

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

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No. 93-7351

(Summary Calendar)

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Q.C. LAMAR SIMMONS,

Plaintiff-Appellant,

versus

HUMPHREYS COUNTY SCHOOL  
DISTRICT, ET AL.,

Defendant-Appellees.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
(GC90-185-D-0)

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(April 26, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

Emilio M. Garza, Circuit Judge:\*

Q.C. Lamar Simmons appeals the district court's partial adverse summary judgment and remand to the Humphreys County School District ("District") for a pretermination hearing. We affirm in part, and vacate and dismiss in part.

I

On May 15, 1990, police arrested Lamar Simmons, a special education teacher in the District, and charged him with the

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\* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

statutory rape of a former special education student, Lucille Chapman. The rape allegedly occurred sixteen years earlier in 1974.<sup>1</sup> The criminal charge against Simmons was eventually dismissed on June 7, 1990. On May 21, 1990, Lonnie Haynes, the superintendent of the District, notified Simmons he was relieved of all of his duties as a special education teacher pending a decision of the school board ("Board") concerning his continued employment. Subsequent thereto, the Board met, and on May 23, 1990, Haynes informed Simmons by mail that Simmons's contract for the 1990-91 school year would not be renewed. Haynes's letter informed Simmons of his right to a hearing on the matter. Upon a timely request by Simmons, a hearing convened on June 20, 1990, before an impartial hearing officer hired by the Board.<sup>2</sup> At the hearing, Simmons argued that because he had not received notice of nonrenewal of his contract by the April 8 deadline as required by Miss. Code Ann. § 37-9-105 (1990),<sup>3</sup> the Board could only terminate his contract for

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<sup>1</sup> Chapman alleged that she had sexual relations with Simmons in a classroom on the school premises which resulted in the birth of a child.

<sup>2</sup> Mississippi law allows a school board to designate an impartial hearing officer to conduct a hearing on its behalf. Once the hearing officer conducts the hearing, the Board reviews the record of the proceedings and makes its decision based solely on the record. Miss. Code Ann. § 37-9-111 (1990).

<sup>3</sup> Section 37-9-105(c) provides that notice of nonrenewal of a school teacher's contract for the successive year must be provided no later than April 8. Moreover, the Mississippi Supreme Court interprets the failure to provide notice to the teacher prior to April 8 as an automatic contract renewal for the successive academic year. See, e.g., *Noxubee County Sch. Bd. v. Cannon*, 485 So. 2d 302, 304-05 (Miss. 1986); *Robinson v. Bd. of Trustees*, 477 So. 2d 1352, 1353-54 (Miss. 1985); *Jackson v. Bd. of Educ.*, 349 So. 2d 550, 553 (Miss. 1977).

"good cause," as defined by Miss. Code Ann. § 37-9-59 (1990).<sup>4</sup> In the interest of judicial economy, the hearing officer accepted some proof from both the Board and Simmons on the alleged charge of sexual misconduct with Chapman. Meanwhile, superintendent Haynes, realizing that the April 8 deadline for non-renewal of Simmons's 1990-91 teaching contract had passed and that the proper course would be for termination for cause, requested that the Board meet to rescind the non-renewal action. Thereafter, on June 26, 1990, the Board met, rescinded the prior notice of renewal which it had sent to Simmons, and accepted Haynes's recommendation of termination for cause. Simmons was promptly informed of the Board's action.<sup>5</sup>

The hearing reconvened on July 25, 1990 to determine whether the Board had good cause to terminate Simmons. The Board submitted a transcript of the June 20, 1990 hearing as proof of good cause. Simmons argued that he had been denied a pretermination hearing and

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The district court concluded as a matter of law that the failure of timely notice of nonrenewal resulted in a state protected property interest in an enforceable teaching contract for the 1990-91 school year for which Simmons could not be deprived absent due process of law consistent with the guarantees of the Fourteenth Amendment.

<sup>4</sup> Section 37-9-59 provides that "[f]or incompetence, neglect of duty, immoral conduct, intemperance, brutal treatment of a pupil or other good cause the superintendent of schools may dismiss or suspend any certificated employee in any school district."

<sup>5</sup> The Board cited as its reasons for Simmons's termination the allegation of sexual misconduct with a student, and that Simmons was found at a friend's house when he supposed to be on duty.

requested one before the Board before the case resumed. Arguing that a pretermination hearing was factually impossible, Simmons claimed that his constitutional procedural due process rights had been violated. The hearing officer granted Simmons's motion for a stay of the hearing until Simmons obtained a judicial ruling in federal court on his right to a pretermination hearing.

On August 15, 1990 Simmons filed an action in district court, claiming that his procedural and substantive due process rights had been violated. The district court granted summary judgment on Simmons's substantive due process claim. After a non-jury trial, the district court held that the July 25, 1990 hearing was a pretermination hearing comporting with procedural due process, and remanded to the hearing officer to resume the hearing. Simmons filed a timely notice of appeal from the district court's entry of final judgment.<sup>6</sup>

## II

Simmons first argues that the district court erred in concluding that his procedural due process rights were not violated. He challenges specifically the court's finding that the

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<sup>6</sup> The district court's interlocutory order granting partial summary judgment is reviewable under the final judgment appealability rule. See *Dickinson v. Auto Center Mfg. Co.*, 733 F.2d 1092, 1102 (1983) ("Under the final judgment appealability rule, a party may obtain review of prejudicial adverse interlocutory rulings upon his appeal from adverse final judgment, at which time the interlocutory rulings (nonreviewable until then) are regarded as merged into the final judgment terminating the action.").

July 25, 1990 hearing was a pretermination hearing.<sup>7</sup> Our thorough review of the record confirms that Simmons was not terminated prior to the July 25, 1990 hearing. The hearing on July 25, 1990, was held before an impartial hearing officer to determine whether "good cause" existed to terminate Simmons. See Miss. Code Ann. §§ 37-9-59, 37-9-111. Although the Board had, prior to the hearing date, accepted the superintendent's recommendation for termination, the Board's its decision was not yet final. See Miss. Code Ann. § 37-9-111(4) ("If the matter is heard before a hearing officer, the board shall also grant the employee the opportunity to appear before the board to present a statement in his behalf, either in person or by his attorney, *prior to a final decision by the board.*") (emphasis added). Because the Board's acceptance did not constitute a final decision, the acceptance of the superintendent's recommendation did not terminate Simmons's employment. Moreover, that Simmons was relieved of his duties pending the outcome of the hearing does not constitute termination. See Miss. Code Ann. § 37-9-59. Hence, the July 25, 1990 hearing, inasmuch as it was held before the Board was given the opportunity to make a final decision, was necessarily a pretermination hearing.

Simmons also contends that he will not be able to obtain a fair and impartial hearing before the hearing officer and the Board. He contends that the Board's prior attempt to terminate his

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<sup>7</sup> Due process requires "some kind of a hearing" prior to the discharge of an employee who has a constitutionally protected property interest in his employment." *Cleveland Bd. of Educ. v. Loudermill*, 105 S.Ct. 1487, 1493 (1985) (attribution omitted).

employment as a teacher for the 1990-91 school year indicates the Board's lack of fairness and partiality. Although Simmons alleges personal animosity due to political differences as a possible motive, the record reveals no evidence of bias or prejudice of a boardmember. At most, the record reflects that the Board accepted superintendent Haynes's recommendation to terminate Simmons without verifying the accuracy of the bases for termination, not that the Board was predisposed against Simmons. "Alleged prejudice of . . . hearing bodies must be based on more than mere speculation and tenuous inferences." *Duke v. North Texas State Univ.*, 469 F.2d 829, 834 (5th Cir. 1972), *cert. denied*, 93 S.Ct. 2760 (1973). *But see Cantrell v. Vickers*, 495 F. Supp. 195 (N.D. Miss. 1980). We do not believe that, under the facts of this case, Simmons will be denied a fair and impartial hearing.<sup>8</sup>

Simmons next contends that the district court erred in not considering his allegation that the Board's nonrenewal determination deprived him of his liberty interest, in violation of his procedural due process rights. The district court correctly determined that because Simmons "had a property interest in his employment contract which entitled him to a pretermination hearing,

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<sup>8</sup> While it may be difficult for Simmons to prospectively establish actual bias, adequate post-hearing mechanisms are in place to remedy any actual bias that may exist. Under Mississippi law, the school board designated an impartial hearing officer to conduct the hearing on its behalf. After this hearing, the Board will review the record of the proceedings and make its decision based solely on the record. See Miss. Code Ann. § 37-9-111. A final decision rendered by the Board is appealable to the Chancery Court and thereafter to the Mississippi Supreme Court.

[it] need not address the liberty issue." *See, e.g., General Elec. v. New York State Dep't of Labor*, 936 F.2d 1448, 1454 (2d Cir. 1991) (declining to address liberty interest issue after concluding that plaintiff had a cognizable property interest which the state could not deprive without affording adequate procedures). We therefore reject this contention on appeal.<sup>9</sup>

Lastly, Simmons contends that the district court erred in granting summary judgment on his substantive due process claim. "To succeed with a claim based on substantive due process in the public employment context, the plaintiff must show two things: (1) that he had a property interest/right in his employment, and (2) that the public employer's *termination* of that interest was arbitrary or capricious." *Moulton v. City of Beaumont*, 991 F.2d 227, 230 (5th Cir. 1993) (emphasis added). Because the Board has not yet made a final determination regarding Simmons's employment, we dismiss Simmons's substantive due process claim for lack of subject matter jurisdiction, as his claim is not ripe for adjudication.<sup>10</sup> Because we dismiss this claim for lack of subject matter jurisdiction, we vacate the district court's grant of

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<sup>9</sup> Because the district court need not have addressed the alleged deprivation of Simmons's liberty interest, we reject Simmons's contention that the district court erred in not allowing into the summary judgment record certain evidence relevant to establishing a liberty interest deprivation.

<sup>10</sup> "Although none of the parties raise the issue of ripeness on appeal, we can address lack of subject matter jurisdiction *sua sponte*." *Cinel v. Connick*, 15 F.3d 1338 (5th Cir. 1994).

summary judgment on this claim.<sup>11</sup>

### III

For the foregoing reasons, we AFFIRM in part, and VACATE and DISMISS in part.

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<sup>11</sup> Simmons also argues that the district court erred in quashing his subpoena for Chapman's welfare records. Because those records only support Simmons's unripe substantive due process claim))Simmons contends that Chapman's failure to name him in those records as her child's father undermines her paternity claim))any error in quashing the subpoena was harmless. See Fed. R. Civ. P. 61.