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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-002274-MR
AND
NO. 2008-CA-002312-MR

HENRY WEBB, IN HIS OFFICIAL
CAPACITY AS SUPERINTENDENT
OF FLOYD COUNTY SCHOOLS AND
BOARD OF EDUCATION OF FLOYD
COUNTY, KENTUCKY APPELLANTS/CROSS-APPELLEES

APPEAL & CROSS-APPEAL FROM FLOYD CIRCUIT COURT
v. HONORABLE DANNY P. CAUDILL, JUDGE
ACTION NO. 07-CI-01038

PAMELA MEYER APPELLEE/CROSS-APPELLANT

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CAPERTON, AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Henry Webb, in his official capacity as superintendent of
Floyd County Schools, and the Floyd County Board of Education (collectively
referred to as the “Board”) appeal two orders of the Floyd Circuit Court finding

that the Board violated the statutory rights of Pamela Meyer and awarding her damages for lost wages. Meyer filed a cross-appeal regarding the amount of lost wages that she was awarded by the Floyd Circuit Court. For the reasons stated herein, we affirm.

By letter dated June 21, 2007, the Board notified Pamela Meyer, the Coordinator of the Family Resource Youth Service Center (FRYSC) at Clark Elementary, that she would not be hired for the same position at the new Prestonsburg Elementary. Meyer had applied for the job after the loss of her position following the consolidation of Prestonsburg Elementary and another school at the end of the 2006-07 school year.

Despite having less seniority than Meyer, Reibal Reynolds, who was the FRYSC Coordinator at the old Prestonsburg Elementary, was assigned the same position at the newly consolidated school. Further, there were other district FRYSC coordinators who had less than four years of continuous active service and maintained their positions. Meyer became a FRYSC Project Clerk, which carried a salary and responsibility reduction compared to her former position.

On September 17, 2007, Meyer filed a civil action against the Board, alleging violations of her classified employee and constitutional due process rights. She alleged that the Board violated her classified employee rights by terminating her employment contract without a reason as required by KRS 161.011(7). She further alleged that her seniority rights were violated when the Board placed an employee with less seniority in the FRYSC Coordinator position at the new school.

The Board answered by asserting that there was no reduction in force as defined by applicable statute and its policies. Thus, it contended that Meyer's classified employee rights were not violated and that seniority played no role in Meyer's employment placement. Additionally, the Board contended that its decision was in compliance with the terms of Meyer's employment contract.

Subsequently, Meyer filed a motion for a declaratory judgment seeking a ruling that the Board had violated state law. On April 24, 2008, the trial court ruled that the Board violated KRS 161.011(8)(a). The trial court then issued an order awarding Meyer \$11,299.92 in damages, the difference between her fiscal year 2008 salary and what she would have received as FRYSC Coordinator for the same period. This appeal and cross-appeal followed.

The Board argues that the trial court erred by finding that its selection of the Prestonsburg Elementary School FRYSC Coordinator was in contravention of KRS 161.011(8)(a). The Board argues that it could not be in violation of KRS 161.011(8)(a) because it did not reduce its workforce. Thus, it contends that the statute was inapplicable to Meyer's case. We disagree.

A trial court's findings will not be set aside unless they are clearly erroneous when the court sits without a jury. *Sebastian-Voor Properties, LLC v. Lexington-Fayette Urban County Government*, 265 S.W.3d 190, 195 (Ky. 2008). When factual findings are supported by substantial evidence, they will not be found to be clearly erroneous. *Eagle Cliff Resort, LLC v. KHBBJB, LLC*, 295

S.W.3d 850, 853 (Ky.App. 2009). We then review the trial court's application of law *de novo*. *Cummings v. Commonwealth*, 226 S.W.3d 62, 65 (Ky. 2007).

The cardinal rule of statutory construction is to ascertain the intention and effectuate the intent of the legislature. *MPM Financial Group, Inc. v. Morton*, 289 S.W.3d 193, 197 (Ky. 2009). We must apply the literal meaning of a statute's terms unless such an approach leads to absurd or wholly unreasonable results.

Richardson v. Rees, 283 S.W.3d 257, 263 (Ky.App. 2009). The interpretation and application of statutes are matters of law and reviewed *de novo*. *Hill v. Thompson*, 297 S.W.3d 892, 895 (Ky.App. 2009).

KRS 161.011(8), in pertinent part, provides the following:

The superintendent shall have full authority to make a reduction in force due to reductions in funding, enrollment, or changes in the district or school boundaries, or other compelling reasons as determined by the superintendent.

(a) When a reduction of force is necessary, the superintendent shall, within each job classification affected, reduce classified employees on the basis of seniority and qualifications with those employees who have less than four (4) years of continuous active service being reduced first.

From a plain reading of the statute, the legislature has expressed a retention preference for employees with greater seniority and qualifications. *Id.* Further, reduction in force applies to the "job classification affected," not all classifications.

In this case, two elementary schools, each having a family resource coordinator, were consolidated, which left only one position. Although the Board argues that there was no reduction in force because its total number of employees

in the district was not reduced, the statutory language provides that a reduction in force occurs when the total number of employees in a particular job classification is reduced (affected). Accordingly, the trial court did not err by applying KRS 161.011(8)(a) in Meyer's case and ruling in her favor regarding her job placement.

The Board next argues that Meyer's claim that she was demoted was without any basis in law or fact. The Board argues that Meyer's claim must fail because no such statute exists with respect to the demotion of classified employees. Despite the Board's contention, its argument must fail because it was not ruled on by the trial court and was not further preserved by citation in the Board's brief.

When a party believes that the trial court has erred, it must insist on a ruling from the trial court in order to preserve the issue for appellate review.

Oldham Farms Development, LLC v. Oldham County Planning and Zoning Com'n, 233 S.W.3d 195, 197 (Ky.App. 2007). Moreover, a party's brief must contain citations to the record where it requested a ruling on the issue or the issue is unpreserved. *Craig & Bishop, Inc. v. Piles*, 247 S.W.3d 897, 905 (Ky. 2008). Accordingly, because the Board has not preserved this issue for appellate review, we will not address its claim on the merits.

The Board next argues that the trial court erred by issuing a declaratory judgment in favor of Meyer. The Board argues that a declaratory action claim cannot be used to secure a determination of substantive rights during the pendency of a civil action. According to the Board, the issues relating to

Meyer's termination and the district's reduction of force remained disputed and could not be resolved against it without further proceedings. We disagree.

The Kentucky Declaratory Judgment Act, codified in KRS 418.040, provides that "in any action in a court of record wherein it is made to appear that an actual controversy exists, the plaintiff may ask for a declaration of rights, either alone or with other relief, and the court may make a binding judgment." *Mammoth Medical, Inc. v. Bunnell*, 265 S.W.3d 205, 209 (Ky. 2008). While the Act must be liberally applied to effectuate its purpose, it cannot replace our existing system for resolving disputes between parties. *Id.* at 210. Further, the trial court's granting of a declaratory judgment is reviewed under the clearly erroneous standard.

Uninsured Employers' Fund v. Bradley, 244 S.W.3d 741, 744 (Ky.App. 2007).

After reviewing the record, we conclude that the trial court did not err by issuing a declaratory judgment in favor of Meyer. While the Board correctly contends that a declaratory action cannot be instituted to secure a determination of substantive rights involved in a pending suit, Meyer's motion was filed against the Board in their pending lawsuit. Unlike the plaintiff in *Gibbs v. Tyree*, 287 Ky. 656, 154 S.W.2d 732, 733 (1941), Meyer was not instituting an action to determine legal questions relevant to an already pending action. Meyer merely requested that the trial court construe and apply the statute applicable to the parties' case where there was no factual dispute.

Having addressed the issues raised in the Board's appeal, we now turn to the issue presented by Meyer's cross-appeal.

Meyer contends that the trial court erred by not awarding her the difference between the salary she received during the 2007-08 school year and the salary paid to Reibal Reynolds, the FRYSC Coordinator at Prestonsburg Elementary during the 2007-08 school year. We disagree.

The trial court found that Meyer earned \$19,207.02 and that she would have earned \$30,506.94 had she been hired as the FRYSC Coordinator at Prestonsburg Elementary, according to the Board's adopted pay schedule. The trial court awarded Meyer the difference between these amounts in damages for her lost wages, which was \$11,299.92. However, Meyer contends that she should have been awarded \$18,131.99, the difference between her salary and Reynolds's salary of \$37,339.01. According to Meyer, because the person hired as the Prestonsburg Elementary School FRYSC Coordinator received \$37,339.01, she contends that her damages should be based on this amount. Additionally, she contends that the Board did not consistently follow its adopted pay schedule and, thus, she should not be limited by the schedule.

Notwithstanding Meyer's argument, we conclude that the trial court's findings were not clearly erroneous. The trial court found that the Board adopted a uniform pay schedule for its employees but that some employees were "grandfathered" in, permitting them to earn a higher salary, including Reynolds. While Meyer argues for a higher award of damages, the trial court was permitted to use the Board's adopted pay schedule in determining her award for lost wages.

For the foregoing reasons, the two orders of the Floyd Circuit Court are affirmed.

ALL CONCUR.

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