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IN THE
COURT OF APPEALS OF INDIANA

JOEL T. BOUCHER,

Appellant-Plaintiff,

vs.

HUNTINGTON COUNTY COMMUNITY SCHOOL CORPORATION,

Appellee-Defendant.

No. 90A02-0705-CV-370

APPEAL FROM THE WELLS SUPERIOR COURT
The Honorable Frederick A. Schurger, Special Judge
Cause No. 90D01-0505-CT-6

November 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Joel T. Boucher appeals the trial court's denial of his motion to correct error following its entry of summary judgment in favor of Huntington County Community School Corporation ("Huntington"). We affirm.

Issue

Did the trial court err in granting summary judgment in favor of Huntington?

Facts and Procedural History

On May 5, 2004, Huntington's superintendent notified Boucher that Huntington's board of trustees ("the Board") would consider canceling his indefinite contract as a semipermanent teacher at Huntington North High School. At Boucher's request, the Board held a hearing on the matter on June 7, 9, and 10, 2004, at which Boucher was represented by "attorney ISTA UniServ Director, Ms. Valerie Conner[.]" *Id.* at 24. At the hearing, Boucher did not raise the issue of whether Huntington had complied with Indiana Code Section 20-28-7-2(c),[1] which provides,

> Before the cancellation of a semipermanent teacher's indefinite contract, the principal of the school at which the teacher teaches must provide the teacher with a written evaluation of the teacher's performance before January 1 of each year. Upon the request of a semipermanent teacher, delivered in writing to the principal not later than thirty (30) days after the teacher receives the evaluation required by this section, the principal must provide the teacher with an additional written evaluation.

See Appellant's App. at 55 (Boucher's deposition at 22-23) ("[T]he hearing was based on my conduct, my teaching performance, not the January deadline."). On June 14, 2004, the Board

[1] In 2005, Indiana Code Section 20-6.1-4-10.5 was recodified without changes as Indiana Code Section 20-28-7-2. We refer to the statute by its current designation.

voted to cancel Boucher's contract and issued a decision containing numerous findings of fact and conclusions of law.

Boucher filed a complaint against Huntington,[2] alleging that his contract had been improperly cancelled. Huntington filed a motion for summary judgment. Boucher filed a response, in which he raised for the first time the issue of whether Huntington complied with Indiana Code Section 20-28-7-2(c). After a hearing, on February 2, 2007, the trial court issued a judgment that reads in pertinent part, "The evidence designated by both parties pursuant to T.R. 56(C) establishes that there is no genuine issue as to any material fact, and [Huntington] substantially complied with I.C. [20-28-7-2(c)]. Accordingly, [Huntington is] entitled to judgment as a matter of law." *Id*. at 5.

Boucher filed a motion to correct error, to which Huntington filed a response. On March 14, 2007, the trial court issued an order denying Boucher's motion that reads in pertinent part, "The procedures employed by [Huntington] in this case were in compliance with Indiana law." *Id*. at 115. This appeal ensued.

Discussion and Decision

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[2] Boucher originally sued Huntington, the Board, and Huntington North High School Principal Kenneth Kline. The trial court's rulings list all these entities as defendants. Boucher's notice of appeal and the parties' appellate briefs and appendices, however, list only Huntington as a defendant. Indiana Appellate Rule 17(A) provides that a party of record in the trial court shall be a party on appeal. We can only speculate whether the entities other than Huntington have been dismissed from the case.

Boucher argues that "[s]ummary judgment should not have been granted to Huntington since there is [a] disputed material issue of fact as to whether or not Boucher received a written evaluation prior to January 1 as mandated by Indiana Law[,]" i.e., by Indiana Code Section 20-28-7-2(c). Appellant's Br. at 4. Our standard of review is well settled:

> On appeal from a grant of summary judgment, our standard of review is the same as that of the trial court. We stand in the shoes of the trial court and apply a *de novo* standard of review. Our review of a summary judgment motion is limited to those materials designated to the trial court.[3] Ind. Trial Rule 56(H). Summary judgment is appropriate only where the designated evidence shows there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). For summary judgment purposes, a fact is "material" if it bears on the ultimate resolution of relevant issues. We view the pleadings and designated materials in the light most favorable to the non-moving party. Additionally, all facts and reasonable inferences from those facts are construed in favor of the nonmoving party.
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> A trial court's grant of summary judgment is clothed with a presumption of validity, and the party who lost in the trial court has the burden of demonstrating that the grant of summary judgment was erroneous. Where a trial court enters specific findings and conclusions, they offer insight into the rationale for the trial court's judgment and facilitate appellate review, but are not binding upon this court. We will affirm upon any theory or basis supported by the designated materials. When a trial court grants summary judgment, we carefully scrutinize that determination to ensure that a party was not improperly prevented from having his or her day in court.

Cox v. NIPSCO, 848 N.E.2d 690, 695-96 (Ind. Ct. App. 2006) (some citations omitted).

We affirm the trial court's grant of summary judgment in favor of Huntington because Boucher did not raise the issue of Huntington's compliance with Indiana Code Section 20-28-7-2(c) at the hearing before the Board. *See Atkinson v. City of Marion*, 411 N.E.2d 622,

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[3] Both parties cite to pages of Boucher's deposition that were not designated by either party on summary judgment.

629 (Ind. Ct. App. 1980) (holding that police officer had waived claim that he was denied a fair hearing before public safety board: "[S]uch issue was raised for the first time at a point when the Board could no longer attempt to rectify the situation, namely, when [the officer] filed his complaint for judicial review of the Board's action by the [trial court]."); *see also Lilley v. City of Carmel*, 527 N.E.2d 224, 227 (Ind. Ct. App. 1988) (holding that fireman had waived claim of bias by public safety board: "One cannot sit idly by until the Board announces its decision and then object to the procedure utilized. Issues are not preserved for appeal unless a proper and timely objection is made."). Likewise here, Boucher raised the issue of statutory compliance at a point when the Board could no longer attempt to rectify the situation.[4] We therefore affirm.

Affirmed.

DARDEN, J., and MAY, J., concur.

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[4] In his deposition, Boucher acknowledged that Kline informed him in January 2004 that Kline "knew they missed the January 1 deadline to give [Boucher his] evaluation, but they were going to continue on with the process" of canceling his contract. Appellant's App. at 54 (Boucher's deposition at 18).