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## Man sues Levy County School Board for allegedly violating the Family Medical Leave Act

By Jeff M. Hardison © Aug. 13, 2018 at 4:08 p.m.

**GAINESVILLE** -- Steve Tyson sued the Levy County School Board in federal civil court, according to a 12-page document dated Oct. 17, 2017.

In this action, Tyson is seeking to recover alleged damages he is asserting that he suffered and he is seeking to recover attorney's fees from this federal civil action, according to the first part of the general allegations in the suit.

Tyson, represented by David J. Hallstrom, Esq., of the firm Bogin, Munns & Munns, notes that during or around June of 2001, he was hired as the transportation coordinator for the Levy County School Board.

This post is a supervisory position, Tyson notes through Hallstrom.

Tyson was entitled to an employment contract and was to be subject to termination only for just cause, Hallstrom notes among the allegations in the suit against the Levy County School Board.

On or about Aug. 7, 2015, Tyson "took time off from work for emergency surgery in connection with a herniated disc in his neck and for related recovery," Hallstrom alleges in the suit, "and was unable to return to work until on or about Oct. 8, 2015."

Tyson, Hallstrom noted, previously had been diagnosed with degenerative disc disease.

During the time when Tyson was out from work in connection with his surgery, Hallstrom noted, he received treatment two or more times by a healthcare provider through follow-up appointments after the surgery.

Hallstrom went on to note that Tyson was on a course of one or more prescription medications.

During the time when Tyson was absent from work in connection with his surgery, then-Superintendent of Schools Robert O. Hastings, Hallstrom alleges, suggested to Tyson that Tyson might not have a position to return to.

On Oct. 20, 2015, shortly after Tyson returned to work, Levy County Superintendent of Schools Hastings placed Tyson on unpaid leave without any prior notice or meaningful opportunity to be heard, Hallstrom alleges in the lawsuit against the Levy County School Board.

On Oct. 20, 2015, Hastings provided Tyson with notice that Tyson's job termination would be recommended to the Levy County School Board, Hallstrom alleges, but there was insufficient notice provided as to the grounds for termination, as well as what evidence would be presented, or as to the employee's rights in connection with the proceeding.

On or about Oct. 27, 2015, attorney Hallstrom notes in the suit against the School Board, at an informal hearing conducted by the School Board, the Levy County School Board terminated Tyson's employment.

Attorney Hallstrom pulls no punches in his filing of the lawsuit as he noted "This informal hearing amounted to a 'Kangaroo Court.'"

At this informal hearing (a video recording of which was published by the Levy County School Board online, and the direct link is at <https://youtu.be/lpfSLY-yupg>), Tyson clearly expressed that the evidence was not made available to him in anticipation of the informal hearing, that the evidence was being misrepresented, and Hastings was making false statements about Tyson's words and deeds, Hallstrom noted in the allegations against the defendants.

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The plaintiff – Tyson – “... was never given an opportunity to confront any witnesses against him,” Hallstrom noted. “Instead, Mr. Hastings mischaracterized evidence, used third party recitations of conversations which he was not a party to, presented innuendo as fact, presented information that was agreed would not be part of plaintiff’s personnel file, and presented disputed facts to create a false impression regarding plaintiff’s job performance.”

Tyson, not having adequate notice of the grounds for termination of his employment with the Levy County School Board, Hallstrom noted, as well as not having the evidence to be presented against him, was unable to prepare evidence for any kind of hearing just one week after being put on unpaid leave.

Tyson was therefore denied the opportunity to present his own case in support of his job performance, Hallstrom noted.

The attorney for Tyson continues in the lawsuit as he notes more allegations.

After the Levy County School Board terminated Tyson’s employment, Hallstrom noted in the suit, the Levy County School Board failed to provide any information to Tyson regarding his right to a complete evidentiary hearing.

The attorney notes in the suit that this is despite the Levy County School Board’s policies – which, provide that a decision by the School Board to terminate a person’s employment can be the subject of a non-evidentiary appeal to the First District Court of Appeal for the State of Florida.

Within 30 days of the School Board’s decision to terminate Tyson’s employment, Tyson appealed the School Board’s decision to the First District Court of Appeal for the State of Florida.

During or around January of 2017, Hallstrom wrote in this federal lawsuit, shortly after Tyson received notice that the First District Court of Appeal for the State of Florida had affirmed the School Board’s decision, Tyson petitioned the School Board, pursuant to Florida Statutes, for an evidentiary hearing to dispute the purported misrepresentations and seeking reinstatement as the Transportation Coordinator.

The Levy County School Board, attorney Hallstrom noted in the federal suit effectively denied Tyson’s petition for an evidentiary hearing, but has not provided a written notice to Tyson of the action taken on the petition, stating with particularity the reasons the petition was not granted, or providing a deadline for the filing of an amended petition as is required under Florida law.

With that background information and set of alleged facts, attorney Hallstrom notes the different counts in the federal civil action against the Levy County School Board.

In Count 1 of the suit, the attorney is charging that there was deprivation of property to Tyson, and that his client was suspended from his job without pay, and without prior notice or an opportunity to be heard.

Tyson had a constitutionally-protected property interest in his employment with the Levy County School Board, Hallstrom notes as he continues in the filing to show the plaintiff’s side of the story.

Attorney Hallstrom noted that the Levy County School Board, acting through its then-superintendent Hastings, deprived Tyson of his property interest by suspending the man from his employment without pay, and by failing to provide Tyson prior notice or opportunity to be heard.

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As a result of the School Board's conduct, Tyson "has suffered economic harm and indignity," the attorney noted in the suit.

The plaintiff is seeking judgment against the defendant and seeks to recover compensatory damages, pre- and post-judgment interest, attorney's fees and costs of litigation; for a trial by jury on all issues so triable; and for such other and further relief as the Court deems just and proper, on all of the counts of his complaint.

In Count II and Count III, as in Count I, the plaintiff uses the description of what allegedly happened as part of the complaint.

In Count IV, Tyson's attorney noted the alleged violation of the Family Medical Leave Act (FMLA) by the Levy County School Board.

As part of Count IV, the attorney notes there are 50 or more employees for each working day, during each of 20 or more workweeks employed by the Levy County School Board.

The attorney again alleges that the School Board interfered with Tyson's right to take unpaid leave from work under the FMLA.

The attorney, in the general allegations, notes that on or about Aug. 10, 2015, Tyson requested that the School Board place him on FMLA leave.

This suit continues to note, however, that "at no time did DEFENDANT place PLAINTIFF on FMLA leave or even give PLAINTIFF his eligibility notice, the rights and responsibilities notice, or the designation notice."

Attorney Audra M. Bryant, the attorney hired to defend the case and a member of the Bush & Augspurger law firm of Tallahassee, filed a response in the United States District Court (for the Northern District of Florida - in Gainesville).

Attorney Bryant filed a response on Nov. 12, 2017.

She answered Tyson's complaint and presented affirmative defenses as well.

In regard to the general allegations filed by attorney Hallstrom, attorney Bryant denied that the the Levy County School Board violated any provision of the Family Medical Leave Act.

Likewise, on behalf of the School Board, this attorney denied assertions made by the plaintiff, where admission of those allegations would lead to losing the case and she admitted certain undeniable facts that would not adversely affect her client's interests.

In the part of her response where she is asserting affirmative defenses, attorney Bryant's affirmative defense follows -- "The Plaintiff's claims for damages are barred or reduced to the extent that he failed to properly mitigate his alleged damages.

"The Defendant has a legitimate non-retaliatory business reason for the decision to terminate Plaintiff's employment. The Plaintiff had a history of inappropriate and unprofessional behavior which warranted his termination as evidenced by various documentation and evidence.

"The Plaintiff did not have a constitutionally protected property interest in his employment with the Defendant.

"The Plaintiff was an at-will employee and had no substantial interest in his employment with the Defendant.

"Florida law does not create a protected property interest for employees in non-tenured, non-certified, non-instructional year to year positions subject to an annual notice of appointment.

"The Plaintiff failed to provide proper notice as required by FMLA. The Plaintiff was never placed on leave pursuant to the Family and Medical Leave Act as he opted to take paid vacation and sick leave.

"After returning to work in October of 2015, the Plaintiff failed to provide any notice of his

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intention to take FMLA leave after that date.

“The Plaintiff was not entitled to a hearing of any kind prior to the Defendant suspending him without pay.

“The Plaintiff was not entitled to a hearing of any kind prior to the Defendant terminating his employment.

“The Plaintiff was not entitled to a hearing of any kind of post-deprivation evidentiary hearing.

“The Plaintiff did not have an employment contract with the Defendant.

“The Plaintiff was not statutorily entitled to an employment contract with the Defendant.

“The Plaintiff has failed to state a claim upon which relief can be granted. Therefore, this complaint should be dismissed pursuant to Fed. R. Civ. P. 12 (b)(6),” attorney Bryant as she concluded the affirmative defenses with her further statement that “The theories of liability, causes of action, issues and matters raised in the operative complaint are barred by the doctrines of res judicata and/or collateral estoppel. The First District Court of Appeal previously rendered a final decision adverse to the Plaintiff regarding these same issues.”

Given that the two opposing sides of this federal civil legal issue are unable to mediate the disagreement, then a jury trial will be set, as best as can be determined from records. The earliest point for that federal jury trial is late November, as best as can be determined from documents gathered some weeks ago.