IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2002-CA-00256-COA

BOARD OF EDUCATION FOR THE HOLMES COUNTY SCHOOLS **APPELLANT**

v.

FRED JERRY FISHER **APPELLEE**

DATE OF TRIAL COURT JUDGMENT:	1/15/2002
TRIAL JUDGE:	HON. GAIL SHAW-PIERSON
COURT FROM WHICH APPEALED:	HOLMES COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	ALIX HENRY SANDERS
ATTORNEYS FOR APPELLEE:	EDUARDO ALBERTO FLECHAS JAMES D. BELL
NATURE OF THE CASE:	CIVIL - CONTRACT
TRIAL COURT DISPOSITION:	SUMMARY JUDGMENT FOR APPELLEE.
DISPOSITION:	AFFIRMED - 09/09/2003
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	

BEFORE KING, P.J., BRIDGES AND IRVING, JJ.

BRIDGES, J., FOR THE COURT:

¶1. Fred Jerry Fisher was employed as a vocational teacher by the Holmes County School District for the 1999-2000 school year at an annual salary of $41,630. In May 2000, Fisher was offered his contract of employment for the 2000-2001 school year; however, this contract reassigned Fisher from a vocational teacher to a social studies teacher, with a salary of only $39,340.

¶2. Fisher, pursuant to Mississippi Code Annotated section 37-9-109, requested a hearing before the Holmes County Board of Education on the contract, which Fisher claims violated his rights under

Mississippi Code Annotated section 37-9-105. This request was granted, and in June 2000, the Holmes County Board of Education determined that Fisher had been offered a proper contract.

¶3. Fisher filed a complaint in the Chancery Court of Holmes County, Mississippi, against the Holmes County Board of Education, on June 21, 2000. The complaint alleged that the Board had improperly reassigned Fisher, that the Board had failed to provide timely notice to Fisher of the non-renewal of his 1999-2000 contract, and that such failure to timely notice resulted in the automatic renewal of the 1999-2000 contract.

¶4. On June 21, 2000, Fisher filed a motion for summary judgment. Following a hearing on the merits, an order was entered granting Fisher's motion for summary judgment. The chancellor found that the failure of the district's superintendent to give Fisher notice of non-renewal of his 1999-2000 contract violated Mississippi Code Annotated section 37-9-105(c), and this action resulted in the automatic renewal of the contract. Subsequently, Fisher filed a motion for award of damages and injunctive relief, on July 9, 2001. Following an evidentiary hearing, the chancellor entered an order finding that Fisher's damages were the difference between the salary authorized in his 1999-2000 contract and the salary authorized in his 2000-2001 contract. The damage amount was determined to be $2,384.22. The chancellor found no evidence to support injunctive relief, and Fisher was awarded a judgment of $2,384.22, with interest at 8% until paid in full.

¶5. The Board appeals this decision by the chancellor.

STATEMENT OF THE ISSUES

I. WHETHER THE HOLMES COUNTY BOARD OF EDUCATION IS BARRED FROM APPEALING THE CHANCERY COURT'S ORDER GRANTING SUMMARY JUDGMENT?

II. WAS THE DECISION OF THE CHANCELLOR AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE?

III. DID FRED JERRY FISHER INCUR ANY DAMAGES AS A RESULT OF THE ACTIONS OF THE SCHOOL BOARD OR THE SUPERINTENDENT?

FACTS

¶6. Fisher was employed by the district for twenty-seven and one half years. Fisher held a teacher's license from the State of Mississippi, with certification in the areas of reading and social studies. Fisher signed an employment contract to work as a vocational teacher for the 1999-2000 school year. The contract provided that Fisher would be employed for 200 days at an annual salary of $ 41,630. In May 2000, Fisher was presented with an employment contract for the 2000-2001 school year; however, he was to be employed for 189 days at an annual salary of $39,340. Under protest, Fisher signed and executed the contract on May 22, 2000.

¶7. Fisher requested a hearing before the Board under Mississippi Code Annotated section 37-9-109, on the issue of whether the 2000-2001 contract constituted a violation of his rights entitling him to redress. The Board granted Fisher's request. On June 2, 2000, the Board, in executive session, determined that Fisher had been offered a proper contract.

¶8. Fisher filed a complaint in the Chancery Court of Holmes County, Mississippi, seeking reformation of the 2000-2001 contract. The complaint also sought damages and attorney fees under 42 United States Code sections 1983, 1988.

ANALYSIS

I. WHETHER THE HOLMES COUNTY BOARD OF EDUCATION IS BARRED FROM APPEALING THE CHANCERY COURT'S ORDER GRANTING SUMMARY JUDGMENT?

¶9. In Fisher's brief, he makes an issue about whether the Board is even barred from appealing the summary judgment granted by the chancellor. Rule 4 of the Mississippi Rules of Appellate Procedure state

that "the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from." Fisher claims that because the Board waited nearly one year following the date of entry for the summary judgment it is now barred from appealing the order granting summary judgment.

¶10. In *Fortune v. Lee County Board of Supervisors*, the Mississippi Supreme Court held that only when there is a final judgment can there be an appeal. The court further stated:

> A final decision generally is one which ends the litigation on the merits, and leaves nothing for the court to do but execute the judgment.... An interlocutory judgment, on the other hand, leaves for future determination an equity of the case, or some material question connected with it. A judgment is interlocutory, as opposed to final, only when something further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties. Accordingly, where further action of the court is necessary to give a complete adjudication upon the merits, the judgment under which the further question arises is to be regarded, not as final, but as interlocutory.

Fortune v. Lee County Bd. of Supervisors, 725 So. 2d 747, 750-51 (¶5) (Miss. 1998).

¶11. Since the summary judgment is not considered a final judgment, the Board would not be procedurally barred from this appeal. Therefore, this issue is without merit.

II. WAS THE DECISION OF THE CHANCELLOR AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE?

¶12. We conduct a de novo review of the record to determine whether the trial court properly granted a motion for summary judgment. *Hudson v. Courtesy Motors*, 794 So. 2d 999, 1002 (¶7) (Miss. 2001) (citing *Russell v. Orr*, 700 So. 2d 619, 622 (Miss. 1997)). The de novo review includes looking at the evidentiary matters and viewing them in the light most favorable to the party against whom the motion has been made. *Pace v. Fin. Sec. of Miss.*, 608 So. 2d 1135, 1138 (Miss. 1992). The movant has the burden of proving that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Daniels v. GNB, Inc.*, 629 So. 2d 595, 599 (Miss. 1993).

¶13. In the present case, Fisher filed a complaint alleging that the Board had "attempted tortiously to evade its contractual duties" to Fisher. Under Mississippi Code Annotated section 37-9-105, in the event that a school district recommends non-renewal of a teacher contract for a successive year, written notice of non-renewal shall be given within seven days of the date when the recommendation to reemploy would have been made under the provisions of sections 37-9-15 and 37-9-17. Miss. Code Ann §37-9-105 (Rev. 2001). Mississippi Code Annotated section 37-9-105 applies to circumstances in which a teacher is terminated and also to circumstances in which a teacher is offered a different position or their prior school term contract is otherwise not renewed. *DeSoto County Sch. Bd. v. Garrett*, 508 So. 2d 1091, 1093 (Miss. 1987). Failure to notify a teacher of non-renewal of a contract in a timely manner will result in automatic renewal of the contract in question for the ensuing year. *Garrett*, 508 So. 2d at 1094; *also see Noxubee County Sch. Bd. v. Cannon*, 485 So. 2d 302, 304 (Miss. 1986).

¶14. In *DeSoto County School Board v. Garrett*, two women filed a complaint alleging that the reassignments, from principals to teachers, constituted a failure to renew employment and that compliance with the procedures law, Mississippi Code Annotated section 37-9-101, was mandated. *Garrett*, 508 So. 2d at1092. "After conducting a hearing, the chancellor ruled that the procedures law applied to an offer of reemployment in a different position, at a reduced salary; in short a demotion. *Id*. On appeal, the Mississippi Supreme Court affirmed the chancellor's findings. *Id*. at 1094.

¶15. Similarly, in the present case, Fisher was offered a different position, from a vocational teacher to a social studies teacher, and was offered a reduced salary, from $41,630 to $39,340, in short a demotion. Fisher was not provided written notice or otherwise informed within seven days of the non-renewal of his 1999-2000 employment contract, as required under Mississippi Code Annotated section 37-9-105. The 2000-2001 contract indicates that it was not executed until May 8, 2000, thirty days subsequent to the

deadline for notice, which was on April 8, 2000. According to *Garrett*, since the Board failed to timely notice Fisher by written notice of the non-renewal of his 1999-2000 school term contract, such contract was automatically renewed for the 2000-2001 school term. With this being the case, no genuine issue of material fact existed; therefore, the granting of summary judgment by the chancellor was proper.

III. DID FRED JERRY FISHER INCUR ANY DAMAGES AS A RESULT OF THE ACTIONS OF THE SCHOOL BOARD OR THE SUPERINTENDENT?

¶16. In *Eastland v. Gregory*, the Mississippi Supreme Court stated that "a party who breaches a contract is only liable for the damages caused by the breach, and the non-defaulting party is only entitled to be put in the same position he would have been had there been no breach." *Eastland v. Gregory*, 530 So. 2d 172, 174 (Miss. 1988). The Mississippi Supreme Court also stated that, at the discretion of the trial judge, a non-breaching party may be awarded pre-judgment interest if the involved damages are liquidated. *Warwick v. Matheney*, 603 So. 2d 330, 342 (Miss. 1992).

¶17. In the present case, the Board breached when it compensated Fisher for only $39,340 when it should have compensated Fisher for $41,630 when the 1999-2000 contract was automatically renewed due to lack of notice. In order to place him in the same position he would have been had there been no breach, Fisher was entitled to the difference between the two salaries, for a total of $2,290. Fisher was also entitled to pre-judgment interest which amounted to $94.22, for an overall total of $2,384.22. This is the amount awarded to Fisher by the chancellor; therefore, there was no error and this issue is without merit.

¶18. **THE JUDGMENT OF THE HOLMES COUNTY CHANCERY COURT IS AFFIRMED. STATUTORY DAMAGES AND INTEREST ARE AWARDED. COSTS ARE ASSESSED TO THE APPELLANT.**

KING, P.J., THOMAS, LEE, IRVING, MYERS, AND CHANDLER, JJ., CONCUR.

SOUTHWICK, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY McMILLIN, C.J., AND GRIFFIS, J.

SOUTHWICK, P.J., DISSENTING:

¶19. The majority concludes that the contract sent to Fisher constituted the offer of a demotion. There was a slight income change under the contract, but that allegedly was the result solely of fewer workdays being applicable to the position to which Fisher was assigned. The old and the new positions were paid at the same daily rate. It is too facile to rule that any reduction in overall income is a demotion. The issue is more complex. There was a dispute of material fact regarding whether the new contract was a reassignment to a comparable position. If it was, there was no demotion and no need for the Board to have followed procedures for contract non-renewal. I would reverse and remand so that the fact questions can proceed beyond the summary judgment stage.

¶20. Fisher's 1999-2000 contract had employed him in the position of "vocational teacher," obligating him to 200 days of service at $208.15 per day. Fisher's 2000-2001 contract described his position as "teacher," requiring 189 days of service at $208.15 per day for a salary of $39,340. Had this been a non-renewal as meant by the relevant statute, certain procedural protections applied that were not followed. Fisher was granted summary judgment as to liability. Later an award of the daily salary for eleven more days was awarded, plus interest.

¶21. The trial judge granted summary judgment because she found under controlling judicial interpretation that there was no dispute of material fact that Fisher's 2000-2001 contract resulted in a "demotion" from the terms of the 1999-2000 contract. *See DeSoto County Sch. Bd. v. Garrett*, 508 So. 2d 1091, 1093 (Miss. 1987). Since it was found to be a demotion, the failure to provide statutory notice

invalidated the action. Miss. Code Ann. § 37-9-105 (Rev. 2001). Under that statute, whenever a teacher who has been employed during a particular school year will not be offered "a renewal contract for a successive year," then timely notice must be given. That notice was not sent. Our issue of course is whether it was required.

¶22. Though the statute refers to a "non-renewal," that word is not defined. What is clear is that a "renewal" does not require that the identical terms appear in the new one-year contract. If nothing else, the dates of employment will change. There might actually be a raise, and granting that would not be a non-renewal triggering the protections of section 37–9-105. The job title may change, but I find no basis in statute or caselaw that a change in title automatically is a non-renewal.

¶23. In *Garrett*, principals were reassigned to positions as classroom teachers. The Supreme Court determined that offering a principal a new position as a teacher at lesser pay was a demotion. Consequently, the new contract was not a "renewed" contract. *Garrett*, 508 So. 2d at 1092-93. Though the Court agreed with the trial judge that the new position was a demotion, it did not announce a readily usable definition of that word.

¶24. The majority interprets *Garrett* to mean that when teachers are "offered a different position or their prior school term contract is otherwise not renewed," the notice and other statutory procedural requirements must be followed. Respectfully, that makes *Garrett* far more absolute than is justified. This would mean that the offer of any new position at the same or better pay, with a different title that all concerned admitted was a more prestigious one, would be a non-renewal. These procedural rules do not apply to those sorts of changes. And if an improvement in position should not be considered a non-renewal, neither should the offer of a comparable even if different position. Changing job title cannot be

enough, else school boards are unnecessarily hamstrung in the flexibility of assigning their teachers where they are needed.

¶25. *Garrett* holds that process is due when something adverse is to be offered. That is the key because the statute that concerns us is not supposed to create a rigid structure for placement of employees within school districts. I find two statements of legislative intent particularly relevant. First, the statute was intended "to provide public school employees with notice of the reasons for not offering an employee a renewal of his contract." Miss. Code Ann. § 37-9-101 (Rev. 2001). The legislature rejected that the statute would "establish a system of tenure." *Id.* There are procedures for teachers or principals to have a hearing if their existing contractual benefits are not going to be offered again for the new school year. It is with that understanding that we should examine what it means for a contract to be renewed.

¶26. Here, the school board paid Fisher $208.15 daily for 200 days in 1999-2000, and offered to pay him $208.15 for eleven fewer days worked in 2000-2001. There is no evidence on this summary judgment of whether the fewer days were strictly a matter of the nature of the job. Perhaps all "teachers" worked 189 days and all "vocational teachers" worked 200 days in the new school year.

¶27. It is of some importance that the contract that Fisher had for his year as a vocational teacher and the one offered him as teacher provided that the Board had discretion to reassign him to other employment. By statute, a superintendent may reassign personnel so long as the reassignment is to "an area in which the employee has a valid license issued by the State Department of Education." Miss. Code Ann. § 37-9-14(2)(s) (Rev. 2001). The reassigned employee can complain by seeking review by the school board. Miss. Code Ann. § 37-9-14(2)(s) (Rev. 2001). Fisher is certified in reading and social studies. His reassignment from vocational education (in which he is admittedly not certified) to 6th grade social studies was well within the superintendent's authority. That reassignment if during the school year would not have

been an implicit cancellation of the old contract and execution of a new one. If instead the change does not take place until the offer of a new contract at the end of a school year, there is not necessarily a non-renewal if the contract reflects what could have been done with a reassignment. A change that results in a comparable position, even if not identical in title or pay, may be found to be a renewal.

¶28. Other statutory rules are important in understanding what occurred in this case. A school's principal is to present a slate of recommendations on or before April 1, for all teachers who will be employed for the following school year. Miss. Code Ann. § 37-9-17(1) (Rev. 2001). Teachers are generally to be employed for not less than a school year of 187 days. Miss. Code Ann. § 37-9-24(1) (Rev. 2001). A principal must generally recommend "renewal" of the contracts of even long-standing teachers at the school on an annual basis. The recommendations pass from the principal to the superintendent and on to the school board. If accepted, the superintendent of the district shall enter into a contract with the teacher. Miss. Code Ann. § 37-9-17(1) (Rev. 2001).

¶29. Fisher was offered a contract for 2000-2001 as a teacher in a subject in which he was certified at a salary that maintained his daily rate of pay from the previous year. The answer too quickly given by the majority is that this qualified as a non-renewal of contract. *Garrett* provides procedural protections to adverse employment action similar to demotions. In *Garrett*, the employment action consisted of reemployment at an inferior position -- teacher instead of principal -- at a reduced salary. Since *Garrett* discussed "demotions" but did not define the term, I look to other authority:

> A demotion includes any reassignment (1) under which the staff member receives less pay or has less responsibility than under the assignment he held previously, (2) which requires a lesser degree of skill than did the assignment he held previously, or (3) under which the staff member is asked to teach a subject or grade other than one for which he is certified or for which he has had substantial experience within a reasonably current period.

Montgomery v. Starkville Mun. Sep. Sch. Dist., 665 F. Supp. 487, 492 (N.D. Miss. 1987).

¶30. I find useful similarity between the issues in such federal cases which involve whether racial discrimination has occurred regarding a teacher's employment, and those analyzing adverse decisions sufficient to invoke the procedural protections of the statute that Fisher cites:

> [R]esponsibility is the central value protected by *Singleton's* demotion provision. An increase in salary is not necessarily determinative, see *Lee v. Macon Cty. Bd. of Educ. (Muscle Shoals),* 5 Cir., 1971, 453 F.2d 1104 (black principal demoted to Head Start teacher despite fact that his salary increased), nor is the title, see *Lee v. Macon Cty. Bd. of Educ. (Thomasville),* [470 F.2d 958 (5th Cir. 1972)] (Black principal was not demoted to administrative assistant to the school superintendent. The court held that responsibilities were not "significantly different.")

Lee v. Russell County Bd. of Ed., 563 F.2d 1159, 1161 (5th Cir. 1977); Pamela Dill, "Education Law Abstract: A Survey of Prominent Issues in Mississippi's Public Schools," 13 MISS. C. L. REV. 337, 361 (1993) (discusses *Russell*). Just as an increase in salary does not shield racial discrimination, a slight reduction in salary does not spawn a *per se* non-renewal.

a. Reduced salary

¶31. There is no question that $39,340 is less than $41,630, or that Fisher received less money for the 2000-2001 school year than for that of 1999-2000. The corresponding days of required service were also decreased. Thus, under the school board's reasoning, Fisher's salary was not "reduced," as Fisher received compensation at the same daily rate that he did for the 1999-2000 school year.

¶32. Fisher was offered a contract that complied with this provision:

> The contract shall show the name of the district, the length of the school term, the position held (whether an assistant superintendent, principal or licensed employee), the scholastic years which it covers, the total amount of the annual salary and how same is payable. The amount of salary to be shown in such contract shall be the amount which shall have been fixed and determined by the school board . . . .

Miss. Code Ann. § 37-9-23 (Rev. 2001). Even if the new calculation of total annual salary is less than that in the previous year, the issue remains open of whether this was a demotion.

¶33. Contractual obligations for teachers are statutorily mandated at a minimum of 187 days for a school year. Miss. Code Ann. § 37-9-24 (Rev. 2001). Both Fisher's 1999-2000 and 2000-2001 contracts satisfied the statutory minimums for employment. Though the actual take-home income was less under the new contract, I find that if that reduction was solely the result of placing Fisher in a comparable position whose duties required somewhat fewer work days, the contract still might be considered a renewal.

b. Inferior position

¶34. There is no evidence on summary judgment that the new position was inferior. Fisher was reassigned from vocational education (where he taught reading, writing, and language skills) to 6th grade social studies. The reassignment of personnel is authorized so long as the reassignment is to "an area in which the employee has a valid license issued by the State Department of Education." Miss. Code Ann. § 37-9-14(2)(s) (Rev. 2001). In addition, Fisher's 1999-2000 and his 2000-2001 signed contracts expressly provide for reassignment, albeit "during the school term."

¶35. Since contractual and statutory authority existed to reassign Fisher during the school term, a reassignment at the end of the school term is not a *per se* non-renewal of that contract. Fisher was certified in both reading and social studies. The superintendent had authority to reassign Fisher's teaching responsibilities. He could have done so by the terms of Fisher's 1999-2000 contract even prior to the start of the 2000-2001 school year.

¶36. I find that a school board may decide to move teachers into comparable positions in the year-end review of what school needs may be, without such moves being considered non-renewals. Those reassignments may at times result in different titles; there may be slight pay differentials for reasons such as are alleged here, namely, certain positions may require more before or after school-year work. Within the fact-specific parameters established by *Garrett* of whether the new position should be considered a

demotion, this case needs to be decided. Since summary judgment was granted, the fact issues were not resolved of the relative status of the two positions, and whether the difference in pay was solely the result of the different number of days that those assigned in the two different positions legitimately are required to work. There is also a fact question of whether the differential in pay, even if arising from neutral factors, in itself was enough to be a demotion.

¶37. A meaningful reduction in prestige, responsibility or pay is necessary. I would reverse and remand so that the case could proceed past the summary judgment stage.

McMILLIN, C.J., AND GRIFFIS, J., JOIN THIS SEPARATE WRITTEN OPINION.