

[Cite as *Burnell v. Cleveland Metro. School Dist.*, 2016-Ohio-7406.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104447

KIM BURNELL, ET AL.

PLAINTIFFS-APPELLANTS

vs.

**CLEVELAND METROPOLITAN SCHOOL DISTRICT,
ET AL.**

DEFENDANTS-APPELLEES

**JUDGMENT:
VACATED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-830560

BEFORE: Jones, A.J., Kilbane, J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: October 20, 2016

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LARRY A. JONES, SR., A.J.:

{¶1} This case is before this court for the second time, and is on the accelerated docket pursuant to App.R. 11.1 and Loc. App.R. 11.1. The purpose of an accelerated appeal is to allow this court to render a brief and conclusory opinion. *State v. Priest*, 8th Dist. Cuyahoga No. 100614, 2014-Ohio-1735, ¶ 1. For the reasons that follow, we vacate the trial court’s February 22, 2016 judgment and remand the case for a hearing on the issue of whether appellants had an adequate hearing as required by R.C. 3311.81(C).

{¶2} The plaintiffs-appellants are Kim Burnell, Karen Cunningham-Frank, Barbara Delgado, Iris Diaz, Layla Dibe, Emmet Erwin, Vito Federici, Karen Jozwiak, Brett Katz, Sarah Morrow, Heidi Stevens, and Michael Worth (collectively “appellants”). The defendants-appellees are the Cleveland Metropolitan School District Board of Education and Denise W. Link, chairwoman of the Board (collectively “CMSD” or “the Board”).

{¶3} The appellants were teachers with the CMSD, and were under limited contracts during the 2013-2014 school year. Near the end of the school year, the teachers were notified in writing that the Board did not intend to renew their contracts for another year. As was their statutory right, the teachers requested a written explanation as to why their contracts were not being renewed and a hearing to challenge the decision.

{¶4} Appellee Link scheduled a hearing at the next regularly scheduled Board meeting and promulgated rules for the hearing. Under Link’s rules, each teacher and his

or her representative were permitted 20 minutes to present an oral argument. Each of the teachers' principals or other administrators who recommended that his or her limited contract not be renewed were present at the meeting, but the teachers and their representatives were not permitted to question them.

{¶5} After the teachers' oral arguments, Link requested that the teachers and their representatives leave the meeting room. In their complaint, the teachers alleged that after they had gone, the Board heard testimony from CMSD administrators in executive session.

When the Board returned to public session, it moved to adopt a resolution to not renew the contracts of all the appellants; the resolution passed.

{¶6} Appellants filed a declaratory judgment action in the common pleas court, alleging that CMSD deprived them of their statutory right to a hearing before voting not to renew their contracts. The teachers contend that they were not afforded a hearing because they were not permitted to present evidence, cross-examine witnesses, or respond to the evidence and arguments made against them. Their complaint sought two kinds of relief: (1) a declaration that they were deprived of their right to a hearing under R.C. 3311.81(C) and (2) damages resulting from CMSD's decision not to renew their contracts.

{¶7} CMSD filed a motion to dismiss under Civ.R. 12(B)(1) and (6). CMSD contended that, because R.C. 3311.81 provides that school board decisions "shall be final and shall not be subject to further appeal," the trial court had no authority to review the Board's decision. The trial court agreed, holding that it "lacked jurisdiction to hear an appeal," and dismissed the case.

{¶8} The teachers appealed to this court, and contended that the trial court erred in dismissing their complaint because it was not an appeal but, rather, an independent action to enforce their statutory right to a hearing. This court held that “[a]lthough R.C. 3311.81(C) states that a school board’s decision is final and not subject to appeal, nothing prevents aggrieved limited contract teachers from bringing an action to enforce their right to a hearing under R.C. 3311.81(B).” *Burnell v. Cleveland Mun. School Dist. Bd. of Edn.*, 8th Dist. Cuyahoga No. 103069, 2015-Ohio-5431, ¶ 11. This court further found that filing a declaratory judgment action was the appropriate avenue for the appellants to enforce their rights under R.C. 3311.81. *Id.* at ¶ 11-14.

{¶9} This court specifically held that, under R.C. 3311.81(C), the “trial court has jurisdiction to determine whether the teachers received an adequate hearing but lacks jurisdiction to review the Board’s decision not to renew the teachers’ contracts.” *Id.* at ¶ 15. This court, therefore, affirmed the trial court’s judgment in part, reversed it in part, and “remanded [the case] to the trial court to conduct a hearing to determine whether CMSD complied with the hearing requirements of R.C. 3311.81(C).” *Id.* at ¶ 20.

{¶10} On remand, the trial court issued a judgment entry on February 22, 2016, stating that it “finds that appellants had an adequate hearing as required by R.C. 3311.81(C).” The court did not have a hearing on the issue prior to reaching its conclusion. A lower court must follow the mandate of its court of appeals, whether correct or incorrect, absent extraordinary circumstances such as an intervening decision by the Supreme Court. *State ex rel. Sharif v. McDonnell*, 91 Ohio St.3d 46, 48, 741 N.E.2d

127 (2001). Because the trial court did not follow this court's mandate, the trial court's February 22, 2016 judgment is vacated, and the case is again remanded to the trial court with instructions to conduct a hearing on whether the appellants had an adequate hearing as required by R.C. 3311.81(C).

{¶11} Judgment vacated; case remanded.

It is ordered that appellants recover of appellees costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., ADMINISTRATIVE JUDGE

MARY EILEEN KILBANE, J., and
EILEEN T. GALLAGHER, J., CONCUR