STATE OF MICHIGAN

COURT OF APPEALS

ROBERT ARNOLD,

Plaintiff-Appellant,

v

NEW LOTHROP AREA PUBLIC SCHOOLS and NEW LOTHROP BOARD OF EDUCATION,

Defendants-Appellees.

UNPUBLISHED
August 16, 1996

No. 171558
LC No. 92-001403-CK

Before: Wahls, P.J., and Murphy and C.D. Corwin,* JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) based on the determination that plaintiff failed to present admissible evidence so as to create a genuine issue of material fact regarding plaintiff's claim that defendants arbitrarily and capriciously decided not to renew his contract in violation of MCL 380.132; MSA 15.4132, a provision of the School Code of 1976, which in part governs the contract terms of principals. We affirm.

Plaintiff had worked as an elementary school principal for defendants since 1973. For the school years 1983-84 and 1985-86, plaintiff received favorable evaluations from the superintendent. In 1986, a new superintendent was hired. Starting in 1987, the personnel committee of the school board approved lower salary raises for plaintiff than the other administrators because the school board had expressed dissatisfaction with plaintiff's performance. Because of dissatisfaction expressed by the school board in 1989, the personnel committee decided to freeze plaintiff's salary. The superintendent subsequently recommended to the school board that plaintiff's contract not be renewed for five reasons: (1) ineffective communications; (2) lack of consistent ability to work in stressful situations and seek compromise solutions; (3) failure to maintain a cooperative and effective relationship with parents and community members; (4) failure to maintain a cooperative and supportive relationship with administrators and the Board of Education; and (5) ineffective educational leadership. After a special meeting on March 26, 1990, the school board resolved not to renew plaintiff's contract "for the reasons

* Circuit judge, sitting on the Court of Appeals by assignment.

stated in Superintendent Younkman's written recommendation." Plaintiff claimed that upon deposing the school board members, he learned that there was a majority only for the fifth reason stated in the superintendent's recommendation, "ineffective educational leadership," and that this reason was arbitrary and capricious.

Plaintiff first argues that he should have been able to use the school board members' testimony to prove that the board's decision not to renew his contract was arbitrary and capricious. We disagree. Plaintiff could not use the deposition testimony because a school board only speaks through its minutes and the import of the minutes "cannot be altered or supplemented by parol testimony." *Travener v Elk Rapids Rural Agricultural School Dist*, 341 Mich 244; 67 NW2d 136 (1954).

Plaintiff argues that *Travener* is not applicable because the Legislature amended MCL 380.132; MSA 15.4132 to include subsection (3), which states in relevant part: "a notification of nonrenewal of contract of a person described in this section may be given only for a reason that is not arbitrary and capricious." He argues that this addition overrules the previous case law because in order to look at the reasons for a school board's decision, one must go beyond the minutes of their meetings and resolutions. We disagree. Although a court must look at evidence beyond the board's minutes and resolutions, *Travener* holds that a board's actual resolutions may not be altered by parol evidence. Although the 1979 amendment puts in place additional due process safeguards for school administrators, it does not change the scope of review of a board's resolution. Moreover, the house bill legislative analysis for House Bill 4163, which became 1979 PA 183, the act incorporating the amendment, confirms that the purpose of the amendment was not to change the scope of review. The minutes of the school board meeting are not included in the trial court record. In addition, at oral argument counsel conceded that the minutes of the school board meeting did not create a fact question as to the arbitrariness of defendants' actions. Rather, it was the inadmissible deposition testimony upon which plaintiff relied. Thus, plaintiff has failed to show that there is a genuine issue of fact as to the arbitrariness of defendants' actions.

Plaintiff next argues that the trial court impermissibly made findings of fact in order to grant defendants' motion for summary disposition. He argues that an issue of fact existed as to whether the school board's decision not to renew his contract was arbitrary and capricious because he maintains that he had improved his performance by responding to the superintendent's recommendations. We disagree. The trial court did not make any factual conclusions but, rather, held that plaintiff had failed to present any evidence to show that the measures he took to follow the recommendations were considered satisfactory by the superintendent. More importantly, a satisfactory response to the superintendent's recommendations would have had no apparent bearing on the reasons for defendants' decision not to renew plaintiff's contract. Defendants, independently of the superintendent's recommendation for nonrenewal, determined that plaintiff had not satisfactorily done his job as principal. Although defendants cite to the superintendent's recommendation for nonrenewal as the basis of the nonrenewal, their decision was based on an independent finding that plaintiff had failed to properly perform his job for the five separate reasons that were listed on the superintendent's recommendation. Since plaintiff has not shown any connection between a successful response to the superintendent's

recommendations for his improvement and defendants' resolution not to renew his contract, the trial court properly granted defendants' motion for summary disposition.

Affirmed.

/s/ Myron H. Wahls
/s/ William B. Murphy
/s/ Charles D. Corwin