

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001627-MR

JEFFERSON COUNTY BOARD OF EDUCATION

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANN O'MALLEY SHAKE, JUDGE
ACTION NO. 98-CI-001439

SHEILA GOODPASTER-TROYER

APPELLEE

OPINION
AFFIRMING IN PART, REVERSING IN PART, AND REMANDING
** ** * * * * *

BEFORE: BUCKINGHAM, KNOPF, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: The Jefferson County Board of Education appeals from an order of the Jefferson Circuit Court granting appellee's motion for summary judgment which remanded the case back to the Board to resolve an issue of fact. The Board contends the appellee requested a voluntary demotion and that the procedures under KRS 161.765(2) for demoting an administrator with three years of service do not apply to voluntary demotions, so that the Board in appellee's case lacked jurisdiction. We agree with the circuit court that the voluntariness of the demotion is an issue of fact which determines jurisdiction, and must be resolved first by the Board. However, we disagree with the circuit court's

conclusion that if the demotion was voluntary, no hearing is needed.

Sheila Goodpaster-Troyer was the principal of Coleridge-Taylor Elementary School, in Jefferson County, Kentucky, from approximately 1993 to 1997. Sheila asserts that her troubles began in June 1996, when she experienced problems with a teacher at the school. In May 1997, the teacher filed a complaint against Sheila, who was found to be in compliance with school policy. The teacher appealed, and a small demonstration, organized by a community activist, was held in support of the teacher on the first day of school. On August 27, 1997, Sheila was called to the office of her supervisor, Dr. Frieda Merriweather, where Sheila alleges she was directed, under duress, to write a letter requesting that, in light of the recent happenings, that she be reassigned to an instructional position for the 1997-98 school year. Sheila alleges that, later that same day, she was called back into Dr. Merriweather's office, where she was presented with a second letter that had been typed. The second letter revised the terms of the first letter, stating that, in addition to requesting reassignment for the 1997-98 school year, she would "voluntarily accept reassignment for the 1998-99 school year" to a resource teacher position with the applicable salary adjustment. Sheila claims that she asked to take the letter home and have the letter reviewed by her lawyer before signing it, but that Dr. Merriweather insisted that she sign it immediately. Sheila signed the letter, but contends she did so under duress.

On September 15, 1997, Sheila wrote to the Superintendent of the Jefferson County Schools, stating that she did not write the letter which she signed, and had not voluntarily requested reassignment as she had been intimidated into signing the letter by Dr. Merriweather. The Superintendent replied on October 20, 1997, stating that it was clear to him that it was Sheila's decision to take the demotion. Sheila was reassigned to a resource teacher position, but retained her principal's salary and benefits for the duration of the 1997-98 school year. In a letter dated April 28, 1998, the Superintendent notified Sheila that her responsibilities as principal would be eliminated at the end of the 1997-98 school year, with a corresponding reduction in salary for the 1998-99 school year. In a letter dated May 7, 1998, Sheila notified the Superintendent that she wished to contest the demotion through her appeal rights in KRS 161.765. The Superintendent responded in a letter dated May 14, 1998, stating that her transfer was a voluntary move to which KRS 161.765 did not apply.

Sheila's original complaint, which included statutory, tort, and contract claims, was filed on March 13, 1998. These claims were later dismissed and a claim pursuant to KRS Chapter 344 was stayed. Sheila filed an amended complaint, requesting a declaration of rights pursuant to KRS 161.765 and an order directing the Board to process her appeal in compliance with the statute. On December 23, 1998, the Board filed a motion for summary judgment, arguing that KRS 161.765 does not apply to voluntary demotions. On December 28, 1998, Sheila filed a cross-

motion for summary judgment, stating that the transfer was not voluntary, and requesting the court to place the controversy back within the authority of KRS 161.765.

On April 26, 1999, the court granted summary judgment to Sheila. The court stated that it agreed with the Board that Sheila "would have waived her rights under KRS 161.765, if [she] had voluntarily requested the demotion". However, the court found that because the parties were in dispute as to whether the demotion was voluntary or involuntary, the issue must be addressed at an administrative hearing and resolved by an administrative fact finder. On May 7, 1999, the Board filed a motion to alter, amend or vacate the court's April 26, 1999 order. On June 9, 1999, the court denied this motion. This appeal followed.

On appeal, the Board argues that the circuit court erred in granting summary judgment to Sheila, as her demotion was clearly voluntary in light of her two signed requests for a transfer. The Board contends that KRS 161.765 does not apply to such voluntary transfers, and therefore Sheila was not entitled to a demotion hearing. Alternatively, the Board argues that, because the court found an issue of fact existed regarding the voluntariness issue, summary judgment was improper. The Board contends that it is without authority to decide the issue of voluntariness per KRS 161.765, since KRS 161.765 will not apply if the demotion was voluntary. Therefore, the Board asserts that this issue must be resolved by the court, not the Board.

KRS 161.765, "Procedures for demotion of administrative personnel - Appeal" states, in pertinent part:

(2) An administrator who has completed three years of administrative service . . . cannot be demoted unless the following procedures have been complied with:

(a) The superintendent shall give written notice of the demotion to the board of education and to the administrator. If the administrator wishes to contest the demotion, he shall, within ten (10) days of receipt of the notice, file a written statement of his intent to contest with the superintendent. If the administrator does not make timely filing of his statement of intent to contest, the action shall be final.

(b) Upon receipt of the notice of intent to contest the demotion, a written statement of grounds for demotion, signed by the superintendent, shall be served on the administrator. The statement shall contain:

1. A specific and complete statement of grounds upon which the proposed demotion is based, including, where appropriate, dates, times, names, places, and circumstances;

2. The date, time, and place for a hearing, the date to be not less than twenty (20) nor more than thirty (30) days from the date of service of the statement of grounds for demotion upon the administrator.

(c) Upon receipt of the statement of grounds for demotion the administrator shall, within ten (10) days, file a written answer. Failure to file such answer, within the stated period, will relieve the board of any further obligation to hold a hearing and the action shall be final. . . .

(d) The hearing on the demotion shall be public or private, at the discretion of the administrator and shall be limited to the matters set forth in the written statement of grounds for demotion . . .

. . . .

(f) Appeal from final board action may be taken in the same manner . . . as an appeal from tribunal action under KRS 161.790.

KRS 161.790(6) and (8) provide that a teacher has the right to appeal the final order of a tribunal to the circuit court having jurisdiction in the county where the school district is located. The right to appeal an administrative action calls for a review of the record, or a de novo hearing if the statute so provides,¹ but after the administrative hearing. The right to appeal is not a substitute for the Board hearing required by KRS 161.765. See KRS 161.790 and Bowlin v. Thomas, Ky. App., 548 S.W.2d 515, 518 (1977). Even if we agreed that the administrator who resigns has no right to appeal, allegations of duress call into question the voluntariness of the demotion or resignation. Whether the demotion/transfer was voluntary is an issue of fact and must be resolved first by the Board.

The Board contends that its longstanding interpretation of KRS 161.765, that a principal who requests a transfer is not entitled to a hearing, must be given controlling weight. Hagan v. Farris, Ky., 807 S.W.2d 488, 490 (1991); Barnes v. Department of Revenue, Ky. App., 575 S.W.2d 169 (1978). However, an agency's interpretation of a regulation is valid, only if the interpretation complies with the actual language of the

¹KRS 161.790 has been interpreted to give a teacher the right to a hearing before the Board and if requested, a de novo hearing before circuit court. Bowlin v. Thomas, Ky. App., 548 S.W.2d 515, 518 (1977); Osborne v. Bullitt County Board of Education, Ky., 415 S.W.2d 607 (1967); Story v. Simpson County Board of Education, Ky., 420 S.W.2d 578 (1967); and Kelly v. Board of Education of Monticello Independent School Dist., Ky. App., 556 S.W.2d 165 (1977).

regulation. Hagan, 807 S.W.2d at 490. We believe that the Board's interpretation of KRS 161.765(2) conflicts with the plain language of the statute that "an administrator . . . cannot be demoted" unless its procedures have been complied with. We find no language in the statute which excuses the Board from complying with procedures because the contested grounds for demotion is "voluntariness".

Furthermore, unlike the circuit court, we believe that voluntariness can be contested under the statute, and may be the subject of a demotion hearing when asserted by the Board as the "grounds for demotion" per KRS 161.765(2)(b). The interpretation of a statute is a matter of law, and a reviewing court is not required to adopt the decisions of the trial court as to a matter of law, but must interpret the statute according to the plain meaning of the act and in accordance with the legislative intent. Floyd County Board of Education v. Ratliff, Ky., 955 S.W.2d 921, 925 (1997). The intent of KRS 161.765(2) is to provide administrators with three years of service with heightened procedural protections. Estreicher v. Board of Education of Kenton County, Kentucky, Ky., 950 S.W.2d 839 (1997).

Upon receipt of notice that an administrator is contesting a demotion, KRS 161.765(2)(b)(1) requires the superintendent to provide a statement of grounds upon which the proposed demotion is based. In the instant case, the superintendent's letter to Sheila, dated May 14, 1998, stated that the grounds for the demotion was her voluntary request for reassignment. KRS 161.765(2)(b) and (d) entitles an

administrator to a hearing on the grounds for demotion. As "voluntariness" is the ground the Board is asserting, per the statute, the Board was required to hold a hearing on this ground and then take official action, from which Sheila could then appeal to circuit court. KRS 161.765(2)(d), (e), and (f); KRS 161.790.

We reject the Board's argument that this interpretation of KRS 161.765 would lead to an unreasonable and absurd result - that principals would be permitted to "change their minds" at any time and rescind transfers which they themselves sought, forcing the Board to deny all requests by school principals for transfers, or to leave the vacated positions open, or to staff them for an unspecified period with temporary replacements. After receiving notice of a demotion, the principal has 10 days to contest it, after which it becomes final. KRS 161.765(2)(a). It is logical to assume that principals whose demotions were truly voluntary will not contest them, and as such, these demotions would be final in 10 days. The Board is further mistaken that this interpretation of KRS 161.765 will allow principals who simply "change their minds" to rescind their transfers. A voluntary request for a transfer is a legitimate reason for a demotion, and, as such, if the request is truly voluntary, the Board will prevail in the demotion hearing, and the principal will be unsuccessful on appeal.

For the aforementioned reasons, the decision of the Jefferson Circuit Court is affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Cynthia Blevins Doll
C. Tyson Gorman
Louisville, Kentucky

BRIEF FOR APPELLEE:

Don Meade
Louisville, Kentucky