SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4135-14T2

IN THE MATTER OF THE REVOCATION OF THE CERTIFICATE OF CRAIG BELL BY THE NEW JERSEY STATE BOARD OF EXAMINERS.

Argued October 3, 2017 – Decided December 19, 2017

Before Judges Fisher, Sumners and Moynihan.

On appeal from the Commissioner of Education, Docket No. 5-5/14A.

Samuel J. Halpern argued the cause for appellant.

Kathryn E. Duran, Deputy Attorney General, argued the cause for respondent (Christopher S. Porrino, Attorney General, attorney; Melissa Dutton Schaffer, Assistant Attorney General, of counsel; Beth N. Shore, Deputy Attorney General, on the brief).

PER CURIAM

The Commissioner of Education upheld the decision of the State Board of Examiners revoking the substitute teaching certificate of Craig Bell due to his unbecoming conduct. The Board adopted the factual findings and recommendation by an

Administrative Law Judge (ALJ) who conducted an evidentiary hearing. The ALJ determined Bell engaged in unbecoming conduct when he arranged to meet a middle school student on a Sunday, drove her to a park, kissed her and sought to have sex with her. Bell contends the Commissioner's decision was against the weight of the evidence, the ALJ's off-the-record remarks demonstrated his impartiality, and the penalty was excessive or inconsistent with the theory of progressive discipline. Having reviewed the record and based upon our standard of review, we affirm.

In October 2004, the Willingboro Board of Education hired Bell as a long-term substitute physical education teacher assigned to a middle school. At some point, he became involved in an inappropriate relationship with P.P., a fourteen-year-old, seventh-grade student at the school.

According to P.P., who was twenty-two years old at the time of the hearing, Bell made flirtatious comments to her, which led to them exchanging private notes and telephone numbers. On Sunday, January 16, 2005, P.P. and Bell spoke on the telephone to arrange to meet that late morning. Bell drove to a location near P.P.'s home. After P.P. got into Bell's vehicle, he drove to a nearby park. Moments later, P.P. maintains they kissed each other on the lips and with open mouths. She was not sure if Bell grabbed her, but believed he may have touched her when they were kissing. When

she noticed that Bell had unzipped the fly to his pants, she became scared because he was going further than she desired. She immediately exited the vehicle and walked home. P.P. admitted that she could not recall every detail about the incident because it occurred eight years before her testimony.

It was not until the next school day, two days later,[1] when P.P. spoke with school guidance counselor, Cheryl Alston-Jones, that P.P. told anyone what occurred. Through Alston-Jones' encouragement, P.P. then told her foster mother, R.C., what had happened. P.P. subsequently reported the incident to the local police, the Burlington County Prosecutor's Office, and the dean of her school.

Three days after the incident, school district officials confronted Bell at the middle school with P.P.'s allegations. Bell denied meeting P.P. and kissing her. In fact, he could not recall where he had been the day and time of the incident. Bell revealed for the first time, however, that he previously received private notes from P.P.[2] The officials were unpersuaded by Bell's denial, and were dismayed by his calm demeanor and his claim that "he was a favorite of the girls at the school." They told Bell he was

[1] School was closed Monday, the day after the incident, due to Martin Luther King, Jr. Day.

[2] One note written by P.P. to Bell detailed that one of her classmates admired Bell and wanted to get together with him.

terminated and he immediately left the school. Bell returned five minutes later claiming that he now recalled he was at a campground in Pomona the past weekend, and could not have met with P.P. at the time she claimed. Unmoved by Bell's delayed recollection, the school officials did not change the decision to terminate Bell.

At the hearing, Bell reiterated his claim that he was not in Willingboro the day of the alleged incident because he was in Pomona from Saturday, January 15, until the evening of Sunday, January 16. His alibi was supported by the testimony of William Malave, the brother of his live-in fiancée. Yet, a mere eight months earlier, Bell had certified in his interrogatory answers that he could not remember where he was that weekend. Moreover, Bell's bank statement showed that he made cash withdrawals in Hammonton at 7:20 p.m. on January 15, when he and Malave were supposedly in Pomona, and in Willingboro at 11:05 a.m. on January 16, around the time P.P. claims she was with Bell in Willingboro. Pomona and Willingboro are more than sixty miles apart. Bell also contended that he never had any telephone contact with P.P. However, R.C. testified that, several days prior to the incident, an older man had telephoned her house asking for P.P., and the police told her that a telephone call was placed to her home from Bell's cell phone number.

Following the four-day hearing, the ALJ issued a thirty-page initial decision on November 18, 2013, finding that Bell committed unbecoming conduct.[3] The ALJ determined that despite some inconsistencies in statements authored by those investigating the incident but not reviewed by P.P., and the eight-year gap between the incident and P.P.'s testimony, P.P.'s overall testimony was credible and corroborated by R.C., Alston-Jones and the Prosecutor's Office investigation. The ALJ also determined that Bell's bank records undermined his alibi, and in turn, his and Malave's credibility regarding Bell's whereabouts on the morning of the incident. Finding that "Bell went well above and beyond innocent interaction [with P.P.] and, in the process, he overstepped his authority, position as a teacher to a very large and totally unsavory degree[,]" the ALJ concluded revocation of Bell's substitute teaching certificate was warranted.

The Board adopted the ALJ's findings and recommendation in its entirety and issued an order revoking Bell's certificate. Bell filed exceptions with the Commissioner. The Commissioner, noting there was "nothing in the record that would suggest that the ALJ's

[3] Although the school district promptly reported Bell's termination to the Board, for reasons that are not clear in the record, the district did not respond to the Board's several requests for additional information, and the Board did not seek to revoke Bell's substitute teaching certificate until December 2011.

credibility findings were inappropriate and, in fact, agree[ing] with same[,]" affirmed the Board's decision. We agree.

Our review of the decision of the Commissioner is limited to determining:

> (1) whether the agency's action violated the legislative policies expressed or implied in the act governing the agency; (2) whether the evidence in the record substantially supports the findings on which the agency's actions were premised; and (3) "whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors."
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> [Barrick v. State, Dep't of Treasury, 218 N.J. 247, 260 (2014) (quoting In re Carter, 191 N.J. 474, 482 (2007)).]

Bell's argument that the Commissioner's decision is not supported by credible competent evidence is without merit. The ALJ's factual findings, which the Commissioner adopted, are supported by substantial credible evidence as set forth in his final agency decision. See In re Stallworth, 208 N.J. 182, 194 (2011).

Bell further contends that, even if the record supports the finding of unbecoming conduct, revocation of his substitute teaching certificate is unwarranted. We disagree. The infractions of telephone contact with P.P., meeting with P.P. outside of regular school hours, kissing P.P., and unzipping the fly to his

pants, are sufficiently severe to revoke his certificate, without following progressive discipline. See id. at 196-97; see also In re Herrmann, 192 N.J. 19, 33-34 (2007). Moreover, the penalty is not so harsh as to shock our sense of fairness. In re Carter, 191 N.J. 474, 484 (2007).

Finally, Bell's contention that the ALJ engaged in conduct suggesting the ALJ was biased in favor of the Burlington County Prosecutor's Office was not preserved for appeal. Bell contends that the ALJ made off-the-record remarks that he previously worked in the Prosecutor's Office and that he would not discount the credibility assessment of the Prosecutor's Office detective who testified concerning the investigation of P.P.'s complaint. He also questions the ALJ's fairness and impartiality due to the ALJ's comments on the record characterizing Alston-Jones' testimony as dubious despite ultimately finding her credible, as well as the ALJ's solicitous treatment of P.P. even though she failed to obey subpoenas.

Since these arguments were not raised before the ALJ nor the Board, they will not be considered on appeal because they do not involve jurisdictional issues or matters of great public interest. See Zaman v. Felton, 219 N.J. 199, 226-27 (2014). Moreover, as to the ALJ's alleged off-the-record comments, there is no record upon which we can consider for appellate review.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION