

Even if we were to agree that the email was an invalid attempt to create a new school policy, which we do not, we cannot reach the merits of these arguments. The record on appeal is limited to that which is abstracted and we will not go to the record to reverse the decision below.[14] Based on the record before us, while appellant made the argument that the prior-approval requirement was not written personnel policy before the school board, the circuit court did not make a ruling on it. It is an appellant's responsibility to obtain a ruling in order to preserve an issue for appeal.[15] Our courts have repeatedly held that a party's failure to obtain a ruling is a procedural bar to this court's consideration of the issue on appeal.[16] This rule applies with equal force in cases brought under the TFDA as appealed from circuit court.[17] Because the circuit court did not specifically rule on this issue, we are precluded from addressing its merits on appeal. Likewise, because appellant made the arguments that the (1) prior-approval requirement was not written personnel policy and (2) that the cited to personnel policies did not apply to principals in her notice of appeal to the circuit court, but failed to get a ruling on them, we are precluded from reaching the merits on these issues.

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[14] *Watson Chapel School Dist. v. Russell*, 367 Ark. 443, 448, 241 S.W.3d 242, 246 (2006) (citing *Greene v. Pack*, 343 Ark. 97, 32 S.W.3d 482 (2000)).

[15] *Washington v. Washington*, 2013 Ark. App. 54, at 9, 425 S.W.3d 858, 864 (citing *Miller v. Ark. Dep't of Fin. & Admin.*, 2012 Ark. 165, 401 S.W.3d 466).

[16] *Olsen*, *supra*, at 446, 143 S.W.3d 576, 581 (citing *Doe v. Baum*, 348 Ark. 259, 72 S.W.3d 476 (2002); *E–Z Cash Advance, Inc. v. Harris*, 347 Ark. 132, 60 S.W.3d 436 (2001); *Barker v. Clark*, 343 Ark. 8, 33 S.W.3d 476 (2000)).

[17] *Id.* (citing *Higginbotham v. Junction City Sch. Dist.*, 332 Ark. 556, 966 S.W.2d 877 (1998)).

Finally, appellant made no argument in her pleadings to the circuit court that there was not substantial evidence to support her termination. In order to preserve an issue for appeal, the issue must be presented to the trial court so that the trial court is given the opportunity to rule on it.[18] We do not consider arguments raised for the first time on appeal.[19] Accordingly, we are precluded from reviewing this issue on appeal.

Affirmed.

GLADWIN, C.J., and HIXSON, J., agree.

The Robertson Law Firm, PLLC, by: *Charles Finkenbinder*, for appellant.

McGue Law Firm, by: *Clinton D. McGue*, for appellee.

[18] *Deering v. Supermarket Investors, Inc.*, 2013 Ark. App. 56, at 9, 425 S.W.3d 832, 837 (citing *Brown v. SEECO, Inc.*, 316 Ark. 336, 871 S.W.2d 580 (1994)).

[19] *Richardson v. Brown*, 2012 Ark. App. 535, at 7, 423 S.W.3d 630, 634 (citing *Boellner v. Clinical Study Ctrs.*, LLC, 2011 Ark. 83, 378 S.W.3d 745).