

NO. 66204-0-1

IN THE COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

GRAZYNA PROUTY,

Appellant/Plaintiff,

v.

TAHOMA SCHOOL DISTRICT,

Respondent/Defendant.

BRIEF OF RESPONDENT
TAHOMA SCHOOL DISTRICT

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I. INTRODUCTION

Appellant Grazyna Prouty (“Prouty”) failed to meet the statutory deadline for challenging the nonrenewal of her teaching contract in the only forum available for such challenges. The Respondent Tahoma School District (the “District”) provided Prouty with clear and explicit notice of her appeal rights, and, by her own admission, Prouty failed to meet the statutory deadline under RCW 28A.405.210.

Nevertheless, Prouty filed a Notice of Appeal with the Superior Court challenging the nonrenewal. As part of her Notice of Appeal, Prouty attempted to raise before the trial court numerous unrelated and incoherent issues regarding the District’s deployment of educational resources and classroom observations. The trial court properly limited the scope of its review to whether Prouty had met the statutory deadline under RCW 28A.405.210. In granting the District’s summary judgment motion, the trial court concluded that Prouty failed to meet the statutory procedural requirements and therefore could not invoke any statutory right to a hearing. The trial court dismissed the action with prejudice.

Prouty now appeals, seeking review by this Court of the trial court’s order. Additionally, Prouty again attempts to raise the unrelated and incoherent issues regarding the District’s deployment of educational

resources and classroom observations. The appeal is without merit and should be dismissed.

II. STATEMENT OF THE CASE¹

The District employed Prouty as a certificated teacher for English Language Learner (“ELL”) students in the 2009-10 school year. Due to teaching deficiencies, the District placed Prouty on probation starting in November 2010. In compliance with RCW 28A.405.100, the District provided notice to Prouty of the 60-day probation period and offered her a reasonable program for improvement, which included classroom observations and assistance with her teaching skills. Before, during and after the probation period, Prouty received representation and advice from her teachers’ union. Both Prouty and her union representative had input into the program for improvement related to the probation period. See VR at 3.4.²

¹ In light of Prouty’s inclusion of extraneous materials, facts, and arguments in the Brief of Appellant, the District includes a restatement of the case for clarity and the convenience of the Court.

² Based on Prouty’s admissions at argument and again in her Brief before this Court, the relevant facts in this matter are not disputed. Accordingly, for the convenience of the Court, the District will primarily cite to the verbatim report of the oral argument held before the trial court on the District’s Motion for Summary Judgment. Despite the voluminous designation of clerk’s papers and exhibits, Prouty failed to designate the majority of the briefing underlying the trial court’s order granting summary judgment, which Prouty now appeals.

Prouty failed to demonstrate sufficient improvement during her probation period. On March 5, 2010, the District's Superintendent issued a letter informing Prouty of his determination that probable cause existed for the District not to renew her employment contract for the 2010-11 school year. In accordance with RCW 28A.405.210, the District personally delivered the letter during a March 5th meeting both to Prouty and to her union representative. Under RCW 28A.405.210, Prouty had ten days to file a request with the president or secretary of the District's Board of Directors for a hearing before an independent hearing officer to contest the probable cause determination. The probable cause letter itself explicitly reminded Prouty of this timeline. A request for a hearing was not received by anyone within the District on or before March 15, 2011, the statutory ten-day deadline from the date of the probable cause letter. Following the recommendation of the probable cause letter, the District's school board voted to nonrenew Prouty's contract for the upcoming 2011-12 school year. Prouty remained on paid administrative leave for the remainder of the 2010-11 school year. *See* VR at 4-5.

On April 2, 2010, Prouty filed a Notice of Appeal with the Superior Court of King County, initiating Case No. 10-2-12633-3 KNT and seeking an "order to renew continuing contract, eliminate probable cause or order

open hearing.” On April 26, 2010, Prouty filed a second Notice of Appeal with the Superior Court, initiating Case No. 10-2-15425-6 KNT. This second Notice of Appeal requested the same relief and included similar allegations of error. In light of the common questions of law and fact, the District moved to consolidate the two actions. The Superior Court granted the District’s Motion to Consolidate on May 27, 2010. *See* CP at 1-94; 581-615,

The District filed a Motion for Summary Judgment, requesting that the trial court dismiss the consolidated actions for failure to state a claim upon which relief could be granted. In particular, the District argued that Prouty failed to meet the statutory deadline under RCW 28A.405.210 for requesting a statutory hearing to challenge the nonrenewal of her teaching contract. Prouty filed several documents in response to the District’s motion, totaling over 250 pages of argument and exhibits. Prouty’s responses overwhelmingly concentrated on topics not properly before the trial court, including the District’s review of her work performance and teaching credentials, the District’s record keeping of student performance, and the District’s educational policies.³ *See* CP at 219-220.

³ The trial court declined to hear argument or rule on these additional issues, as they were not properly before the court. Prouty raised several of these same topics in her

The trial court heard oral argument on the District's motion in September 2010. Argument focused on Prouty's failure to file a timely hearing request pursuant to RCW 28A.405.210. During her argument, Prouty admitted that the District personally delivered the letter of probable cause for nonrenewal to Prouty and her union representative during the meeting on March 5, 2010. Prouty further admitted that she mailed a request for a statutory hearing on March 15, 2010, which was not received by the District until March 16, 2010, after the ten-day deadline of RCW 28A.405.210. See VR at 6-7.

At the argument, Prouty did not dispute the March 16th date, on which the District received her hearing request. Instead, Prouty claimed she fulfilled the time requirement of RCW 28A.405.210 because she mailed the hearing request within the ten-day deadline. The trial court did not agree with Prouty's argument:

We have undisputed evidence that a request for a hearing was received on March 16th, which is obviously 11 days after receipt of letter of nonrenewal. Ms. Prouty argues that she was timely because she wrote her response on March 15th, which I interpret as meaning that she either wrote it or put it in the mail on March 15th. The District's position is that file means received, and the Court concludes that the District is correct that the word file means received.

appellate briefing before this Court. See, e.g., Brief of Appellant, Assignment of Error Nos. 2-10; RAP 9.12.

I base that conclusion on common usage of the word file. If you have to file something in the Court on a certain date, you have to file an appeal on a certain day, that means when the Court received the documents, not when the legal papers are put in the mail. Therefore, I conclude that the request for a hearing that was sent to both individuals was not timely.

Ms. Prouty you also refer to another letter that was sent in April. The problem with that is that the clock begins to run on March 5th and if you're late in terms of the first two letters, you cannot restore that. You cannot solve the problem by writing another letter later. So I conclude that there was no timely request for an administrative hearing, and based on that this action is improper.

The way the case should have proceeded is that if you had written a timely notice or request for a hearing, there would have been a hearing or if the District refuses to provide you with a hearing, even though you had made a timely request, then perhaps you would have the right to come into Superior Court. But there is no evidence that the District's refusal to provide you with a hearing was improper because your request for a hearing was not timely. So, therefore, I'm granting the motion for summary judgment to the District.

VR at 10-11.

After the trial court rendered its ruling verbally, as quoted above, Prouty indicated that she possessed additional documents that were potentially relevant. Specifically, Prouty informed the trial court that she "filed" a hearing request to the District within the statutory ten-day deadline. The trial court granted Prouty limited leave to file any such

alleged request, and stated that any such documents filed would be considered prior to entry of a final, written order. *See* VR 12-15.

Prouty submitted several sets of documents, including the alleged timely request for hearing pursuant to RCW 28A.405.210 as well as additional documents regarding the statutory definition of “file.” In particular, Prouty submitted four letters: two letters delivered on March 10, 2010, and two letters delivered on March 15, 2010. In each of these letters, Prouty attempted to request a hearing before the District’s school board for the purpose of discussing her concerns about the District’s educational policy and ELL programming.

The two letters delivered on March 10, 2010, were identical and delivered to the District’s superintendent and the president of the District’s school board. In the letters, Prouty requested a hearing by the school board of the District, clarifying her request in a post script: “Neither Tahoma School District nor TEA/WEA informed me that I had a right to be heard by the School Board.” *See* Brief of Appellant, Exhibit C, pg. 7.

As explained in the District’s supplemental reply brief to the trial court, the District immediately clarified to Prouty that these two letters were an improper request to discuss the nonrenewal of Prouty’s contract with the school board, rather than at a hearing before an independent hearing

officer as outlined in RCW 28A.405.210. One day after receipt of the letters, the superintendent for the District replied to Prouty:

I am in receipt of your letter dated March 10, 2010, requesting a hearing with the Board of Directors regarding the nonrenewal of your contract. Neither state law nor school board policy provides an appeal to the Board of such decision. Your appeal rights are spelled out in RCW 28A.405.210 and RCW 28A.405.310, as stated in my letter of March 5, 2010.

The two letters delivered on March 15, 2010, confirmed that the March 10th letters were not a request by Prouty for a statutory hearing. She clarified that she was not requesting a hearing before the school board to discuss the nonrenewal of her contract. Instead, she wanted a hearing with the school board to discuss the District's educational policy and programming. In the first letter, to the District's superintendent, Prouty acknowledged receipt of the District's response to her request and explained her agenda for a hearing before the school board:

Since I have received your response to my request of March 10, 2010 I am sending another request on March 15, 2010. I kindly inform you that my plan is not to talk about the contract (I am on Continuing contract. The contract IS NOT provisional) and not to talk about the below items. However, I ask the Board of Directors to read all the information I submitted to the district within the last four years when HR and Teaching and Learning supervised ELL. It is urgent.

I knew that the Board was not ready in 2009 to hear me....

It must change and it will as the student I taught said to me in TJS: “You have not done anything” (in regards to the information I left in summer 2009). The student is correct in a sense I did not talk to the Board, then.

I am not waiting – till summer. The time is now.

Brief of Appellant, Exhibit H, pg. 1 (sic). The remainder of the letter outlined Prouty’s concerns with the implementation of the District’s ELL program.

In the second letter, to the president of the District’s school board, Prouty again clarified the intent behind her requested meeting with the school board: “I am requesting the hearing by the Tahoma School Board concerning the following: (I will talk about): Vision, Continuous Improvement, Assessment, Climate, Collaborative Partnership, Accountability.” See Brief of Appellant, Exhibit G, pg. 2.

After receiving the additional documents and briefing from Prouty and a supplemental reply brief from the District, the trial court entered a final written order granting the District’s summary judgment motion and dismissing the consolidated action with prejudice. See CP at 219-220.

Prouty filed two appeals, challenging the trial court’s dismissal of her action. This Court consolidated the two appeals under the above-captioned case number.

III. ARGUMENT

A. Standard of Review

On appeal, summary judgment rulings are reviewed de novo. *Seybold v. Neu*, 105 Wn. App. 666, 675, 19 P.3d 1068 (2001). When reviewing an order granting summary judgment, an appellate court engages in the same inquiry as the trial court, considering all facts and reasonable inferences in the light most favorable to the nonmoving party. *Kahn v. Salerno*, 90 Wn. App. 110, 117, 951 P.2d 321 (1998). Summary judgment is appropriate if the record before the court shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Ruff v. County of King*, 125 Wn.2d 697, 703, 887 P.2d 886 (1995).

If the party opposing the motion for summary judgment, however, can only offer a “scintilla” of evidence, evidence that is “merely colorable,” or evidence that “is not significantly probative,” the nonmoving party cannot defeat the motion. *Herron v. Tribune Publ'g Co.*, 108 Wn.2d 162, 170, 736 P.2d 249 (1987). The nonmoving party may not rely on speculation, argumentative assertions that unresolved factual issues remain, affidavits considered at face value. *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986). The nonmoving party must set

forth specific facts that sufficiently rebut the moving party's contentions and disclose that a genuine issue as to a material fact exists. *Seven Gables*, 106 Wn.2d at 13. Conclusory statements in an affidavit are insufficient; the nonmoving party must demonstrate the basis for his or her assertions. CR 56(e); *Herron*, 108 Wn.2d at 170; *Grimwood v. Univ. of Puget Sound*, 110 Wn.2d 355, 359-360, 753 P.2d 517 (1988).

An appellate court may affirm a trial court's disposition of a summary judgment motion on any basis supported by the record. *Redding v. Virginia Mason Med. Ctr.*, 75 Wn. App. 424, 426, 878 P.2d 483 (1994).

B. Assignment of Error No. 1: Trial Court Properly Granted the District's Motion for Summary Judgment and Dismissed the Consolidated Action with Prejudice

Based on the evidence and admissions provided by Prouty to the trial court, there is no genuine issue as to a material fact regarding Prouty's failure to satisfy the ten-day deadline of RCW 28A.405.210.

1. Chapter 28A.405 RCW provides the framework for nonrenewal of a teacher contract.

RCW 28A.405.210 provides the sole means of nonrenewing—and challenging the nonrenewal of—a public school teacher's continuing employment contract. Under this statute, a teacher has a continuing contract renewed by the employing school district on an annual basis. The employing school district must renew the teaching contract unless a letter of

probable cause is issued by the district's superintendent and received by the employee on or before May 15 (or, in some cases, June 15) of a given year. See RCW 28A.405.210.

If a teacher receives a letter of probable cause for nonrenewal, the employee has the right to a hearing before an independent hearing officer pursuant to the procedures in RCW 28A.405.310 to determine whether or not there is sufficient cause for the nonrenewal. See RCW 28A.405.210. To assert this right to challenge the sufficiency of the probable cause determination, the employee must file a written request "with the president, chair of the board or secretary of the board of directors of the district within ten days after receiving such notice." RCW 28A.405.210. If the employee fails to follow the procedural requirements of RCW 28A.405.210, the employee cannot challenge the district's decision to nonrenew. An appeal to the superior court is available only after a decision is issued by an independent hearing officer in a properly-requested statutory hearing. RCW 28A.405.320. Challenges to school district decisions to nonrenew are explicitly excluded from other statutory provisions governing judicial review of school district actions. RCW 28A.645.010.

2. Mailing a request for a hearing does not meet the statutory requirement for filing.

Prouty failed to file a request for a hearing to challenge the Superintendent's finding of probable cause to nonrenew her contract within ten days of receiving the notice. Prouty admits that she received her probable cause notice from the District on March 5, 2010, and there is no dispute that the District failed to receive a written request for a hearing by the ten-day statutory deadline of March 15. At the oral argument, Prouty simply claimed that the District must provide and pay for a statutory hearing because she placed a written request for a hearing in the mail on March 15.

Mailing a request for a hearing, however, does not meet the statutory requirements. The relevant statute is unambiguous and clear as to the procedural requirements for invoking the right to a hearing:

Every such employee so notified, at his or her request made in writing and *filed* with the president, chair or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for hearing pursuant to RCW 28A.405.310 to determine whether there is sufficient cause or causes for nonrenewal of contract.

RCW 28A.405.210 (emphasis added). “When statutory language is clear, we assume that the legislature ‘meant exactly what it said’ and apply the plain language of the statute.” *Stroh Brewery Co. v. Dep't of Revenue*, 104 Wn.

App. 235, 239, 15 P.3d 692 (2001) (quoting *Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997)); see also *Waste Mgmt. of Seattle v. Utils. & Transp. Comm'n*, 123 Wn.2d 621, 629, 869 P.2d 1034 (1994) (if statute is unambiguous, reviewing court determines legislative intent from the statutory language alone). The statute in question provides no exception for mailing, constructive service, or other alternatives to actual filing of the request for the hearing with the school district

The trial court properly looked to the regular dictionary definition of “filed.” See, e.g., *City of Spokane v. Dep't of Revenue*, 145 Wn.2d 445, 454, 38 P.3d 1010 (2002). In situations where “an otherwise common word is given a distinct meaning in a technical dictionary or other technical reference and has a well-accepted meaning within the industry,” courts may turn to the technical, rather than general purpose, dictionary to resolve the word’s definition. *Spokane*, 145 Wn.2d at 454. The verb “file” has the following legal definition: “[t]o deliver (a legal document) to the court clerk or record custodian for placement into the official record.” Black’s Law Dictionary 642 (7th ed. 1999); for examples of reliance on Black’s Law Dictionary for legal definition of “file” by federal courts, see *Schneider v. Chertoff*, 450 F.3d 944, fn. 18 (9th Cir. 2006); *Hull v. United States*, 146 F.3d 235, 237 (4th Cir. 1998).

Placing a hearing request in the mail does not meet the common or legal definition of “file.” Regardless of Prouty’s chosen method of delivery, neither the secretary nor the president of the Board received a copy of the request on or before March 15. Having failed to meet the statutory procedural requirements, the trial court properly concluded that Prouty could not invoke the statutory hearing rights.

C. **Assignment of Error Nos. 2, 3, 6, 7, 9, 10: Errors of Law Cannot be Based on Erroneous Citations and Inapplicable Statutes.**

Assignments of Error Nos. 2, 3, 6, 7, 9, and 10 are unfounded and must fail. Prouty’s arguments in support of each are based on a misunderstanding of the relevant statutory law and procedural rules.

1. **Assignment of Error No. 2.**

There is no state or local rule governing the required length of oral argument for a summary judgment motion in a notice of appeal action. Although Prouty argues that the trial court should have afforded twenty minutes for her verbal presentation, the trial court has the discretionary authority to limit or extend oral argument. The fact that the trial court limited Prouty’s presentation does not prove or even imply—as Prouty argues in her brief—that the trial court was prejudiced against her case. The trial court limited argument based on the issues raised in the District’s summary judgment motion.

2. Assignment of Error No. 3.

Prouty argues that the March 30, 2010 vote of the District's school board to nonrenew her teaching contract should be "annulled" because the District failed to personally serve her with notice of that vote. In support, Prouty cites to RCW 28A.405.220 and RCW 28A.405.300. Neither of these statutes contain any such notice requirement.

RCW 28A.405.220 addresses the nonrenewal of teaching contracts for *provisional* employees. Newly certificated teachers are considered provisional employees during their first three years of employment and are subject to different evaluation and nonrenewal procedures than non-provisional employees (i.e., teachers who have been employed for more than three years). Prouty was not a *provisional* employee; she had been employed as a certificated teacher for several years. Instead, Prouty was on *probation* with the District, due to poor work performance. RCW 28A.405.220 does not apply to *probationary* employees, and cannot be applied to this matter.

As discussed above, RCW 28A.405.300 does apply to this matter and does in fact contain a notice requirement. However, the statute's notice requirement—which Prouty only partially quotes in her opening brief—relates to the determination that probable cause exists for a school district not to renew a teacher's employment contract for the upcoming

school year. Prouty admitted that the District personally delivered this notice of probable cause in a letter dated March 5, 2010. There is no further notice requirement in the statute regarding a subsequent vote by the school board to nonrenew a teaching contract. Instead, the statute is explicit that if an employee fails to file a timely request for a hearing to challenge the determination of probable cause, “such employee may be discharged or otherwise adversely affected as provided in the notice upon the employee.”

3. Assignment of Error Nos. 6, 7, 9.

The trial court did not have the authority to review the underlying determination of probable cause for nonrenewal because procedurally, the trial court was not conducting a hearing into the District’s determination of probable cause. The trial court ruled that Prouty failed to meet the statutory procedural requirements and therefore could not invoke the statutory hearing rights. Despite Prouty’s arguments to the contrary, RCW 28A.405.340 (granting an employee the right to appeal the outcome of a statutory hearing to the superior court) cannot be applied to this matter.

4. Assignment of Error No. 10.

Chapter 28A.645 RCW allows individuals who are aggrieved by a decision of a school board to appeal such decision to Superior Court.

Challenges to a school district's decision to nonrenew a teacher, however, are explicitly excluded from this statutory provision. RCW 28A.645.010. Instead, such challenges are governed by chapter 28A.405 RCW. Accordingly, RCW 28A.645.020 cannot be applied to this matter.

D. Assignment of Error Nos. 4, 5, 8: Issues Were Not Before the Trial Court and Cannot Be Raised on Appeal

It is difficult to determine the precise errors being alleged by Prouty in Assignment of Errors Nos. 4, 5, and 8. It appears Prouty is attempting to seek the Court's review of the District's deployment of educational resources and classroom observations. None of the articulated errors were addressed or decided upon at the trial court. Although she may disagree with the District's decisions and may feel as if the District did not heed her recommendations for improvement, it is improper for Prouty to seek review of those decisions in this appeal.

IV. CONCLUSION

For all of the foregoing reasons, this Court should affirm the trial court's grant of the District's summary judgment motion and dismissal of the consolidated action with prejudice.

RESPECTFULLY SUBMITTED this 27th day of July, 2011.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that I sent *via legal messenger*, the Brief of Respondent Tahoma School District to the following:

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Dated this 27th day of July, 2011.

Brittany Tornquist
By: Brittany Tornquist

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