

STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

07-1235

EDDIE J. GUILBEAUX

VERSUS

THE HOUSING AUTHORITY OF THE CITY OF OPELOUSAS, ET AL.

COOKS, J., concurs in the result and assigns additional reasons.

Plaintiff argues his termination was not proper because under La.R.S. 42:6, a public body may take no binding action in executive session. He further argues there was no dispute regarding the fact that the Housing Authority terminated Plaintiff's contract during the executive session; and as a result, the trial judge should have handled this matter as an undisputed fact, applying the provisions of La.R.S. 42:6 to these undisputed facts and holding the contract was not legally terminated. While I find validity in this argument, Plaintiff failed to timely voice his objection to this defect by seeking to enjoin the termination in advance of filing the present suit. He also did not file a motion for summary judgment asserting his legal entitlement to immediate reinstatement because of the improper termination. He additionally could have, though belatedly, urged after the Defendants rested, that a directed verdict was appropriate because Defendants failed to establish the termination was legally valid. Although Plaintiff vociferously urges that public policy compels that we "do the right thing" and follow R.S. 42:6, we are procedurally barred from taking such action.

Plaintiff has also argued the basis for the termination was not the same as that used at trial. Again, this may be so. However, Plaintiff failed to take advantage of the procedural remedies available to him prior to and during trial. There were a number of procedural avenues Plaintiff could have taken: (1) he could have filed a motion in limine to prevent admission of evidence and enlargement of the pleadings;

(2) he could have objected to admission of the evidence during the trial as beyond the reasons actually used by the Board to terminate Plaintiff's employment; and (3) he could have requested an instruction to the jury in line with *Votier v. Church Point Wholesale Beverage Co.*, 99-1777 (La.App. 3 Cir 4/5/00), 760 So.2d 451, writ denied, 00-1920 (La.9/29/00), 770 So.2d 350. Having failed to avail himself of his procedural remedies below, Plaintiff cannot now seek redress at this level.