

CASE NO. A09-1047

State of Minnesota

IN COURT OF APPEALS

STEVEN MONTPLAISIR,

Relator,

v.

**INDEPENDENT SCHOOL DISTRICT NO. 23,
FRAZEE-VERGAS, MINNESOTA**

Respondent.

RELATOR'S REPLY BRIEF

EDUCATION MINNESOTA
Rebecca H. Hamblin, Atty. Reg. #172686
41 Sherburne Avenue
St. Paul, Minnesota 55103
(651) 292-4827

ATTORNEYS FOR RELATOR

INDEPENDENT SCHOOL
DISTRICT NO. 23
Kevin J. Rupp, Atty. Reg. # 195509
Ratwik, Roszak & Maloney, P.A.
300 U.S. Trust Building
730 Second Avenue South
Minneapolis, Minnesota 55402
(612) 339-0060

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES.....	ii
INTRODUCTION.....	1
ARGUMENT.....	1
1. Relator’s legal statutes with the School District as a continuing contract teacher is a matter of law, not fact.	1
2. Respondent’s analysis of Lucio is incorrect and its reliance on Thomas and Mohn is misplaced.	3
CONCLUSION	5

TABLE OF AUTHORITIES

Cases

<u>Emmanuel v. I.S.D. No. 273</u> , 615 N.W.2d (Minn. Ct. App. 2000)	5
<u>Lucio v. I.S.D. No. 625</u> , 574 N.W.2d (Minn. Ct. App. 1998), <u>rev. denied</u>	1, 3, 4
<u>Mohn v. I.S.D. No. 697</u> , 471 N.W.2d (Minn. Ct. App. 1991).....	5
<u>Thomas v. I.S.D. No. 2142</u> , 639 N.W.2d (Minn. Ct. App. 2002).....	4
<u>Westgard v. I.S.D. No. 745</u> , 400 N.W.2d, 345 (Minn. Ct. App. 1987) (emphasis added).....	3

Statutes

Minn. Stat. § 122A.40	2, 3, 5
Minn. Stat. § 122A.41	3
Minn. Stat. § 122A.44	5
Minn. Stat. § 125.17	3
Minn. Stat. § 354.44	2

INTRODUCTION

Relator Steven Montplaisir (“Relator” or “Montplaisir”) challenges, by writ of certiorari, the action of Respondent School District, I.S.D. No. 23, Frazee-Vergas (“Respondent” or “District”) on April 13, 2009, purporting to non-renew his teaching contract.

Respondent’s Brief focused in large part on facts to support its claim that the District hired Relator as a probationary teacher for the 2008-09 school year, arguing that it treated him as a probationary teacher and Relator acknowledged his status as such. These facts are legally irrelevant. Relator’s legal status with the District is a matter of law, not fact. Further, Respondent’s legal arguments are supported with case law that is misplaced and distinguishable, and its analysis of Lucio v. I.S.D. No. 625, 574 N.W.2d 737 (Minn. Ct. App. 1998), rev. denied, April 30, 1998, is incorrect.

ARGUMENT

1. Relator’s legal statutes with the School District as a continuing contract teacher is a matter of law, not fact.

The District cannot defeat Montplaisir’s claim by its attempts to treat him as a probationary teacher, whether that was done out of ignorance or out of an attempt to confuse Montplaisir. Respondent focuses on a number of facts such as the number of sick and personal days the District gave to Relator and his salary step placement to show that the District was not treating Relator as a teacher returning from leave. That is a given—Relator was not returning from a

leave. Whether Respondent could have or should have argued for greater benefits under the collective bargaining agreement or could have filed one or more grievances challenging the benefits he received under the collective bargaining agreement has no relevance to his legal status under Minn. Stat. § 122A.40. Respondent is mixing apples and oranges in its analysis.

However, Relator does point out that there is nothing in the teacher contract between the District and Montplaisir for the 2008-09 school year indicating Relator's status as either a probationary teacher or a continuing contract teacher. The contract merely notes that it is subject to the provisions of Minn. Stat. § 122A.40. Relator also points out that there is nothing in the School Board minutes indicating that the District was purporting to hire Relator as a probationary teacher.

Ultimately, Respondent's facts all boil down to Respondent trying to defeat a purely legal claim with irrelevant facts: what the District thought and what the teacher thought have no legal significance. None of the facts in this case support any possible waiver of Montplaisir's right to continuing contract status under the statute. The District cannot defeat Montplaisir's legal claim established through statute by the teacher's own ignorance of his legal status. Montplaisir either is or is not a continuing contract teacher as a matter of law.

2. Respondent's analysis of Lucio is incorrect and its reliance on Thomas and Mohn is misplaced.

Respondent incorrectly analyzes Lucio v. I.S.D. No. 625, 574 N.W.2d 737 (Minn. Ct. App. 1998). First, Respondent argues this Court cannot look to Lucio because the applicable statute in that case was Minn. Stat. § 125.17, the predecessor statute to Minn. Stat. § 122A.41, the law that governs tenure rights for teachers in cities of the first class only. The courts have repeatedly held that the two statutes are very similar and contain the same concepts. "[W]hile the two statutes contain different language, the concept of seniority and tenure for teachers is the same." Westgard v. I.S.D. No. 745, 400 N.W.2d 341, 345 (Minn. Ct. App. 1987) (emphasis added).

Both Minn. Stat. §122A.40 and §122A.41 contain similar language regarding probationary periods and when a teacher achieves continuing contract status or tenure in a single district. The difference in the probationary functions between the two statutes is in the number of years served in another district after the initial three-year period in a single district. That number does not affect the legislative intent of the two statutes and the legal rights they provide to a teacher who satisfies the initial probationary period in a single district. Therefore, the Court's analysis in Lucio is applicable to this case.

Secondly, Respondent argues that Lucio is distinguishable because the teacher did not resign in Lucio and Relator did. The Court in Lucio found the break in a teacher's service was not dispositive when the plain language of the

statute provided tenure rights. Lucio, 574 N.W.2d at 741-742. What mattered to the Court in Lucio was that the teacher acquired tenure rights with the school district, had a break in service, and then returned to the same district. The Court held that the break in service did not waive his preexisting tenure rights, although the district argued that the teacher had effectively resigned. Id. at 742.

“Because Lucio did not manifest an intention to waive his tenure rights solely by failing to return when his leave of absence ended, we conclude that he did not waive them.” Id. Likewise, Montplaisir did not manifest an intention to waive his continuing contract rights in this case, notwithstanding the District’s attempt to make him think he did.

The Court in Lucio clearly stated:

The teacher tenure act provides that a teacher who is reemployed by a school district after completing a probationary period shall not be discharged or demoted except for cause after a hearing. Lucio was reemployed by the school board as a principal after he had completed his probationary period with the school district. If the legislature had intended for a break in service with a school district to waive preexisting tenure rights, it could have so provided. But we cannot supply “what the legislature purposely omits or inadvertently overlooks.”

Id. (citations omitted).

Respondent’s reliance on Thomas v. I.S.D. No. 2142, 639 N.W.2d 619 (Minn. Ct. App. 2002) is misplaced. The facts in Thomas and the Court’s legal analysis are focused on the rights of a teacher who voluntarily retired and then was immediately rehired by the same school district. This Court looked to Minn. Stat. § 354.44 in analyzing Thomas’ continuing contract status. In addition,

Thomas signed a "Notice of Assignment, Long Term Substitute Assignment" and the Court cited this fact in finding his situation analogous to that in the Emmanuel case, since both involved teachers who had been hired as long-term substitute teachers. Emmanuel v. I.S.D. No. 273, 615 N.W.2d 415 (Minn. Ct. App. 2000).

Montplaisir was not a returning retiree looking to receive retirement benefits while continuing to teach. Montplaisir was not hired as a long-term substitute teacher under Minn. Stat. § 122A.44. Montplaisir was hired as a teacher whose status was controlled by Minn. Stat. § 122A.40.

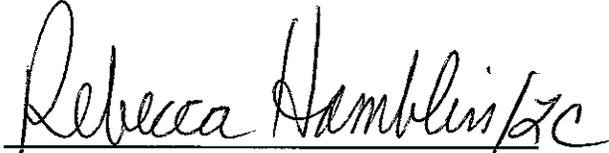
Finally, the Mohn case, which Respondent cites and distinguishes, is simply not on point in this case. Mohn v. I.S.D. No. 697, 471 N.W.2d 723 (Minn. Ct. App. 1991). The Court's analysis in Mohn was an analysis under the teacher layoff and recall statutes, then codified in Minn. Stat. § 122A.40, subds. 6(a) and (b) (1990) and now codified in Minn. Stat. § 122A.40, subds. 10 and 11 (2008).

CONCLUSION

For all the reasons stated herein and in Relator's Brief, Montplaisir respectfully requests that this Court find that as a matter of law, he was a continuing contract teacher with the District immediately upon his being hired by the Board for the 2008-09 school year. Montplaisir asks that this Court order that he be reinstated to his teaching position and receive any wages and benefits due to him as if she had been teaching for the entirety of the 2009-10 school year.

Respectfully submitted,

EDUCATION MINNESOTA

A handwritten signature in cursive script that reads "Rebecca H. Hamblin". The signature is written in black ink and is positioned above a horizontal line.

Rebecca H. Hamblin (#172686)
41 Sherburne Avenue
St. Paul, Minnesota 55403-2196
(651) 292-4827

Dated: August 27, 2009

ATTORNEYS FOR RELATOR