

ORIGINAL

IN THE SUPREME COURT OF OHIO

JOHN FRESHWATER,	)	CASE NO. 12-0613
	)	
Appellant,	)	
	)	
v.	)	
	)	
MOUNT VERNON CITY SCHOOL	)	<b>On Appeal from the Court of Appeals of</b>
DISTRICT BOARD OF EDUCATION,	)	<b>Knox County, Ohio, Fifth Appellate</b>
	)	<b>District / Case No. 11-CA-000023</b>
Appellee.	)	

APPELLEE MOUNT VERNON CITY SCHOOL DISTRICT BOARD OF EDUCATION'S MEMORANDUM IN OPPOSITION TO APPELLANT'S MOTION FOR RECONSIDERATION

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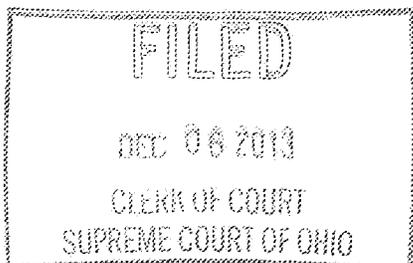
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## MEMORANDUM IN OPPOSITION

### I. INTRODUCTION

Unsurprisingly, Freshwater does not like this Court's decision. He moves for reconsideration, but in doing so fails to present any new arguments, explanations, or theories. Again and again he tells this Court he did not understand the directions, did not intend to disobey, and was not insubordinate. But the Court has heard this all before – in Freshwater's merit and reply briefs. The Court reviewed the record, assessed the evidence, and rejected Freshwater's claims. Because Freshwater merely rehashes his previous arguments and fails to present any novel perspectives, this Court should deny his Motion for Reconsideration ("Motion").

At the outset, Freshwater declares that the Court distorts the factual record, rewards oppressors, and delivers injustice to religious teachers across the state. Motion, p. 3-4. As examples, he asserts once more that he complied with all book-related directives, did not intend to willfully disobey, and, in any event, his failure to comply was the District's fault. *Id.*, pp. 4-9. This Court, however, devoted 22 pages to reviewing the voluminous record and explaining its assessment of the evidence. Slip Opinion, ¶ 2. Freshwater's allegations are not only disrespectful, they are incorrect.

Moreover, motivation is hardly relevant to insubordination or a refusal to obey. Freshwater asserts that he displayed the *Jesus of Nazareth* text and the *Oxford Bible* to "retain his source of inspiration in his personal area." Motion, p. 7. Further, he alleges he was bewildered by the directions, threatened by them, and sought to mitigate their effects. *Id.*, pp. 8-9. Aside from the Court's explicit determination that Freshwater checked out the books to make a point, an employee's motive for disobedience is irrelevant to a finding of insubordination. Any fired

employee can surely claim he had the best motivations to disobey a valid order, to ignore a supervisor's reasonable directive or command. No termination could be upheld if a teacher could avoid insubordination findings by simply claiming to misunderstand instructions or be bewildered by them.

Finally, Freshwater argues that the Court's decision forever alters the landscape of educator employment law. Instead, this Court merely provides one example of good and just cause for termination – insubordination, including willful disobedience. The Court does not limit terminations for good and just cause to any one fact pattern. It does not require, or even permit, terminating teachers for their personal beliefs. It does not require teachers to divine unspoken directives or guess as to what an administrator's instructions might be. This Court simply holds that a teacher's employment, much like that of any other employee, can be terminated for insubordination, and clarifies that it means “willful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued by a school or by an administrative superior.” Slip Opinion, syllabus and ¶ 83. Freshwater's overbroad and anxious interpretation mimics the complaint of every other unsuccessful plaintiff – the court's legal holding does not favor me and those like me.

## **II. STANDARD OF REVIEW FOR MOTIONS FOR RECONSIDERATION**

The Supreme Court Rule of Practice 18.02(B) (“Rule”) authorizes the Court to review motions for reconsideration to “correct decisions which, upon reflection, are deemed to have been made in error.” *State ex rel. Shemo v. City of Mayfield Heights*, 96 Ohio St.3d 379, 2002-Ohio-4905, 775 N.E.2d 493, ¶ 5; *State ex rel. Huebner v. West Jefferson Village Council*, 75 Ohio St.3d 381, 383, 662 N.E.2d 339 (1995). The Rule, however, strictly forbids re-arguments. Ohio S. Ct. Prac. R. 18.02 (B); *State ex rel. Shemo*, 96 Ohio St. 3d at ¶ 9. For example, in *State*

*ex rel. Shemo*, this Court denied, in part, respondents' motion for reconsideration, because respondents simply rehashed their previous contentions. *Id.* at ¶ 9 ("First, respondents' attempted reargument of this contention is not authorized by our Rules of Practice. . . . Respondents previously asserted [this argument] in their merit brief.")

Similarly, Freshwater's Motion simply regurgitates his previous arguments. In his brief, Freshwater tells the Court that he was not insubordinate, that he complied with all orders and clear directives, and that his motives were noble and his cause was just. Motion, pp. 4-8, 9-11. But none of this is new -- Freshwater already made these claims in his merit and reply briefs. For example, Freshwater already argued that he fully complied with Board policy and all clear directives. Appellant's Merit Brief, p. 19; Appellant's Reply Brief, pp. 2-3, 9. He already told this Court that he failed to remove the books and posters because the directives were not clear enough for him. *Id.* at 13. Freshwater already claimed that that the Bible verses were obscured from view, that others were permitted to have similar items, and that he was not insubordinate. *Id.* at pp. 13-15. Because a motion for reconsideration cannot ground itself in arguments already presented to, and considered by, this Court, Freshwater's motion should be denied.

In the final pages of his brief, Freshwater invites this Court to admit its decision obliterates Ohio teacher employment laws. Instead of "good and just cause," argues Freshwater, this Court's holding permits teachers to be fired for failing to comprehend vague and illegal instructions. Motion, p. 12. This also is not a novel argument -- it is nothing but Freshwater's extreme interpretation of the Court's holding. In truth, the Court has not "drastically lower[ed] the standard" for teacher termination in Ohio. Motion p. 1. Insubordination is not a novel basis for teacher discipline, including termination. *See, e.g.*, Slip Opinion, ¶ 82, citing Annotation, *What Constitutes "Insubordination" as Ground for Dismissal of Public School Teacher*, 78

A.L.R.3d 83, 87 (1977). Freshwater's contention that teachers should only be terminated "for serious misconduct involving intentional, immoral acts" has no basis in current law. Motion p. 2. The Ohio Teacher Tenure Act, contained in Ohio Revised Code Chapter 3319, governs the employment of Ohio public school teachers. Specifically, with respect to termination, R.C. 3319.16 provides, "[t]he contract of any teacher employed by the board of education of any \* \* \* school district may not be terminated except for good and just cause." This Court defined "good and just cause" as a "fairly serious matter." *Hale v. Bd. of Edn.*, 13 Ohio St.2d 92, 98-99, 234 N.E.2d 583 (1968).

In its opinion, the Court reviewed the "good and just cause" standard and found that such cause also includes insubordination and willful disobedience of an administrator's reasonable rules, regulations, or orders. Slip Opinion, ¶ 83. Freshwater's displeasure with, and interpretation of, this finding is unsurprising, but it hardly merits a reconsideration of his already rejected arguments.

### **III. ABUSE OF DISCRETION STANDARD**

A court of appeals reviews a district's decision to terminate a teaching contract under an abuse of discretion standard. *Graziano v. Bd. of Edn.*, 32 Ohio St.3d 289, 294, 513 N.E.2d 282 (1987). Absent such abuse, a court of appeals may not substitute its judgment for that of the trial court. *Id.* Abuse of discretion is not a simple mistake; instead, it is a "perversity of will, passion, prejudice, partiality, or moral delinquency." *State ex rel. Commercial Lovelace Motor Freight, Inc. v. Lancaster*, 22 Ohio St.3d 191, 193, 489 N.E.2d 288 (1986). Such abuse can be found only where there exists no evidence upon which the court or commission could have based its decision. *Id.*; *see also State ex rel. Rouch v. Eagle Tool & Machine Co.*, 26 Ohio St.3d 197, 215, 498 N.E.2d 464 (1986).

Freshwater's claims have been heard by the original referee, the trial court, the Fifth District Court of Appeals, and now, this Court. Each judicial body affirmed the termination, finding that Freshwater was defiant and insubordinate. As he did in his merit and reply briefs, Freshwater states again that the orders were not clear. Yet, after having been told by his superior that "Bibles and other religious DVDs, videos, etc. should also be placed out of sight and access of students by [April 16, 2008]," Freshwater went to the school library, checked out *Jesus of Nazareth* and the *Oxford Bible*, and put them, not in a drawer or even on his "messy" and "off-limits" desk, but on a lab table in his science classroom. He claims he did so because he needed the books for inspiration should the school take his Bible. Motion, p. 6. In reality, there was never a threat of confiscation. Principal White clearly stated that Bibles should be "placed out of sight and access of students."<sup>1</sup> His actions simply cannot be characterized as "good faith," given that he was told to what to do on several occasions, was told he would be insubordinate if he refused, and because he willfully disobeyed the order by adding two new religious books to his classroom lab table – not "out of sight and access of students." Placing a second Bible and religious text on a lab table after having been told his religious display impermissibly promoted religion in the classroom was neither a mitigation nor necessary for personal inspiration – it was a flagrant thumbing of his nose. As the referee, who was present for the testimony and in the best position to weigh credibility, found, "it is abundantly clear that what may have begun as confusion soon transformed into defiance." Slip Opinion, ¶ 61.

Freshwater has set forth no evidence showing a "perversity of will, passion, prejudice, partiality, or moral delinquency" on the part of any court with respect to his insubordination.

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<sup>1</sup> As was obvious to Judge Lanzinger in her concurring opinion, "merely putting the book into a desk drawer during class time would have sufficed." Slip Opinion, ¶ 101.

Because no court abused its discretion, this Court should uphold Freshwater's termination and deny his Motion.

#### IV. CONCLUSION

Freshwater's Motion should be denied because it is, essentially, an impermissible re-argument of his appeal. This Court, having committed no error and having resolved the appeal solely under R.C. 3319.16, need not address the constitutional issues presented. Slip Opinion, ¶ 5 citing *State ex rel. DeBrosse v. Cool*, 87 Ohio St.3d 1, 7, 716 N.E.2d 1114 (1999) ("Courts decide constitutional issues only when absolutely necessary"). See also, *State ex rel. Essig v. Blackwell*, 103 Ohio St.3d 481, 2004-Ohio-5586, 817 N.E.2d 5; *State ex rel. DeBrosse v. Cool*, 87 Ohio St.3d 1, 716 N.E.2d 1114 (1999); *BSW Dev. Group v. City of Dayton*, 83 Ohio St. 3d 338, 345, 699 N.E.2d 1271 (1998); *Norandex, Inc. v. Limbach*, 69 Ohio St.3d 26, 28, 630 N.E.2d 329, 331(1994).

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing *Appellee Mount Vernon City School District Board of Education's Memorandum in Opposition to Appellant's Motion for Reconsideration* was filed this 6<sup>th</sup> day of December 2013, via regular U.S. mail, postage prepaid upon the following:

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