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ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-22-118

LITTLE ROCK SCHOOL DISTRICT APPELLANT	Opinion Delivered: May 10, 2023 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SIXTH DIVISION [NO. 60CV-20-5498]
V.	HONORABLE TIMOTHY DAVIS FOX, JUDGE
JOY WADLEY, AS ADMINISTRATOR OF THE ESTATE OF CHARLES PERRY PARLIMENT, DECEASED APPELLEE	AFFIRMED

CINDY GRACE THYER, Judge

Following a bench trial, the Pulaski County Circuit Court entered a judgment in favor of the decedent, Charles Parliment[1] on his breach-of-employment-contract claim[2]

[1]At times in the record and briefing, Parliment's last name is spelled "Parliament." Because his signature on his employment contracts with the District reflects the former spelling, it will be used for consistency. Parliment died on June 17, 2022, while this appeal was pending, and Joy Wadley, as Administrator of the Estate of Charles Perry Parliament, deceased, was substituted as the appellee.

[2]Ordinarily, a teacher is required to file this action pursuant to the Arkansas Teacher Fair Dismissal Act (ATFDA) since there is no common-law cause of action for breach of contract when the ATFDA applies—the AFTDA is the exclusive remedy. Ark. Code Ann. § 6-17-1510(d)(1) (Repl. 2021); *Digby-Branch v. Westside Consol. Sch. Dist. No. 5*, 2023 Ark. App. 164, ___ S.W.3d ___.. However, in July 2017, the State Board of Education classified the LRSD as a district in need of Level 5 - Intensive support pursuant to the Arkansas Educational Support and Accountability Act (AESAA). Ark. State Bd. of Ed. Order

against the appellant Little Rock School District (LRSD or District). The LRSD had terminated Parliment's contract as a special-education teacher at Hall High School for his alleged failure to supervise students serving in-school suspension in the final days of the spring semester and his alleged failure to report an incident in which a student filmed and posted online other students under his supervision "twerking."[3] Parliment claimed that he was unaware of the incident because several students had intentionally blocked his view; that he attempted to get those students to sit down, both verbally and by alerting security; and that he was able to regain control of the classroom fairly quickly. The circuit court held that Parliment's actions that day were not a material breach of his employment contract and entered a judgment in favor of Parliment in the amount of $54,719 plus court costs.[4] The

(08/02/2017) https://dese.ade.arkansas.gov/Files/20201015132042_Order_Classifying_LRSD_in_need_of_Level_5_Intensive_support_signed.pdf(archived at https://perma.cc/7344-U4B8). Such classification became effective August 1, 2017. *Id.* Under the AESAA, if a school district receives this classification, the State Board may take various actions, including waiving education-related law such as the ATFDA and the Public School Employee Fair Hearing Act (PSEFHA). Ark. Code Ann. § 6-15-2916 (Supp. 2021). On December 20, 2018, the State Board voted to waive the application of the ATFDA and the PSEFHA as to the LRSD, effective immediately and through the 2019–2020 school year. Ark. State Bd. of Ed. meeting minutes (12/20/2018); https://dese.ade.arkansas.gov/Files/20210115121705_2018_December_20_SBE_Signed.pdf (archived at https://perma.cc/5SKD-PNM9).

[3]Twerking is a sexually suggestive dance characterized by rapid, repeated hip thrusts and shaking of the buttocks especially while squatting. *Twerking*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/twerking (accessed May 9, 2023) (archived at https://perma.cc/U665-6KQP).

[4]The court reserved the issue of attorney's fees. This does not affect finality, however, because our appellate courts have consistently held that the grant of attorney's fees is a collateral matter that does not bear upon the finality of a final judgment on the merits. *Mw.*

LRSD has appealed that judgment, arguing that the circuit court erred in finding that Parliment's actions did not constitute a material breach of the contract and that the school failed to follow established District policy. The District also challenges the circuit court's characterization of in-school suspension on the day of the incident as "babysitting." Because there was sufficient evidence to support the circuit court's decision, we affirm.

The incident giving rise to Parliment's termination occurred on May 16, 2019. At the time of the incident, Parliment was employed by the LRSD as an inclusion special-education teacher for Hall High School and had recently signed a contract with the district to continue his employment for the 2019–2020 school year.

May 16 was not an ordinary school day—it was the end of the school year, and many of the students were taking final exams. Parliment was working that day and had agreed to relieve Coach Chambers, who was tasked with supervising the in-school-suspension class (ISS), so that Chambers could run an errand. It was anticipated that the errand would take approximately fifteen minutes; it took closer to forty-five minutes.[5]

Because an ISS classroom is where students are sent if they have misbehaved, it is not a typical class with a set curriculum; instead, classroom teachers are supposed to send assignments for their students to complete while in ISS. However, because the students were

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Terminals of Toledo, Inc. v. Palm, 2011 Ark. 81, 378 S.W.3d 761; *Farm Bureau Mut. Ins. Co. of Ark., Inc. v. VJM Enters., LLC*, 2017 Ark. App. 28, 511 S.W.3d 349.

[5]Parliment entered the classroom at approximately 11:35 a.m. and exited around 12:20 p.m.

taking and preparing for final exams, it appears that did not happen on the day of the incident. Moreover, several of the students had been sent to ISS temporarily for roaming the halls after their exams. Thus, when Parliment took over the classroom, not all the students were completing homework assignments—some of the students had their earphones in and were listening to music on their phones, and some were using their phones for schoolwork. Others were doing nothing.

Once in the classroom, Parliment sat at his desk and began to work on a math problem for a student. A few minutes later, Parliment noticed a group of girls had congregated in the corner of the classroom. The girls had formed a circle in the corner, and Parliment heard music being played. Because Parliment had a policy that only one student should be up at a time, he told the girls to take a seat. They did not. He asked again, and no response. Because the girls were ignoring his commands, he pounded his fist on the desk and again told the girls in a "mean voice" to "sit down." The girls still ignored him. At that time, the bell rang, and several of the students, including Minor Child 1 (MC1), left the room. As they were leaving, Parliment asked MC1 to notify security or an administrator that he needed assistance. When Parliment stood up from his chair, the girls returned to their seats. The entire encounter lasted only several minutes.

During this time, a school security officer was told about a video that had been posted online of two female students "twerking." One of the girls seen in the video had pulled down her pants and was twerking in her underwear. Another student posted the video online. The officer alerted Assistant Principal Carol Overton, who immediately recognized the students

as students she had just placed in ISS. It was at that point that Dr. Overton and the security officer confronted Parliment in the classroom.

By the time they arrived in the classroom, the students had returned to their seats, the class was quiet, and the situation was under control. Dr. Overton asked if there was anything going on, and Parliment responded no because he had regained control of the situation. She asked if he had anything to report, and he again said no. Parliment indicated he did not want to discuss the students' behavior in front of other students. Dr. Overton "flashed" her phone and informed Parliment that a video had been livestreamed from the classroom. Parliment responded that, yes, several of the students had been acting out[6] but that he had everything under control.

Parliment was then sent to the human resources department and was shown a video of what had occurred in the classroom. Immediately thereafter, he was placed on administrative leave with pay, and an investigation was conducted.

On June 12, 2019, Dr. Mark Roberts, the Hall High School principal, recommended to the superintendent that Parliment's employment be terminated for violating the following District policies as documented in the employee handbook:

- All employees of the LRSD are expected to make every effort to create an atmosphere that nurtures the educational process and provides a safe environment for employees and students. All employees will demonstrate

[6]Dr. Overton claimed that when asked, Parliment admitted that the girls had been dancing. However, Parliment denied knowing the girls had been dancing and claimed that his view had been obscured by other students. He also claimed that his poor eyesight contributed to his inability to see what was occurring in the classroom.

responsible and ethical conduct toward students, fellow employees, parents and the community.

- Employees have an obligation to have concern for and give attention to their own and the District's legal responsibility for the safety and welfare of all employees and students, including the need to ensure that students are under supervision at all times.

On June 17, 2019, Superintendent Michael Poore advised Parliment that he was also recommending Parliment's termination. Poore's recommendation was due to Parliment's failure to adequately supervise students under his direct supervision resulting in the students' engaging in inappropriate behavior and his failure to report the incident to administration or security.

Parliment requested and was granted a hearing before the Community Advisory Board. After the hearing, the Community Advisory Board accepted Superintendent Poore's findings as true and recommended termination. This recommendation was forwarded to Arkansas Department of Education Commissioner Johnny Key.

On September 10, 2019, Commissioner Key accepted the recommendation of the Community Advisory Board that Parliment's employment with the District be terminated, and he terminated his contract effective immediately.

One year later, on September 30, 2020, Parliment filed a breach-of-contract claim against the District, claiming that his contract had been terminated without cause and against the District's policies and procedures. The District filed an answer generally denying the allegations of the complaint.

At trial, Parliment testified that he was in the ISS classroom that day as he had volunteered to briefly relieve the ISS teacher, Coach Chambers, so Chambers could run an errand. Because it was the end of the year and the students were taking finals, there was no classroom instruction, and the students had been allowed to listen to music on their phones. While he was attempting to help a student with math homework, he noticed several students had congregated in the corner of the classroom and that music was being played. He could not see what was occurring because several students blocked his view. He ordered the students to take their seats several times, but the students refused to do so. There was no intercom in the room, and Coach Chambers had taken the radio with him. Although he had his cell phone with him, the school's number was not programmed into the phone. Parliment claimed he walked to the door to check for security in the hallway and eventually sent a student, MC1, to find security. Since he could not physically restrain the students or use corporal punishment, he stated there was nothing else he could have done under the circumstances. He was unaware that the girls were twerking until he saw the video in the human resources department. He also testified that, a few days prior to this incident, he had caught one of the girls dancing, had sent her to the office, and the meeting with the girl's mother erupted into a fistfight between the girl and her mother. Thus, the girl was mad at him.

MC1 testified that she was sitting in the back of the classroom when the girls began to twerk. One of the girls was twerking in her "panties." Three other girls were blocking Parliment's view and recording. She looked at Parliment, and he appeared to be reading

something and was not aware of what was taking place. She stated that Parliment eventually told the girls to sit down, but they were not listening to him. When she asked to go to the bathroom, Parliment asked her to get security. She stated that the office was empty, and the principal's door was locked. When she got back to the classroom, everything had settled down. Contrary to Parliment's account, however, she claimed that Parliment had attempted to use the intercom. She stated that the incident lasted only five to six minutes.

Another student, Minor Child 2 (MC2), also testified. She stated that she was one of the students involved in the incident that day and admitted that she purposely blocked Parliment's view so the girls could twerk because she did not want her friends to get into trouble. She did not believe Parliment saw anything that day. She further confirmed that Parliment had told them to sit down multiple times and that he had raised his voice, but they were not listening.

Investigator Vickie Finney testified that she investigated the incident. She contacted and interviewed Parliment; reviewed written statements from Security Officer Leniear, Dr. Overton, and the students; and viewed the videotape. She was unable to speak with students in person because school was no longer in session, and they were only on campus for exams. Once she finished her report, she forwarded it to the director of security.

Dr. Overton testified that she was notified of the incident by Security Officer Leniear. Officer Leniear showed her the video that had been livestreamed, and she recognized the students involved because she had just put them in ISS before she began lunch duty. She then went to the classroom and confronted Parliment. Parliment denied anything had

happened. When she entered the classroom, the students were calm and in their seats. She stated that she spoke with the students individually and obtained their statements. The students involved were sanctioned because their actions constituted video voyeurism, which is against the student-handbook policies. As for Parliment's actions, she stated that there was an intercom in the classroom and, as of October 4, 2019, it was in good working order.

Dr. Mark Roberts testified that he was the principal of Hall High School on the day in question. He stated that he was walking down the hall that day when several people approached him to show him the video. Upon seeing the video, he notified the District's central office. He then spoke with Parliment, who seemed surprised at his questioning and unsure of what had taken place in the classroom. He relieved Parliment of his duties and sent him home.

After the investigation was complete, Dr. Roberts reviewed the information gathered during the investigation conducted by Vickie Flynn and Dr. Overton, considered a letter of explanation submitted by Parliment, and watched the video. He then drafted a letter to Parliment stating that he was being placed on leave until further investigation.

Dr. Roberts subsequently recommended that Parliment's employment be terminated for his violation of the District's policies. Dr. Roberts stated that he was concerned for the students involved and that a professional educator should never place a student in a position where the student is degraded or the subject of objectivity, especially in a viral video. He said the actions taking place in the classroom that day were not what he would consider a classroom environment because students were acting at will, and Parliment failed to take

action to subdue or stop them. When asked what other actions Parliment should have taken, Dr. Roberts responded that Parliment could have gone to the door in the hallway and asked the teacher across the hall to assist. He admitted, however, that this action could only have been taken after the fact and would not have prevented the incident from occurring in the first place.

When asked by the court about the school's official cell-phone policy, Dr. Roberts stated that Hall High School's specific policy was a little different than that of the District. He stated that it was up to the individual teachers as to how the students could use their cell phones in the classroom. He stated that some teachers used cell phones for instruction, so it was not a blanket prohibition on cell-phone use.

Dr. Roberts further elaborated that, while ISS did not have a set curriculum, the students' teachers were supposed to send assignments for the students to complete in the class. It was the job of the ISS teacher to ensure that the assignments were sent by the classroom teacher and completed.

Finally, Superintendent Michael Poore testified regarding the actions taken to investigate the incident and the procedural history of Parliment's termination. On the basis of his review of the evidence, the recommendation of Dr. Roberts, and the findings of the Community Advisory Board, he agreed that Parliment's employment should be terminated. He stated that he felt that Parliment's behavior was egregious and that Parliment had not taken any ownership in terms of his awareness of the event. Additionally, he believed that Parliment had violated the policies of the District. He stated it was just not clear why

Parliment had been unable to act to prevent the incident, and there had been no evidence that he sought help.[7] As a result, he recommended Parliment's termination.

When asked by the court about the District's cell-phone policy, Poore stated that students are allowed cell phones in the classroom, but they are to be used for instructional purposes only. He was then asked about the District's disciplinary policy. Poore responded that a teacher could physically confront a student only if it was necessary to protect others or the teacher. Thus, he acknowledged that with this particular situation, Parliment could not have legitimately utilized physical contact to make the students sit down. His only recourse was to order them to sit down.

After hearing the evidence presented and reviewing the video[8] that had been posted online, the circuit court concluded that Parliment's actions on the day in question did not constitute a material breach of his contract and awarded Parliment $54,719 in damages.[9] In making this determination, the circuit court made the following findings disputed by the District on appeal:

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[7]He also alluded to a comment Parliment made upon watching the video in which he indicated that the girls were "really getting after it." Parliment admitted making the statement and agreed it was unprofessional.

[8]The circuit court described the contents of the twenty-six-second video as being "eighteen (18) seconds of two students dancing, during which a student pulls her own pants down and is shown dancing in her underwear, together with a five (5) second pan of the ISS classroom, first showing a student dancing with her pants on, then moving to a couple of seconds of [Parliment] sitting at his desk working on paperwork."

[9]In calculating this award, the circuit court imputed a full-time, minimum-wage salary for the contracted 190 days as mitigation of damages and subtracted the same from the District's contracted wage.

> 14. Hall High School deliberately did not follow the established Little Rock School District guidelines for utilization of cellphones on campus during regular school hours. This deviation from official policy was allowed and acknowledged by the Principal of Hall High.
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> 15. It is clear from the totality of the testimony that the students were sent to ISS for "babysitting" and not for any type of educational instruction. It would require the court to speculate, which it will not do, as to why students who merited suspension at that point in time in the school year were not simply suspended and sent home instead of being grouped together in a room with no constructive school purpose.
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> 29. The plaintiff's actions on May 16, 2019 did not constitute a material breach of his contract that did not begin until August 6, 2019.

The District timely filed a notice of appeal from the judgment.

For its first point on appeal, the LRSD argues that the circuit court erred in finding that Parliment's actions did not constitute a material breach of the contract. The District contends Parliment's failure to properly supervise the students was a material breach of his employment contract and that his failure to supervise was clear. It notes that Parliment observed the students standing in a circle and recognized that the students were blocking his view of what was happening behind them. And while he instructed the students to sit down, he did not attempt to investigate what was occurring. The District contends this was a material breach.

The employment contract between Parliment and the LRSD provided that the District would pay Parliment $69,919 in twenty-four installments in exchange for 190 days of work beginning August 6, 2019. A contract for a definite term may not be terminated

before the end of the term, except for cause or by mutual agreement, unless the right to do so is reserved in the contract. *See Griffin v. Erickson*, 277 Ark. 433, 642 S.W.2d 308 (1982). Whether justification exists for termination of the contract under the facts and circumstances of a particular case is usually a question of fact. *Joshua v. McBride*, 19 Ark. App. 31, 716 S.W.2d 215 (1986). The circuit court weighed the evidence presented and assessed the credibility of the witnesses and, as the finder of fact, found that Parliment had met his burden of proof.

The standard of review of a circuit court's findings of fact after a bench trial is whether those findings are clearly erroneous. *Greenwood Sch. Dist. v. Leonard*, 102 Ark. App. 324, 328–29, 285 S.W.3d 284, 288–89 (2008). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.*

Under the facts and circumstances as presented, we cannot conclude that the circuit court's findings in this case were clearly erroneous. The record reflects that Parliment took appropriate steps in his attempt to control the situation. There was no evidence that Parliment gave the students permission to be out of their seats; in fact, it was his policy that only one student should be out of his or her seat at a time. Parliment was attempting to solve a math problem so he could assist another student when the incident occurred. As soon as Parliment realized the students were standing, he ordered them to return to their seats multiple times, even emphasizing his request by pounding on the desk and using his "mean voice." When they would not cooperate, he asked another student to contact security. The

students returned to their seats when he stood up. While the District contends he should have investigated or used the intercom, there is no evidence that such an investigation would have prevented the filming and posting of the video online or that summoning security by intercom would have resulted in faster compliance.

LRSD asserts that the law affords school boards broad latitude in the matter of directing the operation of the schools and that the court does not have the power to interfere with the board's exercise of such discretion unless there is evidence of a clear abuse of that discretion. It then submits that because there is no evidence in the record that the District abused its discretion in the matter of directing the operation of Hall High School by terminating Parliment, the circuit court erred in finding that his actions did not constitute a substantial breach of his employment contract. In making this argument, the District relies on *Safferstone v. Tucker*, 235 Ark. 70, 357 S.W.2d 3 (1962) (decision to convert an all-white school to an all-black school); *White v. Jenkins*, 213 Ark. 119, 209 S.W.2d 457 (1948) (decision to bus students from one district to another); and *Corbin v. Special School District of Fort Smith*, 250 Ark. 357, 465 S.W.2d 342 (1971) (decision to implement policy preventing spouses of certain administrative personnel from being employed by the district). In each of those cases, however, the circuit court was reviewing the school district's implementation of a general policy of the school district, not its actions with regard to an individual employment decision. Thus, those cases are inapposite. As noted above, our standard of review from a bench trial in a breach-of-contract action is whether the circuit court's findings were clearly erroneous or clearly against the preponderance of the evidence. *See Keith Capps Landscaping*

& Excavation, Inc. v. Van Horn Constr., Inc., 2014 Ark. App. 638, 448 S.W.3d 207. Thus, our review is not focused on whether the District abused its discretion in terminating the contract but whether the circuit court clearly erred in finding that the District's action was a material breach of the employment contract. We find it was not.

For its second point on appeal, the LRSD asserts that the circuit court erroneously found that Hall High School failed to follow established LRSD guidelines for the utilization of cell phones on campus during regular school hours and then relied on this alleged deviation to support its finding that Parliment's conduct did not violate the LRSD's personnel policy. The District also asserts that, while Hall High School's policy was that individual teachers were authorized to determine if and how students were able to use cell phones in their classrooms, in no case were students authorized to use cell phones in an inappropriate manner unrelated to instructional purposes. Thus, it argues, there was no evidence in the record that Hall High School deliberately failed to follow established District guidelines.

The circuit court here found that Parliment volunteered to temporarily watch the ISS classroom for fifteen minutes for another teacher and that when he arrived, the students were utilizing their cell phones for various activities, including playing music. One of the student's cell phones, which Hall High School allowed students to use in contravention of the District's official policy concerning the use of cell phones on campuses, was utilized to record inappropriate behavior. The circuit court found that Hall High School deliberately disregarded established LRSD guidelines for the utilization of cell phones on campus during

regular school hours, and this deviation was allowed and acknowledged by Dr. Roberts, the principal of Hall High School. Thus, the court concluded, it was the administration's decision, not Parliment's, to not follow the LRSD cell-phone guidelines and to allow the students to utilize their cell phones in the classroom.

The evidence before the circuit court supports the court's findings. At trial, Superintendent Poore testified that the official LRSD policy concerning student cell-phone use was that "students were allowed to have cell phones in the classroom" but that their use was to be limited to "instructional purposes," i.e., for research or math problems. The District instructors were expected to ensure that students were not using their cell phones inappropriately. Dr. Roberts, on the other hand, testified that Hall High School had a different policy regarding student cell-phone use. He testified that, at Hall High School, the *individual teachers* had the authority to decide "how students were able to use or not use cell phones in the classroom." Thus, Hall High School's official cell-phone policy differed from the official policy espoused by the District. The individual teacher in this case, Coach Chambers, allowed the students to use their cell phones to listen to music in class, and Parliment, who had anticipated being in the classroom for only a short period of time (fifteen minutes) followed his lead. Thus, when Parliment took over the classroom, the students were using their cell phones in contravention of the District's cell-phone policy but in compliance with Hall High School's policy. Accordingly, the circuit court did not clearly err when it determined that the school's policy in allowing cell-phone usage for noninstructional

purposes in contravention of the District's stated policy played a role in the incident giving rise to Parliment's termination.

Finally, the LRSD argues that the circuit court erred when it found that the students were sent to the ISS classroom for "babysitting" and not for any type of educational instruction. The District notes that Dr. Roberts testified that classroom teachers were expected to send assignments for students serving ISS and that the ISS teacher is tasked with the responsibility of ensuring that the work has been assigned and completed. The District also asserts in its reply brief that whether the students had assignments to complete is irrelevant to whether Parliment properly supervised the students in the classroom that day.

Again, the circuit court's findings are not clearly erroneous. The evidence submitted at trial revealed that the incident occurred on a day near the end of the school year, and many of the students were either finished with their exams or had been placed in ISS because they had nowhere else to go. Thus, it was not a normal school day, and the record does not reflect whether any of the students' classroom teachers had forwarded any work assignments for completion. In fact, when Parliment relieved Coach Chambers, some of the students were listening to music on their phones, and it appears that little, if any, classroom instruction was occurring. Thus, the circuit court's characterization of the teacher's role on the day in question is not far off. Moreover, while the District is correct that Dr. Roberts had testified that it was the responsibility of the ISS teacher to ensure assignments are forwarded for completion, the record is clear that Coach Chambers was the ISS teacher that day, and Parliment was only a brief substitute. Thus, it is unclear what responsibility, if any,

Parliment had to ensure that the children had schoolwork to complete during his brief supervision.

In essence, we have a teacher who briefly supervised another teacher's class at the end of the school year. Because it was the end of the year, the students were not working on assignments and were allowed to listen to music on their cell phones. While the substitute teacher was in the classroom, a group of girls got out of their seats, formed a semi-circle so as to block the teacher's view, and began to film another student twerking. When the teacher realized something was happening, he ordered the students back to their seats multiple times. He pounded on the table and used his "mean voice" to get their attention, but the students refused to reply. He looked into the hallway for assistance, but no one was available. He was prohibited from using any sort of physical coercion or punishment. Once he noticed that multiple students were out of their seats, Parliment took reasonable steps to address the situation. Considering the foregoing, the circuit court did not err in finding that Parliment's actions did not constitute a material breach of his employment contract and that the school failed to follow established District policy. Further, the court's characterization of the classroom environment on the date in question is not clearly erroneous.

Affirmed.

VIRDEN and HIXSON, JJ., agree.

Friday, Eldredge & Clark, LLP, by; *Khayyam M. Eddings*, for appellant.

Bailey Ellis Farner, for appellee.