

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

March 20, 2015

To: Ms. Ruth Falls-Miller, 1 Ashleigh Lane, Pooler, Georgia 31322

Case Number: _____ Lower Court: _____ County Superior Court

Court of Appeals Case Number and Style: _____

Your document(s) is (are) being returned for the following reason(s).

- There is no case pending in the Court of Appeals of Georgia under your name.
- A Notice of Appeal is filed with the clerk of the trial court and not with the Court of Appeals of Georgia. See OCGA §5-6-37. Once the trial court clerk has received and filed the Notice of Appeal, the trial court clerk will prepare a copy of the record and transcripts as designated by the Notice of Appeal and transmit them to this Court. Once the Notice of Appeal is docketed in the Court of Appeals of Georgia, a Docketing Notice with the Briefing Schedule and other important information is mailed to counsel for the parties or directly to the parties, if the parties are representing themselves. You do not need to provide this Court with a copy of the Notice of Appeal you filed with the superior court.
- The Motion for Reconsideration must include a proper Certificate of Service. A Certificate of Service must show service to the opposing counsel and contain the counsel's full name and complete mailing address. The opposing counsel must actually be served with a copy of your filing.
- An Application for Writ of Habeas Corpus should be filed in the superior court of the county in which you claim you are illegally detained. An appeal from a denial of an Application for Writ of Habeas Corpus is to the Supreme Court and not the Court of Appeals.
- An Application for Writ of Mandamus should be filed in the superior court of the county official whose conduct you intend to mandate. An appeal from a denial of an Application for Writ of Mandamus is to the Supreme Court and not the Court of Appeals.
- Your appeal was disposed by opinion (order) on _____. The Court of Appeals _____ . The remittitur issued on _____ divesting this Court of jurisdiction. The case decision is therefore final.
- Your mailing/documents indicate that you intended to file your papers in another court rather than the Court of Appeals of Georgia. The address of the Clerk of the _____ is: _____
- If an attorney has been appointed for you and you are concerned with the representation provided by that attorney, you should address that issue to the trial court. As long as you are represented by an attorney, you cannot file pleadings on your own behalf. Your attorney must file a Motion to Withdraw as Counsel and it must be granted, before you can file your own pleadings in this Court.
- A request for an out-of-time appeal should be made to the trial court from which you are appealing. If your motion is denied by the trial court, you can file an appeal of that decision by filing a Notice of Appeal with the clerk of the superior court.

IN THE COURT OF APPEALS
STATE OF GEORGIA

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RUTH FALLS-MILLER,
APPELLA NT

VS.

SAVANNAH-CHATHAM COUNTY
PUBLIC SCHOOL BOARD

FILED IN OFFICE
MAR 16 2015
COURT CLERK
CLERK COURT OF APPEALS OF GA

APPEAL NO. A15D0261

MOTION FOR RECONSIDERATION PURSUANT TO RULE 37

Pursuant to Court of Appeals Rule 37, Appellant timely files Motion for Reconsideration, and hereby moves this Court to reconsider its March 3, 2015 decision to dismiss appellant's Application for Discretionary Appeal. This application was written to replace the appellant's application of her Notice of Appeal filed which was timely filed with the Court on September 3, 2014 – 30 days within the time period that the order from the trial court was entered into the record. A copy of the Court's dismissal decision for the Notice of Appeal filed on September 3, 2014 is attached here as Exhibit "A." [A copy of the appellant's Application for Discretionary Appeal is on file with the Court]. This motion addresses issues which serve to explain the appellant's reasons for filing a Notice of Appeal on September 3, 2015 within the 30 day time period of the trial court's order (Exhibit "B"), followed by the appellant's filing of her Application for Discretionary Appeal on February 7, 2015. The record shows that the trial court judge while providing the appellant with the order, no notice of the appeal procedures were made available to the appellant as what occurs at each level of the administrative hearing process involving an appeal of a decision by a local school under the Georgia Fair Dismissal Act [O.C.G.A. § 20-2-1160]; the transmission of the certified court record, was not completed and

timely transmitted by the trial court to the Court which resulted in the timely docketing of the appellant's more than four months after the appellant filed her Notice of Appeal, an appeal which was docketed on January 7, 2015; and the Court's untimely notification to the appellant within 30 days' of its receipt of the appellant's improperly filed Notice of Appeal which contributed to the appellant's timely response in perfecting the properly appeal.

I. TIMELY FILING OF APPEAL

The trial court's order dismissing the appellant's Notice of Appeal was received by the appellant on January 21, 2015. As is customary in administrative hearings, the parties upon receipt of the trial court's order or decision are notified of the appeal procedures should either party desire to appeal the final decision. As previously stated, the appellant was not provided such notice of the proper statutory appeal procedures to follow. Such information normally considered as part of the rules of a trial court appears to have been considered by the trial court judge as given legal advice to the appellant, when in fact such notice of the appeal procedures has at other levels of the administrative hearing process been provided to appellant undergoing hearings relative to the Georgia Fair Dismissal Act (O.C.G.A. § 20-6-1160). Despite searching for the rules of this trial court, without success prior to the hearing on the appellant's appeal being heard, no such rules were available or offered. Thus when the trial court sent a copy of its order to its' order or decision, minus the notice of the appeal procedures, the appellant sent a Notice of Appeal to the Court as opposed to an Application for Discretionary Appeal.

The Court has decided in cases of the past, that when a pro se timely files an appeal and it fails to meet all the criteria required by the Court in its acceptance of an appeal, provided it has

been timely filed, the pro se is given leave to amend his appeal or revise it according to those requirements specified by the Court [Sawyer v. City of Atlanta, 257 Ga. App. 324, 148, 571 S.E.2d 146 (2002)]. This position of the Court was further pronounced in the case of Evans v. State, 235 Ga. App. 877, 510 S.E.2d 619 (1999), where in the Court held that under O.C.G.A. § 5-6-37, such an error of timely but misfiling an appeal “provides no basis for dismissing” the appeal of an appellant.

II. DELAYED TRANSMITTAL OF CERTIFIED COURT RECORD

Considering that the appellant’s notice of appeal and the certified court, along with the transcript had been filed with the Court [Ga. Ct. App. R. 11(a)], the appellant’s appeal should have been docketed in or around September 3, 2014, not four months later on January 9, 2015. Had not the Court received the entire record from the trial court, the rules of the court allows for the parties to be notified and allowed to request that the case be remanded to the trial court “...until such time as the record is so prepared and delivered to the Court of Appeals” [Ga. Ct. App. R. 11(d)]. The appellant’s due process rights were violated by the trial court owing to its failure to provide notice to the appellant of the need for an extension of time required to file the record with Court (Rule 12 of the Court of Appeals). Also, the Court has ruled that “if for any reason the clerk is unable to transmit the record and transcript within the time hereinbefore required, or when an extension of time was obtained under section 6 (Code § 6-804) hereof, he (clerk) shall state in his certificate the cause of the delay, and the appeal (submitted by appellant) shall not be dismissed [Mae Carmack v. The Oglethorpe Company, 114 Ga. App. 512, 514, 151 S.E.2d 799 (1966)].

III. COURT'S LATE FILING OF APPELLANT'S APPEAL

On September 3, 2014, within 30 days from the day the order was entered into the record, the appellant filed a notice of appeal. As for the reasons cited above, a notice of appeal was submitted rather than an Application for Discretionary Appeal. Regardless of the fact that the proper appeal was not filed by the appellant, the Court, rather than filing the appeal on that day, as required by Rule 1.2.4 to docket the appeal only when the appeal, record and transcript have been filed with clerk's office. Relative to the appeal filed by the appellant, be it improper or not, the Court waited more than 120 days before docketing the appellant's appeal on January 9, 2015. Twelve days later, the court notified the appellant the appeal had been dismissed for lack of jurisdiction. Even with the wrong appeal submitted by the appellant, had the Court notified the appellant within the 30 day time period that the appeal had been dismissed, the appellant could have filed a letter requesting an extension of time to file an application for discretionary appeal before the last day of filing. Also, had such a dismissal notice been provided to the appellant with 30 days upon its receipt by the Court, the appellant could have filed an Application for Discretionary Appeal within the time fixed by applicable rules. Such a delay in docketing the appellant's appeal was beyond the control of the appellant, yet, the Court sited the appellant for being more than 176 days late in filing her appeal – such reasoning and misconstruing of the material facts of this case lead to the appellant being untimely in filing her appeal, when in effect, her due process rights of being denied notice of the extension of time or the trial court's delay in transmitting the record to the Court.

CONCLUSION

Appellant has been denied fundamental due process, the right for her appeal which could set a precedent in matter where appellants are wrongfully denied approval of their affidavits of indigence by local school boards which exercise gross abuse of their discretion leading to the denial of an appellant's due process rights to have the material facts relative to her indigent status to be fairly and justly determined. This Court is asked to reverse the dismissal of the appellant's Application for Discretionary Appeal based on past appeals timely filed, and grant the appellant leave to file her appeal which could set a precedent for future cases relative to the wrongful denial of affidavit of indigence.

This ___ day of March, 2015

BY: Ruth Falls-Miller
Ruth Falls-Miller, Pro Se
1 Ashleigh Lane
Pooler, GA 31322-3921
(912) 323-3880

IN THE COURT OF APPEALS
STATE OF GEORGIA

RUTH FALLS-MILLER,
APPELLANT

VS.

SAVANNAH-CHATHAM COUNTY
PUBLIC SCHOOL BOARD

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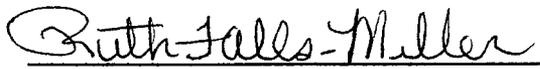
APPEAL NO. A15D0261

CERTIFICATE OF SERVICE

I, Ruth Falls-Miller, appellant pro se, hereby certify that on March 12, 2015, I served copies of this Motion for Reconsideration by way of U.S.P.S. first class postage paid mail on the Court of Appeals of Georgia to the address listed below:

Court of Appeals of Georgia
Suite 501
47 Trinity Avenue
Atlanta, GA 30334

This ____ day of March, 2015

BY: 
Ruth Falls-Miller, Pro Se
1 Ashleigh Lane
Pooler, GA 31322-3921
(912) 323-3880

IN THE COURT OF APPEALS OF GEORGIA
STATE OF GEORGIA

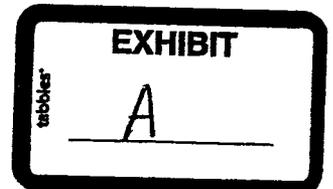
RUTH FALLS-MILLER)
Appellant)
Vs.) Civil Action
) No.: CV13-1120-AB
)
SAVANNAH-CHATHAM COUNTY)
PUBLIC SCHOOL BOARD)

NOTICE OF APPEAL

Notice is given that Ruth Falls-Miller (Appellant Pro Se) in the above matter hereby appeals to the Court of Appeals of Georgia from the judgment of the trial court entered on the 15 day of August, 2014, yet received by the appellant by mail on the 23 of August 2014, affirmed the decision of the Savannah-Chatham County School Board to deny appellant's affidavit of indigence (Exhibit 1).

The clerk shall omit nothing from the record on appeal. A transcript of evidence and all proceedings, including a transcript of the oral arguments presented by the appellant and the attorney for the appellee that were heard at the hearing before the Superior Court in the above referenced case be filed for inclusion in the record on appeal.

The Court of Appeals, rather than the Supreme Court, has jurisdiction of this appeal because the issue involved in this appeal is the failure of the trial court to adhere O.C.G.A. § 20-2-1160 requiring the trial court to confine or base its decision on the certified record. Also, the trial court, in doing so, misconstrued the facts of the case as evident in asserting that the Georgia State Board of Education (BOE) affirmed the decision of the Savannah-Chatham County School Board to deny the appellant's affidavit of indigence, when in fact the BOE sustained the local school board's decision (Exhibit 2). In addition, aside from the trial court claiming that it reached its decision under the "any evidence standard," the trial court erred in failing to identify any findings of fact or conclusion of law from the record in support of its order to affirm the decision of the local school board. The trial court demonstrated an erroneous conclusion of the evidence in its claim that its review and decision to affirm the local school board's decision was



based under the "any evidence standard", however, here again, the trial court failed to identify any findings of fact from the record in support of its order to affirm the decision of the local school board. In effect, the trial court failed to provide a de novo review of the case and subsequently misconstrued the BOE decision, the court proved negligent in addressing the enumeration of error cited in the appellant's appeal.

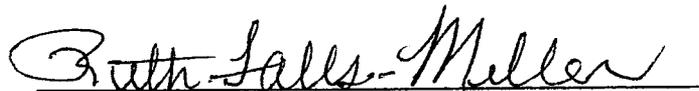
Also, as cited by the enumeration of errors cited by the appellant in her appeal, the local school board proved grossly abusive of its discretion, and arbitrary and capricious, in failing to offer "any evidence" to challenge or disprove appellant's testimony and documents presented at the local school board hearing on the affidavit. Plus, claims made by the appellee's attorney during oral arguments that appellant's spouse testified at the hearing that he had a full time job and the appellant owned a house, not only were such claims untrue and not part of the certified record, the appellant objected to such claims in the hearing before the trial court. To what extent such false claims had on the trial court's decision to affirm was not stated, nor addressed in the order.

The appellant recognizes that Georgia state law (Hood v. Rice, 120 Ga. App. 691, 693, 172 S.E.2d 172 (1969)) gives county school boards a broad range of discretion in the management and control of policies governing local school districts. Notwithstanding this fact, the appellant's appeal asserts that the local school board failed to exercise that right by not putting into place policy procedures for conducting a fair, objective review and traverse of the appellant's documented evidence and testimony supporting her claim of indigence. The lack of such policy procedures failed to allow for the timely issuing and response to appellant's subpoena of witnesses and request for the production of documents. Also, the appellant stated in her appeal that owing to such the lack of policy process procedures for the hearing on the affidavit, the local school board grossly abused its discretion, and arbitrary and capriciously adopted an erroneous legal theory in reaching its decision to deny approval of the appellant's affidavit, in turn the appellant's due process rights were denied by the local board as cited in her appeal such was a violation of state law. When such gross abuses of discretion leads to arbitrary and capricious actions of local school boards that result in violating the law with respect to denying the appellant's her due process rights the courts can intervene (Colston et. al. v. Hutchinson et al.

208 Ga 559, 67 S.E.2d 763, (1951)). Relative to error cited in the appellant's appeal, the trial court erred in failing to address this issue.

Owing to the trial court's erroneous conclusion of the evidence, in overlooking the facts of the case based on the certified record, misconstruing the BOE's decision to sustain rather than affirm, failing to address the enumeration of errors or identify any findings of fact or conclusion of law in support of its decision to affirm the local school board's denial of the appellant's affidavit, the appellant argues that the trial court's decision was contrary to the evidence or simply without supporting evidence. In accordance with previous cases, where trial court decisions have been contrary to the evidence (Beck v. State, 149 Ga. App. 571, 574, 254 S.E.2d 891 (1979)), the appellant moves that the Court of Appeals closely under take a de novo review of the case in reaching a decision to reverse the trial court's order.

The Superior Court, being the trial court of record, itself, committed errors aforementioned with respect to Code Section 20-2-1160. Such an appeal of the trial court's order, in terms of how it was derived, are not reserved to the Supreme Court of Georgia pursuant to Article VI, Section VI, Paragraphs II and III of the Constitution of the State of Georgia, but rather to the Georgia Court of Appeals (O.C.G.A. § 5-6-35(a)(1)).



This the 3rd day of September, 2014

Ruth Falls-Miller
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Phone: 1-912-323-3880

CC:

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Phone: 1-912-238-5100

IN THE SUPERIOR COURT OF CHATHAM COUNTY
EASTERN JUDICIAL CIRCUIT
STATE OF GEORGIA

2014 AUG 15 P 4:03

CJA
DEP. CLK. SUPERIOR CT.
CHATHAM COUNTY, GA.

Ruth Falls-Miller,)

Appellant,)

v.)

Savannah-Chatham County Board of)
Education,)

Appellee.)

Civil Action No. CV13-1120-AB

ORDER

This case is presently before the Court on the notice of appeal of the final decision released by the Georgia State Board of Education ("BOE"). Having reviewed and considered the relevant pleadings, the record and the applicable law, the Court hereby AFFIRMS the BOE's decision.¹

Following her termination from employment by the Savannah-Chatham County Board of Education ("school board"), appellant requested a copy of the termination hearing transcript to appeal the termination. Appellant filed an affidavit of indigence in connection with the request. Two hearings were held on the matter of her alleged indigence. Upon review of the evidence, the school board denied her request for waiver of the cost for the transcript. Ms. Falls-Miller then appealed the denial to the BOE. The BOE subsequently affirmed the school board's

¹ This appeal came before the Court for oral arguments on August 13, 2014, with Ms. Falls-Miller appearing pro se and attorney Lester B. Johnson, III appearing on behalf of the Savannah-Chatham County Board of Education. The Court notes that it denied Ms. Falls-Miller's request to have her husband Dr. Howard Miller participate in the instant hearing as he is not a party to the appeal or an attorney of record representing her. According to the certified record, Dr. Miller appeared as a fact witness at the administrative hearings before the school board, but he is not a party to the proceedings. Moreover, no testimony was permitted at the hearing before this Court because this Court may not re-litigate the facts and is confined to review only the certified record under the "any evidence" standard.

EXHIBIT

B

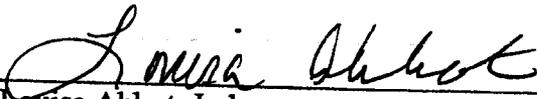
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decision. Ms. Falls-Miller then filed an appeal to Superior Court to challenge the BOE's decision. Thus, the sole issue before the Court is Ms. Falls-Miller's appeal of the BOE's decision to affirm the school board's denial of her request for a copy of the termination hearing transcript at no cost to her. The issue of the underlying termination is not a matter before this Court.

O.C.G.A. § 20-2-1160 (e) provides in pertinent part: "[n]either the state board nor the superior court shall consider any question in matters before the local board nor consider the matter de novo, and the review by the state board or the superior court shall be confined to the record." In addition, this Court's review is under the "any evidence" standard. *See King v. Worth Cnty. Bd. of Educ.*, 324 Ga. App. 208, 749 S.E.2d 791, 793 (2013) ("Not unlike the State Board and the superior court, this Court as an appellate body applies the 'any evidence' standard of review to the record supporting the initial decision of the Local Board.").

Upon review of the certified record under the any evidence rule, the Court finds that the denial of Ms. Falls-Miller's request for a transcript at no cost was supported by the evidence. Accordingly, the Court AFFIRMS the BOE's decision.

SO ORDERED, this 15th of August, 2014.


Louisa Abbot, Judge
Superior Court of Chatham County
State of Georgia, EJC

cc: Ruth Falls-Miller
Lester B. Johnson, III, Esq.