

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION IV

CA06-1254

November 7, 2007

DAWN HARTER

APPELLANT

APPEAL FROM THE CONWAY
COUNTY CIRCUIT COURT
[CV-2003-109]

V.

WONDERVIEW SCHOOL DISTRICT
APPELLEE

HON. PAUL E. DANIELSON,
CIRCUIT JUDGE

AFFIRMED

This is a pro se appeal from Dawn Harter, who was terminated from her teaching position with the Wonderview School District after being arrested. On appeal, she claims that the school district violated the Arkansas Fair Teacher Dismissal Act. She makes two arguments—first she argues that she did not receive proper notice prior to her termination hearing, and second she argues that the school district failed to show reasonable cause for her termination. Neither claim is meritorious, and we affirm.

Although the police report, which presumably outlines the circumstances of Harter's arrest, was omitted from the one brief we received in this case, we know the termination decision was based on Harter's arrest after being discovered in a car in the driveway of her former boyfriend. She was accompanied by her minor child and was alleged to have been

under the influence (and in possession) of chemical substances. The school board, based on the recommendation of the district's superintendent, determined that Harter was a person whose "continued presence on campus, as a teacher of children and a role model, was extremely undesirable."

The school district claims that Harter was then "properly" notified of the superintendent's intention to recommend that Harter's contract be terminated and that she timely requested a hearing before the board. Harter did not appear at the hearing. Claiming that they assumed Harter had abandoned her claim for relief, the board went into executive session to consider the superintendent's basis for the termination recommendation. Upon returning to public session, the superintendent made a recommendation—without explanation—that Harter's contract be terminated. The school board then voted to accept the recommendation.

When Harter was informed of the board's decision, she claimed to have been denied proper notice of the hearing. In response to her charge of faulty notice, the district rescinded the previous vote and gave Harter a new hearing. The board was instructed to ignore the previous vote, and any information previously provided, and to base their decision only on the information provided during the second hearing. After the second hearing, the board again voted to terminate Harter's contract. The record provides us with no insight into Harter's testimony—if any—at the second hearing.

On appeal, we first consider Harter's claim that she was not provided proper notice of the first hearing and suffered prejudice at the second hearing. The record establishes that Harter was aware of the subsequent hearing and does not contend otherwise. Her argument

is that the second hearing was merely a “rubber stamping” of the first, and as such the second hearing failed to cure the irregularities of the first hearing. However, our law states the contrary. *See Murray v. Altheimer-Sherrill Sch. Dist.*, 294 Ark. 403, 743 S.W.2d 789 (1998) (using a “substantial compliance” standard to find a subsequent hearing cures notice defect in initial hearing).¹ The board was instructed to base its decision only on information provided during the second hearing. Harter had ample opportunity to deny or explain the charges against her and to address her claim that she had been a victim of prejudicial deliberation.

Harter’s second claim of error relates to the merits of the decision not to renew her contract. On appeal, we must uphold the decision of a school board unless its decision is shown to be in error by clear and convincing evidence. *Lee v. Big Flat Pub. Schs.*, 280 Ark. 377, 658 S.W.2d 389 (1983). She claims that the decision is not supported by the evidence because she “always had good evaluations as a teacher.” She further asserts, but without corroboration, that the charges stemming from her arrest were ultimately resolved without conviction.

At trial, the district conceded that she had carried out her classroom duties in a competent manner. However, the district alleged that “her performance in the classroom was

¹The FTDA standard of procedural compliance was changed from “strict compliance” to “substantial compliance” by Act 1739 of 2001. This returned the compliance standard to its 1998 form. In addition, Act 1739 raised the standard for deciding whether the reasons for dismissal are adequate to “any just and reasonable cause.” Ark. Code Ann. § 6-17-1503 (Supp. 2001).

not in issue.” Instead, they asserted that the board should consider whether a person that exercised such poor judgment should “be in the classroom in the first place.” The district superintendent stated that his non-renewal recommendation was based entirely on the content of the police report following Harter’s December 29, 2002, arrest.

The termination letter that Harter received from the district was included in her brief to our court. The letter explicitly outlined the grounds for her termination: a police report following her arrest. According to the letter, Harter was “discovered, in a lethargic condition, hiding in a vehicle, not [her] own, on private property [she] had previously been warned to avoid, and [was] believed by the police to have abandoned a glass pipe in the squad car, and [was] charged with criminal trespass and possessing the instruments of the crime.”

After careful review, we are satisfied that the district’s decision to terminate Harter’s contract is supported by clear and convincing evidence. The fact that she was arrested with a child in her car, in a non-sober condition, stalking an ex-boyfriend is sufficient to support her firing.

Affirmed.

ROBBINS and BAKER, JJ., agree.