

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS  
FORT SMITH DIVISION  
CIVIL DIVISION

FILED  
FT. SMITH, ARK.  
*Reginald M. Moore*

CURTIS E. SORRELLS

2015 AUG 26 PLAINTIFF

v.

NO. CV-15-607

CIR. CLERK SEB. CO.

FORT SMITH SCHOOL DISTRICT and  
FORT SMITH PUBLIC SCHOOLS BOARD OF EDUCATION

DEFENDANTS

**REPLY TO RESPONSE IN OPPOSITION TO  
MOTION FOR EXTENSION OF DISCOVERY DEADLINE**

Comes now the Plaintiff, Curtis E. Sorrells, and for his Reply to Response in Opposition states:

1. This is a matter involving an unlawfully held meeting of the Fort Smith Public School Board (herein "the Board"), disguised as a "committee" meeting. The unlawful meeting was held at approximately 5:30 p.m. on June 23, 2015 (the official minutes from the June 23, 2015 meeting are attached as Exhibit "1" and incorporated herein), which was exactly the same time as had been planned for a closed meeting of the Board (see Exhibit "2" Media Alert dated June 23, 2015 reflecting that the meeting was closed).

2. As the Court is aware, the unlawfully held Board meeting discussed and voted on changing the fight song and mascot of Southside High School. Again, no notice of the meeting was given.

3. On July 27, 2015, another meeting of the Board was held, except that in this meeting the Board did not attempt to disguise the meeting as a "committee meeting." In this meeting, the Board again voted to change the fight song and mascot of Southside High School.

4. In depositions that were taken in this matter, Plaintiff confirmed that the decision by (at least a great majority) of the individual members of the Board to change the fight song and mascot had been made and discussed well before the July 27, 2015 meeting.

5. Plaintiff has learned of a “fight song” committee that was appointed and authorized to expend funds prior to the July 27, 2015 meeting for the purpose of carrying out the Board’s directive to change the “fight song” of Southside High School. (See attached Exhibit “3” the July 1, 2015 official minutes of the “Fight Song” Committee and Exhibit “4” a July 28, 2015 memorandum from Dr. Benny Gooden to the Fort Smith School Board members.) The decision to select the “fight song” at Southside High School was made on July 1, 2015.

6. Plaintiff seeks to take the depositions of Dr. Benny Gooden (superintendent of the Fort Smith Public Schools), Wayne Haver (principal of Southside High School), and Sean Carrier (Southside High School Band Director). As anticipated, Defendants object contending that there is no need to allow for the depositions to occur. However, each of the proposed deponents has knowledge regarding the fact that a “fight song” had been selected well before July 27, 2015 as well as other relevant issues.

7. In this regard, Dr. Gooden met with the committee and gave directives. Mr. Haver and Mr. Carrier participated in the committee meetings and were only doing what they were instructed to do by the School Board and/or Dr. Benny Gooden and acted in the best interest of the students.

8. Ark. R. Civ. P. 26(b) provides:

“Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the issues in the pending actions, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any

other party, including the existence, description, nature, custody, condition, identity and location of any books, documents, or other tangible things and the identity and location of persons who have knowledge of any discoverable matter or who will or may be called as a witness at the trial of any cause. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”

9. Defendants provide no basis for their objection, other than the unsupported claim that it is a “fishing expedition.” While the claim of a “fishing expedition” is unsupported, Rule 26(b)(1) provides a clear standard that discovery is permissible “if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”

10. While there are other areas that Plaintiff wishes to depose each of the proposed deponents about, Plaintiff should not be required to reveal his trial strategy in order to obtain an order extending the mere two week discovery period allowed by the Court. This is especially true since Defendants will suffer no prejudice and make no claim that they will suffer prejudice by extending the discovery deadline.

11. Plaintiff further notes that an additional basis for the deposition of Dr. Benny Gooden is sought because his testimony given before this Court on July 29, 2015 is inconsistent with that of, for example, Zena Featherston. For example, Dr. Gooden testified that Zena Featherston “drew her conclusion” that six School Board members voted on the motion to change “Dixie” and the Rebel mascot because when she arrived six School Board members present. While in deposition, Zena Featherston testified that she received detailed information from Dr. Gooden and the School Board regarding the official vote and she prepared an email to administrators based upon that information, which Dr. Gooden and the School Board approved. In another example, Dr. Gooden stated after the July 27, 2015 School Board meeting that, “In the next few days we will be making a selection of a new fight song.” In fact, official minutes of the

meeting on July 1, 2015 state that a new fight song was already selected on July 1, 2015. Plaintiff is certainly entitled to further inquire as to the basis for these inconsistencies and other inconsistencies.

12. It is a well-established rule that the goal of discovery is to allow a litigant to obtain the information needed to adequately prepare for issues that may develop, without imposing an onerous burden on his adversary. *Marrow v. State Farm Ins. Co.*, 264 Ark. 227, 237, 570 S.W.2d 607 (1978). Here, information from the proposed deponents is needed to prepare for trial and there is no burden placed on Defendants by compelling the deponents to appear and testify. In cases where there is an unreasonable limitation on discovery, an abuse of discretion has been found. *Parker v. Southern Farm Bureau Ins. Co.*, 326 Ark. 1073, 1080, 935 S.W.2d 566 (1996), citing *Marrow v. State Farm Ins. Co.*, 264 Ark. 227, 237, 570 S.W.2d 607 (1978). Here, Plaintiff is asking for three depositions and some of the reasons for the depositions have been set out, without requiring a complete disclosure of Plaintiff's trial strategy.

13. For these reasons, the Court should extend the discovery deadline and permit the depositions of Dr. Benny Gooden, Wayne Haver, and Sean Carrier to occur.

WHEREFORE, the Plaintiff, Curtis Sorrells, prays that the Court extend the discovery deadline in this matter as previously requested and for such other relief as is proper.

Respectfully submitted,



---

Joey McCutchen (No. 88-045)  
McCutchen Buckley - The Law Firm  
P.O. Box 1971  
Fort Smith, AR 72902-1971  
Phone 479-783-0036  
Facsimile 479-783-5168

Service of any documents by e-mail will not be received by counsel for the Plaintiff unless copied to [pam@mccutchenlawfirm.com](mailto:pam@mccutchenlawfirm.com)

**CERTIFICATE OF SERVICE**

I, Joey McCutchen, hereby certify that a copy of the above and foregoing Reply was hand delivered to all attorneys of record as listed below on August 26, 2015:

Mr. James Mitch Llewellyn  
Thompson & Llewellyn  
412 South 18<sup>th</sup> Street  
Fort Smith, AR 72902-0818



---

Joey McCutchen

Today... and ...



in the **Future**

---

**Office of the Superintendent**

3205 Jenny Lind · P.O. Box 1948  
Fort Smith, Arkansas 72902-1948  
479-785-2501  
Fax: 479-785-1722

TO: Board of Education

FROM: Benny L. Gooden, Superintendent of Schools

DATE: June 25, 2015

SUBJECT: Committee of the Whole Minutes/Called School Board Minutes

Ms. Susan McFerran made a motion, seconded by Ms. Yvonne Keaton-Martin, to convene as a Committee of the Whole at 5:45 p.m. on Tuesday, June 23. The vote for approval was 5/0. Board members present were Ms. Jeannie Cole, Mr. Wyman R. Wade, Jr., Esq., Dr. Deanie Mehl, Ms. Yvonne Keaton-Martin, and Ms. Susan McFerran. Dr. David Hunton arrived at 6:20 p.m. Mr. Russell Owen was absent. Superintendent Benny L. Gooden was also present.

Giving great consideration to the continuing impact of perceived symbols of racism on the community, state and nation, the Fort Smith Public School Board committee members discussed changing the Southside High School mascot and discontinuing the "Dixie" fight song. Symbols associated with Southside High School have been a topic of discussion with the FSPS Board of Education since a resolution to study the use of these symbols passed in 1989,

Ms. Susan McFerran made a motion, seconded by Ms. Yvonne Keaton-Martin, to discontinue the use of "Dixie" as the Southside High School fight song immediately and to phase out the Rebel as the Southside mascot over the next year completing the process in 2016/2017. The motion passed with a 5/0 vote, with Dr. David Hunton expressing an affirmative vote upon his arrival. This recommendation will be placed on the Board of Education agenda for consideration on July 27, 2015.

The Committee of the Whole adjourned at 6:35 p.m.

A called school board meeting for the purpose of evaluating the superintendent was convened at 6:35 p.m.

Board members met with Superintendent of Schools Dr. Benny L. Gooden to complete his annual evaluation.

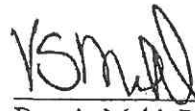
Directors went into closed session to discuss the Superintendent's performance at 7:45 p.m. Board members opened the session at 8:20 p.m. Ms. Jeannie Cole made a motion, seconded by




Committee Minutes/Called School Board Meeting  
June 23, 2015  
Page 2

Ms. Yvonne Keaton-Martin, to extend Dr. Gooden's contract by one year providing for the renewal of a three year agreement between the Board of Education and the Superintendent. The term of the 2015/2016 contract extends to June 30, 2018 and the current salary remains the same. The vote for approval was 6/0.

The meeting adjourned at 8:25 p.m.

  
\_\_\_\_\_  
Deanie Mehl, President

  
\_\_\_\_\_  
Wyman E. Wade, Jr., Esq., Secretary



Katy Valdez <kvaldez@fortsmithschools.org>

**Media Alert: Board of Education to Meet**

1 message

Katy Valdez <kvaldez@fortsmithschools.org>

To: 40/29 <news@4029tv.com>, 5 News <news@kfsm.com>, "Brenda Bernet, Democrat Gazette" <bbernet@nwaonline.com>, Brian Sanderford <bsanderford@swtimes.com>, "Chad Hunter, Times Record" <chunter@swtimes.com>, "Dave Hughes, Democrat Gazette" <dhughes@nwaonline.com>, Jonathan Rozelle 40/29 <jrozelle@hearst.com>, Judi Hansen <jhansen@swtimes.com>, Meredith Baldwin <meredith.baldwin@kfsm.com>, "Michael Tilley, The City Wire" <mtilley@thecitywire.com>, Pedro Rivera <privera2@hearst.com>, Tina Dale <tdale@swtimes.com>

Tue, Jun 23, 2015 at 3:22 PM

Members of the FSPS Board of Education will meet today for the annual evaluation of Superintendent Benny Gooden. A fax regarding this closed meeting was sent yesterday.

Katy Valdez  
Communication Specialist  
Fort Smith Public Schools  
Phone: (479) 785-2501, Ext. 1302  
Fax: (479) 785-1722





MINUTES OF THE SOUTHSIDE FIGHT SONG COMMITTEE  
JULY 1, 2015  
SOUTHSIDE HIGH SCHOOL CONFERENCE ROOM

- I. **CALL TO ORDER:** The meeting of the Southside Fight Song Committee was called to order at 2:00 P.M. in the Southside Conference Room by Wayne Haver, Principal. Those committee members present were: Student Body President Catherine Owen, Senior Class President Paxton Clark, Junior Class President John Magness, former staff members Jean Ann Sadler and Larry Loux, current staff members Dana Goins and Randy Kern, alumni Tony Jones, Athletic Director Jim Rowland, Southside Athletic Coordinator and Head Coach Jeff Williams, Southside Band Director Sean Carrier, and Southside Principal Wayne Haver. Alumni Stephanie Adams Mahoney was out of the country. Dr. Benny Gooden, Superintendent of Fort Smith Schools was also present.
- II. **INTRODUCTION OF THE COMMITTEE:** Principal Wayne Haver welcomed the committee members and introduced the members of the Southside Fight Song Committee. He explained that alumni Stephanie Adams Mahoney was out of the country in London, England.
- III. **REMARKS BY DR. GOODEN:** Dr. Benny Gooden, Superintendent of Fort Smith Schools, welcomed the committee and gave the charge to the committee as directed by the Fort Smith School Board.
- IV. **EXPLAIN THE PURPOSE:** Principal Wayne Haver reiterated that the purpose of the committee was to select a new fight song for Southside High School, as voted on by the Fort Smith School Board's Committee of the Whole on June 23, 2015 to replace "Dixie".
- V. **HISTORY OF THE PRESENT FIGHT SONG:** Mr. Haver discussed the history of the present fight song, mascot, and school colors.
- VI. **POSSIBLE CHOICES:** Mr. Haver explained that he and Sean Carrier, Southside Band Director, had listened to over a hundred and fifty fight songs that were on the NCAA Fight Song site on the internet. He pulled up that site on a computer and using a LCD projector, projected the site on the screen. Several college fight songs, such as the fight songs of Northwestern University, North Colorado State University, University of Michigan, University of Richmond, University of Wisconsin, University of Virginia, Virginia Tech University, University of Georgia, Texas A&M, and renditions of The Wabash Cannonball by Kansas State University, University of Texas, Texas Tech University, and Texas A&M, etc., were listened to from the various conferences. Members of the committee members suggested such song as Arkansas Traveler and Ghost Rider's in the Sky.
- VII. **DISCUSSION:** Many fight songs were discussed by the committee and listened to a second or third time. Sean Carrier was questioned about the Southside Band's ability to play the various songs. He talked about the structure of various songs.
- VIII. **RECOMMENDATIONS:** Student Body President Catherine Owen made a motion to select the Texas A&M version of the "Wabash Cannonball". The motion was seconded by Randy Kern. After discussion the vote was taken and the motion passed unanimously.
- IX. **Adjourn:** The committee adjourned at 3:40 P.M.

Respectively Submitted,

Dana Goins



Today... and ...



in the **Future**

Office of the Superintendent

3205 Jenny Lind • P.O. Box 1948  
Fort Smith, Arkansas 72902-1948  
479-785-2501  
Fax: 479-785-1722

TO: Board of Education  
FROM: Benny L. Gooden, Superintendent of Schools  
DATE: July 28, 2015  
SUBJECT: Southside High School Fight Song Selection

Following the anticipated decision to change the Southside High School fight song and mascot, I asked Principal Wayne Haver to select a committee for the purpose of selecting a fight song. While this was done in advance of the final action, in order to move forward in a timely manner relative to the selection of music, securing clearance for use, procuring appropriate arrangements and instrument parts—not to mention being ready for rehearsal when the band starts its summer practice next week—some advance action was essential.

Mr. Haver identified a committee which included current student leaders, current and former Southside faculty members, and Southside alumni. Specifically included were staff who work with music and activities at the school.

I met with the committee briefly to help frame the issue at hand. I outlined for them a few considerations relative to school fight songs from the several schools at which I have worked. I emphasized to the committee that although the decision to change was not final, that a timely selection was necessary. I also emphasized to them that regardless of the ultimate change, what a potential mascot might be, or any delay, selecting a great musical arrangement would be always useful to the Southside Band.

Attached are minutes of the meeting from July 1. As you can see, the committee spent a considerable amount of time reviewing various fight songs. Wayne Haver and Sean Carrier had spent a good deal of time preparing for this meeting to expedite the work of the committee.

After considering a number of options, the committee unanimously selected an arrangement of a tune, "Wabash Cannonball" as used by Texas A & M University. The original tune was called "Great Rock Island Line" and is credited to J. A. Roff in 1882 according to Tresona Music. This selection will be titled: "Southside Fight." A search of copyrighted music through the bureau used to secure clearance for arrangements revealed that the tune is now public domain. No copyright fees would be required.

Subsequent to the meeting, Sean Carrier procured an arranger to configure all instrument parts as appropriate for the Southside High School Band. David Gorham of Owassa, Oklahoma is a well-known and respected arranger. Mr. Gorham agreed to produce the necessary wind parts for a payment of \$500. Justin Ball, a Southside alumnus is a percussion specialist and wrote percussion parts for \$200. Contacts with Texas A & M University resulted in granting additional rights to use their arrangement without payment of any royalties. While the Texas A & M arrangement is excellent, it is somewhat longer than desirable. This process made a timely selection important in order to be ready for the beginning of band rehearsals.

I believe that the committee has discharged its initial responsibility effectively.

Enclosure