

IN THE CHANCERY COURT OF HOWENDES COUNTY, MISSISSIPPI

MARTHA LIDDELL

FILED
JUL - 8 2013

PLAINTIFF

V.

CAUSE NO. 2013-0450

COLUMBUS MUNICIPAL SCHOOL
DISTRICT BOARD OF TRUSTEES

Lisa Zyngier Nease
Chancery Clerk

DEFENDANTS

MOTION TO DISMISS

COME NOW Defendants Columbus Municipal School District Board of Trustees ("CMSD") and file this Motion to Dismiss the Plaintiff's Complaint for Injunctive Relief and Declaratory Judgment, and in support thereof, show unto the Court the following:

INTRODUCTION

Plaintiff's complaint is a blatant attempt to circumvent the statutory requirements pertaining to the dismissal of a school employee. At this time, Dr. Liddell has been notified of a preliminary recommendation of termination by the CMSD. Such a preliminary recommendation is final only upon a decision after (or waiver thereof) a hearing before the CMSD, where Dr. Liddell and the Columbus Municipal School District will present evidence relating to the preliminary recommendation. By statute, this Court lacks jurisdiction to consider Plaintiff's procedural complaints until after the school board has held a hearing and issued a final decision. Instead of following the statutory scheme, Plaintiff invites this Court to ignore the provisions of Mississippi Code §37-9-59. Until Dr. Liddell exhausts her administrative remedies, this Court may not take up her cause. For these reasons, the Court should dismiss Plaintiff's complaint.

Additionally, Dr. Liddell's motion has no hope of success and is solely for purposes of harassment or delay. Accordingly, this Court has the discretion to award attorneys' fees to

CMSD arising from the filing of this response, including any travel time and hearings which take place.

II. LAW AND ARGUMENT

This Court should dismiss Plaintiff's complaint for two reasons. First, the Court lacks subject matter jurisdiction until a final decision is made by the school board, which has not yet occurred. Second, even if this Court has jurisdiction, Plaintiff has wholly failed to establish any right to the extraordinary remedy of injunctive relief. Because Plaintiff's claims are frivolous and have no hope of success, this Court should award attorneys' fees to the CMSD in having to respond to Plaintiff's complaint.

A. This Court Lacks Subject Matter Jurisdiction to Hear Plaintiff's Claims.

This Court does not have subject matter jurisdiction to hear Plaintiff's complaint. This Court's jurisdiction in matters involving the dismissal of an educational employee is strictly limited to an appellate review of a school board's final decision. Because there is not yet a final decision for this Court to review, Plaintiff's attempt to challenge the procedures employed with regard to her preliminary termination decision is premature and not properly before this Court. The only decision made thus far with regard to Dr. Liddell is preliminary. A copy of this preliminary decision is attached hereto as Exhibit "A". Plaintiff's complaint is nothing more than an attempt to politicize the statutorily mandated process and pressure the CMSD prior to its administrative hearing to make a final decision on Dr. Liddell's potential termination.

The termination of a licensed employee is governed exclusively by statute. MISS. CODE ANN. §37-9-59. The procedural steps required when a discharged employee requests a hearing

are outlined in Mississippi Code §§37-9-111 and 113.¹ These statutes permit a school board to preside over a termination hearing, or alternatively, to appoint a hearing officer to conduct proceedings. Regardless of who presides over the hearing, it is the school board that makes the final decision as to whether the employee's discharge was proper. *Id.*; *see also Yarbrough v. Camphor*, 645 So. 2d 867, 870 (Miss. 1994)(explaining that "the ultimate power to terminate an employee lies with the school board"); *Tutwiler v. Jones*, 394 So. 2d 1346, 1348 (Miss. 1981)(holding that "the actual power to remove or not to remove [an employee] rests with [the school board]").

Importantly, the statutes governing these procedures do not permit court intervention until *after* the board has heard the employee and rendered a final decision. MISS. CODE ANN. §37-9-113. The CMSD has not rendered such a final decision yet. (*See Ex. A, Preliminary Decision*). Any objections to the board's decision, including allegations that procedures prior to the hearing were defective, may be brought only on appeal. *Id.* The Mississippi Supreme Court has confirmed that this statutory scheme provides the "exclusive remedy for a school district's board of trustee's violation of a contract [employee's] right to procedural due process." *Bowman v. Ferrell*, 627 So. 2d 335, 338-39 (Miss. 1993). Further, even on appeal, this Court's role is "limited to a review of the record made before the school board or hearing officer." MISS. CODE ANN. § 37-9-113(3). Until such a record is made, this Court has nothing to review and has no statutory authority to involve itself in the termination hearing process. Put simply, the statutory scheme is clear that this Court is limited to appellate jurisdiction and not original jurisdiction. For this reason alone, Plaintiff's complaint must be dismissed.

¹ Although Mississippi Code §37-9-59 outlines the rights of a school employee who has been terminated for cause, that statute specifically references Mississippi Code §§37-9-111 and 113, which set forth the procedural requirements in cases of both termination for cause and non-renewal.

Here, Plaintiff has requested and received confirmation that a final administrative hearing will take place. A copy of Dr. Liddell's written request for such a hearing is attached as Exhibit "B". By simultaneously seeking injunctive relief, Plaintiff ignores the statutory scheme delineating her rights and responsibilities and has instead chosen to circumvent the procedures instituted by the Mississippi Legislature. Plaintiff's request for declaratory judgment makes obvious that she is seeking to avoid the statutorily mandated process. (Complaint, ¶23). Specifically, Plaintiff asks this court to "enter a declaratory judgment declaring the rights and obligations of the parties hereto with respect to the preliminary termination letter ... as it relates to the Plaintiff's right to a due process hearing and/or appeal." *Id.* This Court should not permit Plaintiff to evade, distort or supersede the statutory requirements merely because she does not like them. Plaintiff's complaint is improper, has no hope of success and was filed solely for purposes of harassment or delay. Accordingly, it must be dismissed.

B. Plaintiff Failed to Plead the Strict Requirements Establishing a Right to a Preliminary Injunction.

As discussed above, this Court must dismiss Plaintiff's complaint for lack of subject matter jurisdiction. Alternatively, this Court should dismiss Plaintiff's complaint because the complaint fails to sufficiently plead the requirements for a preliminary injunction. Plaintiff bears a heavy burden to secure the extraordinary remedy of a preliminary injunction. *Moore v. Sanders*, 558 So. 2d 1383, 1385 (Miss. 1990) (finding that "plaintiff bears the burden of showing the prerequisites for obtaining the extraordinary relief of preliminary injunction"). Plaintiff has neither acknowledged this burden, nor has she pled facts capable of satisfying this burden.

In order to obtain a preliminary injunction, Plaintiff must prove the following:

- (1) There exists a substantial likelihood that plaintiff will prevail on the merits;

- (2) The injunction is necessary to prevent irreparable injury;
- (3) Threatened injury to the plaintiffs outweighs the harm an injunction might do to the defendants; and
- (4) Entry of a preliminary injunction is consistent with the public interest.

A-1 Pallet Co. v. City of Jackson, 40 So. 3d 563, 568-569 (Miss. 2010) (citing *City of Durant v. Humphreys County Mem'l Hosp. Extended Care Facility*, 587 So. 2d 244, 250 (Miss. 1991)).

Other than reciting these elements in her prayer for relief, Plaintiff has not pled any facts which purport to satisfy this heavy burden. As a general matter, preliminary injunctions exist to provide relief in situations where there is no adequate remedy at law for the movant's alleged harm. *Moore*, 558 So. 2d at 1385. Here, Plaintiff has failed to meet this threshold requirement. Even assuming that Plaintiff's allegations are true and the CMSD has somehow violated Plaintiff's due process rights in advance of her final administrative hearing, which is denied, she retains full rights to appeal these actions. MISS. CODE ANN. §37-9-113. Upon appeal, this Court may consider all the issues currently raised by Plaintiff, and if she is successful on appeal, this Court may remand for proceedings consistent with proper procedures. MISS. CODE ANN. §37-9-113(4). Until that time, this Court has no subject matter jurisdiction. Accordingly, and in the context of a request for a preliminary injunction, Plaintiff has an adequate remedy of law for all her current grievances.

Moreover, this Court's intervention before an administrative hearing could lead to inconsistent and unnecessary results. For example, it is plausible that the CMSD's final decision would be to reinstate Dr. Liddell to her position as superintendent. This possibility is acknowledged by Dr. Liddell in her complaint where she recognizes that the preliminary decision to terminate her was by a 3-2 vote. (Complaint, ¶8). It is certainly possible that the testimony at an administrative hearing could sway one or more votes, resulting in a reversal of

the preliminary decision to terminate Dr. Liddell. In such a scenario, what purpose would this Court's intervention and grant of injunctive relief serve? At this time, the Court does not have a final decision from the CMSD—a necessary element to allow the Court to determine whether the Plaintiff will succeed on the merits or suffer any irreparable harm. For these reasons, a preliminary injunction should not be permitted.

C. The Court Should Award the CMSD Attorneys' Fees Incurred in Having to Respond to Plaintiff's Frivolous Complaint.

Counsel for the CMSD advised Plaintiff on June 27, 2013, that her complaint had no basis under the law and requested Plaintiff to withdraw her complaint and to proceed with the process set forth by statute. (Ex. C, *Correspondence from CMSD to Counsel for Dr. Liddell*). Plaintiff responded on July 3, 2013, indicating that Plaintiff would not withdraw her complaint.

“Rule 11 permits a court to award a responding party reasonable attorneys' fees and expenses when any party files a motion or pleading which, in the opinion of the court, is frivolous or is filed for the purpose of harassment or delay.” *In re Spencer*, 985 So. 2d 330, 339 (Miss. 2008) (citing Miss. R. Civ. P. 11(b)). A “pleading is frivolous only when, objectively speaking, the pleader or movant has no hope of success.” *Id.* (citing *City of Madison v. Bryan*, 763 So. 2d 162, 168 (Miss. 2000)(internal quotes omitted). “A motion or pleading is filed for the purpose of harassment or delay when the party does not have a viable claim. *Id.* (citing *Leaf River Forest Prods. v. Deakle*, 661 So. 2d 188, 195 (Miss. 1995)).

Here, the statutory process is clear. Plaintiff has requested and the CMSD has agreed to a due process hearing to make a final decision as to whether Dr. Liddell will be terminated. Until that hearing occurs, there can be no reasonable dispute that this Court is without subject matter jurisdiction. Accordingly, Plaintiff's complaint has no hope of success. Plaintiff's complaint is nothing other than an attempt to harass or delay the statutorily mandated process, allowing the

CMSD to make a final decision. For these reasons, the Court should award attorneys' fees, costs, and expenses for which the CMSD has incurred in preparing, filing, and pursuing the dismissal of Plaintiff's complaint.

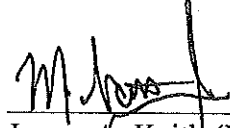
III. CONCLUSION

For the foregoing reasons, this Court should (a) dismiss Plaintiff's complaint, (b) award attorneys' fees, costs and expenses to CMSD incurred in pursuing dismissal of Plaintiff's complaint, and (c) grant the CMSD any and all further relief this Court deems appropriate. Alternatively, the Court should deny Plaintiff's request for injunctive and/or declaratory relief for failure to state a claim.

Respectfully submitted, this the 3rd day of July, 2013.

**COLUMBUS MUNICIPAL SCHOOL
DISTRICT BOARD OF TRUSTEES**

By:



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M. Scott Jones (MSB No. 102239)
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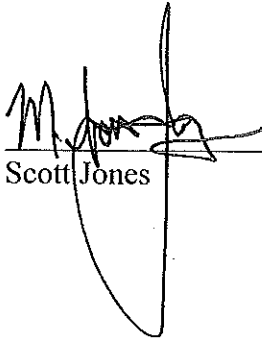
W. David Dunn (MSB No. 6243)
Dunn & Hemphill, P.A.
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Telephone: 662-327-4211
Facsimile: 662-328-3468
E-Mail: wddunn@marketstreetlaw.com

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the foregoing by either hand-delivery, email, and/or placing a copy of the foregoing in the United States Mail, postage prepaid, to the following persons:

Austin Vollar
Attorney for Plaintiff
Vollar Law Firm, P.A.
P.O. Box 80120
Starkville, MS 39759
Austin@VollarLawFirm.com

This, the 3rd day of July, 2013.



Scott Jones

Columbus Municipal School District

2630 McArthur Drive P.O. Box 1308
Columbus, Mississippi 39703
(662) 241-7400
FAX (662) 241-7453

Craig Shannon
Deputy Superintendent

Anthony Brown
Assistant Superintendent of Federal & Special Programs

June 19, 2013

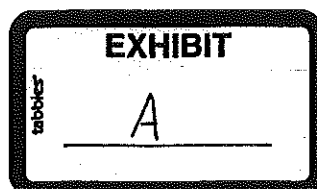
Dr. Martha Liddell
52 Almond Drive
Columbus, MS 39705

RE: Termination of Employment

Dear Dr. Liddell:

Pursuant to the provisions of Mississippi Code Annotated, Section 37-9-59 and Mississippi Supreme Court rulings, and also subject to your right to appeal, you are hereby notified that the Columbus Municipal School District (CMSD) has made a preliminary decision to terminate your employment as of June 17, 2013, for the following reasons under the "other good cause" provisions of said statute:

1. Violation of MS law and the Mississippi Educators Code of Ethics and Standard of Conduct as adopted by the Mississippi Department of Education by (a) contracting with the CMSD Office of Child Nutrition for food, employees, equipment and services for a December 24, 2011 Christmas Party for \$65.40 when the value was clearly worth far more; (b) by authorizing payment of the \$65.40 from CMSD Maintenance funds; and (c) contracting with the CMSD Office of Child Nutrition for food, employees, equipment and services for a December 23, 2012 Christmas Party for \$150.00 when the value was clearly worth far more and then not reimbursing the CMSD for the true value of the food and services.
2. Using your position to purchase a substantial amount of food through CMSD's purchasing system for personal use and thereby receiving discounted prices that CMSD received and also avoided paying sales tax on the purchases.
3. Making misleading statements to the public that you contracted with a private caterer (Aramark) when in fact you contracted with the CMSD Office of Child Nutrition and that you paid the bill when in fact you did not make any payments or reimbursement to the CMSD other than the initial \$150 that you paid until you were confronted with your actions and then you have still not reimbursed the CMSD in full.



Columbus Municipal School District

2630 McArthur Drive P.O. Box 1308
Columbus, Mississippi 39703
(662) 241-7400
FAX (662) 241-7453

Craig Shannon
Deputy Superintendent

Anthony Brown
Assistant Superintendent of Federal & Special Programs

Dr. Martha Liddell
June 19, 2013
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Under the above statute, you, as a superintendent, are not legally entitled to a public hearing on the charges against you, but the CMSD will grant you a hearing if requested. You may request a hearing by delivering a letter to my attention at this office within five (5) calendar days from this date. Your failure to request a hearing within five (5) calendar days of the date of this notice of termination shall constitute a waiver of all of your rights regarding this termination.

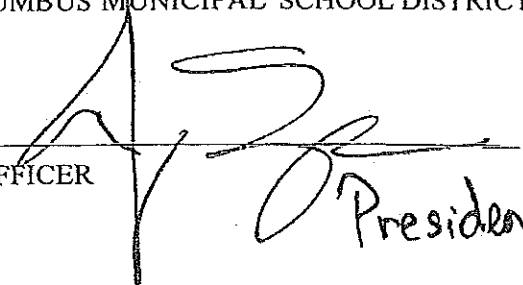
You are immediately relieved of all duties and access pending a hearing on these charges, if you request such a hearing. You are not to return to the Administrative Offices or any other Columbus Municipal School District facility or campus as an employee and shall not access or attempt to access school email, accounting or other financial systems.

Sincerely,

COLUMBUS MUNICIPAL SCHOOL DISTRICT

BY:

OFFICER



President



VOLLOR LAW FIRM, P.A.



AUSTIN VOLLOR
ATTORNEY AT LAW
AUSTIN@VOLLORLAWFIRM.COM

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VIA EMAIL & U.S. MAIL

June 24, 2013

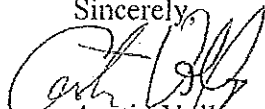
Jason Spears
Columbus Municipal School District Board of Trustees
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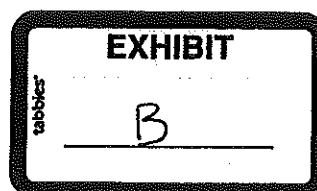
Re: Notice/Requests for Hearing

Please accept this as Dr. Martha Liddell's request for a public hearing regarding the letter attached hereto as Exhibit "A". Dr. Liddell does not waive objections and legal challenges to the steps taken by certain board members to this point. Please have your attorney contact me at his earliest to coordinate our schedule for a date. Do not set a hearing date without first discussing with me in order to avoid scheduling conflicts. I look forward to hearing from you or your attorney.

Sincerely,


Austin Vollar

AAV/knw



June 27, 2013

By E-Mail and U.S. Mail

Mr. Austin Vollar
Vollar Law Firm, P.A.
Post Office Box 80120
Starkville, Mississippi 39759
Austin@VollarLawFirm.com

Re: Preliminary Termination of Dr. Martha Liddell

Dear Mr. Vollar:

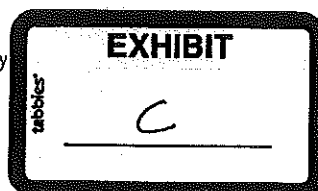
My firm is representing the Columbus Municipal School District ("CMSD") with regard to the termination hearing and litigation pertaining to your client, Dr. Martha Liddell.

We have received written notice from your client electing to proceed with an administrative hearing under Mississippi Code §37-9-111. We also received your client's waiver of the 30-day requirement for proceeding with the termination hearing. We will work with you to identify a convenient time to conduct this hearing.

We also received your client's complaint for injunctive relief and declaratory judgment filed in the Chancery Court of Lowndes County, Mississippi, cause number 2013-450. We agreed to a hearing date on your client's complaint for July 16, 2013, beginning at 10:00 a.m. Accordingly, we have executed the proposed order you provided us setting the time and date for the hearing before the chancery court.

My primary purpose in writing today is a hopeful effort for us to avoid the time and expense of the chancery court hearing, which is improper and premature. At this time, your client has received the CMSD's preliminary decision to terminate her for various reasons for violation of the "other good cause" provisions in her employment agreement. CMSD has not made a final decision yet regarding your client's termination.

The proposed termination of your client is governed exclusively by statute. MISS. CODE ANN. § 37-9-59. The procedural steps required when a discharged employee requests a hearing are outlined in Mississippi Code §§37-9-111 and 113. The CMSD offered, and your client has elected, to proceed with an administrative hearing before a hearing officer. After this



Mr. Austin Vollar
June 27, 2013
Page 2 of 2

administrative hearing is conducted, the CMSD board will make a final decision as to whether your client will be terminated. The applicable statutes do not allow intervention by a chancery court until after the board has heard the employee and rendered a final decision. MISS. CODE ANN. § 37-9-113. Any objections to the board's decision may be brought on appeal. *Id.* The chancery court does not have jurisdiction to hear matters that the legislature dictated be resolved by administrative hearing until that hearing is complete and a final decision is rendered. No such hearing or final decision has been rendered. Thus, your client's complaint with the chancery court is premature and improper.

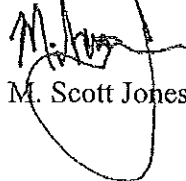
For these reasons, we ask that you voluntarily dismiss your client's complaint and proceed under the mandated statutory process. If your client is not satisfied with the CMSD board's final decision, whatever that decision may be, then your client can appeal the decision. Until your client exhausts her administrative remedies, however, such an appeal is improper.

Our hope is that this matter can be resolved in the manner proscribed by statute rather than my client seeking dismissal of an action that is not properly before the chancery court at this time. If your client is unwilling to withdraw her complaint and the CMSD is forced to defend the matter in chancery court, then my client will seek attorneys' fees and other costs at the hearing on July 16, 2013. We certainly hope this will not be necessary.

Thank you for your consideration. Feel free to call me if you have questions or concerns. I look forward to working with you in this matter.

Regards,

ADAMS AND REESE LLP



M. Scott Jones

MSJ:gc
Enclosure

cc: Jim Keith (by e-mail with enclosure)
David Dunn (by e-mail with enclosure)

IN THE CHANCERY COURT OF LOWNDES COUNTY
STATE OF MISSISSIPPI

MARTHA LIDDELL

PLAINTIFF

VERSUS

CAUSE NO: 2013-0450

COLUMBUS MUNICIPAL SCHOOL DISTRICT
BOARD OF TRUSTEES

DEFENDANTS

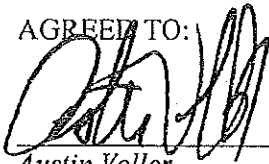
ORDER SETTING HEARING

The above mentioned matter is set for hearing on the Plaintiff's Complaint for Injunctive Relief and Declaratory Judgment on the 16th day of July, 2013, at 10:00 a.m., in the Chancery Court of Oktibbeha County, Mississippi located at 101 East Main Street, Starkville, Mississippi.

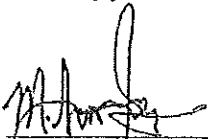
SO ORDERED AND ADJUDGED, this the _____ day of _____, 2013.

CHANCELLOR

AGREED TO:



Austin Vollar
Attorney for Plaintiff



M. Scott Jones
Attorney for Defendants