

STATE OF MICHIGAN
COURT OF APPEALS

RILEY STANSKY, a Minor, by his Next Friend,
MICHAEL STANSKY

UNPUBLISHED
October 25, 2012

Plaintiff-Appellant,

v

No. 305287
Marquette Circuit Court
LC No. 10-048285-CZ

GWINN AREA COMMUNITY SCHOOLS and
MICHAEL R. MAINO,

Defendants-Appellees.

Before: MURPHY, C.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition. We affirm.

On May 4, 2010, an extreme bullying incident occurred between plaintiff Riley Stansky and another ninth grade student. The two boys were in the locker room after gym class when the other boy threw a toothbrush that hit a locker next to plaintiff. Plaintiff picked up the toothbrush and chased the other boy into the bathroom stalls where he fell and cut his hand, sustaining a two-inch gash in his hand.

During the incident and while the other student was on the ground in the bathroom stall, plaintiff shoved the toothbrush at him. Plaintiff picked up the toothbrush and said, "I'm going to stick this up your butt." The toothbrush touched the victim's testicles as plaintiff shoved it at him.

An investigation occurred and the school determined that plaintiff's actions were intentional and not a manifestation of his educational disability. Plaintiff does not dispute that his actions met the definition of assault. Plaintiff was suspended for 180 days with the opportunity to be reinstated after 90 school days if certain conditions were met.

Plaintiff's parents appealed the decision on several grounds, including that the student handbook indicated that each assault would result in a suspension of 5 to 10 days and possible referral for expulsion. The school board unanimously upheld the original suspension.

Plaintiff filed suit alleging that the 180-day suspension violated Riley's due process rights because it was arbitrary, unreasonable, and contrary to the published student handbook such that Riley had no notice of this severe consequence.

The trial court granted summary disposition for defendants, finding that the suspension was within the range contemplated by the Board of Education's policies as well as the student handbook. The trial court also determined that the suspension was reasonable and not arbitrary or capricious.

We review a trial court's decision on a motion for summary disposition de novo on appeal. *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 280; 807 NW2d 407 (2011). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Henry Ford Health Sys v Esurance Ins Co*, 288 Mich App 593, 597; 808 NW2d 1 (2010). A motion for summary disposition may be granted when there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10).

School authorities have wide latitude and discretion in fashioning rules to maintain order and discipline in the schools, *Davis v Hillsdale Community Sch Dist*, 226 Mich App 375, 380; 573 NW2d 77 (1997), but authorities may not act arbitrarily or capriciously. *Id.* Additionally, "courts must give great deference to a school administration's construction of its own rules and regulations." *Birdsey v Grand Blanc Community Sch*, 130 Mich App 718, 724; 344 NW2d 342 (1983).

If a student in sixth grade or above commits a physical assault against another student the school board "shall suspend or expel the pupil from the school district for up to 180 school days." MCL 380.1310(1). A school district "shall develop and implement a code of student conduct and shall enforce its provisions with regard to pupil misconduct" MCL 380.1312(8).

Similarly, the school board administrative policy § 5610.02 states that "[t]he Board shall suspend or expel a student in grade six or above for up to 180 school days if the student commits physical assault at school against another student." The administrative policy § 5110 also states that "[t]he guidelines and procedures by which students are to function while attending school in the District are to be contained in one (1) or more student handbooks."

The student handbook contains a section titled "student rights & responsibilities/cause effect discipline code." The definition and effect of assault are as follows:

ASSAULT

A violent physical attack against another person.

A. Each Offense

1. Five to 10 days suspension and possible referral for exp[ul]sion.

At the end of the student rights & responsibilities/cause effect discipline code section of the handbook is a sub-section titled “suspensions and expulsions procedures.” That subsection provides:

The administrator issuing the suspension may consider extenuating circumstances and/or unusual situations when determining the length of a suspension and adjust the number of days called for or other actions called for in the “Cause-Effect Disciplinary Code” when it is in the best interest of the student and/or school community.

Plaintiff claims that defendants arbitrarily deviated from the handbook’s disciplinary code, and that there was no notice that a 180-day suspension would result from a simple assault. Therefore, according to plaintiff, the arbitrary nature of defendants’ conduct is a de facto violation of due process.

Adequate notice of a 180-day suspension was provided because the statutes and school board policies specifically allow up to a 180-day suspension for assault, and the handbook allows an administrator to adjust the length of a suspension based on circumstances and the best interests of the school community.¹

Additionally, we find that, based on the wide latitude and great deference that is to be given school authorities when formulating and interpreting school policies, defendants’ actions were neither arbitrary nor capricious and the 180-day suspension was a reasonable use of the school authorities’ power and discretion to maintain order and decorum in the school. *Davis*, 226 Mich App at 380-381. The trial court properly granted summary disposition for defendants.

Defendants raise two other issues in their appellate brief, but an appellee cannot obtain a decision more favorable than the decision rendered by the trial court unless a cross appeal is filed. *Truel v Dearborn*, 291 Mich App 125, 137; 804 NW2d 744 (2010). Defendants’ issues were not properly preserved for appeal; therefore, we decline to review them.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer

¹ We note that a hearing by the Gwinn Area Community Board of Education was held June 21, 2010, at which time the board reviewed and upheld the original 180-day suspension given to the student for the assault against another student.