2015 IL App (1st) 142901

THIRD DIVISION
October 28, 2015

No. 1-14-2901

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DUSHON BROWN, Respondent-Appellant, v. BOARD OF EDUCATION OF THE CITY OF CHICAGO, BARBARA BYRD-BENNETT, Chief Executive Officer, DAVID VITALE, Board, President, DR. CARLOS M. AZCOITIA, HENRY BIENEN, DR. MAHALIA HINES, DEBORAH QUAZZO, ROD SIERRA and ANDREA L. ZOPP, Board Members, ILLINOIS STATE BOARD OF EDUCATION and LAWRENCE A. COHEN, Hearing Officer. Petitioners-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 140827 RSI

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Mason and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 The Board of Education of the City of Chicago properly discharged respondent from her position as a contract principal.

¶ 2 This appeal arises from an administrative decision by petitioner the Board of Education of the City of Chicago (Board) to terminate respondent Dushon Brown's contract as a school principal. On appeal, respondent contends the Board's findings that she had prohibited contact with a political figure and misused funds were against the manifest weight of the evidence. In addition, respondent contends that there was not sufficient cause to terminate her contract. Further, respondent contends that her conduct was not irremediable and dismissal was unwarranted. We affirm.

¶ 3 BACKGROUND

¶ 4 We recite only those facts necessary to understand the issues raised on appeal. The Board employed respondent in various teaching and administrative positions for nearly 30 years. Respondent worked as the principal of the Gwendolyn Brooks College Preparatory Academy (Brooks), a selective enrollment high school, from August 2006 until her removal. In 2009, the Board issued respondent a Warning Resolution (Warning) and 20-day suspension without pay based on a contract respondent entered into with a vendor to host a fundraising dance at Brooks. The Warning, in pertinent part, advised respondent:

> "You shall follow all Board rules, policies and fiscal reporting procedures when collecting and distributing funds collected as a result of all fundraising activities.
>
> You shall conduct yourself at all times in such a manner that you are a good role model to your students and to your administration, teaching and educational support colleagues.
>
> Dismissal will be requested if you fail to comply with the directives for improvement as noted above."

¶ 5 In June 2012, the Board approved 24 dismissal charges and specifications against respondent pursuant to section 34-85 of the School Code (105 ILCS 5/34-85), alleging that

respondent had engaged in irremediable misconduct and breached her contract in strict violation of the Warning. Specially, the Board asserted respondent: (1) violated the selective enrollment rules and policies by having "prohibited contact" with Illinois State Representative Monique Davis in an attempt to enroll a student at Brooks; (2) engaged in the "improper transfer of students into Brooks for the 2011-2012 school year;" (3) permitted an "unapproved trip by the Brooks' football" team; and (4) improperly converted "funds from the Saint Martin de Porres (St. Martin) Parent Organization."

¶ 6 Subsequently, the Board conducted a hearing and testimony revealed the following. In August 2010, respondent hired Robert Locke as Brooks' new highly sought basketball coach. Locke wanted his son E.L. to attend Brooks as a 9th grader, but he did not take the Board required selective-enrollment exam. Nonetheless, respondent submitted a request to the Office of Academic Enhancement (OAE) to allow E.L. to enroll at Brooks.

¶ 7 Abigayil Joseph, an OAE officer, testified that the Board accepted 9th grade students into selective-enrollment schools based on their grades, ISAT score and selective-enrollment exam. Only transfer students were exempt from the selective-enrollment exam. According to the Principal Discretion Handbook prohibited contacts would be "when the principal was contacted about a particular student by another CPS employee, a political official, or someone who had political connections" in order to assert political influence over the principal. In turn, if a principal reached out to a political official this would also violate the prohibited contacts provision. On August 30, 2010, respondent called Joseph and repeatedly requested that E.L. be permitted to enroll in Brooks as a 9th grader because she wanted to insure that Locke would remain at Brooks. Joseph told respondent that it was impossible because E.L. did not take the selective-enrollment exam, which violated Board policy. The next day Representative Davis

called Joseph and requested that E.L. be admitted to Brooks. Joseph again explained that it violated Board policy and Representative Davis allegedly threatened to contact Ron Huberman, the Chief Executive Officer of the Chicago Public Schools (CPS). Joseph then called the Board's general counsel and the Office of the Inspector General (OIG) advised Joseph to document the occurrence.

¶ 8 The following year, E.L. entered Brooks as a transfer student and the OIG opened an investigation into transfer students for the 2011-2012 school year. Linda Brown, OIG Director of Investigations, testified that during the investigation she obtained respondent's work emails, which revealed continued correspondence between respondent and E.L.'s mother Jaye Locke regarding E.L.'s 9th grade admittance into Brooks. Investigators also found an August 30, 2010, written telephone message from Representative Davis for respondent. Phone records from the following day revealed Jaye called respondent's cell phone twice, and four minutes after the call ended, respondent used her personal cell phone to make a 12-minute call to Representative Davis's cell phone.

¶ 9 Brown further testified that respondent allegedly mishandled finances, pertaining to the St. Martin Booster Club account. St. Martin was a Catholic school that occupied the same address as Brooks. Although St. Martin closed in 1997, bank statements for its Booster Club account continued to be mailed to the address. Initially, the Board opened a public school called Southside College Preparatory High School (Southside Prep), which ultimately became Brooks. On February 29, 2008, respondent, along with her operation's manager Chandra Butler, went to Parkside National Bank to close Brooks' bank accounts per Board request. She allegedly presented documentation, which allowed her to close the St Martin Booster Club account. Parkside National Bank presented respondent with a check for $186,235.46, which she kept in a

vault for eight months before depositing it into an account at U.S. Bank called Brooks High School Booster Club. Thereafter, respondent and Chandra spent approximately $75,000 from the account, but there were no receipts or invoices to document the account's use. In November 2009, respondent and Butler closed the account and U.S. Bank issued respondent a check in the amount of $110,707.61. Respondent held the check for four months and eventually deposited it into an account at Seaway Bank. From that date until the account was frozen, respondent and Butler spend another $42,000 and again there was no documentation to verify the account's use.

¶10 Respondent testified that Representative Davis became a personal friend when they were classmates during a doctoral program at Roosevelt University. Following Locke's hiring, Locke requested that respondent enroll E.L. at Brooks as a 9th grader. Respondent advised Locke that E.L. would need to take the selective-enrollment exam, have good grades and be a resident of Chicago. Locke asked respondent to speak to his wife Jaye about the process and respondent explained that unless a summer selective-enrollment exam was given, E.L. would have to transfer in as a 10th grader. Respondent exchanged emails with Jaye and contacted the OAE about a possible summer exam. Joseph explained that there would be no summer exam, and thus, E.L. could not enroll as a 9th grader. Respondent did not recall getting the written message from Representative Davis. Respondent also did not ask Representative Davis to apply political pressure to get E.L. admitted.

¶ 11 Respondent further testified that the Board sent a letter requesting principals to withdraw all school funds from their neighborhood banks and transfer the funds to U.S. Bank. At Parkside National Bank when the bank representative asked, "this one too," in reference to the St. Martin account, respondent said "yes" because the bank statement read Southside Prep. Respondent, however, admitted she did not know where the funds originated. Butler and respondent used the

account for things the Board would not fund, such as sports team uniforms, a sports banquet, National Honors Society, other clubs, student activities, and reimbursement for out-of-state trips. It was not for personal use and respondent always submitted documentation for the account's uses to Butler. Respondent did not recall why it took 8 months to deposit the initial check and never gave Butler permission to use respondent's personal stamp on any account check. On cross-examination, respondent did admit the check given by Parkside National Bank was made out to the St. Martin Parent Organization.

¶ 12 The Hearing Officer concluded that the Board had a sufficient basis for respondent's dismissal based on her prohibited contact with Representative Davis in an attempt to enroll E.L. at Brooks. In addition, the Hearing Officer found that respondent's behavior with regard to the St. Martin account "manifestly failed to comply with the Board rules and the 2009 Warning directives." The court noted that respondent "knew or should have known that her conduct was in violation of the 'role model' standard required by Board principles." The court further observed that when respondent closed the St. Martin account she "had no legitimate grounds upon which to believe that account belonged to the Board." Thus, the Hearing Officer determined that respondent's actions with respect to the St. Martin account were irremediable misconduct warranting dismissal. The Hearing Officer, however, determined that the Board failed to prove that respondent's actions with respect to 2011-2012 transfer students or the football trip constituted irremediable misconduct. The Board adopted the above recommendations and discharged respondent and this appeal for direct administrative review followed.

¶ 13 ANALYSIS

¶ 14 Respondent first contends the Board's findings that she had prohibited contact with Representative Davis and misused the St. Martin funds were against the manifest weight of the evidence. Pursuant to the Administrative Review Law (735 ILCS 5/3–101 et seq. (West 2012)), our review of an administrative decision to discharge an employee requires a two-step approach. *Raitzik v. Board of Education of Chicago*, 356 Ill. App. 3d 813, 823 (2005). We must first determine whether the Board's findings of fact and decision were against the manifest weight of evidence, then we determine whether those findings sufficiently support the Board's conclusion that cause for discharge exists. *Id.* The Board's findings are considered *prima facie* true and a reviewing court may not substitute its judgment for that of the Board unless it's findings are against the manifest weight of the evidence. *Board of Education of the City of Chicago v. Box*, 191 Ill. App. 3d 31, 37 (1989). Findings are against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Ahmad v. Board of Education of City of Chicago*, 365 Ill. App. 3d 155, 162 (2006). The reviewing court may affirm the Board's decision on any basis supported by the record. *Younge v. Board of Education of the City of Chicago*, 338 Ill. App. 3d 522, 530 (2003).

¶ 15 Here, the Board's findings were decidedly *not* against the manifest weight of the evidence. Joseph testified that respondent repeatedly requested that E.L. be permitted to enroll in Brooks as a 9th grader even though he did not complete the *required* selective-enrollment exam. When Joseph refused respondent's request, Representative Davis allegedly called Joseph and requested that E.L. be admitted despite his lack of qualifications. In corroboration, cell phone records revealed that E.L.'s mother called respondent's cell phone twice, and four minutes after the call ended, respondent used her personal cell phone to make a 12-minute call to Representative Davis's cell phone. The Hearing Officer found Joseph to be a credible witness

and it is the hearing officer, not the reviewing court's, purview to determine the credibility of witnesses and draw reasonable inferences from the corroborating evidence. See *Board of Education of Community Consolidated School District. No. 54 v. Spangler*, 328 Ill. App. 3d 747, 757 (2002) (the hearing officer acts as the fact finder and "has the responsibility to hear the testimony of witnesses, to determine their credibility and the weight to be given to the testimony of each witness and then to draw reasonable inferences from all evidence produced in support of the charges against the accused"); *East St. Louis School District No. 189 v. Hayes*, 237 Ill. App. 3d 638, 647 (1992) (it was the hearing officer's duty to determine the credibility of the witnesses and the weight afforded their testimony). Furthermore, the Hearing Officer noted, "[a]s the Board correctly argues the only logical reason that Davis placed the call to Joseph in the first place is because her personal friend [petitioner] asked her to do it. How else would Davis know that [E.L.] did not get into Brooks." Based on the record before us, we cannot say that the Board's findings were against the manifest weight of the evidence.

¶ 16 Similarly, with regard to the St. Martin account, the Hearing Officer found that respondent had no legitimate reason to believe the funds belonged to the Board and respondent provided no clear explanation for her belief. The account did not have the name Brooks or Southside Prep on it, but the name St. Martin Parent Organization. In addition, respondent made no attempt to ascertain the origin of the account or clarify that it was in fact part of the 1997 asset transfer to the Board. It is also unclear why respondent waited 8 months to deposit the initial funds. Furthermore, respondent failed to provide any documentation for the use of approximately $117,000 from the St. Martin account. Therefore, the Board's findings were clearly not against the manifest weight of the evidence. See *Hall v. Board of Education of the City of Chicago*, 227 Ill. App. 3d 560, 574 (1992) (the hearing officer acts as the fact finder and

draws reasonable inferences from all evidence produced in support of the charges against the accused).

¶ 17 Respondent next contends that the Board did not demonstrate sufficient cause to terminate her contract. Although "cause" is not specifically defined by the School Code (105 ILCS 5/1-1 et seq. (West 2012)), "it has been defined as 'that which law and public policy deem as some substantial shortcoming which renders a teacher's continued employment detrimental to discipline and effectiveness [citation] or 'something which the law and sound public opinion recognize as a good reason for the teacher to no longer occupy his position' [citation]" *James v. Board of Education of the City of Chicago*, 2015 IL App (1st) 141481, ¶ 16. There must be present a logical nexus between the actions alleged as cause for dismissal and the individual's fitness to perform as an educator. *Chicago Board of Education v. Payne*, 102 Ill. App. 3d 741, 747 (1981). The existence of sufficient cause is a question of fact for the Board to determine and is reviewed under the manifest weight of the evidence standard. *Fadler v. Illinois State Board of Education*, 153 Ill. App. 3d 1024, 1026 (1987).

¶ 18 In the *case sub judice*, there was ample cause for respondent's dismissal. The record before us demonstrates that respondent was in plain violation of the directives given to her in the 2009 Warning. First, respondent did not conduct herself as a "good role model to [her] students and to [her] administration, teaching and educational colleagues" when she engaged in prohibited contact with Representative Davis, attempting to use political influence to admit an unqualified student into Brooks strictly against Board policy. Further, respondent did not "follow all Board rules, policies and fiscal reporting procedures" when she mishandled the St. Martin account. Furthermore, respondent was amply warned that dismissal would result if she failed to comply with the Warning directives. Therefore, the Board had sufficient cause to terminate respondent's

contract. See *Raitzik*, 356 Ill. App. 3d at 831 ("that which law and public policy deem as some substantial shortcoming which renders a teacher's continued employment detrimental to discipline and effectiveness"); *Walsh v. Board of Fire & Police Com'rs of Village of Orland Park*, 96 Ill. 2d 101, 105-06 (1983) (it is well settled that an administrative tribunal's finding of cause for discharge commands our respect, and it is to be overturned only if it is arbitrary and unreasonable or unrelated to the requirements of the service).

¶ 19 Respondent finally contends that the Board failed to demonstrate her conduct was irremediable and could not have been corrected with a warning. Contrary to respondent's assertion, we need not consider whether petitioner's conduct was irremediable pursuant to *Gilliland v. Board of Education of Pleasant View Consolidated School District No. 622*, 67 Ill. 2d 143 (1977). Before the School Code was amended in 1995, *Gilliard* set out a two-part test to determine whether the conduct supporting a dismissal was to be deemed irremediable. *Gilliland*, 67 Ill. 2d at 153 ("[t]he test in determining whether a cause for dismissal is irremediable is whether damage has been done to the students, faculty or school, and whether the conduct resulting in that damage could have been corrected had the teacher's superiors warned her). The School Code (105 ILCS 5/34-85 (West 2012)), however, "was amended to include the language in section 34-85 which explicitly provides that certain types of conduct are to be deemed per se irremediable, thereby eliminating the need to apply the Gilliland test to those particular types of conduct." *James*, 2015 IL App (1st) 141481, ¶ 20.

¶ 20 Specifically, under section 34-85 of the School Code, no written warning is required "if the causes have been the subject of a remediation plan" or "if the conduct on the part of a teacher or principal is cruel, immoral, negligent, or criminal or that in any way causes psychological or physical harm or injury to a student." 105 ILCS 5/34-85 (West 2012). In this matter,

respondent's conduct was clearly negligent and immoral, because not only did she violate the Warning directives, but she negligently and unethically mishandled the St. Martin account and failed to document its use in strict violation of the following Board Rules:

"Section 4-20: Fiscal mismanagement or waste of funds

Section 4-21: Misappropriating any funds of the Board or any other private or public organization." See Rules Board of Education of the City of Chicago (May 2012). In addition, respondent violated the Board's selective enrollment policy when she had prohibited contact with Representative Davis. See *Prato v. Vallas*, 331 Ill. App. 3d 852, 864-65 (2002) (no warning was required because plaintiff illegally recruited students and she was well aware that her conduct was improper and in strict violation of Board policy). Therefore, under the provisions of section 34-85, respondent's conduct was per se irremediable and she was not entitled to a written warning before her dismissal. 105 ILCS 5/34-85 (West 2012). Accordingly, we find that the Board's ultimate decision to dismiss respondent was not against the manifest weight of the evidence.

¶ 21 CONCLUSION

¶ 22 Based on the foregoing, we affirm the judgment of the Board of Education of the City of Chicago.

¶ 23 Affirmed.