

IN THE SUPREME COURT OF THE STATE OF TENNESSEE

MELANIE LEMON,)
)
 APPELLEE,)
)
 V.) No. M2018-01878-SC-R11-CV
)
 WILLIAMSON COUNTY) *Oral Argument Requested*
 SCHOOLS ET AL.,)
)
 APPELLANT.)

**AMICUS CURIAE BRIEF OF THE TENNESSEE SCHOOL
BOARDS ASSOCIATION IN SUPPORT OF APPELLANT,
WILLIAMSON COUNTY BOARD OF EDUCATION**

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TABLE OF CONTENTS

TABLE OF CONTENTS.....2

TABLE OF AUTHORITIES.....4

STATEMENT OF THE ISSUES.....6

STATEMENT OF THE CASE.....7

STATEMENT OF THE FACTS.....8

ARGUMENT.....9

Standard of Review.....9

I. The Court of Appeals erred by not applying the plain language of the Tenure Act and established case law, substantially changing the Act’s interpretation and application.10

A. When the rules of statutory construction are applied, the Tenure Act states that a teacher loses their tenure status upon resignation.....10

B. The Act states that a teacher loses their tenure status upon resignation, but a teacher must maintain their tenure status if they want to claim a violation of the Tenure Act, which does not include the legal fiction of constructive discharge.....14

C. The Court of Appeals incorrectly applied case law to support their holding that constructive discharge may apply to teacher tenure.....16

II. If the Court allows the legal fiction of constructive discharge to apply to claims of wrongful termination under the Tenure Act, the only remedies available are those established under the Act.....20

CONCLUSION.....25

CERTIFICATE OF COMPLIANCE.....27

CERTIFICATE OF SERVICE.....28

TABLE OF AUTHORITIES

Cases

<i>Calaway ex rel. Calaway v. Schucker</i> , 193 S.W.3d 509 (Tenn. 2005).....	12
<i>Emory v. Memphis City Schs. Bd. of Educ.</i> , 514 S.W.3d 129 (Tenn. 2017).....	9, 21, 22
<i>Thompson v. Memphis City Schs. Bd. of Educ.</i> , 395 S.W.3d 616 at 627-628 (Tenn. 2012).....	20, 21, 22 23
<i>Green v. Green</i> , 293 S.W.3d 493 (Tenn. 2009).....	12
<i>Hayes v. Gibson County</i> , 288 S.W.3d 334 (Tenn. 2009).....	11, 12
<i>In re Conservatorship of Clayton</i> , 914 S.W.2d 84 (Tenn. Ct. App. 1995).....	12
<i>In re Estate of Tanner</i> , 295 S.W.3d 610 (Tenn. 2009).....	11
<i>Larsen–Ball v. Ball</i> , 301 S.W.3d 228 (Tenn. 2010).....	11
<i>Lee Medical, Inc. v. Beecher</i> , 312 S.W.3d 515 (Tenn. 2010).....	11, 12, 13, 14, 15
<i>Lemon v. Williamson County Schs.</i> , No. M2018-01878-COA-R3-CV, 2019 WL 4598201 (Tenn. Ct. App. Sept 23, 2019).....	17, 20, 23
<i>State v. Strode</i> , 232 S.W.3d 1 (Tenn. 2007).....	12
<i>State ex rel. McGhee v. St. John</i> , 837 S.W.2d 596 (Tenn. 1992).....	17, 18, 19
<i>Waldschmidt v. Reassure Am. Life Ins. Co.</i> , 271 S.W.3d 173 (Tenn. 2008).....	11

Statutes

Tenn. Code Ann. § 49-2-203.....16

Tenn. Code Ann. § 49-5-501.....passim

Tenn. Code Ann. § 49-5-511.....passim

Tenn. Code Ann. § 49-5-512.....16

Tenn. Code Ann. § 49-5-513.....16

Tenn. Code Ann. § 49-5-705 (1992)17, 19

2011 Tenn. Pub. Acts Chp. No. 70.....19

2012 Tenn. Pub. Acts Chp. No. 614.....19

Rules

Tenn. R. Civ. P. 12.02.....9

Tenn. R. App. P. 27.....6-9

Tenn. R. App. P. 31.....6-9

STATEMENT OF THE ISSUES

Pursuant to the Rules of Appellate Procedure 31(b) and 27(b), the Tennessee School Boards Association (“TSBA”) refers this Court to the Statement of the Issues appearing at page 7 of the Appellant’s brief to the Supreme Court.

STATEMENT OF THE CASE

Pursuant to the Rules of Appellate Procedure 31(b) and 27(b), the Tennessee School Boards Association (“TSBA”) refers this Court to the Statement of the Case appearing at page 8 of the Appellant’s brief to the Supreme Court.

STATEMENT OF FACTS

Pursuant to the Rules of Appellate Procedure 31(b) and 27(b), TSBA refers this Court to the Statement of Facts appearing at page 11 of the Appellant's brief to the Supreme Court.

ARGUMENT

Pursuant to the Rules of Appellate Procedure 31(b) and 27(b), TSBA refers this Court to the Standard of Review appearing at page 15 of the Appellant's brief to the Supreme Court. TSBA hereby adopts all arguments in the Appellant's brief. The primary purpose of filing this Amicus Curiae brief is to expand on the Appellant's arguments and emphasize to the Court the potentially negative impact the Court of Appeals' ruling may have on public school districts in Tennessee.

The ruling of the Court of Appeals should be reversed because the trial court correctly dismissed all the claims asserted in the original complaint pursuant to Tenn. R. Civ. P. 12.02(6) for failure to state a claim upon which relief could be granted by holding that a claim of constructive discharge could not be made under the Teachers' Tenure Act. Tenn. Code Ann. § 49-5-501 *et seq* (2020). The Act removes tenure protections when a teacher resigns. Tenn. Code Ann. § 49-5-501. Further, maintaining tenure status is a condition precedent that must be in place for a teacher to make a claim under the Tenure Act because the protections only extend to tenured teachers.

If the Court holds that a claim of constructive discharge can be made under the Tenure Act, the only remedies available should be those contained in the Act. *Emory v. Memphis City Schs. Bd. of Educ.*, 514 S.W.3d 129, 145 (Tenn. 2017). To do otherwise would judicially modify the Tenure Act. *Id.* at 145.

I. THE COURT OF APPEALS ERRED BY NOT APPLYING THE PLAIN LANGUAGE OF THE TENURE ACT AND ESTABLISHED CASE LAW, SUBSTANTIALLY CHANGING THE ACT'S INTERPRETATION AND APPLICATION.

The Court of Appeals did not apply the plain language of the Tenure Act that removes tenure rights upon a teacher's resignation. If allowed to stand, their ruling substantially changes the interpretation and application of the Act. Based on the statutory language, the question of whether a teacher was dismissed or suspended in violation of the Act can only be determined if the court finds that the teacher has maintained their tenure status. Without tenure status, the protections of the Act are not available. This Court should follow the rules of statutory construction and give full effect to the entire Act and hold that Ms. Lemon lost her tenure status, and the protections of the Act, upon her resignation. Further, the Court of Appeals misapplied case law addressing the assignment of a teacher to support their holding that constructive discharge applies to the Act. Therefore, their ruling should be reversed, and the Trial Court's ruling reinstated.

A. When the rules of statutory construction are applied, the Tenure Act states that a teacher loses their tenure status upon resignation.

The language of Tenn. Code Ann. § 49-5-501(11)(B)(i) does not allow a teacher that resigns to claim wrongful termination under a theory of constructive discharge because the statute unambiguously

states that a teacher is no longer tenured upon their resignation.¹
Tenn. Code Ann. § 49-5-501.

Established case law details how courts must interpret statutes when they are at issue. The interpretation of a statute must be done in a way that will “give full effect to the General Assembly’s purpose, stopping just short of exceeding [the statute’s] intended scope.” *Lee Medical, Inc. v. Beecher*, 312 S.W. 3d 515, 526 (Tenn. 2010) (citing *Larsen–Ball v. Ball*, 301 S.W.3d 228, 232 (Tenn. 2010); *In re Estate of Tanner*, 295 S.W.3d 610, 613 (Tenn. 2009)). This Court has clarified that “because the legislative purpose is reflected in a statute's language, the courts must always begin with the words that the General Assembly has chosen.” *Id.* (citing *Waldschmidt v. Reassure Am. Life Ins. Co.*, 271 S.W.3d 173, 176 (Tenn. 2008)). As a result, “courts must give these words their natural and ordinary meaning” and “when a statute's text is clear and unambiguous, the courts need not look beyond the statute itself to ascertain its meaning.” *Id.* at 526 – 527 (citing *Hayes v.*

¹ Tenn. Code Ann. § 49-5-501(11)(B)(i) states the following:

“A teacher has no property right in the teacher's tenure status and must sustain a specified performance effectiveness level on evaluations, as provided in this part, to achieve and maintain tenure status. *If a teacher acquires tenure, the teacher shall remain under that status until such time as the teacher resigns, retires, is dismissed or the teacher is returned to probationary status by the director of schools under this part.*” (emphasis added).

Tenn. Code Ann. § 49-5-501

Gibson County, 288 S.W.3d 334, 337 (Tenn. 2009); *Green v. Green*, 293 S.W.3d 493, 507 (Tenn. 2009); *State v. Strode*, 232 S.W.3d 1, 9–10 (Tenn. 2007)). Courts should only consider external sources and attempt to ascertain the General Assembly’s intent and purpose when the language can reasonably have more than one meaning. *Id.* (citing *Calaway ex rel. Calaway v. Schucker*, 193 S.W.3d 509, 516 (Tenn. 2005); *In re Conservatorship of Clayton*, 914 S.W.2d 84, 9 (Tenn. Ct. App. 1995)).

The plain language of the Tenure Act states that a teacher’s tenure status, and the availability of the procedural protections afforded by the Act, no longer apply when a teacher resigns. This is the only conclusion that can be reached when reading the natural and ordinary meaning of the text. The complaint filed by Ms. Lemon states she resigned from her position and this fact is not contested. (R., Vol. 1, 7-8). In her brief to this Court, Ms. Lemon also stated that she resigned immediately after receiving an email from Dr. Looney. (Lemon Br., 33-34). By applying the plain language of the statute to this case, Ms. Lemon no longer had tenure status upon her resignation. As a result, the protections of the Tenure Act were not available after her resignation. This would include her claim that she was terminated in violation of the Act, specifically Tenn. Code Ann. § 49-5-511. (R., Vol. 1, 7-8).

While Ms. Lemon argues that this appeal turns on statutory construction of the Tenure Act, she does not fully apply the analysis outlined by this Court in *Lee. Lee*, 312 S.W. 3d 515 at 526-527. Further,

she applies the analysis to Tenn. Code Ann. § 49-5-511(a)(1)-(2)², which limits the grounds for dismissal or suspension of a tenured teacher to those reasons contained in the Tenure Act instead of addressing the plain language of Tenn. Code Ann. § 49-5-501(11)(B)(i). (Lemon Br., 38-39); Tenn. Code Ann. § 49-5-511 (2020).

Ms. Lemon further argues that the “cardinal rule of statutory construction is to effectuate legislative intent, with all rules being a means to that end.” (Lemon Br., 38-39). This analysis, however, only applies if a statute is ambiguous and has the ability to convey more than one meaning. *Lee*, 312 S.W. 3d 515 at 526-527. “Courts must give these words their natural and ordinary meaning” and “when a statute's text is clear and unambiguous, the courts need not look beyond the statute itself to ascertain its meaning.” *Id.* A Court must first determine that the plain language of the statute is ambiguous if they wish to look to the intent of the legislature. *Id.* Before Ms. Lemon can ask a court to analyze the intent of Tenn. Code Ann. § 49-5-511, she must show that the plain language of Tenn. Code Ann. § 49-5-501 is ambiguous, and the

² Code Ann. § 49-5-511(a)(1)-(2) states the following:

- (a) (1) No teacher shall be dismissed or suspended except as provided in this part.
- (2) The causes for which a teacher may be dismissed are as follows: incompetence, inefficiency, neglect of duty, unprofessional conduct, and insubordination, as defined in § 49-5-501.

Tenn. Code Ann. § 49-5-511

statute patently states that a teacher loses their tenure status upon resignation. (Lemon Br., 38-39); Tenn. Code Ann. § 49-5-501, 511.

As the statute states, the protections of the Tenure Act only extend to tenured teachers, and Ms. Lemon's resignation removed the protections she now insists are available. To hold otherwise would ignore the plain language of the statute and the rules of statutory construction.

B. The Act states that a teacher loses their tenure status upon resignation, but a teacher must maintain their tenure status if they want to claim a violation of the Tenure Act, which does not include the legal fiction of constructive discharge.

Maintaining tenure status is a condition precedent to the procedures outlined in the Tenure Act and allowing the theory of constructive discharge to stand would permit a teacher to avoid the entire tenure dismissal process and fundamentally change the application of the Act statewide. As stated in *Lee*, "courts must give these words [of the General Assembly] their natural and ordinary meaning" and "when a statute's text is clear and unambiguous, the courts need not look beyond the statute itself to ascertain its meaning." *Lee*, 312 S.W. 3d 515 at 526-527. A Court must first determine that the plain language of the statute is ambiguous if they wish to look to the intent of the legislature. *Id.* The language of the statute requires a teacher to maintain tenure status if they want to receive the protections of the Tenure Act. Tenn. Code. Ann. § 49-5-501, 511. It does not allow for the legal fiction of constructive discharge because maintaining

tenure status is a condition precedent put in place by the General Assembly. *Id.*

The requirement to maintain tenure in Tenn. Code Ann. § 49-5-501 is a condition precedent to the protections of Tenn. Code Ann. § 49-5-511. *Id.* The wording of Tenn. Code Ann. § 49-5-501(11)(B)(i) is clear – a teacher no longer has tenure status and the protections of the Tenure Act upon their resignation. Tenn. Code Ann. § 49-5-501. Applying the analysis outlined by this Court in *Lee*, the question of whether a teacher was dismissed or suspended in violation of Tenn. Code Ann. § 49-5-511(a)(1)-(2), which is the crux of Ms. Lemon’s argument, can only be determined if the court finds that a teacher has maintained their tenure status based on the plain language of Tenn. Code Ann. § 49-5-501. *Lee*, 312 S.W. 3d 515 at 526-527. To do otherwise would give no effect to Tenn. Code Ann. § 49-5-501. Tenure status must be maintained if the teacher is going to claim an improper dismissal or suspension under Tenn. Code Ann. § 49-5-511(a)(1)-(2). Tenn. Code Ann. § 49-5-511.

Allowing a tenured teacher to resign and give up their tenure status but still claim these protections would fundamentally change the application of the law across the state. The General Assembly carefully laid out an extensive tenure dismissal process in statute. This process does not contain the legal fiction of constructive discharge. If the Court of Appeals’ decision stands, a teacher would essentially be able to avoid the entire tenure dismissal process by resigning and claiming constructive discharge. This would take away the board of education’s ability to review and certify the charges presented by the director of schools against a tenured teacher. Tenn. Code Ann. § 49-5-511. This

review is the board's first opportunity to assess the actions of the director and determine if a suspension or dismissal is warranted. Additionally, the board would not be able to make a final decision during the appeals process. Tenn. Code Ann. § 49-5-512 (2020). There would be no impartial hearing officer appointed, or record of proceedings created. *Id.* The board of education would not have an opportunity to review the record and render a final decision under Tenn. Code Ann. § 49-5-512(b), which is a mandatory function of the board. *Id.*; Tenn. Code Ann. § 49-2-203 (2020). Finally, it would effectively remove the limitation in Tenn. Code Ann. § 49-5-513(a) that only allows a tenured teacher who was suspended or dismissed by action of the board under Tenn. Code Ann. § 49-5-512(c)(3) to petition for a writ of certiorari from the chancery court. Tenn. Code Ann. § 49-5-512; Tenn. Code Ann. § 49-5-513 (2020).

The Tenure Act requires a teacher to maintain their tenure status if they want to claim the protections of the Act. Ms. Lemon resigned from her position and failed to meet this condition precedent. Bypassing this requirement would in effect render other statutory provisions in the Act without effect.

C. The Court of Appeals incorrectly applied case law to support their holding that constructive discharge may apply to teacher tenure.

The Court of Appeals incorrectly applied case law dealing with the assignment of a teacher to support their holding that constructive discharge is applicable to the Tenure Act. The Court of Appeals used

State ex rel. McGhee v. St. John, 837 S.W.2d 596 (Tenn. 1992) to support their decision to apply the constructive discharge doctrine to the Tenure Act. *Lemon v. Williamson County Schs.*, No. M2018-01878-COA-R3-CV, 2019 WL 4598201, at *5-6 (Tenn. Ct. App. Sept 23, 2019). The *McGhee* case, however, was decided on narrow facts and illustrates that constructive discharge may occur when a teacher is reassigned to a position she is not certified to hold. *McGhee*, 837 S.W.2d 596 at 602; Tenn. Code Ann. § 49-5-705 (1992).

In *McGhee*, this Court reviewed the plight of a teacher that returned from a leave of absence and was assigned to a position she was not certified to teach. *McGhee*, 837 S.W.2d 596 at 597. Ms. McGhee was a high school teacher that gave a failing grade “to the school’s star basketball player.” *Id.* As a result, she was intimidated and forced to change the student’s grade, received threats from the community, and ultimately sought medical care. *Id.* Ms. McGhee took leave but was order back by the Superintendent on a specific date even though her doctor stated that he believed she was not able to perform her duties. *Id.* When she did not return to work, the school board discharged her for abandonment of her position, refusal to return to work, insubordination, and dereliction of duties. *Id.* On appeal, this Court held that Ms. McGhee should be reinstated without loss of any salary or her position. *Id.* at 598. Subsequently, Ms. McGhee sent a letter to the school board asking for a one-year medical leave. *Id.* The school board approved the medical leave of absence on October 21, 1988. *Id.* On July 29, 1989, Ms. McGhee asked for her original position at the high school, but the superintendent did not respond until October 9, 1989. *Id.* Ms.

McGhee was then placed in a fifth-grade elementary school class, a position in which she was not certified. *Id.* This action was held to be in violation of Tenn. Code Ann. § 49-5-705 because the statute stated she had the right to return to her old position. *Id.* at 601-602. In holding that Ms. McGhee was entitled to her position, this Court stated:

Because it would have been virtually impossible for Anne McGhee to acquire another teaching position for the 1989–1990 school year, given the fact that the academic year was well under way by the time she was *constructively discharged* by Baird's letter of October 9, 1989, we hold that McGhee is entitled to receive the equivalent of her salary and benefits for that year, without diminution of any kind. (emphasis added).

Id. at 602. Ms. McGhee's assignment to a different position, coupled with the failure to notify her until well within the school year was the justification for ruling that the school district was in violation of Tenn. Code Ann. § 49-5-705, not Tenn. Code Ann. § 49-5-511. *Id.* at 601-602.

The facts of *McGhee* are distinct from the facts of the current case, and the holding of *McGhee* should not be used to extend the legal fiction of constructive discharge to the Tenure Act. In *McGhee*, not only did the superintendent fail to return her to any position until well into the school year, he returned her to a position that she was not even certified to teach. *Id.* At 597. By taking these concrete actions, the superintendent was in violation of Tenn. Code Ann. § 49-5-705. *Id.* at 601-602. Turning to the facts of the case at hand, Ms. Lemon was never demoted, transferred, or discharged. She personally viewed the actions taken by the superintendent and administration as a reduction to an inferior position. (R., Vol. 1, 7). None of the actions alleged in the

complaint violated any law. By contrast, the actions taken in *McGhee* violated the law by preventing the teacher from returning to a position that: (1) she could have returned to; and (2) was essentially guaranteed to her under the law. *McGhee*, 837 S.W.2d 596 at 601-602. The Court of Appeals' opinion ignores how this Court applied the law to the facts of *McGee* and extended a legal fiction to the Tenure Act that was never intended.

Ms. Lemon argues that the General Assembly has never expressed disapproval of *McGhee* because they did not remove constructive discharge when they reformed the Tenure Act in 2011. (Lemon Br., at 47-48). This argument is fundamentally flawed because the statute at issue in *McGhee* is not even contained in the Tenure Act. It is in a completely different part of Title 49, Chapter 5. It stands to reason that the General Assembly did not remove constructive discharge when they reformed the Tenure Act in 2011 because until the Court of Appeals' ruling in this case, the theory of constructive discharge has never been addressed under the Tenure Act. 2011 Tenn. Pub. Acts Chp. No. 70; of 2012 Tenn. Pub. Acts Chp. No. 614. The phrase "constructive discharge" as it relates to *McGhee* has only been addressed under the leave provision of Tenn. Code Ann. § 49-5-705.

The Court of Appeals should not have used the phrase "constructive discharge" found in *McGhee* as a basis for their ruling in the current case. *McGhee* is distinct in that it addressed the assignment of a teacher to a position she was not certified to teach after a leave of absence, violating the express wording of a statute.

II. IF THE COURT ALLOWS THE LEGAL FICTION OF CONSTRUCTIVE DISCHARGE TO APPLY TO CLAIMS OF WRONGFUL TERMINATION UNDER THE TENURE ACT, THE ONLY REMEDIES AVAILABLE ARE THOSE ESTABLISHED UNDER THE ACT.

If the Court allows the legal fiction of constructive discharge to apply to claims of wrongful termination under the Tenure Act, then the only remedies available to Ms. Lemon should be those that are established under the Act, and the Court should not craft any additional remedies. The Court of Appeals' decision in this case to classify Ms. Lemon's wrongful termination claims as a tort would entitle her to remedies that do not exist under the Tenure Act and would in effect be judicial modification of the statutory language.³

Tenn. Code Ann. § 49-5-511(a)(3) contains the remedy for a violation of the Tenure Act, which applies even if a tenured teacher is terminated without charges or a hearing. *Thompson v. Memphis City*

³ The Court of Appeals suggested in dicta that tort remedies are possibly available to Ms. Lemon based on her wrongful discharge claim under the Tenure Act:

To the extent Plaintiff has sustained emotional injuries and consequential damages in lost front pay, her remedy for those injuries lies in her tort claim for wrongful termination. *See Sasser v. Averitt Exp., Inc.*, 839 S.W.2d 422, 433 (Tenn. Ct. App. 1992) (explaining that the remedy of front pay may be appropriate in wrongful discharge claims where reinstatement is not feasible).

Lemon, 2019 WL 4598201, at *13.

Schs. Bd. of Educ., 395 S.W.3d 616 at 627-628 (Tenn. 2012); Tenn. Code Ann. § 49-5-511.⁴ The courts are not at liberty to rewrite statutes, and the Tenure Act provides the appropriate relief to a teacher who was suspended or dismissed in violation of the law. *Emory*, 514 S.W.3d 129 at 145.

This Court has already ruled that the remedies contained in the Tenure Act apply in a situation where a tenured teacher is dismissed without charges or a hearing. *Thompson*, 395 S.W.3d 616 at 632. In *Thompson*, a tenured teacher, Ms. Thompson, failed to return from sick leave. *Id.* at 618. Three months later an administrator in the district wrote a letter stating that Ms. Thompson was terminated for not returning to work. *Id.* at 619. She did not receive any of the pre-termination protections of the Tenure Act and filed suit against the district alleging a violation of the Act, seeking reinstatement, back pay, and an injunction from future action. *Id.* at 624. On Ms. Thompson's

⁴ Tenn. Code Ann. § 49-5-511(a)(3) states the following:

A director of schools may suspend a teacher at any time that may seem necessary, pending investigation or final disposition of a case before the board or an appeal. If the matter under investigation is not the subject of an ongoing criminal investigation or a department of children's services investigation, and if no charges have been made pursuant to subdivision (a)(4), a suspension pending investigation shall not exceed ninety (90) days in duration. *If vindicated or reinstated, the teacher shall be paid the full salary for the period during which the teacher was suspended.* (emphasis added).

Tenn. Code Ann. § 49-5-511.

motion for summary judgment, the trial court found the district violated the Tenure Act and ordered that she receive the statutory remedies of reinstatement and back pay. *Id.* at 621. The Court of Appeals reversed and remanded the trial court's summary judgment decision on the Tenure Act, stating a full hearing before the board of education was needed. *Id.* at 621-622. On appeal, this Court found that the termination of a tenured teacher must follow the Tenure Act. *Id.* at 625-626. Even though Ms. Thompson was never suspended, but instead terminated without charges or a hearing, this Court stated that Tenn. Code Ann. § 49-5-511(a)(3) provided the appropriate remedies of reinstatements and back pay. *Id.* at 628.

In *Emory*, another case involving the Tenure Act, charges were brought against a tenured teacher and certified by the board of education. *Emory*, 514 S.W.3d 129 at 133-134. The teacher requested a hearing within the timeframe outlined in statute. *Id.* at 134. The board did not conduct a hearing within the thirty days as required by law, but the trial court did not rule directly on the issue. *Id.* at 144. On appeal, the Court of Appeals held that this specific provision in the Tenure Act was directory and should have been followed. *Id.* Moreover, this holding emphasized the fact that there was not a specific consequence for the board failing to hold a hearing and stated some type of sanction was necessary. *Id.* at 139. The Court of Appeals then crafted a remedy not contained in statute. *Id.* at 144-145. This Court reversed the Court of Appeals holding that courts do not have the ability to rewrite statutes and are “not at liberty to judicially modify the Act.” *Id.* at 145.

In the instant case, the Court of Appeals erred by stating Ms. Lemon has the ability to recover tort damages for emotional injuries and consequential damages in lost front pay based on her claim for wrongful termination under the Tenure Act. *Lemon*, 2019 WL 4598201, at *13.⁵ These remedies are not provided for under the Tenure Act. As outlined in *Thompson*, the courts are limited to providing only the remedies available in the plain language of the statute. *Thompson*, 395 S.W.3d 616 at 632. If this Court holds that constructive discharge can apply in Ms. Lemon's situation, and she was dismissed without being charged or receiving a hearing, then just like Ms. Thompson the statutory remedies provide her relief. Even simply stating that Ms. Lemon can seek damages for emotional injuries and consequential damages in lost front pay for a claim for wrongful termination under the Tenure Act is a clear judicial modification of the law and courts are not at liberty to rewrite statutes.

The statutory remedies in Tenn. Code. Ann. § 49-5-511(a)(3) are the proper vehicles a court should use to cure any violation of the

⁵ The WCBOE did file a Petition for Rehearing in which the Court of Appeals stated:

The Board takes issue with our characterization of Plaintiff's wrongful termination claim as a 'tort claim' that provides a remedy for Plaintiff's alleged emotional injury and lost backpay. Our statement, however, was simply recognition that damages for emotional injuries and lost front pay are appropriate in actions for wrongful termination. We gave no opinion as to whether those damages are appropriate or warranted in the present case.

(Order denying Rehearing.)

Tenure Act. Allowing the Court of Appeals' opinion, classifying Ms. Lemon's claim for wrongful termination as a tort, to stand would entitle her to remedies that are nonexistent under the Act, a patent modification of statutory language by the courts.

CONCLUSION

For the foregoing reasons, TSBA respectfully requests that this Court affirm the Trial Court's dismissal of Ms. Lemon's wrongful termination claim brought under the Tenure Act and reverse the Court of Appeals' decision that applies the legal fiction of constructive discharge to the Tenure Act. If the Court allows the theory of constructive discharge to apply to Ms. Lemon's claim for wrongful termination, TSBA requests that any remedies available be limited to those found under the Tenure Act.

As amicus curiae in this instance, TSBA urges this Court to recognize the far-reaching effects the Court of Appeals' ruling will have on school districts. Particularly, the fundamental change in the interpretation and application of the Tenure Act. The impact of viewing this type of wrongful termination claim as a tort could potentially provide alternative remedies under the Tenure Act that has never existed. TSBA respectfully requests that the decision of the Court of Appeals be reversed.

Respectfully submitted, this 6th day of May,
2020.

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CERTIFICATE OF COMPLIANCE

In accordance with Tennessee Supreme Court Rule 46, Section 3.02(a) and (c), the undersigned counsel for *Amicus Curiae* certifies that this Brief of the Tennessee School Boards Association in support of appellant, Williamson County Board of Education, complies with the type and volume limitations of Tennessee Supreme Court Rule 46, Section 3.02(a)(1)(c). According to the word count tabulated in the word processing system utilized in drafting this Brief (Microsoft Word for Mac, Microsoft Office 365), this Brief contains 4,520 words, excluding title/cover page, table of contents, table of authorities, and certificate of compliance, and has been prepared using 14-point Century Schoolbook font.

/s/ Benjamin C. Torres
Benjamin C. Torres

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing brief has been served upon counsel for parties in interest herein by U.S. Mail, postage prepaid, addressed to:

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/s/ Benjamin Torres

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