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NO. A09-1134

State of Minnesota
In Court of Appeals

Steven Emerson,

Relator,

vs.

Independent School District No. 199,
Inver Grove Heights,

Respondent.

BRIEF AND APPENDIX OF RELATOR

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUE

Was Steve Emerson's employment as a licensed Director of Activities covered by Minn. Stat. 122A.40, giving him a continuing contract?

The School Board found in the negative.

STATEMENT OF THE CASE

This appeal by certiorari is from the Inver Grove Heights District No. 199, school board decision terminating Steven Emerson (Relator) asserting he was a probationary rather than a continuing contract teacher.

STATEMENT OF THE FACTS

In March of 2005 Steven Emerson, relator, responded to an employment posting for a position in Respondent school district, Independent School District No. 199, Inver Grove Heights. The posting (Exhibit 4) provided as follows:

"Letters of interest and resumes are currently being accepted for the position of District Director of Activities for the Inver Grove Heights School District in Inver Grove Heights, Minnesota. The Inver Grove Heights School District serves students in kindergarten through grade 12 with an enrollment of approximately 3,680 students. Candidates must hold a current Minnesota principal license or be in the process of

obtaining administrative licensure." (Exhibit 4, Appendix p. 2)

At the time of his application, Emerson held three licenses issued by the Minnesota Department of Education. (Exhibit 12) These licenses included English/language arts; coaching; and principal K-12. Emerson was offered the job by the district. His appointment to the new position was confirmed by the School Board at its May, 2005, meeting. (Exhibit 7)

In addition to the posting, the district prepared a detailed job description for the position. (Exhibit 5, Appendix p. 2) The job description contained a section labeled "Qualifications". The document, in paragraph B "Qualifications" provided that the individual:

"Must hold a principal licensure or be in the process of obtaining licensure which must be completed within 24 months from the date of employment."

Emerson had four continuous years of employment with the Inver Grove Heights School District. He served in the position of Activities Director for school years 2005-06, 2006-07, and 2007-08. Emerson's initial employment was confirmed by a two year written agreement. (Exhibit 8) The 2007-08 year was covered by a one year agreement. (Exhibit 10)

During his fourth year of employment, school year 2008-09, Emerson served as the Inver Grove Heights Middle School interim principal. The compensation for this position was covered by the

collective bargaining agreement between the District and the Inver Grove Heights Principals' Association. (Exhibit 13)

At the end of the 2008-09 school year, the Inver Grove Heights school board terminated Emerson's employment. The Notice of Termination and Non-Renewal, stated:

"You may officially request that the school board give its reasons for the non-renewal of your contract. For your information, however, this action is taken because the position was an interim position posted only for the 2008-2009 school year and you are in probationary status." (Exhibit 16, Appendix p. 1)

A resolution incorporating this notice was adopted by the School Board on April 27, 2009. This appeal followed.

ARGUMENT

I. WHERE A SCHOOL DISTRICT REQUIRES THE POSITION OF ACTIVITIES DIRECTOR TO BE FILLED BY A LICENSED PRINCIPAL, SUPERVISING ALL OF THE DISTRICT'S CO- CURRICULAR PROGRAMS, THAT POSITION IS SUBJECT TO MINN. STAT. 122A.40 PROHIBITING UNILATERAL TERMINATION OF A CONTINUING CONTRACT BY THE DISTRICT.

The standard of review of a school board decision is well settled. The court will reverse a school board's decision to terminate an employee if the decision is "fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within its jurisdiction, or based on an error of law." *Dokmo v. Indep. Sch. Dist. No. 11*, 459 N.W.2d 671, 675 (Minn. 1990).

The statutory scheme governing the employment of teachers in Minnesota has been in effect for decades. Minnesota Statute 122A.40 covers principals, supervisors, classroom teachers and any other professional employee required to hold a license from the State Department. Subdivision 1 provides in relevant part:

A principal, supervisor, and classroom teacher and any other professional employee required to hold a license from the state department shall be deemed to be a "teacher" within the meaning of this section.

The statute divides a teacher's employments into two periods. Initially, the teacher must first serve a probationary period. After the completion of a probationary period, the teacher is deemed to have a "continuing contract". The statute is often referred to as the continuing contract law.

In the present case, the District created the position of Activities Director. The District made the decision to require a licensed principal for the position. On its face, Emerson's employment falls squarely within the provisions of Minnesota Statute §122A.40, subd. 1. He was "required to hold a license from the state department". Indeed, he held a license from the state department. Therefore, he does fall within the definition of teacher and is entitled to the protections of the continuing contract statute.

The District's position is based on a different reading of the statute. The District asserts that because the Department does not

specifically identify "activities director" in its list of licenses, Emerson's position does not fall within the statute. The District ignores his three years of service as activities director and concludes that he is a probationary, having only served one year.

This Court has considered the question of positions falling within the statute on multiple occasions. The factual distinctions of each case are helpful in determining the outcome here.

In *Herdegen v. Sch. Bd. of Indep. Sch. Dist. No. 482*, No. C6-00-783, 2000 WL 1778301 (Minn. App. Nov. 21, 2000), (unpublished), a school business manager, asserted that he was entitled to the protections of Minnesota Statutes 122A.40. Herdegen's employment contract expressly stated that his employment was governed by and subject to the provisions of the statute. Herdegen, however, did not have *any* education license. He was not licensed to teach, nor was he a licensed principal or superintendent. In rejecting Herdegen's argument the court noted that contract language could not alter or override the requirements relating to licensure. The court found that the agreement created simply an annual employment contract. *Id.*

Emerson's case differs from Herdegen. The posting for the Activities Director position specifically required a license. In addition, the Activities Director job description specifically required a license. The district decided that it wanted a licensed principal in the position of Activities Director. It unqualifiedly required the license. The

district cannot create a licensed position and then unilaterally exempt the position from the statute governing licensed positions. The licensed position would be subject not only to the continuing contract statute, but to all licensure requirements for School Principals. Emerson was subject to the code of ethics for school administrators, relicensure and continuing education credits, and possessed special training as an administrator. The position was subject to the statute.

In Strege v. Independent School District No. 482, Little Falls

Community Schools, No. C1-00-867 (Minn. App. Dec.19, 2000) this court again considered the question of an administrator falling within the continuing contract statute. Strege was employed for several years by the Little Falls school district. In 2000, the district terminated her position. At the time the board resolution indicated Strege was a “non-licensed employee” in the position of Director of Teaching and Learning and terminated her position. In requiring Strege’s reinstatement the Court stated:

Strege’s job description requires *either* a Minnesota license or a degree in curriculum or a related field. Nevertheless, Strege falls under the statutory definition of a continuing contract teacher, because she held the position, and the district consistently treated the position as a tenured position. *See Krueth v. Independent Sch. Dist. No. 38, Red Lake*, 496 N.W.2d 829, 839 (Minn. App. 1993)(finding tenure law applied to position even though license not required where only licensed teacher had held position, teaching license and college degree were preferred and position). *Id.*

In the present case the district went further than either *Streng* or *Krueth*. The posting and job description both required the license. It was not optional nor was it preferred. In addition, nothing in the employment agreement indicated that the position was not a position subject to Minn. Stat. 122A.40.

Recently this court considered the issue again in *Morgan v. Independent School District No. 482, Little Falls Minnesota*, A08-0692, (Minn. App. April 7, 2009). Morgan was employed as the Director of Human Resources in March of 1999. The initial contract stated that it was subject to the provisions of the continuing contract statute. Morgan had a principal's license and a teacher's license. Morgan was subsequently assigned additional duties as assistant to the superintendent. In 2007 the district advised Morgan her title was being changed to assistant to the superintendent in part due to breaches of confidentiality. She was advised in January of 2008 of the district's position that she had no continuing contract rights and that the district would non renew her position.

Morgan claimed that Minnesota law required that she hold a license and that therefore she fell within the continuing contract statute. The court found that Morgan's case was distinguishable because, among other factors, she was not required to hold a license for her employment and Human Resources Director. In addition the

court found she was not properly licensed to be an assistant superintendent.

In the present case, Emerson's position is within the statute. The job responsibilities basically involve the supervision of a significant component of the education program at the school district. The job description describes the general area of Responsibility as follows:

The District director of Activities is responsible for the overall operation of K-12 co-curricular programs of ISD 199. The District Director of Activities is responsible to provide leadership that is reflective of all School Board policies and ethical standards of school administration. (Exhibit 5, Appendix p.).

The School Board's decision is arbitrary, unreasonable, unsupported by substantial evident, not within it's jurisdiction and based on an error of law. Emerson is entitled to reinstatement in accordance with the statute, Minn. Stat. Sec. 122A.40, Subd. 11 (Supp. 1999) *Pinkney v. Independent Sch. Dist No. 691*, 366 N.W. 2d 362, 365 (Minn. App. 1985).

CONCLUSION

The School board's determination that Steven Emerson was probationary should be reversed by this Court. Emerson is entitled to reinstatement and appropriate backpay pursuant to the statute.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Roger J. Aronson", written over a horizontal line.

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