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ARKANSAS COURT OF APPEALS

DIVISION I
No. CA09-1196

FAYETTEVILLE PUBLIC SCHOOLS APPELLANT V. BENJAMIN DIAL APPELLEE	**Opinion Delivered** APRIL 7, 2010 APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [CV-09-2032] HONORABLE MARY ANN GUNN, JUDGE AFFIRMED

RITA W. GRUBER, Judge

This case involves the Arkansas Teacher Fair Dismissal Act, codified at Ark. Code Ann. §§ 6-17-1501–1510. The Act allows a teacher who receives a notice of recommended termination or nonrenewal to file a written request with the school district's board of directors for a hearing, and it requires the board to grant the requested hearing. Ark. Code Ann. § 6-17-1509(a), (c) (Repl. 2007). Fayetteville Public Schools (the district) appeals the order of the Washington County Circuit Court that granted appellee Benjamin Dial's complaint for injunctive relief and enjoined the district from denying Dial a hearing or refusing to renew his contract until his rights were adjudicated in the hearing. The district raises one point on appeal, contending that Dial was not entitled to a hearing under the Act because he had not signed and returned a written contract of employment. We affirm.

A circuit court's conclusion on a question of law is reviewed de novo and is given no

deference on appeal. *Helena-West Helena School Dist. v. Fluker*, 371 Ark. 574, 268 S.W.3d 879 (2007). The standard of review on appeal from a bench trial is whether the circuit court's findings were clearly erroneous or clearly against the preponderance of the evidence. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court upon considering all the evidence is left with a definite and firm conviction that a mistake has been committed. *Id.*

The parties do not dispute that the district offered Dial employment as a teacher for the 2008–09 school year, Dial accepted and signed the district's offer, he began working at McNair Middle School, and he subsequently received a written contract that required his signature. The principal and assistant principal, Michelle Hayward and Ted Whitehead, testified that they never received Dial's contract despite several reminders to him, and Dial testified that he was told in two meetings with Hayward and Whitehead that he had not returned the contract. A November letter of reprimand, which Dial signed, informed him that areas of concern included his failure to return the contract and the fact that there was no contract on file at the central office. In the letter's margin was the handwritten comment, "Contract turned in? (lost in shuffle)."

Hayward and Whitehead testified that they met with Dial in November 2008, that Dial said the contract perhaps had been lost "in the shuffle," that Hayward told him to request another contract from human resources and to take care of the matter, and that the subject was mentioned in another meeting that took place in January 2009. Dial testified that he had

signed the contract and put it in Whitehead's box the same day it was received. He stated that he told this to Hayward and Whitehead when it became an issue for reprimand, that he told them the contract must have been lost "between Mr. Whitehead's box and administration," and that he requested another contract at the November and January meetings. He denied being told to obtain a contract from human resources.

The district notified Dial in April 2009 that his employment would end with the current school year. In May Dial appealed the nonrenewal of his employment contract and requested a hearing. He was not afforded the hearing, and in June he filed his complaint for injunctive relief. The offer of employment, notice of nonrenewal, and other documents generated by the district were introduced into evidence at the hearing. An employee database showed that Dial was hired as a "teacher–certified" on August 4, 2008, at wages of $43,605 in the initial year of a three-year "new hire probationary period." He was also shown as a "teacher" with this salary in a document that he testified was a printout from the district's website, showing all "contracted employees" and salaries for the school year.

At the conclusion of the hearing, the circuit court announced its findings, granted the injunction against the district, and ordered the district to grant Dial a hearing. The subsequent written order, entered on July 29, 2009, set forth these findings of fact:

> 6. The Court did not find the evidence to be credible that [Dial] signed a contract and put it in the Assistant Principal's box at school.
> 7. I find that [Dial] was asked to sign the contract . . . on at least three different occasions. For whatever reasons, he did not do it.
> 8. The school officials did not prepare a new one or an additional contract for him to sign and present it to him . . . , but that does not preclude a hearing.

9. [Dial] complied with the Teacher Fair Dismissal Act and requested a hearing within the time prescribed. . . .
10. [The school district] has refused to afford [Dial] a hearing.
11. There is at least a prima facie case made of irreparable harm.
12. There was a contract between the parties as evidenced by the exhibits and the parties' performance.

The order also included these conclusions of law: under the Teacher Fair Dismissal Act, a school district must grant a hearing requested by a teacher who has received notice of recommended termination or nonrenewal; the Act mandates providing the hearing to a probationary teacher;[1] Dial, as a probationary teacher, could appeal his notice of nonrenewal of his contract as provided by the Act; based upon the parties' performance, there was a contract between the parties; and the requirement of making written contracts with teachers was a duty of a school district's board of directors.

The district contends that the Teacher Fair Dismissal Act does not apply to this case because Dial did not have a written contract. The district asserts that Dial's provision of teaching services and his payment for services do not meet an alleged requirement, based in statutes and case law, for a written contract. The district admits that the Act lacks any specific statement that the initial contract between teacher and school board must be written, but it asserts that a review of the Act and its subject matter indicates such a requirement. We disagree.

The district first points to statutory language outside the Act itself referring to written

[1]A "probationary teacher" is a teacher who has not completed three successive years of employment in the school district where the teacher is currently employed. Ark. Code Ann. § 6-17-1502(a)(2) (Repl. 2007).

contracts for teachers: a school district's board of directors has a duty to employ staff, including "[s]chool district employees under initial written employment contracts in the form prescribed by the State Board of Education"; school boards "may employ . . . teachers . . . by written contract"; and warrants issued in payment of teachers' salaries are void unless the teacher "has been employed by a valid written contract." Ark. Code Ann. §§ 6-13-620(5)(A)(ii)*(a)* (Supp. 2009); 6-17-301(a)(1) (Supp. 2009); 6-17-919(a)(2) (Repl. 2007). *See also* Ark. Code Ann. 6-17-801 (Repl. 2007); –803 (Repl. 2007); and –204 (Supp. 2009) (addressing "indefinite teacher employment contract," payment of teachers' annual salaries, and incorporation of personnel policies for certified personnel). Based upon these statutes and the Act's requirement that every contract of employment "shall be renewed in writing," Ark. Code Ann. § 6-17-1506(a) (Repl. 2007), the district concludes that the Act contemplates the existence of original written contracts. Again, we disagree.

The Act defines "teacher" in pertinent part as a person "employed in an Arkansas public school district who is required to hold a teaching certificate from the Department of Education as a condition of employment." Ark. Code Ann. § 6-17-1502(a)(1) (Repl. 2007). Section 6-17-1506(a)'s requirement that a teacher's contract must "be *renewed* in writing" (emphasis added), refers to an original "contract" but does not specify that it be a written contract.

When a statute is not ambiguous, we will not interpret it to mean anything other than what it says. *Hempstead County Hunting Club, Inc. v. Ark. Pub. Serv. Comm'n*, 2009 Ark. App.

511, 324 S.W.3d 697. Nor will we read into a statute a provision that the General Assembly did not include. *Potter v. City of Tontitown*, 371 Ark. 200, 264 S.W.3d 473 (2007). In the present case, we need not look beyond the language of the Act itself. Quite simply, nothing in the Act indicates that a teacher is not employed unless he has a written contract.

The district cites the holding of *Love v. Smackover School District*, 322 Ark. 1, 5, 907 S.W.2d 136, 138 (1995), that a teacher "had a written contract signed by board members containing provisions which entitled her to assert her rights under the Teacher Fair Dismissal Act." Nothing in *Love*, however, stands for the proposition that a teacher is not entitled to provisions of the Act if no written contract exists. The district cites other appellate decisions that discuss whether a teacher had a written contract with a school board, but it does not explain how those cases relate to the Act. *E.g.*, *Hart v. Bridges*, 30 Ark. App. 262, 271, 786 S.W.2d 589, 594 (1990) (addressing the question of an agent's liability for a contract created outside his authority and stating that statutes dealing with teachers' contracts simply did not apply). The appellate court will not address issues that are not appropriately developed. *Spears v. Spears*, 339 Ark. 162, 3 S.W.3d 691(1999).

For the reasons discussed in this opinion, we hold that the circuit court did not err in finding that Dial was entitled to the provision of Ark. Code Ann. § 6-17-1509 that afforded him a hearing. The decision of the circuit court is affirmed.

Affirmed.

MARSHALL and BAKER, JJ., agree.