[Cite as *State ex rel. Browne v. Sandusky City School Dist. Bd. of Edn.*, 2009-Ohio-6672.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

State ex rel. Richard Browne	Court of Appeals No. E-09-023
Appellant	Trial Court No. 2008CV0655
v.	
Sandusky City School District Board of Education	**DECISION AND JUDGMENT**
Appellee	Decided: December 18, 2009

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Christine A. Reardon and Bethany German Ziviski, for appellant.

Christian M .Williams for appellee.

John E. Britton, Krista Keim, and Lindsay F. Gingo for Ohio School Boards Association

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PIETRYKOWSKI, J.

{¶ 1} Relator-appellant, Richard Browne, appeals the April 28, 2009 judgment of the Erie County Court of Common Pleas which granted respondent-appellee Sandusky City School District Board of Education's ("the Board") Civ.R. 12(B)(6) motion to

dismiss appellant's complaint for a writ of mandamus. For the reasons that follow, we affirm the trial court's judgment.

{¶ 2} The following undisputed facts are relevant to this appeal. In December 1982, appellant graduated with a Bachelor of Fine Arts degree from Bowling Green State University. In the spring semester of 1983, appellant enrolled in and received three credit hours in the area of licensure or in an area related to the teaching field. In the spring semester of 1994, at Bowling Green State University, appellant enrolled in and received credit for 18 hours of coursework in the area of licensure or in an area related to the teaching field.

{¶ 3} On June 20, 1994, the Ohio Department of Education issued appellant his first four-year provisional teaching certificate; at that time, appellant did not hold a master's degree. From 1994 until present, appellant has been employed with the Sandusky City School District. Following the issuance of his initial teaching certificate through 2003, appellant completed ten hours of coursework in his area of licensure or in an area related to the teaching field.

{¶ 4} Believing that he had attained eligibility for a continuing contract, appellant applied for a continuing contract for the 2005-2006 school year. In November 2005, appellant was informed that he needed to complete two additional semester hours in order to be eligible for continuing contract status. In 2006, appellant completed an additional three hours of coursework. Also in 2006, appellant was issued a five-year professional license.

{¶ 5} In November 2006, appellant again requested that the Board consider his eligibility for a continuing contract. In a letter dated December 8, 2006, Sandusky Schools Superintendent, William Pahl, informed appellant that, upon closer inspection of his transcripts, the semester hours that appellant completed following his baccalaureate degree but prior to his initial licensure did not count toward the 30 semester hour requirement for continuing contract purposes. Superintendent Pahl then informed appellant that he needed to complete 20 additional semester hours to be eligible for continuing contract status.

{¶ 6} Appellant did not complete any additional semester hours but continued to assert his right to a continuing contract. On September 18, 2007, the Board again denied appellant's request for a continuing contract.

{¶ 7} On July 15, 2008, appellant filed a complaint for a writ of mandamus requesting that the Erie County Court of Common Pleas compel the Board to issue him a continuing contract. Specifically, appellant asserted that, pursuant to R.C. 3319.11, appellant had a clear legal right to a continuing contract; the Board was under a duty to award appellant a continuing contract; and that appellant had no adequate remedy at law.

{¶ 8} On September 11, 2008, the Board filed a motion to dismiss pursuant to Civ.R. 12(B)(6). The Board argued that because appellant failed to complete 30 additional semester hours of coursework as required under R.C. 3319.08(B)(2)(a), appellant was not eligible for a continuing contract and, thus, did not have a clear legal right to the relief requested. Appellant responded that, construing the remedial legislation

of R.C. Chapter 3319, the Ohio Teacher Tenure Act, liberally in favor of teachers, he met the coursework requirement because the statute does not specify that all of the 30 semester hours be completed after the issuance of the initial teaching certificate. On April 28, 2009, without a written opinion, the trial court granted the motion to dismiss. This appeal followed.

{¶ 9} Appellant now raises the following assignment of error for our review:

{¶ 10} "1. The trial court committed reversible error when it dismissed relator-appellant Richard Browne's Petition for Writ of Mandamus."[1]

{¶ 11} We review a trial court's order granting a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted on a de novo basis. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶ 5; *Firelands Regional Med. Ctr. v. Jeavon*s, 6th Dist. No. E-07-068, 2008-Ohio-5031, ¶ 17. "A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint." *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 1992-Ohio-73. In considering such a motion, we accept as true the factual allegations of the complaint. *Perrysburg Twp. v. Rossford* at ¶ 5.

{¶ 12} "The standard for determining whether to grant a Civ.R. 12(B)(6) motion is straightforward. In order for a complaint to be dismissed under Civ.R. 12(B)(6) for failure to state a claim, it must appear beyond a doubt from the complaint that the

[1]The Ohio School Boards Association, with permission of this court, has filed an amicus curiae brief in support of appellee.

plaintiff can prove no set of facts entitling him to relief. *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, syllabus." *Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 2002-Ohio-2480, ¶ 5.

{¶ 13} In his sole assignment of error, appellant argues that the trial court erred when it dismissed his complaint for a writ of mandamus because he stated a claim to which he is entitled to mandamus relief; to wit, his entitlement to a continuing contract as he met all the requirements set forth in R.C 3319.08 and 3319.11.

{¶ 14} R.C. 3319.08 provides, in relevant part:

{¶ 15} "(B) A continuing contract is a contract that remains in effect until the teacher resigns, elects to retire, or is retired pursuant to former section 3307.37 of the Revised Code, or until it is terminated or suspended and shall be granted only to the following:

{¶ 16} "* * *

{¶ 17} "(2) Any teacher holding a professional educator license who has completed the applicable one of the following:

{¶ 18} "(a) If the teacher did not hold a master's degree at the time of initially receiving a teacher's certificate under former law or an educator license, thirty semester hours of coursework in the area of licensure or in an area related to the teaching field since the initial issuance of such certificate or license, as specified in rules which the state board of education shall adopt; * * *."

{¶ 19} R.C. 3319.11(B) further provides:

{¶ 20} "Teachers eligible for continuing service status in any city, exempted village, local, or joint vocational school district or educational service center shall be those teachers qualified as described in division (D) of section 3319.08 of the Revised Code, who within the last five years have taught for at least three years in the district or center, and those teachers who, having attained continuing contract status elsewhere, have served two years in the district or center, but the board, upon the recommendation of the superintendent, may at the time of employment or at any time within such two-year period, declare any of the latter teachers eligible."

{¶ 21} Appellant and the Board agree that appellant has taught for at least three of the past five years in the Sandusky City School District. Thus, appellant meets the requirement under R.C. 3319.11(B). As to R.C. 3319.08(B)(2), the parties agree that appellant has a five-year professional educator's license. The parties dispute, however, the interpretation of the requirement that the teacher complete 30 additional semester hours of coursework. Appellant contends that it is the date of the completion of the coursework that is determinative. In other words, so long as the 30 semester hours are *completed* after the issuance of the initial teaching certificate the statutory requirement has been met. Conversely, the Board adheres to the interpretation that 30 semester hours, in their entirety, must be commenced and completed following the issuance of the initial teaching certificate.

{¶ 22} In support of his argument, appellant relies on the opinion of the Ohio Attorney General, 2007 Ohio Atty.Gen.Ops. No. 2007-015, in which Attorney General Marc Dann interpreted the statute in a factually similar case finding:

{¶ 23} "R.C. 3319.08(B)(2)(a) requires that the teacher finish the applicable thirty semester hours after the initial issuance of the teacher's certificate or license, regardless when the first of those hours commenced. Nothing in R.C. 3319.08(B)(2)(a) indicates that a teacher must have both started and finished thirty hours of applicable coursework after the issuance of the initial certificate or license, only that the teacher must have finished those thirty hours after receiving the initial certificate or license. Had the General Assembly intended that a teacher both start and finish thirty hours of coursework in the period following the teacher's initial licensure, it could easily have included in R.C. 3319.08(B)(2)(a) language that indicated such intention."

{¶ 24} As acknowledged by appellant, "an opinion authored by the Attorney General is persuasive authority and not binding on this court" *State ex rel. Merrill v. Ohio Dept. of Natural Resources*, 11th Dist. Nos. 2008-L-007, 2008-L-008, 2009-Ohio-4256, ¶ 72, citing *Gen. Dynamics Land Sys., Inc. v. Tracy*, 83 Ohio St.3d 500, 504, 1998-Ohio-19.

{¶ 25} This court has consistently held that "when the relevant statutory language is plain and unambiguous, it conveys a definite, indisputable meaning. As such, any necessity for an appellate court to apply the rules of statutory interpretation is negated." *Hilton v. Osterud*, 6th Dist. No. WD-08-082, 2009-Ohio-1741, ¶ 10, citing *Perrysburg Twp. v. Rossford Arena Auth.*, 175 Ohio App.3d 549, 2008-Ohio-363.

{¶ 26} In the Attorney General's Opinion letter, he quotes the definition of "since" as "'in the period *after* a specified time in the past.' Merriam-Webster's Collegiate Dictionary 1163 (11th Ed. 2005.)" (Emphasis in original.) In our view, the requirement

that 30 semester hours of coursework be completed since the issuance of the initial teaching certificate clearly means that the semester hours be both commenced and completed following the initial teaching certificate. The interpretation espoused by appellant and the Attorney General could lead to inequitable results. For example, a teacher who has obtained a master's degree prior to the issuance of an initial teaching license must complete six additional semester hours of graduate coursework prior to becoming eligible for a continuing contract. R.C. 3319.08(B)(2)(b). Thus, a teacher holding a master's degree need only complete six additional coursework hours; whereas, a teacher with a baccalaureate degree must complete 30 additional hours. If a teacher with a baccalaureate degree need only finish his or her 30 hours requirement after the issuance of the initial teaching certificate it could result in the teacher only taking two or three semester hours and achieving eligibility for a continuing contract. A result such as this is not consistent with the purpose of awarding tenure to teachers who "have reached a certain level of professional accomplishment." *State ex rel. Fraysier v. Bexley City School Dist. Bd. of Edn.* (1989), 65 Ohio App.3d 245, 248.

{¶ 27} Based on the foregoing, we find that the trial court did not err when it granted the Board's motion to dismiss appellant's complaint for a writ of mandamus. Appellant's assignment of error is not well-taken.

{¶ 28} On consideration whereof, we find that substantial justice was done the party complaining and the judgment of the Erie County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, J. _____
CONCUR.
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.