

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Sherri Shumate,
Petitioner Below, Petitioner**

vs) No. 11-1298 (Raleigh County 10-C-558)

**Raleigh County Board of Education and
Charles R. Maynor, in his official capacity as
Principal of Woodrow Wilson High School,
Respondents Below, Respondents**

FILED

September 24, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Sherri Shumate, by counsel Michael T. Clifford and Richelle K. Garlow, appeals the Circuit Court of Raleigh County's order entered on August 11, 2011, granting respondents' motion for summary judgment. The respondents, by counsel Gregory W. Bailey and Howard E. Seufer Jr., have filed a joint response.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Petitioner is a teacher in the Raleigh County school system and served as assistant cheerleading coach at Woodrow Wilson High School ("Woodrow Wilson"). In June of 2010, respondents posted an open position for head cheerleading coach at Woodrow Wilson. Petitioner, along with several other applicants, applied for the position. Petitioner was the only applicant who was under contract as a high school assistant cheerleading coach. After the job was awarded to another candidate, petitioner filed a petition for writ of mandamus and injunctive relief in the circuit court, and alleged that she was the most suitable candidate for the position. In their answer, respondents stated that "mandamus does not lie in controlling county boards of education in exercising their discretionary powers, in the absence of a showing of caprice, passion, partiality, fraud, arbitrary conduct, or some ulterior motive or misapprehension of the law." Petitioner then moved to convert the action to a complaint for declaratory and injunctive relief and moved for summary judgment. Petitioner argued that the seniority rights for school service personnel code provision is applicable and that Respondent Raleigh County Board of Education failed to follow the hiring requirements of the West Virginia Code. Respondents filed a motion for summary judgment, arguing that extracurricular coaches do not fall under school service personnel positions. After a hearing, the circuit court granted respondents' motion for summary judgment and found that "the underlying purpose of West Virginia Code § 18A-4-16 is not to dictate whether extracurricular positions are to be considered as professional or school service personnel, but was enacted to protect both professional and service employees from

being compelled to undertake extracurricular assignments, in addition to their regular employment.” The circuit court rejected petitioner’s claim that this statute must be read in conjunction with the statutes relating to filling school service personnel vacancies when filling coaching vacancies. The circuit court found that “[t]he statutes relating to school service personnel vacancies are only relevant when filling extracurricular positions that are designated by a county board of education as school service personnel extracurricular positions.”

“‘A circuit court's entry of summary judgment is reviewed *de novo*.’ Syllabus point 1, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994).” Syl. Pt. 1, *Loudin v. Nat’l Liab. & Fire Ins. Co.*, 228 W.Va. 34, 716 S.E.2d 696 (2011). Moreover, “[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law.” Syl. Pt. 5, *Arnold v. Palmer*, 224 W.Va. 495, 686 S.E.2d 725 (2009) (internal citations omitted).

On appeal, petitioner argues that the circuit court erred in finding that respondents were not required to follow the seniority statutes in filling the vacant head cheerleading coach position, and in granting summary judgment in favor of respondents. Petitioner argues that because a cheerleading assistant coach falls under the definition of “service personnel” pursuant to West Virginia Code §18A-1-1, the seniority rights provision of West Virginia Code § 18A-4-8b(5) requires that her seniority be considered in hiring for head cheerleading coach. Petitioner also argues that the above code provisions should be read *in pari materia* with § 18A-4-16, which notes, in pertinent part, that “[t]he board shall fill extracurricular school service personnel assignments and vacancies in accordance with [§ 18A-4-8b] of this article.” Finally, petitioner argues that the statutes “clearly show a preference for seniority in filling positions such as the disputed cheerleading coaching job.”

In response, respondents argue that because coaching positions, including the subject extracurricular coaching vacancy, are professional positions, the circuit court did not err in concluding that school service personnel seniority is not germane in the consideration of the qualifications of candidates for coaching positions. Moreover, respondents argue that the definition of “service person” expressly excludes individuals who fall within the meaning of “teacher,” and petitioner is a teacher who has no school service personnel seniority or qualifications. Respondent Maynor’s response to questioning regarding the lack of relevance of school service personnel seniority to the selection process was, as respondents argue, consistent with the law. Respondents further argue that “the application of the requirements for filling school service personnel positions would have afforded no particular advantage to [petitioner] in her candidacy for the extracurricular coaching position.”

Petitioner presented no evidence that she has ever been classified as “service personnel” absent her own argument. This Court finds no error in the circuit court’s finding that the statutes relating to school service personnel vacancies are only relevant in filling positions that are specifically designated by a county board of education as school service personnel extracurricular positions. Moreover, petitioner has no entitlement to the coaching position, as this Court has previously found that “[c]ounty boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel.” Syl. Pt. 3, in part, *Dillon v. Board of Educ.*, 177 W.Va. 145, 351 S.E.2d 58 (1986).” Syl. Pt. 3, *Cahill v.*

Mercer Cnty. Bd. of Educ., 208 W.Va. 177, 539 S.E.2d 437 (2000). This Court finds no error in the circuit court's order granting summary judgment in favor of respondents.

For the foregoing reasons, we affirm the circuit court's decision.

Affirmed.

ISSUED: September 24, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh