

E.O.D. 12/31/01

IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

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T. S. SULLIVAN
Sullivan

JANIS MULLINAX
Plaintiff

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v.

No. 5:99CV190

TEXARKANA INDEPENDENT
SCHOOL DISTRICT, ET AL.
Defendants

MEMORANDUM ORDER

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. The Report of the Magistrate Judge which contains her proposed findings of fact and recommendations for the disposition of such action has been presented for consideration. Plaintiff filed objections to the Report and Recommendation. The Court conducted a *de novo* review of the Magistrate Judge's findings and conclusions.

First, Plaintiff argues that the school board had knowledge of Plaintiff's allegations of an illegal motive on the part of the superintendent in recommending her termination. To establish a causal connection between her constitutionally protected activities and the board's decision, Plaintiff must impute Dr. Sullivan's allegedly improper motives to the board by "demonstrating that the board approved both [Dr. Sullivan's] decision and the basis for it." *Beattie v. Madison County Sch. Dist.*, 254 F.3d 595, 603 (5th Cir. July 5, 2001). Assuming the board members had actual knowledge of Plaintiff's allegations regarding Dr. Sullivan's alleged improper motives, Plaintiff has presented no evidence that the board approved the basis for Dr. Sullivan's decision. Moreover, assuming the board did terminate Plaintiff in retaliation for exercising her association and speech

135

rights, "it can escape liability, because it would have terminated her for other reasons," namely the sour weed incident. *Id.* at 604. As held by Magistrate Judge Craven, the board members testified that they would have voted to terminate Plaintiff in the absence of the allegations made in this lawsuit because Plaintiff had endangered the health and safety of the children under her care. Plaintiff has offered no evidence to refute the affidavits of the board members. "Thus, the board's independent reason for her termination shields it from liability under *Mt. Healthy.*" *Id.*

Plaintiff also argues that the six board members voting on Dr. Sullivan's recommendation had not read the entire hearing transcript or exhibits. Plaintiff asserts that the district is liable for the board's actions in "rubber-stamping" Dr. Sullivan's recommendation. The Court first notes that the board members arguably reviewed the record of the Hearing Examiner's recommendation and findings and, according to a recent Commissioner's ruling, were not required "to review every line of every single word that was read or made during a hearing."¹

In *Rios v. Rissotti*, 252 F.3d 375 (5th Cir. May 17, 2001), the Fifth Circuit affirmed the trial court's summary judgment in favor of the defendant. The court discussed the "rubber stamp" exception, which is intended "to prevent employers from insulating themselves from the acts of subordinates." *Id.* at 382. Statements of a non-decision maker become relevant when the ultimate decision maker's action is merely a "rubber stamp" for the subordinate's recommendation. *Russell v. McKinney Hosp. Venture*, 235 F.3d 219, 226-27 (5th Cir. 2000). "If the employee can demonstrate that others had influence or leverage over the official decision maker, . . . it is proper to impute their discriminatory attitudes to the formal decision maker." *Id.* at 226. The plaintiff in *Russell* successfully invoked the "rubber stamp" exception by presenting evidence of significant

¹ Transcript of Board Meeting held on July 20, 1999.

control over the decision maker. Specifically, the plaintiff pointed to evidence demonstrating, among other things, that: (1) One employee had given the decision maker an ultimatum that he would quit if she did not fire the plaintiff; (2) the decision maker's budget was controlled by that employee's father; and (3) the decision maker was afraid of losing her job.

Defendants have presented summary judgment evidence of Dr. Sullivan's constitutional motives in recommending Plaintiff's termination. Even assuming retaliatory intent on the part of Dr. Sullivan, Plaintiff has presented no evidence in this case to invoke the "rubber stamp" exception. The Court is not convinced that Dr. Sullivan had influence or leverage over the school board, the official decisionmakers of TISD.

Finally, Plaintiff objects to the Magistrate Judge's ruling that if neither the board nor the school district is liable, then Dr. Sullivan "cannot be held liable no matter how unconstitutional his motive."² Plaintiff argues the ruling "flies in the face of previous Fifth Circuit decisions."³ Having reviewed the cases cited by Plaintiff and the most recent Fifth Circuit case of *Beattie v. Madison County Sch. Dist.*, 254 F.3d 595, 603 (5th Cir. July 5, 2001), the Court concludes that it is bound by the clear language of *Beattie*. Because the board fired Plaintiff for permissible, constitutional motives independently of Dr. Sullivan's recommendation, "that superseding cause shields [Dr. Sullivan] from liability." *Beattie*, 254 F.3d at 605. ("As we have noted, Acton and Jones did not fire [the plaintiff] directly, but merely recommended her termination to the board, which made the final decision. If Acton and Jones did not cause the adverse employment action, they cannot be liable under § 1983, no matter how unconstitutional their motives.") *Id.*

² Plaintiff's Objections at 5.

³ *Id.*

Plaintiff's objections are without merit. The Court hereby adopts the Report of the United States Magistrate Judge as the findings and conclusions of this Court. Accordingly, it is hereby **ORDERED** that Defendants' Motion for Summary Judgment (Docket Entry # 80) is **GRANTED**.

SIGNED this 29th day of December, 2001.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE

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TEXARKANA INDEPENDENT
SCHOOL DISTRICT, ET AL.

FINAL JUDGMENT

This action came before the Court, Honorable David Folsom, District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Plaintiff Mullinax take nothing and that this lawsuit is DISMISSED WITH PREJUDICE. All motions by either party not previously ruled on are hereby DENIED.

Signed this th 29 day of December, 2001.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE