

RENDERED: JULY 26, 2019; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000418-MR

██████████

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE RODNEY BURRESS, JUDGE
ACTION NO. 15-CI-00262

KEITH DAVIS, BULLITT COUNTY
SCHOOLS SUPERINTENDENT; AND
BULLITT COUNTY BOARD OF
EDUCATION

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, LAMBERT, AND L. THOMPSON, JUDGES.

LAMBERT, JUDGE: In this administrative appeal, ██████████ seeks review of the February 7, 2018, opinion and order of the Bullitt Circuit Court upholding the Bullitt County Board of Education's decision to terminate ██████████'s employment at Brooks Elementary School. We affirm.

We repeat the procedural posture contained in the circuit court's order, namely:

After eleven years of employment, [REDACTED] was terminated from her position as a Secretary/Bookkeeper on December 10, 2014. [Alvey] exercised her right to a due process hearing pursuant to the instructions tendered in [Alvey's] Notice of Termination. The initial hearing was held on February 9, 2015. At the hearing, the Hearing Officer, [REDACTED], recommended that [Alvey's] termination be upheld. [REDACTED] appealed the decision to the Circuit Court, arguing that the hearing failed to comply with statutory guidelines, that the finding was not supported by substantial evidence, and that the hearing failed to afford [REDACTED] due process of the law. [The Bullitt County Board of Education] then moved for a Judgment on the Record, or, in the alternative, Summary Judgment. A hearing was then held in this Court on February 2, 2016.

In its March 6, 2016 Order, this Court found that (1) [REDACTED] received adequate notice satisfying constitutional due process, (2) Ms. [REDACTED]'s lack of formal legal training did not violate due process, (3) there was insufficient evidence to find that Ms. [REDACTED] was anything other than a neutral, detached decision maker, and (4) [Alvey] was afforded a hearing in which evidence was taken and weighed. This Court further found that the record was insufficient to determine whether the [Board] complied with KRS [Kentucky Revised Statute] 161.011(9)(c) and that there were insufficient findings of fact to determine whether the decision to terminate [Alvey] was supported by substantial evidence on the record. As such, this matter was remanded to the Bullitt County Board of Education.

A second hearing was held by Ms. [REDACTED] on May 18, 2017 to address the issues set forth in this Court's

Order. Subsequently, [the Board] renewed its Motion for Summary Judgment and it is now under submission.

The circuit court ultimately found that there was substantial evidence in the record to support the Board's decision to terminate ██████'s employment. ██████ appeals, making the same arguments, now couched in terms of allegations of circuit court error for upholding the Board's decision.

Generally, our standard of review in administrative appeals is as follows:

The purpose of judicial review of an appeal from an administrative agency is to ensure that the agency did not act arbitrarily. *Baesler v. Lexington-Fayette Urban County Government*, 237 S.W.3d 209 (Ky. App. 2007). If the Court concludes that the agency applied the correct rule of law to the facts supported by substantial evidence, the final order of the agency must be affirmed. *Bowling v. Natural Resources and Environmental Protection Cabinet*, 891 S.W.2d 406 (Ky. App. 1994).

Commonwealth, Energy and Environment Cabinet v. Spurlock, 308 S.W.3d 221, 223 (Ky. App. 2010). Substantial evidence is defined as "evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men." *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998). "The administrative agency's findings will be upheld even though there exists evidence to the contrary in the record." *Kentucky Unemployment Ins. Comm'n v. Landmark Community Newspapers of Kentucky, Inc.*, 91 S.W.3d 575, 578-79 (Ky. 2002).

Judicial review of an administrative decision is concerned with whether the action of the agency was arbitrary. *American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Comm'n*, 379 S.W.2d 450, 456 (Ky. 1964). Three grounds exist for finding that an agency's decision was arbitrary: (1) the agency acted in excess of its statutory powers, (2) the agency did not afford procedural due process, and (3) the agency's decision was not supported by substantial evidence. *Id.*

Baesler, 237 S.W.3d 209 at 212 (Ky. App. 2007).

█████ first argues that there was insufficient evidence of substance to support the decision to terminate her. Alvey categorizes the Board's evidence as "vague unsupported allegations" with "no facts identified to support" the Board's conclusions. We disagree. In its order, the circuit court devoted two pages to specific factual findings in support of the Board's allegations against █████. We need not belabor this opinion with recounting those facts other than to state that the circuit court did not err in its holding that the evidence was sufficient to support █████'s termination. *Spurlock, supra; Owens-Corning, supra.*

█████ next contends that the circuit court erred in holding that the Board provided adequate notice of its due process procedures. KRS 161.011(9) requires:

Local school boards shall develop and provide to all classified employees written policies which shall include but not be limited to:

- (a) Terms and conditions of employment;

(b) Identification and documentation of fringe benefits, employee rights, and procedures for the reduction or laying off of employees; and

(c) Discipline guidelines and procedures that satisfy due process requirements.

The specific Board policies were entered into the record. ██████ insists that she repeatedly requested a copy of those procedures and was never provided with them. Yet the very things she claims not to have advance knowledge of – order of evidence production; right to review exhibit and witness lists; right to subpoena, present and cross-examine witnesses; right to appeal to circuit court – were never denied her. And she was represented by legal counsel throughout the proceedings.

Procedural due process in the administrative or legislative setting has widely been understood to encompass “a hearing, the taking and weighing of evidence if such is offered, a finding of fact based upon a consideration of the evidence, the making of an order supported by substantial evidence, and, where the party's constitutional rights are involved, a judicial review of the administrative action.”

Hilltop Basic Resources, Inc. v. County of Boone, 180 S.W.3d 464, 469 (Ky. 2005) (citations omitted). ██████ fails to convince us that she was denied procedural due process. The procedure provided her with the necessary due process requirements.

This leads us to ██████'s final contention that the hearing officer was not neutral and had no legal training. As the *Hilltop* Court stated, “[t]he ‘right to an impartial tribunal’ is nowhere to be found within this list, and rightfully so,

since the right, as it is commonly conceived within the judicial context, cannot be guaranteed (nor need it be) in the administrative or legislative setting.” *Id.* We find no evidence of the hearing officer’s existing bias. The hearing officer was a retired educator. There was no evidence placed in the record by ██████ that the hearing officer’s former employment prejudiced her in favor of the Board. KRS 13B.040 lists the reasons for and procedure for disqualification of a hearing officer. None can be found here. Nor does ██████ allege that the hearing officer failed to receive the proper training enunciated in KRS 13B.030(4) (which does not mandate legal training, only “training necessary to prepare . . . to conduct a competent administrative hearing”).

Accordingly, we find ██████'s procedural due process rights were not infringed, as she received notice, a hearing, and an opportunity to present evidence and offer rebuttal. *Hougham v. Lexington–Fayette Urban County Government*, 29 S.W.3d 370, 373 (Ky. App. 1999).

The judgment of the Bullitt Circuit Court is affirmed.

THOMPSON, L., JUDGE, CONCURS.

DIXON, JUDGE, CONCURS IN RESULT ONLY.

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