Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000073-MR
AND
NO. 2010-CA-000093-MR

EDWIN RILEY   APPELLANT/CROSS-APPELLEE

APPEAL AND CROSS-APPEAL FROM MCCRACKEN CIRCUIT COURT
v.   HONORABLE THOMAS O. CASTLEN, JUDGE
ACTION NO. 09-CI-00087

BOARD OF EDUCATION
OF MCCRACKEN COUNTY,
KENTUCKY   APPELLEE/CROSS-APPELLANT

OPINION
VACATING AND REMANDING

** ** ** ** **

BEFORE: STUMBO AND VANMETER, JUDGES; SHAKE,[1] SENIOR JUDGE.

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[1] Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

VANMETER, JUDGE: Edwin Riley appeals from the order of the McCracken

Circuit Court granting the McCracken County Board of Education's ("School

Board") motion for summary judgment and summarily denying Riley's motion for

summary judgment. The School Board cross-appeals from the trial court's order

denying its motion to dismiss for Riley's failure to join indispensable parties. For

the following reasons, we vacate and remand.

The School Board currently operates twelve school centers in the

McCracken County Public School District ("School District"), which constitutes

all areas of McCracken County, Kentucky not located within the Paducah

Independent School District. The School District is divided into three attendance

zones, namely Reidland, Heath, and Lone Oak, each of which contains a high

school, a middle school, and two elementary schools.

In June 2007, the School Board established and received approval by the

Kentucky Board of Education ("KBE") of a local District Facilities Plan ("DFP").

Later, the School Board sought permission to amend the DFP to allow for the

construction of a new high school, as well as for realignment of certain grades at

each school center in the Lone Oak attendance zone. This amendment was

approved by the KBE in December 2007.

In 2008, the School Board voted to request permission from the Kentucky

Department of Education ("KDE") to initiate the amendment process of the DFP

for a second time to provide for the construction of a new consolidated high school

to enroll grades ten through twelve of the Reidland, Heath and Lone Oak

attendance zones. The KDE approved the request by letter dated September 24, 2008. On November 20, 2008, the School Board unanimously approved the amendment and submitted the proposed amendment to the KDE for review and consideration. Upon the recommendation of the KDE, the KBE approved the amendment for review during its state board meeting on December 10, 2008.

Riley filed the underlying action alleging, in part, that the School Board's amendment of the DFP was in violation of the "Kentucky School Facilities Planning Manual" of June 2008 ("Manual"). First, Riley claimed the School Board failed to address whether any required circumstance existed to justify an amendment, and that no such circumstance existed. Second, Riley argued the School Board did not timely submit the amendment to the KBE for final approval.

In response, the School Board filed a motion to dismiss on the basis that the KDE was a necessary and indispensable party to the action. The court denied the School Board's motion, and after further discovery, the parties each filed motions for summary judgment. The court granted the School Board's motion for summary judgment, concluding that Riley was precluded from challenging the School Board's compliance with the administrative regulations for amendment of the DFP in light of the KBE's approval of the amended DFP. This appeal and cross-appeal followed.

In its cross-appeal, the School Board argues the trial court erred by denying its motion to dismiss the action for failing to join the KDE as an indispensable party. We agree.

CR[2] 19.01 provides, in part:

> A person who is subject to service of process . . . shall be joined as a party in the action if (a) in his absence complete relief cannot be accorded among those already parties, or (b) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

In this action, Riley challenges the School Board's compliance with established regulatory requirements for amending the DFP as prescribed by 702 KAR[3] 4:180, which incorporates the Manual by specific reference. The regulations maintain that every school district must develop a local DFP once every four years. 702 KAR 4:180, Section 1. In addition, the DFP, as well as any amendments thereto, must be "developed in accordance with the standards and hearing procedures contained in the [Manual]." 702 KAR 4:180, Section 2.

In regard to the amendment process of the DFP, the Manual provides:

> The local board of education may request an amendment to its DFP under the following circumstances:
> 1. A major change in enrollment.
> 2. A major change in curriculum.
> 3. A major disaster.
> 4. An unforeseen occurrence.

Manual, Section 502.2. To begin the amendment process, "the local board of education shall vote in open session to request permission from KDE to reassemble

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[2] Kentucky Rules of Civil Procedure.

[3] Kentucky Administrative Regulations.

the LPC [local planning committee] that developed the current DFP." Manual, Section 502.3. Then, the board must notify KDE of the need for an amendment, after which the KDE shall issue a decision to approve or disapprove the need for an amendment. Manual, Section 502.4. Ultimately, the amendment must be developed and approved by the LPC, reviewed by the KDE, tentatively approved by the local board, reviewed in a public hearing, finally approved by the board, and then submitted to the KBE for final review. Manual, Section 502.9. Final review by the KBE follows the same process required for approval of a new DFP. Manual, Section 108.3 provides, a "district shall submit verification of the completion of the steps . . . to KDE 45 days in advance of the State Board Meeting[.]"

The rule is well-established that "[a]n administrative agency's interpretation of its own regulations is entitled to substantial deference." *Hughes v. Kentucky Horse Racing Authority*, 179 S.W.3d 865, 872 (Ky.App. 2004) (citing *Camera Ctr., Inc. v. Revenue Cabinet*, 34 S.W.3d 39 (Ky. 2000)). Thus, "[a] reviewing court is not free to substitute its judgment as to the proper interpretation of the agency's regulations as long as that interpretation is compatible and consistent with the statute under which it was promulgated and is not otherwise defective as arbitrary or capricious." *Hughes*, 179 S.W.3d at 872 (citing *City of Louisville By and Through Kuster v. Milligan*, 798 S.W.2d 454, 458 (Ky. 1990)).

Here, the Manual is an administrative regulation detailing the procedural steps a local school board must take in order to seek the review and potential

approval of a DFP, and any amendments thereto, by the KBE and KDE. It follows that the School Board's compliance with the procedural steps detailed in the Manual is left to the discretion of the KBE and KDE. Thus, an action challenging such compliance with the Manual should be brought against the state agency charged with interpreting its own rules of compliance. Accordingly, the trial court erred by failing to dismiss this action for Riley's failure to join the KDE as an indispensable party.[4]

The order of the McCracken Circuit Court is vacated and this action is remanded to the trial court with directions to dismiss this case for failure to join an indispensable party.

ALL CONCUR.

BRIEFS FOR APPELLANT/
CROSS-APPELLEE:

Robert L. Prince
Benton, Kentucky

BRIEF FOR APPELLEE/
CROSS APPELLANT:

Gorman Bradley, Jr.
L. Miller Grumley
Paducah, Kentucky

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[4] Since we vacate and remand on procedural grounds, we are unable to meaningfully review Riley's appeal. Thus, we decline to address Riley's remaining claims of error.