

Commonwealth Of Kentucky

Court Of Appeals

NOS. 1996-CA-002283-MR & 1997-CA-000874-MR

ALLAN KEITH YOUNG¹

APPELLANT

v. APPEAL FROM ADAIR CIRCUIT COURT
HONORABLE WILLIAM M. HALL, JUDGE
ACTION NO. 95-CI-00087

ALMON SULLIVAN, JR.,
INDIVIDUALLY, AND IN HIS
OFFICIAL CAPACITY AS
SUPERINTENDENT OF ADAIR
COUNTY SCHOOLS

APPELLEE

OPINION
AFFIRMING IN PART, REVERSING IN PART AND REMANDING
** **

BEFORE: ABRAMSON², JOHNSON, AND KNOFF, JUDGES.

JOHNSON, JUDGE: Allan Keith Young (Young) has appealed from the partial summary judgment of the Adair Circuit Court entered on August 8, 1996, which dismissed his claims against Almon Sullivan, Jr. (Sullivan), the Superintendent of Adair County Schools, concerning his right to be hired as head boys' basketball coach under Kentucky Revised Statutes (KRS) 160.345 and KRS 161.760(3). Young has also appealed from the final

¹In the Notices of Appeal, the appellant's first name is spelled "Allen" in one and "Allan" in the other. Hereafter, we shall use "Allan" in our Opinion.

²Judge Abramson concurred in this opinion prior to leaving the Court on November 22, 1998.

judgment entered on March 11, 1997, after a jury trial, in which the trial court granted a directed verdict in favor of Sullivan on Young's defamation claim. We affirm as to the defamation claim and reverse as to the hiring claim.

From 1982 until 1995, Young served as the head coach of the boys' basketball team at Adair County High School. In 1984, Young was hired as the Assistant Principal at that school, a position he continues to hold. On March 29, 1995, Young was notified by Sullivan that his position as head basketball coach would be terminated at the end of the 1994-95 school year.³ Sullivan's action created a vacancy for which Young applied when it was posted.

Adair County High School had elected, pursuant to KRS 160.345, to be governed by a school-based decision making council (the school council). Under the procedure established in KRS 160.345(2)(h), George Critz (Critz), the principal of Adair County High School, requested the applications for the coaching vacancy from the superintendent for consideration by the school council. Sullivan forwarded all the applications to Critz except that of Young's. Critz then requested that Sullivan send him all the applications. On May 31, 1995, Sullivan forwarded Young's application with a memo which stated that Young was not "endorsed" because he was "under State Police investigation for

³Sullivan's letter of notification to Young enumerated eight reasons for the action taken to remove Young as coach, including, insubordination, decline in public support for the team, keeping the team in the locker room an hour after losing a game to Russell County to berate the players, and an allegation that Young attempted to bribe the head football coach to recommend hiring Young's son as an assistant.

misconduct[.]" Despite this admonition, on June 7, 1995, Critz recommended to Sullivan that Young be hired as the boys' basketball head coach for the 1995-96 school year.

On June 8, 1995, Young filed a complaint in the Adair Circuit Court against the Board of Education of Adair County (the Board) and Sullivan, individually, and in his official capacity as Superintendent of the Adair County Schools. Young alleged (1) that the reasons cited by Sullivan for his removal in the notice required by KRS 160.760(3) were "not the true and actual reasons for said action," thereby rendering the notice "defective, void and of no effect," (2) that his removal was done "to punish him for, his political affiliations, views and associations in relation to school board races" in violation of KRS 161.164 and § 1983 of Title 42, U.S.C., and (3) that his removal was "taken without any legitimate purpose or reason commensurate with the proper administration of the Adair County schools in violation of Section 2 of the Kentucky Constitution[.]" Young asked that the Board and Sullivan be enjoined from removing him as head coach and for monetary damages to compensate him for the reduction in his salary, mental anguish and emotional distress, and for his attorney's fees.

In his answer, Sullivan stated that "there existed overwhelming bases for having taken such action and for having previously disciplined [Young] for such conduct which conduct was reasonably believed to have amounted to a violation of KRS 161.164(3) and perhaps other statutory provisions, both civil and

criminal." The Board, pursuant to CR 12.02, moved the trial court to dismiss it as a party.

On August 21, 1995, Sullivan rejected Critz's recommendation to hire Young as head coach for the upcoming school year.⁴ Thus, on September 18, 1995, Young moved the trial court for leave to file an amended complaint in which he alleged that Sullivan's refusal to hire him constituted "deliberate and intentional" interference with the school council in violation of KRS 160.345(9). Also on that date, Young moved the trial court for the issuance of a temporary injunction requiring the Board and Sullivan to immediately reinstate him as the head coach. On October 18, 1995, the trial court granted the Board's motion to dismiss it as a party. It also granted Young's motion to amend his complaint vis-a-vis Sullivan, but denied his motion for a temporary injunction.

On April 17, 1996, Young moved the trial court for leave to file a second amended complaint which asserted a claim against Sullivan for defamation. On May 31, 1996, he moved the trial court for a partial summary judgment on his first amended complaint. Young argued that, based upon Critz's recommendation, he was entitled to be restored to the position of head coach. On June 18, 1996, Sullivan filed a response to the motion for partial summary judgment and his own motion for partial summary

⁴The vacancy was again posted. Young's wife, Juanita Young, a middle school teacher in Adair County, applied for and was selected for the position by Critz, after he consulted with the school council. Sullivan completed the hiring process on this occasion, but ordered Juanita Young not to have any contact with her husband during team practices and games.

judgment. He urged that the construction of KRS 160.345(2)(h) proffered by Young "would totally negate [his] authority . . . under KRS 161.760(3) to determine who would not be the boys' basketball coach at Adair County High School for the 1995-96 school year" (emphasis in original). He further contended that the school council and principal could choose any other qualified applicant, but should not be allowed "to 'trump' [his] statutorily-authorized act." He insisted that it was "patently absurd" to interpret the statute to allow the principal and the school council to "undo what the superintendent has done."

On August 16, 1996, the trial court entered an opinion and partial summary judgment essentially parroting the arguments advanced by Sullivan. In granting Sullivan's motion for summary judgment and dismissing Young's claims predicated on KRS 160.345, the trial court reasoned as follows:

Clearly, it would be unreasonable for a Superintendent to be able to exercise his clear statutory authority to reduce a teacher's extra duty assignment, and then to allow the school Principal and site based council to totally negate what the superintendent has done. Allowing the principal to take such action would permit him to do indirectly that which he is directly prohibited from doing under KRS 160.345(2)(f), that is, exercise any discretion with respect for [sic] dismissals at the school. In this particular case, allowing the Principal to hire [Young] for a coaching position for the 1995-96 year, after [Young] had been dismissed by the Superintendent for the 1995-96 year, would clearly thwart the Superintendent's statutory authority.

A trial was conducted on February 19 and 20, 1997, on Young's claim that Sullivan stripped him of his head coaching job

in retaliation for his political affiliations and his tort claim for defamation. At the close of Young's evidence, the trial court directed a verdict in favor of Sullivan on the defamation claim. The jury returned a verdict in favor of Sullivan on Young's constitutional claims. Young's appeal from the partial summary judgment and his appeal from the final judgment have been consolidated for this Court's review.

DEFAMATION--APPEAL NO. 97-CA-000874-MR

A few additional facts are needed before addressing the propriety of the trial court's resolution of Young's dignitary tort claim: The last year that Young served as the boys' basketball head coach, the team had a very successful post-season record. T-shirts were sold by the booster club, the profits from which were used to buy rings for the basketball players. Young and his wife were in charge of the T-shirt sales. An audit at the high school revealed that some people had purchased the shirts with checks made out to Adair County High School. Those checks were not deposited into Adair County High School accounts, a fact revealed during a routine audit. Sullivan reported the findings of the audit to the Board which in turn voted to have an official investigation conducted. Young was investigated by authorities; however, no criminal charges resulted.

Young's defamation claim against Sullivan was premised on statements attributable to Sullivan that were contained in two

articles in the Columbia News.⁵ One article quoted Sullivan as

⁵The first article reads in its entirety as follows:

The Adair County school board has asked state police to investigate its own high school to see whether money from ticket and T-shirt sales for the boy's state basketball tournament was managed properly.

The investigation comes amid a heated controversy surrounding Superintendent Al Sullivan's decision not to rehire head basketball coach Keith Young. Young took his team to the Sweet Sixteen this year, and the decision not to keep him as coach has torn the community.

Young, who also is assistant principal at Adair County High School, said yesterday that he and Principal George Critz appear to be the main targets of the investigation.

But Young said he welcomes any review and called the motives behind this one political. Critz has not supported Sullivan's decision and has asked that Young's application to be rehired be included with the other coach candidates.

Sullivan said yesterday that the board's request for a state police investigation is not a political ploy. He said a quarterly audit at the high school raised legitimate questions about how money from the T-shirt and ticket sales was handled.

"Any time there's a problem with money -- whether it's \$1, \$100, or \$1 million -- that needs to be looked at," Sullivan said.

Young said the T-shirts were sold through the booster club by more than one person. Money raised from the T-shirt sale was used to buy Fifth Region championship rings for the basketball team, Young said. None of the money was mishandled and none of it was public money, he said.

The other article read:

The Kentucky State Police will soon be

(continued...)

⁵(...continued)

investigating the Adair County High School, and particularly assistant principal Keith Young, for possible mismanagement of funds.

Questions were brought up following a quarterly audit - for January, February and March - at the high school completed by the firm of Wise and Lee.

"The audit was conducted after several questions were raised about state tournament ticket sales at the high school by certain people and Fifth Regional champion t-shirt sales by Keith Young," said superintendent Al Sullivan.

Young responded to the allegations saying, "The t-shirts were sold through the booster club with several of us selling them. That's what we bought our rings with (Fifth Region Championship rings.)"

"An investigation is fine with me," Young added.

Representatives of the firm met with board members behind closed doors last Tuesday during a special-called meeting to discuss the audit findings. No action was taken that night, however, another meeting was held Tuesday night.

Following a 30-minute executive session, the school board reconvened in regular session and Jimmy Kemp made a motion requesting that the Kentucky State Police do a follow-up investigation on the recent audit report. The motion was seconded by Mike Stephens and passed unanimously.

After the meeting Kemp stated, "We're dealing with state money and we want to be sure of what we are doing. To ensure the integrity of this board we felt it was necessary to bring in an outside party to follow up on the audit report."

Stephens added, "The auditors couldn't establish normal business trails and procedures in certain areas and there were a

(continued...)

saying that an audit "raised legitimate questions about how money from the T-shirt and ticket sales was handled." The other article quoted Sullivan as follows: "The audit was conducted after several questions were raised about state tournament ticket sales at the high school by certain people and Fifth Regional champion t-shirt sales by Keith Young."

A directed verdict in favor of a defendant is appropriate only when the plaintiff has not "sustained his burden of proving his claim by at least a scintilla of probative evidence capable of inducing conviction in reasonable minds." Wyant v. SCM Corporation, Ky. App., 692 S.W.2d 814, 816 (1985). The trial court is required to "consider the evidence in its strongest light in favor of the party against whom the motion was made and must give him the advantage of every fair and reasonable intendment that the evidence can justify." Lovins v. Napier, Ky., 814 S.W.2d 921, 922 (1991). In our review, we must "consider[] the evidence in the same light." Id. In the instant case, the trial court found that Young had failed to sustain his burden of proving that he had been defamed. Having reviewed the evidence presented by Young, we agree with the trial court's ruling.

In order to establish a claim for defamation one must prove the existence of: (1) defamatory language; (2) about the plaintiff; (3) which is published; and, (4) which causes injury. McCall v. Courier-Journal and Louisville Times Company, Ky., 623

⁵(...continued)
lot of questions."

S.W.2d 882, 884 (1981), and Columbia Sussex Corporation, Inc. v. Hay, Ky. App., 627 S.W.2d 270, 273 (1981). Whether the words are defamatory must be determined from the statements as a whole. Ball v. E.W. Scripps Co., Ky., 801 S.W.2d 684, 690 (1990), cert. denied, 499 U.S. 976, 111 S.Ct. 1622, 113 L.Ed.2d 719 (1991). Further, it is axiomatic that the defamatory statements must be false. Bell v. Courier-Journal and Louisville Times Company, Ky., 402 S.W.2d 84, 87 (1966).

The gist of the statements attributed to Sullivan by the newspaper include the following facts: (1) Young was in charge of t-shirt sales for the Booster Club; (2) an audit at Adair County High School revealed possible mishandling of funds; and (3) Young was, at the request of the Board, under investigation by the state police. Young acknowledged that these facts were indeed accurate. While in the normal scheme of things it is the defendant's burden to establish the truthfulness of an alleged defamatory statement, Young's admissions at trial made such a defense unnecessary. See Rollins v. Louisville Times Company, 139 Ky. 788, 90 S.W. 1081 (1906). There being no issue of fact as to the falsity of the statements, it is immaterial whether Sullivan acted with malice or whether he was aware that the investigation would reveal that Young had not committed any criminal acts. The trial court properly granted a directed verdict in favor of Sullivan on Young's defamation claim.

KENTUCKY EDUCATION REFORM ACT CLAIMS--APPEAL NO. 96-CA-002283-MR

The issue presented in this appeal concerns the interplay between KRS 160.380(2)(a) and KRS 160.390, both of which were amended in conjunction with the passage of the comprehensive legislation known as the Kentucky Education Reform Act (KERA), and portions of a new statute enacted as part of KERA, KRS 160.345(2)(f) and (h). KRS 160.380(2)(a), which pertains to school employees, was amended to read in part as follows: "All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. . . ." KRS 160.390, which is entitled, "General duties as to condition of schools; responsibilities; reports," was changed to give the superintendent the responsibility for "all personnel actions including hiring, assignments, transfer, dismissal, suspension, reinstatement, promotion, and demotion. . . ." These changes resulted in a major shift in authority over personnel. Prior to 1990, the superintendent merely made recommendations to the local school board which had the ultimate authority over personnel. See Chapman v. Gorman, Ky., 839 S.W.2d 232, 235 (1992). Since the passage of KERA, the school board has no longer been involved in individual personnel matters. See Estreicher v. Board of Education of Kenton County, Ky., 950 S.W.2d 839 (1997).

While the General Assembly entrusted personnel matters to the superintendent, it nevertheless granted specific authority over hiring to the principal and the school council. This exception to the superintendent's control is found in subsections

(2) (f) and (h) of KRS 160.345, the statute concerning school-based decision making councils,⁶ as follows:

By January 1, 1991, each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. . . . The policy shall also address and comply with the following:

. . .

(f) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.

. . .

(h) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school

⁶Such councils, also known as "site-based management councils," or "SBMC's," are generally composed of three teachers, two parents and a school administrator. KRS 160.345 (2)(a). See also Kentucky Department of Education v. Risner, Ky., 913 S.W.2d 327 (1996).

council shall select the new principal from among those persons recommended by the local superintendent. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available [emphasis added].

Sullivan's argument that his authority in personnel matters is plenary is simply not tenable given the clear and explicit authority given to the principal and the school council in matters of hiring. KRS 160.345(2)(h) unequivocally provides that, unless the vacancy to be filled is that of principal, it is the principal who, after consulting with the school council, selects the candidate to be employed. Further, this statute plainly provides that the superintendent's role in this regard is merely to forward a list of "qualified" applicants to the principal. The superintendent has no discretion whatsoever in the selection of the appropriate applicant and must complete the "hiring process."

Sullivan argues that the statutes which transferred authority over personnel to him cannot possibly be reconciled with these sections of KRS 160.345. He insists that they are "diametrically and wholly inconsistent and incapable of being construed so as to give effect to both." Clearly, under settled principles of statutory construction, if the statutes were irreconcilable, the more specific grant of authority to the school councils would control over the general personnel statutes. Land v. Newsome, Ky., 614 S.W.2d 948, 949 (1981).

However, the cardinal rule in construing statutes is "to promote their objects and carry out the intent of the Legislature." KRS 446.080.

We start with the well-established premise that in construing legislative enactments, courts "should look to the letter and spirit of the statute, viewing it as a whole. . . ." City of Owensboro v. Noffsinger, Ky., 280 S.W.2d 517, 519 (1955). Where there is apparent conflict between sections of a statute, courts must endeavor to harmonize its interpretation so as to give effect to both. Kentucky Insurance Guaranty Association v. NREPC, Ky. App., 885 S.W.2d 315 (1994). In so doing, the reviewing court must attempt to construe the statute in such a manner that "'no part of it is meaningless or ineffectual.'" Brooks v. Meyers, Ky., 279 S.W.2d 764, 766 (1955). Finally, we are required to observe the directive set out in Commonwealth of Kentucky, Transportation Cabinet v. Tarter, Ky. App., 802 S.W.2d 944 (1990), that each section is to be construed in accord with the statute as a whole.

Combs v. Hubb Coal Corporation, Ky., 934 S.W.2d 250, 252-253 (1996).

With these principles in mind, we hold that the interpretation urged by Young is the one that fits the scheme envisioned by the Legislature in its enactment of KERA. Placing personnel decisions within the purview of the superintendent and away from the board "eliminate[d] areas which were once fertile ground for favoritism and/or nepotism to take root." Chapman v. Gorman, supra at 235. However, the changes were far more innovative than coalescing personnel authority in the superintendent. Clearly, the Legislature intended to empower

local school authorities to select employees, from those qualified, that best suited the needs of the individual school.

As our highest Court observed, the "development of school-based decision making" councils is one of the "two primary objectives of KERA," the other being decentralization of authority. Board of Education of Boone County v. Bushee, Ky., 889 S.W.2d 809, 814 (1994). "The obvious intent [in enacting KRS 160.345] is to have the decisions affecting the individual schools within the district to be made by persons most affected by what occurs at that school; this is what 'school-based decision making' means." Id. (emphasis in original). It is, after all, the administrators, teachers, students and parents, those who are involved with the school on a daily basis, who are "persons most affected" by the filling of a particular vacancy at the school.

In Bushee, our Supreme Court emphasized that in shifting certain powers and responsibilities from local school boards to school-based decision making councils, the General Assembly gave school councils their "own independent sphere of responsibility." Id. at 816. Just as local school boards have had considerable power removed in favor of superintendents, superintendents are required to share that authority with principals and school councils. It is this concept of "shared responsibilit[y]" that the General Assembly used to form its foundation to build "an efficient public school system." KRS 158.645.

Thus, while no one has questioned Sullivan's statutory authority to reduce Young's extra-duty assignment as the boys' basketball head coach, the scheme envisioned by KERA plainly allowed Critz to select Young to fill the coaching vacancy. Sullivan was required at that point to complete the hiring process. We agree with Sullivan's observation that this interpretation might, as the instant case demonstrates, result in a battle of wills, between the principal and superintendent, and a circuitous pattern of hiring and firing. Nevertheless, the scheme provides a check on the superintendent's power to dismiss a non-tenured employee or to reduce a tenured teacher's extra-duty assignments.⁷

Next, Sullivan argues that Young was not "qualified" as a matter of law to be considered by the principal and the school council as he had been dismissed as the head coach. We agree with Young that it is absurd to suggest that an assistant principal with basketball coaching experience is not "qualified" to coach an extracurricular basketball team. Whether he was the best person for the job was the responsibility of the principal to determine with the input of the school council. There is nothing in KRS 160.345(2)(h) to prevent the superintendent from expressing to the principal and the school council his opinions and concerns that resulted in the initial reduction of extra

⁷Sullivan states that he removed Young as coach "for cause." While the superintendent was required to give a "reason" for the reduction of responsibility, KRS 161.760(3), such reasons do not contemplate legal "cause." There are no property interests attached to extra-duty assignments, like coaching, and no hearing rights are associated with such a reduction.

duties. However, that decision does not, under the statute, disqualify an otherwise qualified applicant.

In this vein, Sullivan suggests that his office is not merely a conduit for receiving and sending on applications. He insists that he has some discretion in screening applicants before submitting them to the school for consideration. Again, we believe this argument is contrary to the scheme established in KERA.

Initially, KRS 160.345(2)(h) provided that a vacancy would be filled from a list "recommended" by the superintendent. This section of the statute was amended in 1992 to set the superintendent's duties in matters of hiring to merely submitting a list of qualified applicants. As the term "qualified applicants" is not otherwise defined, we construe it to include, by reference to its plain meaning, all those who meet the minimum legal requirements for the job. Allowing Sullivan to withhold applications based upon his subjective opinions would skew the process and defeat KERA's purpose of allowing the hiring decision to emanate at the school level.

Finally, Sullivan argues that Young had no right to the head coaching job and that Critz failed to consult with the school council. He bases this argument on the fact that there are no minutes of the school council reflecting that the required consultation occurred. However, the minutes do reflect that in its meeting on June 6, 1995, the school council went into executive session to "discuss personnel." The record reveals that during the executive session Critz informed the school

council that he had finally received Young's application from Sullivan, and that at least one school council member expressed her opinion regarding Critz's desire to hire Young. That other school council members did not express an opinion, although given the opportunity, does not negate the fact that "consultation" did occur.

Accordingly, the judgment of the Adair Circuit Court dismissing Young's claim for defamation is affirmed. The summary judgment dismissing Young's claim of entitlement to the boys' basketball head coaching job for the 1995-96 school year based on KRS 160.345 is reversed and this matter is remanded for further proceedings on the issue of Young's damages.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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ORAL ARGUMENT FOR APPELLANT:

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