

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NUMBER 2011 CA 1295**

**SHELITA BAILEY**

**VERSUS**

**BOARD OF SUPERVISORS FOR THE LOUISIANA TECHNICAL  
COLLEGE SYSTEM**

**Judgment Rendered: February 10, 2012**

**Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge, Louisiana  
Docket Number 518,728**

**Honorable Timothy Kelley, Judge Presiding**

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Board of Supervisors for the Louisiana  
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**BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.**

*Guidry, J. CONCUR.*

**WHIPPLE, J.**

Plaintiff, Shelita Bailey, appeals a judgment of the district court finding no error in the decision of the Board of Supervisors of Community and Technical Colleges ("the Board") to remove her from employment for non-disciplinary reasons. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

At all pertinent times, Bailey was a tenured employee of the Louisiana Technical College System. Prior to her removal, she was employed through the LTC-Jumonville Memorial Campus as a Special Program Coordinator at the Louisiana State Penitentiary.<sup>1</sup> As such, Bailey worked on the Louisiana State Penitentiary premises in Angola, Louisiana on a daily basis. Further, Bailey's work duties were such that she could not perform her job as Special Program Coordinator at Angola without daily access to the penitentiary premises.<sup>2</sup>

By letter dated August 15, 2002, the Assistant Warden of the Louisiana State Penitentiary notified the Dean of the LTC-Jumonville Memorial Campus that Bailey was barred from the penitentiary premises.<sup>3</sup> Upon being barred from entering the penitentiary premises, Bailey's ability to perform her job or fulfill her employment duties as a Special Program Coordinator became impossible.

After Bailey was barred from the premises of the Louisiana State Penitentiary, the Dean of the LTC-Jumonville Memorial Campus offered

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<sup>1</sup>At the time of her removal, Bailey was compensated at a rate of \$3,521.36 per month.

<sup>2</sup>Pursuant to LSA-R.S. 15:1199.5(D), the Department of Public Safety and Corrections may enter into cooperative endeavors or contracts with the Louisiana community and technical colleges to provide intensive training programs for inmates.

<sup>3</sup>The bases for the decision by the Assistant Warden and/or Warden to bar Bailey from the penitentiary premises were set forth in a memorandum, and a copy of that memorandum was provided to the Dean of Louisiana Technical College.

Bailey the only open position for which she was qualified, i.e., the position of TANF Coordinator at the LTC-Jumonville Memorial Campus.<sup>4</sup> However, Bailey rejected the offer.

Thus, the acting chancellor of the Louisiana Technical College informed Bailey by letter dated November 8, 2002, that she was being formally charged with “non-disciplinary termination,” given that she was barred from the penitentiary grounds, which prohibited her from performing the duties of her position, and that she had rejected the only other available position within the Louisiana Technical College for which she was qualified. The acting chancellor further advised Bailey that he had recommended to the Board that her employment be terminated.

Because Bailey was a tenured employee, a tenure hearing on the charge of “non-disciplinary termination” was scheduled before the personnel subcommittee and was held on March 19, 2003. Following the hearing, the subcommittee recommended that the Board terminate Bailey’s employment for “non-disciplinary” reasons. Thereafter, by letter dated April 9, 2003, the Board informed Bailey that her employment was terminated for “non-disciplinary” reasons.

Bailey then filed a petition for damages against the Board in the district court on March 29, 2004, contending that she had not committed any acts for which a tenured employee’s employment could be terminated and, thus, that the Board was liable to her for damages for “its unlawful termination of her employment.” Specifically, Bailey contended that the Board’s action in terminating her employment was not in accordance with

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<sup>4</sup>In the letter offering Bailey the position of TANF Coordinator, Bailey was informed that the salary for the position was “\$36,700.00 with benefits totaling \$7,157.00.”

the provisions of LSA-R.S. 17:542, as well as the Board's own policies and procedures.

On March 18, 2010, the Board filed a motion for summary judgment seeking "summary dismissal" of Bailey's claim against it. The Board asserted that Bailey's contention that her employment could not be terminated for "non-disciplinary" reasons was unfounded and that Bailey's reliance on LSA-R.S. 17:542, which it asserted did not apply to the Board, and on Board Policy No. 6.021, addressing termination for cause due to disciplinary reasons, was misplaced.

Following a hearing on the motion, the district court granted the Board's motion and summarily dismissed Bailey's claims against it with prejudice. In oral reasons for judgment, the district court noted that the statute and policy relied upon by Bailey dealt specifically with disciplinary cause for termination and, thus, were not applicable to Bailey's situation, which involved a non-disciplinary termination. From the judgment dismissing her suit, Bailey now appeals, contending that the district court committed legal error in concluding that the Board could terminate Bailey's employment as a tenured teacher without a finding of "cause" for termination.

#### **BURDEN OF PROOF AND STANDARD OF REVIEW FOR SUMMARY JUDGMENT**

A motion for summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B). The summary judgment procedure is expressly favored in the law

and is designed to secure the just, speedy, and inexpensive determination of non-domestic civil actions. LSA-C.C.P. art. 966(A)(2).

The mover bears the burden of proving that he is entitled to summary judgment. LSA-C.C.P. art. 966(C)(2). However, if the mover will not bear the burden of proof at trial on the subject matter of the motion, he need only demonstrate the absence of factual support for one or more essential elements of his opponent's claim, action, or defense. LSA-C.C.P. art. 966(C)(2). If the moving party points out that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense, then the nonmoving party must produce factual support sufficient to satisfy his evidentiary burden at trial. LSA-C.C.P. art. 966(C)(2). If the mover has put forth supporting proof through affidavits or otherwise, the adverse party may not rest on the mere allegations or denials of his pleadings, but his response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue for trial. LSA-C.C.P. art. 967(B).

In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. East Tangipahoa Development Company, LLC v. Bedico Junction, LLC, 2008-1262 (La. App. 1<sup>st</sup> Cir. 12/23/08), 5 So. 3d 238, 243-244, writ denied, 2009-0166 (La. 3/27/09), 5 So. 3d 146.

#### **DISCUSSION**

In support of her claim that the Board could not terminate her employment absent a finding of "cause" for discipline, Bailey contends that

pursuant to LSA-R.S. 17:542 and the Board's own policy,<sup>5</sup> as a tenured employee she was subject to removal only upon a finding of: (1) willful neglect of duties; (2) incompetency in the performance of duties; (3) dishonesty in the performance of duties; or (4) being a member of or having contributed to any group, organization, movement or corporation that is by law or injunction prohibited from operating in the State of Louisiana. Thus, Bailey averred in her petition that because her termination does not fall within any of these causes for which she could be removed, the Board's termination of her employment violated state law and its own tenure policies.

In support of its motion for summary judgment, the Board contended that LSA-R.S. 17:542 was not applicable to the Board and further that Bailey was relying upon Board policies that apply only to **disciplinary** removals, whereas the termination of Bailey's employment was for **non-disciplinary** reasons. Thus, the Board contended, because Bailey was relying upon an inapplicable statute and policy in support of her claim, Bailey could not prevail on her claims, and, thus, the Board was entitled to judgment in its favor dismissing her suit.

On appeal, Bailey asserts that the district court erred as a matter of law in concluding that the Board could terminate her employment as a tenured teacher for any reason other than a finding of "cause" as enumerated in LSA-R.S. 17:542 or Policy # II.3.021.

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<sup>5</sup>While Bailey refers to this policy as "Policy # II.3.021" and the copy of this policy that she submitted in opposition to the motion for summary judgment also bears number II.3.021, the Board contends that this policy is more properly referred to as "Policy No. 6.021." However, the Board acknowledges in brief that the language of the policy referenced by Bailey is identical to what it claims is Policy No. 6.021. Because the policy of record is referenced as number II.3.021, we will cite it herein using the identifying number appearing in the record. See also Delahoussaye v. Board of Supervisors of Community and Technical Colleges, 2004-0515 (La. App. 1<sup>st</sup> Cir. 3/24/05), 906 So. 2d 646, 650 (wherein this court discussed Policy II.3.021).

With the adoption of LSA-Const. art. VIII, § 7.1 in 1998, the system of public vocational-technical colleges and community colleges was transferred from the jurisdiction of the Board of Elementary and Secondary Education (BESE) to the Board, effective July 1, 1999. Thus, the Board is the constitutionally created higher education board charged with the management of public vocational-technical colleges and community colleges. LSA-Const. art. VIII, § 7.1. At that point, tenured instructors at the Louisiana Technical College's various campuses came under the purview of the Board and were no longer governed by the statutes applicable to tenured BESE employees. Delahoussaye v. Board of Supervisors of Community and Technical Colleges, 2004-0515 (La. App. 1<sup>st</sup> Cir. 3/24/05), 906 So. 2d 646, 650.

Moreover, the Board is conferred with self-executing, exclusive administrative authority over the learning institutions within its jurisdiction. LSA-Const. art. VIII, § 7.1. Therefore, the Board has the authority to adopt rules and regulations governing the internal management of its learning institutions without legislative consent or approval. Delahoussaye, 906 So. 2d at 649-650. For the express purpose of ensuring that transferred tenured employees would "retain all property interests and due process interests acquired by them prior to their transfer," the Board adopted Policy # II.3.021, applicable to employees transferred from the jurisdiction of BESE to the Board's jurisdiction and tenured prior to the effective date of the transfer. As noted in Delahoussaye, 906 So. 2d at 650, this removal policy

essentially tracks in most respects the language of LSA-R.S. 17:542(A),<sup>6</sup>

providing, in pertinent part, as follows:

**CAUSE FOR REMOVAL:**

A permanent employee shall not be removed from a position of employment except upon a Determination, by the personnel committee of the Board, that the employee is guilty of the following:

1. Willful neglect of his/her duties;
2. Incompetency in the performance of his/her duties;
3. Dishonesty in the performance of his/her duties; or
4. Being a member of or having contributed to any group, organization, movement or corporation that is by law or injunction prohibited from operating in the State of Louisiana.

To meet the obligation placed upon it herein, the personnel committee is hereby authorized to establish a standing "LTC Tenure Hearing Subcommittee" for the purpose of conducting hearings on charges of removal and for the purpose of making recommendations, in writing, to the personnel committee for its final Determination. The Chair of the personnel committee shall be the presiding officer of the LTC Tenure Hearing Subcommittee. A final Determination that an employee is guilty of any of the above listed charges must receive the vote of a majority of the members of the full personnel committee.

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**REMOVAL:**

If a permanent employee is found **guilty** by the personnel committee, after a due and legal hearing as provided herein, on charges, as directed herein, the employee shall be ordered removed from employment with the LTC or otherwise **disciplined** by the personnel committee, effective the date of the determination. The personnel committee shall submit its determination and order to the Board for ratification at its next

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<sup>6</sup>In Delahoussaye, this court recognized that LSA-R.S. 17:542, governing the causes and procedure for removal of permanent employees, was enacted in 1976 and amended in 1977, during the period of BESE's jurisdiction over vocational-technical colleges and community colleges. As further noted in Delahoussaye, the language of LSA-R.S. 17:542 parallels that of LSA-R.S. 17:443, governing causes and procedure for removal of permanent teachers employed by parish and city school boards. LSA-R.S. 17:542 has not been amended since the system's transfer to the Board's jurisdiction, and its continued applicability is questionable, given the Board's autonomous character. See Delahoussaye, 906 So. 2d at 650 n.4.



regularly scheduled meeting. The Board shall ratify or reject the final determination of the personnel committee. In no event shall the employee be entitled to a full rehearing before the Board.<sup>7</sup>

(Emphasis added).

In support of its motion for summary judgment, the Board submitted the affidavits of Sheila Davis, who at the relevant time was an Administrative Services Officer-2 responsible for human resource functions for the Jumonville, Sullivan and Folks campuses, and Margaret Webb, who at the relevant time was the Assistant Director of Human Resources for Technical Education of the Louisiana Community and Technical College System. In their affidavits, Davis and Webb attested that the tenure policy relied upon by Bailey at issue deals only with circumstances in which the Board terminates the employment of a tenured, permanent employee for the enumerated causes, "most of which deal with deficient performance" and that the policy has never applied to "situations in which an employee is prevented from doing her job because she has been banned from the facility." Davis and Webb further noted and attested that the policy similarly does not apply to a situation in which employment is terminated due to budgetary constraints or because an entire department or program is terminated. Moreover, both Davis and Webb attested that there is no policy or procedure adopted by the Board "that prevents the Board from terminating the employment of an employee who is no longer able to access a facility at which their [sic] duties must be performed" or, similarly, from terminating

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<sup>7</sup>The policy further sets forth the procedures to be followed for the hearing and notice thereof and provides for the right of appeal of the final determination in "a court of competent jurisdiction."

the employment of an employee “whose facility was closed or whose department was eliminated or any other similar reason.”<sup>8</sup>

In further support of its motion for summary judgment, the Board submitted Bailey’s answers to Requests for Admissions, in which Bailey specifically admitted that her position as a Special Programs Coordinator at the LTC-Jumonville Memorial Campus required her to enter onto the institutional grounds of the Louisiana State Penitentiary, as well as evidence of the job offer made to, but rejected by, Bailey.

Thus, considering the language of Policy # II.3.021, as well as the evidence regarding the circumstances in which the Board’s policy would apply, we find no error in the district court’s determination that Policy # II.3.021 governs **disciplinary** cause for removal. Although Bailey argues that the Board also was bound by LSA-R.S. 17:542, it is unnecessary for this court to consider the applicability of this statute. Even if we were to determine, as suggested by Bailey, that the Board was bound by the provisions of LSA-R.S. 17:542, we conclude that, to the extent that subsection (A) of that statute likewise addresses disciplinary-based cause for removal, it would be inapplicable to the present situation wherein Bailey’s employment was terminated for non-disciplinary reasons, *i.e.*, where she was no longer able to perform the functions of her job because she was banned from the premises of the penitentiary and where she had declined to accept the only other available position for which she was qualified.<sup>9</sup>

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<sup>8</sup>Indeed, the record contains other policies adopted by the Board, specifically Policy # II.3.016 and Policy # II.3.026, that contemplate removal of tenured faculty for reasons other than disciplinary cause, such as for reasons of financial exigency, lack of work, or actions that impair the discharge of duties.

<sup>9</sup>Notably, contrary to Bailey’s assertion that LSA-R.S. 17:542 does not contemplate removal of a tenured employee for non-disciplinary reasons, subsection (C) of the statute specifically addresses a situation wherein a tenured employee’s employment may be terminated for non-disciplinary reasons, *i.e.*, when a specified course the employee teaches at any of the vocational-technical schools is discontinued.

Furthermore, given that Bailey's response in opposition to the Board's motion for summary judgment does not establish the existence of any genuine issue for trial, we find no error in the trial court's conclusion that the Board had established its entitlement to judgment as a matter of law, dismissing Bailey's claims against it for alleged violations of LSA-R.S. 17:542 and Policy # II.3.021 after terminating her employment for non-disciplinary reasons.

### **CONCLUSION**

For the above and foregoing reasons, the March 28, 2011 judgment of the district court, dismissing Shelita Bailey's claims, with prejudice, is hereby affirmed at appellant's costs.

**AFFIRMED.**