

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Suzanne Venezia,	:	
	:	
Appellant	:	
	:	
v.	:	No. 686 C.D. 2010
	:	Submitted: January 28, 2011
School District of Philadelphia	:	
	:	

**BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE BROBSON**

FILED: April 13, 2011

Appellant Suzanne Venezia (Venezia) appeals from an order of the Court of Common Pleas of Philadelphia County (trial court), which affirmed a decision of the School Reform Commission (Commission) of the School District of Philadelphia (District) under the Public School Code of 1949¹ (School Code) to terminate Venezia from her employment as a teacher. We affirm.

The facts as revealed in the Commission’s decision and as gleaned from the record are summarized below.² The District initially employed Venezia from September 2002 through September 2004, when she resigned. The District rehired Venezia to begin teaching in September 2008. Venezia reported to Roberto Clemente Middle School on September 5, 2008. Several incidents appear to have

¹ Act of March 10, 1949, P.L. 30, *as amended*, 24 P.S. §§ 1-101-27-2702.

² The Commission adopted the findings of fact and conclusions of law of its hearing examiner, Jeffrey White (Hearing Examiner). (Reproduced Record (R.R.) at 3a.)

formed the basis for the Commission's decision. First, on September 18, 2008, Venezia pushed student M.E.'s hand away from her, injuring M.E.'s thumb. M.E. ultimately went to an emergency room for treatment of the thumb, and his mother later went to the private criminal complaint unit of the Philadelphia District Attorney's office to file a complaint against Venezia. Second, on September 16, 2008, a fight occurred in Venezia's classroom between two of her students. Other students in the classroom broke up the fight, and Venezia did not report the fight to school officials or seek to file "pink slips" for the students involved in the fight. Third, the day after the fight, the mother of one of the students involved in the fight went to the school and spoke with the school Principal. The Principal was unaware of the incident, but directed Venezia to speak with the mother regarding the incident. Venezia refused to meet with the mother, even though the Assistant Principal took measures to have another person take care of Venezia's classroom and provided Venezia with union representation. The mother waited for three hours for a conference with Venezia, who never appeared. Fourth, three students submitted written statements to school officials indicating that Venezia had referred to the students in her class as "animals." Venezia admitted she had used that expression and apologized to her classroom for using that word. Finally, between September 17 and 19, 2008, several other teachers whose classrooms are near Venezia's classroom contacted school officials to report concerns or complaints regarding (a) the safety and welfare of students in Venezia's classroom and (b) disruptions of their classrooms caused by activities in Venezia's classroom, including excessive noise, screaming, and the pounding of desks.

The District removed Venezia from the school on September 19, 2008, and reassigned her to the District's Central Regional Office. On September

25, 2008, the Assistant Principal of Roberto Clemente Middle School held a conference with Venezia. Following the conference, the Assistant Principal issued an “anecdotal record,” in which she recommended a five-day suspension of Venezia and provided an “unsatisfactory” rating of Venezia. The Assistant Principal notified Venezia that she would conduct a conference on October 8, 2008, to discuss the substance of the anecdotal record, corporal punishment, and particular incidents involving Venezia. The Assistant Principal issued an undated “Unsatisfactory Incidents” document, referring to incidents involving Venezia between September 12 and 18, 2008, and in which she recommended that the District terminate Venezia.

The Principal of Roberto Clemente Middle School wrote an undated memorandum to the District’s Regional Superintendent, indicating her concurrence with the Assistant Principal’s recommendation and requesting a “second level conference.” The Regional Superintendent held a second level conference with Venezia on November 10, 2008, during which the Regional Superintendent instructed Venezia that she should no longer report to the Central Regional Office. The Regional Superintendent wrote to Venezia on December 1, 2008, summarizing his understanding of the history of her September 2008 employment and informing her that he recommended that she be terminated. On December 24, 2008, the District’s Chief Talent and Development Officer wrote to Venezia, informing her the District’s Office of Human Relations would recommend to the Commission that the Commission terminate Venezia’s employment and noting that Venezia had the right to appeal the recommendation to the Commission. Venezia sought review of the recommendation to terminate, and the District assigned a hearing examiner to consider Venezia’s appeal.

The Hearing Examiner recommended to the Commission that it terminate Venezia's employment based upon the following grounds: (1) Venezia's use of corporal punishment was prohibited by District policy; (2) Venezia's refusal to follow the Assistant Principal's instructions constituted improper conduct; and (3) evidence of chaotic conditions in Venezia's classroom indicated that the safety and welfare of her students were endangered. Based upon these conclusions, the Hearing Examiner rendered an ultimate legal conclusion that Venezia had demonstrated incompetence, violated school laws, and exhibited other improper conduct, which, under Section 514 of the School Code, 24 P.S. § 5-514, warranted her termination. The Commission adopted the Hearing Examiner's decision, thereby terminating Venezia. Venezia appealed to the trial court. The trial court opined that there was sufficient evidence from which the Commission could find and/or conclude that Venezia was incompetent and violated the policy prohibiting corporal punishment. Further, the trial court stated that Venezia had not included in her brief or oral argument "any issue that [the trial court could] review." (Appellant's brief, Appendix "A" at 36.)

In her appeal to this Court,³ Venezia raises the following issues: (1) whether the trial court improperly reviewed the facts based upon Venezia's claims that the District misrepresented the facts in order to discredit her in an alleged effort to avoid responsibility for its own failings; (2) whether the trial court erred in affirming the Commission when Venezia submitted "documentation" purporting to contradict the District's charges that Venezia engaged in corporal

³ This Court's review of a trial court's order affirming a decision dismissing a school district employee under Section 514 of the School Code is limited to considering whether the Commission's necessary factual findings are supported by substantial evidence, whether constitutional rights were violated and whether the Commission erred as a matter of law. 2 Pa. C.S. § 754; *School Dist. of Phila. v. Puljer*, 500 A.2d 905, 905 (Pa. Cmwlth. 1985).

punishment and to impugn the manner in which the District conducted its investigations; (3) whether the trial court disregarded arguments Venezia made in her appeal to the trial court, relating to alleged due process violations on the part of the District; and (4) whether the trial court erred in concluding that Venezia had not raised constitutional issues before the trial court.⁴

⁴ Before addressing the issues raised under Section 514 of the School Code, we mention here some questions regarding the application of the School Code to an individual whom the District itself describes as a temporary professional employee. Venezia does not dispute her status as a temporary professional employee. Section 1108 of the School Code, 24 P.S. § 11-1108, distinguishes between professional employees and temporary professional employees. Under subsection (b) of Section 1108 of the School Code, temporary professional employees only become professional employees within the meaning of that term in Article XI of the School Code (relating to professional employees) if they have been certified by the district superintendent “during the last four (4) months of the second year of such service.” Subsection (a) of Section 1108 of the School Code provides that “[n]o temporary professional employee shall be dismissed unless rated unsatisfactory, and notification, in writing, of such unsatisfactory rating shall have been furnished the employee within ten (10) days following the date of such rating.” Further, this same subsection of the School Code directs districts to perform such rating in accordance with the provisions of Section 1123 of the School Code, 24 P.S. § 11-1123. Thus, if a district follows the rating requirements under Section 1123 of the School Code and rates a temporary professional employee as not satisfactory, then under Section 1108(a) a district may dismiss a temporary professional employee, so long as the district has provided notification to the employee within ten days of the rating.

In *Phillis v. Board of School Directors of Mechanicsburg Area School District*, 617 A.2d 830 (Pa. Cmwlth. 1992), *appeal denied*, 535 Pa. 664, 634 A.2d 226 (1993), this Court noted that only tenured professional employees (as compared to temporary professional employees) are entitled to a hearing before a board of school directors under Section 1122 of the School Code, 24 P.S. § 11-1122. School districts are local agencies, 2 Pa. C.S. § 101, and because the School Code provides no specific remedy for temporary professional employees, when a school district dismisses a temporary professional employee based upon an unsatisfactory rating, the provisions of the Local Agency Law, 2 Pa.C.S. §§551 - 555, 751 – 754, apply. *Id.* at 832. In a decision in which a temporary professional employee sought to challenge an unsatisfactory rating that formed the basis for her dismissal, we described the relative burdens of temporary professional employees and school districts as follows:

[Districts] have the burden of ‘going forward’ with the records of the unsatisfactory rating and the persons whose observations were the basis for that rating. *Kasper v. Girard School District*, 361 A.2d 471 (Pa. Cmwlth. 1976). Such evidence establishes prima

Section 514 of the School Code provides as follows:

Removal of officers, employees, etc.

The board of school directors in any school district . . . shall after due notice, giving the reasons therefore, and after hearing if demanded, have the right at any time to remove any of its officers, employes, or appointees for incompetency, intemperance, neglect of duty, violation of any of the school laws of this Commonwealth, or other improper conduct.

Section 514 of the School Code establishes a property right in non-professional public school employees requiring school districts that seek to discharge such employees for cause to comply with appropriate due process. *Lewis v. School Dist. of Phila.*, 690 A.2d 814, 817 (Pa. Cmwlth. 1997). To satisfy

facie the validity of the rating and a discharge based on the rating. It then becomes the burden of the temporary professional employee to prove that the unsatisfactory rating, or the consequent dismissal, was fraudulent, arbitrary, capricious, or contrary to the law.

Kudasik v. Bd. Dir., Port Allegheny Sch. Dist., 455 A.2d 261, 264 (Pa. Cmwlth. 1983) (citations omitted). As this Court observed in *Phillis*, “[t]he burden is placed on the temporary professional employees because, due to their untenured status, they are not entitled to have the school district prove a statutory basis as it must do when it dismisses a tenured professional employee. Otherwise, there would be no difference between a tenured and a non-tenured employee for the purposes of dismissal.” *Phillis*, 617 A.2d at 833 (citation omitted). Further, the evidentiary burden on a school district seeking to support a rating of a temporary professional employee as unsatisfactory is minimal. Testimony of the person to whom a district delegates the responsibility to rate such an employee regarding the method used to rate the employee, coupled with a reference to the reasons for the rating based upon “anecdotal records,” was sufficient in *Phillis* to support the district’s action. The record in this case includes anecdotal records, including one issued by the Assistant Principal recommending that Venezia be rated as unsatisfactory. Despite the apparent application of Section 1108 of the School Code, the district terminated Venezia under Section 514 of the School Code, which provides for the dismissal of “employees” for incompetence, intemperance, neglect of duty, violation of the school laws of this Commonwealth, or other improper conduct,” and we shall thus review Venezia’s appeal under that provision.

due process, the governmental entity seeking to extinguish a property interest should provide to the person whose rights are at stake notice and opportunity to be heard and to defend her position in a proceeding suited to the nature of the case before the tribunal having jurisdiction over the dispute. *Id.* In *Lewis*, this Court confirmed that school boards have the power to delegate to a hearing examiner hearing functions necessary for due process. *Id.* The school district in *Lewis* satisfied its duty to provide due process by “(1) appointing a hearing officer to hold a hearing at which Lewis was represented by counsel and had the opportunity to cross-examine witnesses; (2) reviewing the officer’s findings of facts, conclusions of law and recommendation; and (3) making an independent ruling based on the entire record.” *Id.*⁵ Thus, this Court has recognized that although hearing examiners may conduct hearings on behalf of a school district, the relevant governing board of a school district acts as the ultimate fact finder and arbiter of credibility.

With regard to Venezia’s first issue, we perceive her claim to be that she submitted evidence suggesting that school administrators were incompetent, resented Venezia, and sought to retaliate against her, and that the Commission and trial court ignored such evidence. Venezia points to various exhibits in the record documenting her communications with the administration, and asserts that the school administration began to gather information unfavorable to Venezia with the goal of obtaining her termination.

Thus, in essence, Venezia is suggesting that the Commission, as affirmed by the trial court, erred by accepting the District’s view of the facts instead of Venezia’s. As noted above, the Commission is the ultimate finder of

⁵ Venezia has not raised any argument suggesting that her due process rights were violated because she was not represented by counsel.

fact, and the trial court's standard of review, as well as our own, does not permit us to reweigh the evidence or the credibility determinations of the fact finder. This Court's review of the record reveals conflicting evidence, but the Commission apparently determined that the evidence submitted by the District was more credible than the evidence Venezia submitted. We cannot disturb the credibility determinations of the fact finder. *In re Thompson*, 896 A.2d 659, 669 (Pa. Cmwlth. 2006), *appeal denied*, 591 Pa. 669, 916 A.2d 636 (2007). Consequently, we conclude that the trial court did not err in rejecting Venezia's argument.⁶

We view Venezia's next argument as attempting to raise challenges to the trial court's review, asserting that the trial court failed in its duties to review her appeal because (1) the decision of law enforcement authorities not to prosecute Venezia for child abuse (for bending one of her student's thumbs) suggests that the District abused its discretion by concluding that Venezia imposed corporal punishment on one of her students; (2) the Hearing Examiner, at the end of the hearing, directed Venezia not to contact an earlier witness regarding the incident in which the student bent Venezia's finger and not to contact the school nurse to confirm that Venezia did visit the nurse when the student hurt Venezia's finger; (3) the Commission should not have relied upon information the school administrators gathered from other students relating to the thumb-bending incident in light of the fact that the injured student had bent *Venezia's* finger in an earlier incident; (4) the documentation of events the District relied upon relating to certain allegations, including Venezia's alleged failure to meet with the Principal

⁶ We also note that Venezia's discussion is devoid of any legal analysis or citation to court decisions relating to retaliation claims. Based upon the lack of legal authority and discussion, we also conclude that Venezia has waived this argument. *D.Z. v. Bethlehem Area Sch. Dist.*, 2 A.3d 742, 750 n.8 (Pa. Cmwlth. 2010) (issue waived where appellant failed to develop legal argument or cite relevant legal authority in support of issue); Pa. R.A.P. 2119.

following a letter the Principal purportedly sent to Venezia, and phone logs, was false; and (5) irregularities in the District's investigatory methods, which included interviews by the Assistant Principal rather than "administrators." Again, we note that Venezia does not set forth the specific legal principle she is seeking to assert in attempting to identify particular errors in the Commission's decision and the trial court's review. We reiterate here that an appellant has a responsibility to propound legal argument and supporting legal authority for a particular position. Venezia's brief is devoid of such essentials, and accordingly, we again conclude that, based upon Venezia's failure to adequately comply with these requirements, she has waived the points of alleged error she sought to identify. *D.Z.*, 2 A.3d at 750 n.8. Nevertheless, we make the following observations regarding some of the points Venezia stresses in her brief.

With regard to Venezia's reliance upon the decisions of the District Attorney's Office and the Department of Welfare not to pursue criminal or civil charges or claims against Venezia, we note that Venezia has cited no legal authority in support of her contention that the trial court erred in its review based upon the failure of the District Attorney's Office to prosecute her. District attorneys have broad discretion in making prosecutorial decisions. *Com. v. Williams*, 586 Pa. 553, 587, 896 A.2d 523, 543 (2006). Consequently, a district attorney's decision to prosecute or not to prosecute has no bearing from an evidentiary perspective on distinct administrative proceedings such as this.

Venezia raises challenges to the Commission's reliance upon information the District collected from students relating to various events culminating in her termination, including the thumb-bending incident and an incident involving a missing classroom telephone. Venezia seeks to challenge this

evidence as being either unreliable or conflicting with her own evidence. For example, Venezia points out that she had submitted a contemporaneous communication to the school administration that a child had taken the classroom telephone. She also states that the student whose thumb she bent had bent her own finger approximately one week earlier. She further contends that she told the administration that the statements her students had submitted in response to its request for information were unreliable or false, reflecting nothing more than the students' concern for a fellow classmate, rather than the truth. As suggested above, matters involving conflicting evidence are solely within the province of the fact-finder, *Thompson*, 896 A.2d at 668, which in this case, is the Commission.

In summary, based upon Venezia's failure to adequately brief these points of alleged error, and for the additional reasons expressed immediately above, we reject Venezia's argument.

Venezia next asserts that the trial court failed to address her assertions of due process violations, and thereby committed legal error. Venezia contends that in her "first appeal brief," which she identifies by reference to pages in her Reproduced Record, she "gave a clear and concise summary of the many due process violations committed by the [District]." (Venezia Br. at 25.) We have reviewed that brief, and, while we recognize the difficulties a lay person may have in seeking to convey legal issues and argument in a manner that is sufficient to enable a judicial entity to engage in meaningful review, we must conclude that Venezia's argument is not sufficiently clear to have enabled the trial court, or this Court, to engage in appellate review. Venezia refers to arguments she made in that brief that concern her rights under a collective bargaining agreement. We cannot discern what those rights are, if they do indeed exist. We note that the District's

December 24, 2009 letter informs Venezia that she had a choice between raising a challenge under a collective bargaining agreement or under the Local Agency Law. We have no way of knowing what the terms of the collective bargaining agreement are,⁷ but, by electing to challenge the District's action under the Local Agency Law, Venezia also may have elected to forego any due process rights she might have enjoyed if she followed the relief provided in the collective bargaining agreement. Further, Venezia's argument within that brief refers to sources of positive due process, but does so ineffectively by not referring to the specific rules or legal doctrines upon which she purports to rely. Her brief to this Court informs us in a manner that by no means improved upon her effort with the trial court. Consequently, we conclude that the trial court did not err in refusing to address these issues, and we conclude that she has waived them before this Court as well. *D.Z.*, 2 A.3d at 750 n.8.

Venezia's final claim is that the trial court abused its discretion by concluding that Venezia had not presented a constitutional claim. We note, however, that Venezia's argument section, rather than asserting doctrines that warrant reversal on the basis of the law the Hearing Examiner applied under Section 514 of the School Code, appears to assert tort-like claims relating to immunity of governmental officials, including alleged retaliation on the part of the District, that a litigant might assert in a lawsuit *against* a former employer. Additionally, although Venezia cites several decisions arising in federal courts, she does not make clear how these decisions apply to the District's decision to terminate her employment.

⁷ If the terms of a collective bargaining agreement are included in the record, Venezia has failed to direct the Court to such information in a successful manner.

Based upon the foregoing, we conclude that the trial court did not err as a matter of law or abuse its discretion. Further, for the reasons stated above, we may not engage in a review of the factual findings upon which the Commission based its decision. Accordingly, we affirm the order of the trial court.

P. KEVIN BROBSON, Judge

