

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1004

September Term, 2013

ESTELLE BOWERS

v.

PRINCE GEORGE'S COUNTY BOARD OF
EDUCATION, ET AL.

Wright,
Hotten,
Salmon, James. P.
(Retired, Specially Assigned),

JJ.

Opinion by Hotten, J.

Filed: June 10, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant filed suit against appellee, the Board of Education of Prince George’s County (“the Board”), in the District Court for Prince George’s County, after her employment contract was not renewed. The case was transferred to the Circuit Court for Prince George’s County following the Board’s notice of intent to defend and demand for a jury trial. Before the circuit court, the Board filed a motion to dismiss for failure to exhaust administrative remedies. Appellant did not file a response to the motion within the proscribed time frame. The circuit court granted the motion and dismissed the complaint. Appellant appeals, presenting one question for our review:

Did the lower trial court err when dismissing the case because the appellant did not exhaust administrative remedies[,] [w]hen Maryland Rule §4-205 and §6-202 require a teacher to have tenure in order to have appeal rights?

For the reasons that follow, we shall affirm the circuit court’s dismissal.

FACTUAL AND PROCEDURAL HISTORY

Appellant, Estelle Bowers, is a teacher formerly employed by the Board. In August 2010, she began working at Phyllis D. Williams Elementary School as a 4th grade teacher. Over the next two school years, appellant had several disagreements with school administration and other teachers, creating what appellant characterized as a hostile work environment.¹ In February 2012, appellant was notified by letter that the former Superintendent of Schools for Prince George’s County, Dr. William R. Hite, would be recommending to the Board that her contract not be renewed and that she be terminated.

¹ Appellant devotes the majority of her brief to recounting numerous disagreements and verbal altercations she had with co-workers and administration. However, these instances are not relevant to the issue on appeal, and accordingly, we shall not address them.

On April 12, 2012, the Board approved the Superintendent's recommendation. Appellant was notified via letter on April 17, 2012 that her contract would not be renewed. Thereafter, on December 12, 2012, appellant filed suit against the Board.

The Board filed a Motion to Dismiss, arguing that appellant failed to exhaust the administrative remedies available to her pursuant to Board policy and the Maryland Code. Appellant failed to file a response to this motion. The circuit court granted the Board's motion and dismissed the case on April 17, 2013. Thereafter, on May 22, 2013, appellant filed a motion to alter judgment, asserting the court had erred in dismissing her complaint based on the failure to exhaust administrative remedies. Following a hearing, the court denied appellant's motion. The court closed the case statistically on June 3, 2013. Appellant noted a timely appeal.

STANDARD OF REVIEW

“The proper standard for reviewing the grant of a motion to dismiss is whether the trial court was legally correct. In reviewing the grant of a motion to dismiss, we must determine whether the complaint, on its face, discloses a legally sufficient cause of action.” *Britton v. Meier*, 148 Md. App. 419, 425 (2002) (quoting *Fioretti v. Md. State Bd. of Dental Exam'rs*, 351 Md. 66, 71-72 (1998)) (citations omitted).

DISCUSSION

Appellant argues that pursuant to Maryland Code, Education Article §4-205 [hereinafter Educ.], she was entitled to appeal the non-renewal of her contract. The Board responds that appellant was entitled to appeal her termination, albeit pursuant to Educ.

§6-202 and not Educ. §4-205, but contends that appellant never took advantage of her appeal rights before the Board, thereby failing to exhaust administrative remedies.

Appellant filed her complaint on February 8, 2013. On March 29, 2013, the Board filed a motion to dismiss for failure to exhaust administrative remedies.

Maryland Rule 2-311(b) provides:

Except as otherwise provided in this section, a party against whom a motion is directed shall file any response within 15 days after being served with the motion, or within the time allowed for a party's original pleading pursuant to Rule 2-321 (a), whichever is later. Unless the court orders otherwise, no response need be filed to a motion filed pursuant to Rule 1-204, 2-532, 2-533, or 2-534. If a party fails to file a response required by this section, the court may proceed to rule on the motion.

Appellant did not file a response within fifteen days, as required by Rule 2-311(b).

Accordingly, the court ruled on the motion considering only the arguments advanced in the Board's motion. It ordered:

Upon consideration of [the Board's] Motion to Dismiss For Failure to Exhaust Administrative Remedies, and the lack of any opposition thereto, it is this 17th day of April, 2013, by the Circuit Court of Prince George's County, Maryland, hereby ORDERED that [the Board's] Motion to Dismiss for Failure to Exhaust Administrative Remedies be and hereby is GRANTED.

In its motion, the Board argued that after receiving her notice of termination, appellant could have pursued an administrative procedure to appeal her termination. The Board averred that State law and County policy provided an administrative process that appellant was required to exhaust before she could file suit in the trial court.

The General Assembly enacted Educ. §6-202 in order to provide a right for a terminated teacher or administrator to appeal that decision. Maryland Code, Education Article §6-202 states:

- (a)(1) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant . . .
- (2) Before removing an individual, the county board shall send the individual a copy of the charges against him and give him an opportunity within 10 days to request a hearing.
- (3) If the individual requests a hearing within the 10-day period: . . .
- (4) The individual may appeal from the decision of the county board to the State Board.

Consistent with this statute, Board policy created a procedure through which a terminated teacher may challenge the decision. Prince George's County Public Schools, Board of Education Policy 4200 provides:

I. Purpose

The purpose of this policy is to provide the rules of procedures for hearings and appeals pursuant to the following provisions of State law. . .

B. All employees recommended for suspension without pay and/or dismissal shall have the right to request a hearing provided such request is made in writing to the [Board of Education] within 10 business days of receipt of the written notice described in II., (A) above.

C. Any employee who receives written notice of a recommendation for suspension without pay and/or dismissal and who fails to request a hearing within 10 business days, shall have waived the right to request a hearing on such matters, and the allegations and charges as contained in the notice shall be deemed by the Board to be valid and the Superintendent's recommendation accepted as a final action on the employee's employment status.

Maryland courts have reaffirmed on a number of occasions that where an administrative procedure exists to appeal or challenge a decision, the administrative

process must first be exhausted before a party may pursue a remedy through the judicial system. *See, e.g., Prince George’s Cnty. v. Ray’s Used Cars*, 398 Md. 632, 650 (2007); *Gazunis v. Foster*, 400 Md. 541, 562 (2007); *Board of Educ. for Dorchester Cnty. v. Hubbard*, 305 Md. 774, 786 (1986).

The Court of Appeals has explained:

The reasons for requiring the exhaustion of administrative remedies before resorting to the courts are that it is within the expertise of the administrative agency involved to hear and consider the evidence brought before it and make findings as to the propriety of the action requested; courts would be performing the function that the legislature specified be done by the administrative agency; . . .

Prince George’s Cnty. v. Ray’s Used Cars, 398 Md. at 650. In *Walsh v. Communications Workers of America*, 259 Md. 608 (1970), the defendant violated his union’s constitution and as a result, the union then initiated disciplinary proceedings against him. *Id.* at 609. The defendant did not respond to the disciplinary proceeding notification, attend the hearing, produce any witnesses or speak on his own behalf. *Id.* at 610. The hearing was held in his absence and a fine was imposed. *Id.* The defendant neither paid the fine, nor appealed the decision as was his right under the union constitution. *Id.* The union subsequently filed a lawsuit in court to enforce the fine and received a judgment in its favor. *Id.* The defendant appealed, arguing that it was an unfair labor practice to impose a fine on a union member and that federal labor laws prevented the union from seeking enforcement in a state court. *Id.* The Court of Appeals noted that Maryland law requires that a member of an organization, including labor unions, exhaust available internal remedies before seeking relief from state courts. *Id.* at 612. Since the defendant did not

take advantage of the administrative procedures afforded to him, including appealing the imposition of the fine, the Court held that he could not seek judicial relief. *Id.*

In her brief, appellant asserts that only a tenured teacher has the right to appeal once terminated. However, she advances no legal argument to support this claim. The language of Education Article §6-202 provides no distinction between tenured and non-tenured teachers. Title 4 of the Education Article, which governs local school administration and which contains the statute permitting the right to appeal a termination, includes no distinction between the protections afforded a tenured teacher versus a non-tenured teacher. Furthermore, the regulation which governs teachers employed under contracts, Code of Maryland Regulations (“COMAR”) 13A.07.02.01B, cites Educ. §6-202, stating that teachers employed under contract may be terminated by recommendation of the superintendent and that they have a right to appeal a contract termination. Non-tenured teachers, including those employed under a contract such as appellant, are permitted the same appeal rights upon termination as tenured teachers are provided under the Maryland Code. Accordingly, appellant’s argument fails. There was an administrative procedure available through which appellant could have challenged the failure to renew her contract. Before the circuit court and this Court, she failed to advance an argument regarding why her failure to exhaust was excused. We perceive no error in the circuit court’s dismissal of her lawsuit.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY IS AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**