

2019 IL App (1st) 172226-U
No. 1-17-2226
March 25, 2019

FIRST DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

LINDA RULE,)	Appeal from the Circuit Court
)	Of Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 16 CH 07355
)	
ILLINOIS STATE BOARD OF EDUCATION,)	The Honorable
JAMES T. MEEKS, Board Chair, in his)	Anna Helen Demacopulos,
official Capacity, DR. TONY SMITH,)	Judge Presiding.
State Superintendent, in his official capacity,)	
BOARD OF EDUCATION OF THE CITY)	
OF CHICAGO, a municipal agency, FRANK)	
CLARK, President, in his official capacity,)	
RONALD MARMER, General Counsel, in his)	
official capacity, and ANNE L. WEILAND,)	
Hearing Officer,)	
)	
Defendants-Appellees.)	

JUSTICE WALKER delivered the judgment of the court.
Justice Pierce and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Where a school board terminates a teacher for using corporal punishment, and an appellate court mandates that the board consider if the teacher's conduct was

irremediable and whether the board would terminate the teacher solely on the basis of the use of the corporal punishment, the board's decision to affirm the teacher's termination will not be reversed if the board follows the mandate. The decision of the Board of Education to terminate teacher's employment for the use of corporal punishment was not against the manifest weight of the evidence.

¶ 2 Plaintiff, Linda Rule (Rule), worked as a second grade teacher at Kohn Elementary School (Kohn) in Chicago. After charges of using corporal punishment on her student Lloyd were filed, Rule was recommended for dismissal. The Chicago Board of Education (Board) held a hearing, and Rule was dismissed. Rule's dismissal was reversed by the circuit court, the Board appealed and this court affirmed in part and remanded in part, and mandated the Board (i) to use the analysis found in *Gilliland v. Board of Education of Pleasant View Consolidated School District No. 622*, 67 Ill. 2d 143, 153 (1977), to determine whether Rule's conduct was irremediable, and (ii) whether the Board would support its discharge sanction if it were based solely on the charge of corporal punishment of Lloyd alone. On remand, the Board issued a supplemental opinion and order dismissing Rule which the circuit court confirmed. Rule appealed and argued that the Board failed to comply with this court's mandate, and this court again reversed the Board's decision and remanded the case for proceedings consistent with the first mandate. On the second remand, the Board issued a second supplemental opinion and order terminating Rule, and the circuit court confirmed. Rule now appeals the circuit court's decision, arguing that the Board still did not comply with the first mandate.

¶ 3 We confirm the Board's decision to terminate Rule because it applied the *Gilliland* analysis and found that Rule's conduct was irremediable. The Board also provided sufficient

evidence to support its discharge sanction based solely on the charge of corporal punishment alone.

¶ 4

I. BACKGROUND

¶ 5

A complete statement of the facts of this case can be found in *Rule v. Board of Education of the City of Chicago*, 2012 IL App (1st) 103380-U (*Rule I*). We are only concerned with the instructions given by the appellate court to the Board in both of its remand orders, so we will limit the facts in this order to those which are relevant to this review.

¶ 6

A. RULE I

¶ 7

In *Rule I*, this court ordered the Board to use the analysis outlined in *Gilliland v. Board of Education of Pleasant View Consolidated School District No. 622*, 67 Ill. 2d 143, 153 (1977) by our supreme court to determine whether Rule’s conduct was irremediable:

“There are two kinds of misconduct that may constitute cause for termination of a tenured teacher: (1) irremediable conduct, which is a type of conduct which causes damage to students, the faculty or the school, and could not have been corrected if warnings had been given; and (2) remediable conduct, which could ordinarily be remedied if called to the teacher’s attention. *Gilliland*, 67 Ill. 2d 143, 153 (1977) [sic]. Before terminating a teacher for remediable conduct, the Board must provide the teacher with written notice of those ‘causes which, if not removed, may result in charges.’ In *Gilliland*, 67 Ill. 2d at 153 [sic], our supreme court set forth a two-part analysis as to whether a teacher’s conduct is irremediable: (1) whether the conduct caused significant damage to students, faculty and the school and (2) whether the teacher would not have corrected her

conduct, even if she had been issued a written warning and a period of remediation." *Rule*, 2012 IL App (1st) 103380-U, ¶66.

¶ 8 In addition in *Rule I*, this court also instructed the Board to determine whether Rule's dismissal was proper:

“[A] remand would be appropriate to determine whether the Board would support its discharge sanction if it were based solely on the charge of corporal punishment of Lloyd alone. This is particularly true in light of the fact that there is little dispute that Lloyd suffered from [Attention Deficit Hyperactivity Disorder] (ADHD) and that his behavior was volatile and difficult to control, and given further fact that his testimony regarding his own conduct when he was allegedly struck was subject to some impeachment [Citation.]” *Rule*, 2012 IL App (1st) 103380-U, ¶69.

¶ 9 B. RULE II

¶ 10 Following remand, the Board issued a supplemental opinion and order affirming their original decision to terminate Rule. On administrative review, the circuit court confirmed the Board's supplemental order. Rule appealed the circuit court's decision. *Rule v. Illinois State Board of Education*, 2015 IL App (1st) 133685-U (*Rule II*).

¶ 11 On appeal in *Rule II*, Rule presented the court with two issues: (1) whether the Board followed the *Rule I* mandate and (2) whether the Board sufficiently proved Rule violated its corporal punishment policy. The court found: “[In its supplemental order] the Board (1) did not conduct a *Gilliland* analysis, and (2) did not solely consider Lloyd's charge of corporal punishment and the [e]ffect his ADHD had on his behavior, and the fact that Lloyd's

testimony regarding his conduct when he was allegedly struck was subject to some impeachment.” *Rule*, 2015 IL App (1st) 133685-U, ¶10. Accordingly, the court held that the Board did not follow the mandate, and remanded the case.

¶ 12 On the second remand, the Board issued another supplemental opinion and order affirming their original decision to dismiss *Rule*. Under a section entitled “[s]ignificant damage to students, faculty and Kohn Elementary School,” the Board stated it accepted its Hearing Officer’s findings that *Rule* caused psychological harm to *Lloyd* by hitting him, directing his classmates to write statements passing judgment on his behavior, encouraging his peers to shun him, and repeatedly excluding him from the classroom. *Supp. Op. 2d Rmd.*, p. 10. The Board accepted these findings due to *Rule*’s admission that she asked her second graders to write down statements on what the students observed regarding the incident between *Rule* and *Lloyd*. The Board also stated that the school’s principal testified that she had never seen a child so degraded, whose self esteem was so damaged, as *Lloyd*’s was by *Rule* in her 15 year career.

¶ 13 The Board further found *Rule* attempted to intimidate *Lloyd* into retracting his truthful assertion that she struck him. *Rule* asked *Lloyd*’s classmates to write down what they witnessed in regards to *Rule* hitting *Lloyd*, and in doing so, pressured them to lie about what they witnessed. When the two classmates reported to a detective investigating the case that *Rule* indeed struck *Lloyd*, *Rule* retaliated against the students. The Board found this behavior harmed not only *Lloyd*, but all her students because as an authority figure and role model, she encouraged the students to lie. Finally, the Board found *Rule* caused damage to the school because the school’s assistant principal had to deal with reports by *Lloyd* and his

mother that Rule struck Lloyd, as well as complaints by parents of the two students Rule retaliated against. Furthermore, the Board found the school was also significantly harmed by the report that one of its teachers corporally punished a child. Supp. Op. 2d Rmd., p. 10-11.

¶ 14 Under section entitled "[a] written warning would not have corrected Rule's misconduct," the Board found Rule would not have corrected her conduct if she had received a written warning not to use corporal punishment. Supp. Op. 2d Rmd., p. 12. The Board supported its assertion by citing *Rush v. Board of Educ. Of Crete Monee School Dist.* No. 201, 312. App. 3d 473, 476-77, which held that corporal punishment may be considered an irremediable cause for discharge when it causes psychological harm to the student and the teacher was aware the school district prohibited it. Supp. Op. 2d Rmd., p. 12. The Board noted that Rule was aware that corporal punishment was prohibited because she complained that another teacher used corporal punishment on her own daughter. The Board also cited its School Code which provided that "conduct on the part of a teacher . . . which is cruel, immoral, negligent, or criminal or which in any way causes psychological or physical harm or injury to a student is deemed irremediable." *Id.*

¶ 15 Furthermore, the Board cited *Younge v. Board of Educ.*, 338 Ill. App. 3d 522 (1st Dist. 2003) which held that "it is unnecessary to employ the Gilliland test to cases involving cruel, immoral, negligent or criminal conduct." Based on the *Younge* holding, the Board found that Rule's actions likely exacerbated Lloyd's misbehavior. The Board supported its finding by citing a study, "Gershoff, E.T., 'Report on Physical Punishment in the U.S.: What Research Tells Us About Its Effect on Children'" (Ohio 2008), which found that "adults who were physically punished as children have increased anxiety and depression, alcohol and drug use,

and psychological maladjustment." Finally, the Board found that Rule striking Lloyd was criminal. The Board cited 720 ILCS 5/12-3(a)(2) which provides that "[a] person commits battery if [s]he intentionally or knowingly without legal justification and by any means . . . makes physical contact of an insulting or provoking nature with an individual." The Board found that Rule violated this statute because she struck Lloyd in violation of the Board's rule prohibiting corporal punishment.

¶ 16 The Board also addressed the effect of Lloyd's ADHD had on his behavior, and Lloyd's testimony regarding his conduct being subject to some impeachment. Here, the Board stated that:

"The Board notes that the Hearing Officer, who had the opportunity to listen to the testimony of both Lloyd and Rule and to observe the demeanor of each witness, found Lloyd to be more credible than Rule. She found the variations in Lloyd's testimony were 'consistent with what one might expect from a seven-year-old child,' in that he lied about his own misbehavior. Seven-year olds are 'at the beginning of cognition of right and wrong.' [Citations]. She concluded Lloyd 'did not demonstrate the maturity level or sophistication necessary [to] fabricate a story about Ms. Rule's behavior with the intent of getting his teacher in trouble and recruit another child to do the same.'"

¶ 17 Finally, the Board acknowledged that Lloyd's behavior was volatile and difficult to control, but the Board accepted the Hearing Officer's finding that "Lloyd's misconduct and his attention deficit hyperactivity disorder did not excuse Rule's corporal punishment, social condemnation and isolation of [Lloyd]."

¶ 18 On administrative review, the circuit court confirmed the Board's decision. This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 First, Rule argues the Board did not satisfy the two prong *Gilliland* test because there was not credible evidence that (i) Rule's conduct caused any significant damage to the students, faculty, or school, and (ii) the Board failed to consider whether Rule could have corrected her alleged misconduct following a warning.

¶ 21 Determining whether a Board has exercised its discretion within the bounds of an appellate court's remand order, is a question of law which is reviewed *de novo*. *Clemons v. Mechanical Devices Company*, 202 Ill. 2d 344, 351-52, 781 N.E.2d 1072, 269 Ill. Dec. 882 (2002). Where the court determines that a board followed the appellate court's mandate, this court must then determine whether the agency's finding that the accused violated the Board's corporal punishment policy is against the manifest weight of the evidence. *People v. Coleman*, 183 Ill. 2d 366, 384-85, 701 N.E.2d 1063, 233 Ill. Dec. 789 (1998).

¶ 22 The first part of the *Gilliland* test is whether Rule's conduct caused any significant damage to the students, faculty, or school. In the Board's supplemental opinion issued on second remand, it conducted an analysis. With respect to damage to the students, the Board found that Rule caused psychological harm to Lloyd by hitting him, directing his classmates to write statements passing judgment on his behavior, encouraging his peers to shun him, and repeatedly excluding him from the classroom. The Board further found that Rule's conduct harmed Lloyd's classmates when she pressured two of her students to lie about what they witnessed, and when the two classmates reported to a detective investigating the case that

Rule indeed struck Lloyd, Rule retaliated against the students. Finally, the Board found Rule caused damage to the school because the school's assistant principal had to deal with reports by Lloyd and his mother that Rule struck Lloyd, as well as complaints by parents of the two students Rule retaliated against. Furthermore, the Board found the school was also significantly harmed by the report that one of its teachers corporally punished a child.

¶ 23 Accordingly, we find the Board satisfied the first prong of the *Gilliland* test because it outlined the damage Rule's behavior caused the students, faculty, and school.

¶ 24 With respect to the second prong of the *Gilliland* test - whether the teacher would not have corrected her conduct - the Board first cited *Rush*, which held that corporal punishment may be considered irremediable cause for discharge when it causes psychological harm to the student and the teacher was aware the school district prohibited it. As to psychological harm, the Board cited the study, "Gershoff, E.T., 'Report on Physical Punishment in the U.S.: What Research Tells Us About Its Effect on Children'" (Ohio 2008), to show that when Rule hit Lloyd, she caused him psychological harm because the study found that "adults who were physically punished as children have increased anxiety and depression, alcohol and drug use, and psychological maladjustment." As to whether Rule was aware the school district prohibited corporal punishment, the Board noted Rule was aware that the Board prohibited corporal punishment because Rule complained that another teacher used corporal punishment on Rule's own daughter.

¶ 25 Furthermore, the Board cited *Younge*, which held that "it is unnecessary to employ the *Gilliland* test to cases involving cruel, immoral, negligent or criminal conduct." Based on the *Younge* holding, the Board found that "when Rule struck Lloyd, she acted in a cruel and

immoral manner that likely exacerbated his misbehavior and put him at risk of serious maladjustment.” The Board also found that striking Lloyd may be a criminal violation by citing 720 ILCS 5/12-3(a)(2) which provides that “[a] person commits battery if [s]he intentionally or knowingly without legal justification and by any means . . . makes physical contact of an insulting or provoking nature with an individual.” Accordingly, the Board determined that giving Rule a warning would have been futile because she was aware of the Board’s corporal punishment policy. Accordingly, we find the Board satisfied the second prong of the *Gilliland* test. Therefore, we hold the Board satisfied *Rule I’s* mandate by applying the *Gilliland* two prong test.

¶ 26 Next, Rule argues that the Board failed to follow *Rule I’s* mandate that the Board consider the effect Lloyd's behavior, as a result of his ADHD, had on the Board's decision to dismiss Rule. Rule contends that Lloyd functioned at a kindergarten level and "was out of his elements in Rule's second grade classroom, which he regularly disrupted with his out-of-control behavior."

¶ 27 *Rule I* instructed the Board as follows:

“[D]etermine whether the Board would support its discharge sanction if it were based solely on the charge of corporal punishment of Lloyd alone... in light of the fact that there is little dispute that Lloyd suffered from ADHD and that his behavior was volatile and difficult to control, and given the further fact that his testimony regarding his own conduct when he was allegedly struck was subject to some impeachment.” *Rule*, 2012 IL App (1st) 103380-U, ¶69.

¶ 28 Here, the Board stated that its hearing officer found Lloyd to be more credible than Rule. It further stated that the hearing officer found the "variations in Lloyd's testimony were 'consistent with what one might expect from a seven-year-old child,' in that he lied about his own misbehavior. Seven-year olds are 'at the beginning of cognition of right and wrong.'" However, the hearing officer concluded Lloyd "did not demonstrate the maturity level or sophistication necessary [to] fabricate a story about Ms. Rule's behavior with the intent of getting his teacher in trouble and recruit another child to do the same." The Board acknowledged that Lloyd's behavior was volatile and difficult for Rule to control, but found that a veteran teacher like Rule should have "acquired a skill set of effective practices in teaching such students that does not include corporal punishment in order to maintain an effective learning environment." Finally, the Board also stated that "Lloyd's misconduct and his attention deficit hyperactivity disorder did not excuse Rule's corporal punishment, social condemnation and isolation of [Lloyd]."

¶ 29 Based on the aforementioned findings, we find that the Board considered the effect Lloyd's ADHD had on his behavior and concluded that it did not excuse Rule's conduct. Although the Board ignored this direction in its first supplemental order, the Board followed the direction in its second supplemental order. The Board not only acknowledged Lloyd's inappropriate behavior, but it also found his testimony was subject to impeachment.

¶ 30 Finally, Rule argues the findings of fact and conclusions of law of both the Hearing Officer and the Board are against the manifest weight of the evidence. A Board's factual findings are deemed *prima facie* true and correct, and its decision will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *LeCompte v. Zoning*

Board of Appeals for Barrington Hills, 2011 IL App (1st) 100423, ¶ 49. When determining whether the finding of an agency is against the manifest weight of the evidence, the reviewing court must view the facts in the light most favorable to the agency. *Id.* The court must decide that “no rational trier of fact could have agreed with the agency.” *Id.* The mere fact that an opposite conclusion would have been reasonable or that the reviewing court might have ruled differently will not justify a reversal of the administrative findings.” *Rule*, 2012 IL App (1st) 103380-U, ¶81. Furthermore, “if the record contains any competent evidence to support the agency's decision, it will be affirmed.” *Id.*

¶ 31 Our review of the record establishes that Rule struck Lloyd, Rule admittedly made her students write letters regarding the incident, and Rule’s actions harmed the students, faculty, or school. Nothing suggests the Board's findings were unsupported by the evidence. Because there was competent evidence that supports the Board's decision, we find that its factual findings were not against the manifest weight of the evidence.

¶ 32 CONCLUSION

¶ 33 As to this third appeal, the controlling issue is whether the Board properly followed the mandate given in the first appeal and echoed in the second. We find the Board has followed the directions in *Rule I*. Accordingly, the Board’s second supplemental order is confirmed and the judgment of the circuit court is affirmed.

¶ 34 Affirmed.