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A09 - 1134

STATE OF MINNESOTA

IN SUPREME COURT

Steven Emerson,

Appellant,

vs.

School Board of Independent School District 199,
Inver Grove Heights, Minnesota,

Respondent.

BRIEF, ADDENDUM AND APPENDIX OF APPELLANT STEVEN EMERSON

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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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Rules:

None.

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None.

APPELLANT EMERSON'S STATEMENT OF THE LEGAL ISSUE AND ITS RESOLUTION BY THE COURT OF APPEALS:

Issue: Is a licensed school principal hired for a position that requires school principal licensure entitled to the statutory rights and benefits of the required licensure?

The Court of Appeals held: The Court of Appeals denied appellant Emerson the statutory rights and benefits of the licensure required for his position with respondent ISD #199, affirming the action of respondent school district and holding that only those persons whose job titles require licensure by the state department of education are entitled to the statutory rights and benefits of their licensure.

List of most apposite cases:

Hibbing Educ. Ass'n v. Public Employment Relations Bd., 369 N.W.2d 527 (Minn. 1985)

Cloud v. Indep. Sch. Dict. No. 38, 508 N.W.2d 206 (Minn. App. 1993)

List of most apposite constitutional and statutory provisions:

Minn. Stat. § 122A.40, subd. 1

APPELLANT EMERSON'S STATEMENT OF THE CASE AND THE FACTS

APPELLANT EMERSON'S STATEMENT OF THE CASE

Appellant Steven Emerson was employed by respondent ISD #199 [Inver Grove Heights] for four consecutive school years [2005-2009] in positions for which ISD #199 required state licensure as a school principal. Upon completing the first three, probationary, years of his employment, Emerson earned "continuing contract status" pursuant to Minn. Stat. § 122A.40.

After Emerson's fourth year of employment, ISD #199 terminated Emerson's employment without affording him the statutory rights of a continuing contract employee, including the right to a hearing. Emerson filed appropriate grievances and ISD #199 rejected them. On a writ of certiorari, the Court of Appeals affirmed, holding that statutory continuing contract status may only be earned by school district employees whose job titles require licensure by the state department of education.

The Supreme Court granted Emerson's Petition for Further Review of the decision of the Court of Appeals.

APPELLANT EMERSON'S STATEMENT OF FACTS

On May 2, 2005, respondent ISD #199 [Inver Grove Heights] hired appellant Steven Emerson for a position titled "Activities Director." *See Appellant Emerson's Appendix, A.4, 5.3.2005 letter of Respondent ISD #199's Interim*

Superintendent LaCroix notifying Appellant Emerson of appointment as Activities Director. Among other things, ISD #199 required that its "Activities Director" either be a licensed principal or be in the process of obtaining licensure and complete that process within 24 months of hiring. *A.1, 2.10.2005 Respondent ISD #199's posting of "Employment Opportunity" – "District Director of Activities"; A.2, 2.10.2005 Respondent ISD #199's Position Description for "District Director of Activities", at A.3; and A. 33, August 2009 Administrative Record filed with MN Court of Appeals, at A.34* ["Exhibit 5. Position Description for the Director of Activities **which was in effect at all times relevant to the Relator's employment in that position**—February 10, 2005" (**emphasis** added)]. In its "Organizational Chart," ISD #199 listed "District Activities Director" as a "Principal." *A. 15, 8.14.2008 Updated Organizational Chart for ISD #199 listing District Activities Director as one of the Principals.*

Appellant Steven Emerson is and, at all relevant times has been, a licensed K-12 school principal. *A.17 – A.19, 2.7.2005 through 5.8.2008 State of MN Dept. of Education Records of Licenses issued to Appellant Emerson; and see A.33, August 2009 Administrative Record filed with MN Court of Appeals* ["Emerson held a K-12 Principal's License at all times material herein"]. In other words, ISD #199 required that its "Activities Director" either be a licensed principal or be in the process of becoming a licensed principal and Emerson met this requirement by being a licensed principal.

ISD #199 employed Emerson as "Activities Director" for three school years, from 2005 through 2008. *A.5, 7.1.2005 through 6.30.2007 Employment Contract between Respondent ISD #199 and Appellant Emerson as Activities Director; and A.10, 7.1.2007 through 6.30.2008 Employment Contract between Respondent ISD #199 and Appellant Emerson as Activities Director.* For the 2008-09 school year ISD #199 hired Emerson as an interim middle school principal. *A.16, 8.8.2008 letter from Superintendent Wells of Respondent ISD #199 to Appellant Emerson offering Interim Principal position effective 8.11.2008.*

At its April 27, 2009, meeting ISD #199's School Board terminated Emerson's contract at the close of the 2008-09 school year. *Add. 1, 4.27.2009 Respondent ISD #199's Resolution Terminating Contract [of Appellant Emerson] and Notice of Termination.* In its "NOTICE OF TERMINATION AND NON-RENEWAL" ISD #199 told Emerson:

> 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. *Id.*

ISD #199 does not dispute that it required that Emerson be a licensed principal for the positions that Emerson held with ISD #199 for four consecutive school years. Clearly indicated by the above "Notice of Termination" is the fact that when it fired Emerson ISD #199 overlooked the first three years of Emerson's employment and treated him as employed for only one year.

Emerson filed grievances calling this oversight to ISD #199's attention, but ISD #199 denied them and the Court of Appeals affirmed the denial.

In its Syllabus the Court of Appeals wrote that

> A school-district employee is not a "teacher" under the continuing-contract law, Minn. Stat. § 122A.40 (2008), unless the state department of education requires a license for the work performed by the employee. *Add. 2.*

Actually, the Court of Appeals' ruling was <u>not</u> based upon an analysis "the work performed" by Emerson as an employee of ISD #199. The Court of Appeals held that when Emerson worked as an "Activities Director" he was not a "teacher" as defined by § 122A.40, subd. 1, because the state department of education does not require licensure of someone holding the <u>job title</u> of "Activities Director."

APPELLANT EMERSON'S ARGUMENT

Scope of Review/Standard of Review

"This court's longstanding rule and repeated holding has been that the proper and only method of appealing school board decisions on teacher related matters is by writ of certiorari." *Dokmo v. Independent School Dist. No. 11*, 459 N.W.2d 671, 673 (Minn. 1990). "Under the standard of review currently applicable, a school board determination will be reversed when it is fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within its jurisdiction, or based upon an error of law." *Dokmo*, *supra*, 459 N.W.2d at 675, citing *Foesch v. Independent School Dist. No. 646*, 223 N.W.2d 371, 375 (Minn. 1974).

Conclusions of law, including interpretations of statutes, are reviewed *de novo*. *F-D Oil Co., Inc. v. Commissioner of Revenue*, 560 N.W.2d 701 (Minn. 1997). In *American Family Ins. v. Schroedl*, 616 N.W.2d 273, 278 (Minn. 2000), the Supreme Court explained:

> When interpreting a statute, we first look to see whether the statute's language, on its face, is clear or ambiguous. *See Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999). "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Id.* Basic canons of statutory construction instruct that we are to construe words and phrases according to their plain and ordinary meaning. *See Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). A statute should be interpreted, whenever possible, to give effect to all of its provisions; "no word, phrase, or sentence should be deemed superfluous, void, or insignificant." *Amaral*, 598 N.W.2d at 384 [citing *Owens v. Federated Mut. Implement & Hardware Ins.*, 328 N.W.2d 162, 164 (Minn. 1983)]. We are to read and construe a statute as a whole and must interpret each section in light of the

surrounding sections to avoid conflicting interpretations. *See Van Asperen v. Darling Olds, Inc.*, 254 Minn. 62, 73-74, 93 N.W.2d 690, 698 (1958); *see also Erickson v. Sunset Mem'l Park Ass'n*, 259 Minn. 532, 543, 108 N.W.2d 434, 441 (1961). Finally, courts should construe a statute to avoid absurd results and unjust consequences. *See Erickson*, 259 Minn. at 543, 108 N.W.2d at 441. When construing a statute, our goal is to ascertain and effectuate the intention of the legislature. *See Amaral*, 598 N.W.2d at 385-86.

While statutory construction focuses on the language of the provision at issue, it is sometimes necessary to analyze that provision in the context of surrounding sections. *See Van Asperen*, 254 Minn. at 74, 93 N.W.2d at 698; *Erickson*, 259 Minn. at 543, 108 N.W.2d at 441.

A licensed school principal hired for a position that requires licensure is entitled to the statutory rights and benefits of the required licensure.

The crux of this case is that respondent ISD #199 employed appellant Emerson for four years as a licensed school principal and then denied Emerson the right of continuing contract status that he earned through those four years of employment. ISD #199 does not dispute that during Emerson's fourth year of employment Emerson worked as a school principal; ISD #199 claims that Emerson's first three years of employment, in the role of "Activities Director," were not years of employment as a school principal.

During his first three years of employment with ISD #199 Emerson's job title was either "District Director of Activities" [*A. 2, Position Description*] or "Activities Director" [*A. 5, 2005-07 Employment Contract; and A. 10, 2007-08 Employment Contract*] or "District Activities Director" [*A. 15, Organizational Chart*]. Though none of these job titles included the word "Principal," ISD #199 required that its "Activities Director" be, and Emerson was, a licensed school

principal [*A. 1, posting of "Employment Opportunity"*; and *A. 2, Position Description*]; and in its Organizational Chart [*A. 15*] ISD #199 referred to its "District Activities Director" as one of its "Principals."

Emerson believes that many of his job duties as "Activities Director," such as supervising and evaluating coaches and advisers [*A. 2*], and the fact that he was responsible to the Superintendent of Schools [*A. 3*], were consistent with employment as a school principal. And while an evaluation of job duties may in some cases be an appropriate part of determining continuing contract status, Emerson contends that where, as in this case, the school district requires school principal licensure for a position, that position falls within the category of "principal," and the definition of "teacher," in Minn. Stat. § 122A.40, subd. 1.

For purposes of "continuing contract status," "teacher" is defined in Minn. Stat. § 122A.40, Subd. 1, which states:

> 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. A superintendent is a "teacher" only for purposes of subdivisions 3 and 19.

"Department" in § 122A.40, subd. 1, means the Department of Education. *See* Minn. Stat. §§ 122A.01 and 120A.05, subd. 7.

The statute, on its face, states that the following are "teachers":

- A principal;
- A supervisor;
- A classroom teacher; and
- Any other professional employee required to hold a license from the state department.

The grammatical "rule of the last antecedent" tells us that a limiting clause or phrase [here, "required to hold a license from the state department"] should ordinarily be read as modifying only the noun or phrase that it immediately follows. *See Barnhart v. Thomas*, 540 U.S. 20, at 26 (2003); *see also Woodhall v. State*, 738 N.W.2d 357, at 361-362 (Minn. 2007).

Applying the "rule of the last antecedent" to § 122A.40, subd. 1, only "any other professional employee" is "required to hold a license" in order to be defined as a "teacher." In light of the lack of a comma between "classroom teacher" and "and any other professional," an argument might be made that both "a classroom teacher" and "any other professional employee" must be required to hold a license from the state department of education in order to be defined as "teacher." But the "rule of the last antecedent" would hold that neither a "principal" nor a "supervisor" need be licensed [by the state department of education] to be defined as a "teacher" in § 122A.40, subd. 1.

Interpreting § 122A.40, subd. 1, as requiring that principals be licensed by the state department of education makes no sense because principals are not licensed by the state department of education; they are licensed by the state Board of School Administrators. *See* Minn. Stat. § 122A.14, subd. 1 ["The board (of school administrators) shall license school administrators"]; and §§ 122A.11, subd. 3, and 122A.15, subd. 2 ["'Supervisory personnel' for the purpose of licensure means superintendents, principals, and professional employees who devote 50 percent or more of their time to administrative or supervisory duties

over other personnel, and includes athletic coaches"]; and § 122A.18, subd. 1 (b) ["The Board of School Administrators must license supervisory personnel as defined in section 122A.15, subdivision 2, except for athletic coaches"].

In this case, the Court of Appeals ruled that Minnesota's continuing-contract statute definition of teacher "unambiguously hinges on state licensure requirements." *Add. 5.* The Court interpreted § 122A.40, subd. 1, as defining "teacher" as:

> • A principal required by the state department to hold a license from the state department;
> • A supervisor required by the state department to hold a license from the state department;
> • A classroom teacher required by the state department to hold a license from the state department; and
> • Any other professional employee required by the state department to hold a license from the state department.

Because appellant Emerson, when he worked for respondent ISD #199 as "Activities Director," was not required by the state department to hold a license from the state department, the Court of Appeals ruled that when he worked as "Activities Director" Emerson was not a "teacher" as defined by § 122A.40, subd. 1.

The Court of Appeals based its conclusion that Emerson as "Activities Director" was not a "teacher" on its earlier interpretation of § 122A.40, subd. 1, in *Cloud v. Indep. Sch. Dist. No. 38*, 508 N.W.2d 206 (Minn. App. 1993) [at the time of *Cloud*, § 122A.40, subd. 1, was codified as §125.12, subd. 1]. In *Cloud*, the issue was whether a Title V Project "Coordinator/Director" was a "teacher" as

defined by § 125.12, subd. 1. The Court of Appeals cited *Hibbing Educ. Ass'n v. Public Employment Relations Bd.*, 369 N.W.2d 527 (Minn. 1985) as holding that the statutory definition of "teacher" was limited to persons whose jobs required that they be licensed by the state.

But in *Hibbing Educ. Ass'n*, *supra*, the Supreme Court was interpreting whether paraprofessionals were "teachers" as defined by the Public Employment Labor Relations Act, Minn. Stat. § 179A.01 et seq. (1984). The Act defined "teacher" as

> ...any public employee other than a superintendent or assistant superintendent, principal, assistant principal, or a supervisory or confidential employee, employed by a school district: (1) in a position for which the person must be licensed by the board of teaching or the state board of education; or (2) in a position as a physical therapist or an occupational therapist. Minn.Stat. § 179A.03, subd. 18 (1984) (Emphasis added). 369 N.W.2d at 529.

Paraprofessionals were not physical or occupational therapists. Noting that paraprofessionals were not required to be licensed by either the state board of teaching or the state board of education, the Supreme Court ruled that they [paraprofessionals] were not "teachers" as defined by Section 179A.03, subd. 18.

In *Cloud*, the Court of Appeals mistakenly observed that the language used in § 125.12, subd. 1 [since recodified as § 122A.40, subd. 1], "...is similar to the language used in section 179A.03, subdivision 18." 508 N.W.2d at 210. The language of the two sections is actually quite dissimilar--§ 179A.03, subd. 18, clearly defines a "teacher," other than a physical or occupational therapist, as an

"employee" that "must be licensed"; and § 125.12, subd. 1 only requires licensure of "any other professional employee" and, possibly, a classroom teacher.

The other significant issue in this case is that § 122A.40, subd. 1, does not specify whom it refers to as requiring that certain people "hold a license." In *Hibbing Educ. Ass'n*, the Court noted that neither the state department nor the employing school district required licensure. In this case the Court of Appeals interpreted § 122A.40, subd. 1, as referring to the state department of education requiring licensure. But this conclusion is based upon the faulty analysis, first stated in *Cloud*, that because § 122A.40, subd. 1 is similar to § 179A.03, subd. 18, the Supreme Court's analysis of § 179A.03, subd. 18 in *Hibbing Educ. Ass'n* also applies to § 122A.40, subd. 1.

Respondent ISD #199 has suggested that appellant Emerson is unfairly demanding something outside of what the parties agreed to in Emerson's employment contracts with the school district. In truth, it is ISD #199 that clearly and unequivocally hired a licensed principal and then refused to give that licensed principal the rights to which he is entitled by Minnesota statutory law. And it is important to distinguish that this is not a case in which Emerson's licensure had nothing to do with the job for which he was hired. ISD #199 required school principal licensure for the position of Activities Director, and ISD #199 listed the Activities Director position as a school principal position on its Organizational Chart [A. 15].

School districts like respondent ISD #199 have complete control over the job titles they give to employees. The Court of Appeals' ruling in this case allows school districts to use job titles as a means to deny licensed personnel the statutory rights they have earned under laws adopted by duly elected legislators.

In this case, because appellant Emerson was required by his employer to be a licensed principal as Activities Director, Emerson was a "teacher" as defined by § 122A.40, subd. 1. If respondent ISD #199 wanted to avoid giving Emerson the rights of a licensed principal it could have done so by not requiring licensure for the position. When ISD #199 chose to make licensure a condition of Emerson's employment ISD #199 concurrently accepted the legislative mandates that come with that licensure.

APPELLANT EMERSON'S CONCLUSION

Because respondent ISD #199 required that appellant Emerson be a licensed school principal when he worked for the district as Activities Director, Emerson was a "teacher," as defined in Minn. Stat. § 122A.40, subd. 1, when he was employed by ISD #199 as Activities Director; and Emerson is entitled to the statutory benefits of a "teacher."

The Supreme Court should reverse the decision of the Court of Appeals and remand this matter to the school board of respondent ISD #199 with an order directing that appellant Emerson be reinstated in accordance with Minn. Stat. § 122A.40, subd. 11.

Respectfully submitted,

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APPELLANT EMERSON'S CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 4,646 words. This brief was prepared using Microsoft Office Word 2007.

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