



**In the Missouri Court of Appeals
Eastern District**

DIVISION THREE

JANE TURNER, SUSAN BRUKER, GINA)	No. ED92226
BREITENFELD and WILLIAM DRENDEL,)	
)	
Plaintiffs/Appellants,)	Appeal from the Circuit Court
)	of St. Louis County
v.)	
)	
SCHOOL DISTRICT OF CLAYTON,)	Honorable David Lee Vincent, III
BOARD OF EDUCATION OF THE CITY OF)	
ST. LOUIS and THE TRANSITIONAL SCHOOL)	
DISTRICT OF THE CITY OF ST. LOUIS,)	
)	
Defendants/Respondents.)	Filed: June 23, 2009

Introduction

Jane Turner, Susan Bruker, Gina Breitenfeld and William Drendel (Appellants or Parents) appeal from the trial court's Amended Judgment in favor of the Clayton School District and the Transitional School District. We affirm.

Factual and Procedural Background

Appellants and their children (Children or Students) live in the City of St. Louis, but Students attend public school within the Clayton School District in St. Louis County pursuant to Tuition Agreements executed between Appellants and the Clayton School District. The terms of the Tuition Agreements provide that Appellants "do not currently reside within the boundaries of the [Clayton] District, but nevertheless wish to enroll their child in the District schools on a

tuition payment basis” and that “the District is willing to enroll the child as a tuition-paying student subject to the terms and conditions set out herein.” The Tuition Agreements state that Appellants “agree to pay the annual tuition to the District” and that Clayton School District “agrees to enroll the child as a full-time tuition-paying student [and] ... [a]s such, the child *will be subject to the same rights, privileges, duties and responsibilities as a resident, non-tuition paying student....*” Appellants “may renew this Agreement from year-to-year until the child graduates from high school unless [Appellants] have failed to pay tuition in a timely manner,” and concludes with a paragraph providing that “[t]his Agreement constitutes the entire agreement between [Appellants] and the District.”

Section 167.151¹ is the statute that authorizes public school districts to admit nonresident students upon payment of tuition in this fashion.

A special administrative board of the Transitional School District currently governs the St. Louis City Public School District, as the St. Louis City Public School District lost its accreditation from the Missouri Department of Elementary and Secondary Education in 2007.

Appellants requested the Clayton School District to prepare special tuition bills for Students and present the bills to the St. Louis Public School District for payment pursuant to Section 167.131, instead of charging Appellants the tuition, pursuant to their Tuition Agreements. Section 167.131.1 provides that the board of education of each district in Missouri that does not maintain an accredited school shall pay the tuition for that district’s students that attend an accredited school in another district that maintains an accredited school. Clayton School District declined to bill the St. Louis Public School District for Students’ tuition.

¹ All statutory references are to RSMo 2006, unless otherwise indicated.

Appellants brought suit against Clayton School District, the Board of Education of the City of St. Louis, and the Transitional School District, seeking a declaratory judgment that, pursuant to Section 167.131, Clayton School District must prepare special tuition bills for Students and that the Transitional School District must pay those bills. In addition, Appellants asserted a restitution claim against Clayton School District for the payments Appellants made under their Tuition Agreements, after Clayton School District refused to issue the special tuition bills. Clayton School District and the Transitional School District each moved for summary judgment. Appellants filed a cross-motion for summary judgment.

On October 23, 2008, the trial court heard all of the motions. On November 5, 2008, the trial court entered its Amended Judgment concluding that Section 161.131 was not applicable in this case, and there was no legal basis for Appellants' request for declaratory judgment; and entered final judgment in favor of Clayton School District and the Transitional School District, and dismissed all of Appellants' claims. This appeal follows.

Points on Appeal

In their first point, Appellants claim that the trial court erred in granting the Transitional School District's motion for summary judgment because Section 167.131 applies to the St. Louis Public School District in that a plain reading of Section 167.131 cannot support the interpretation that Section 167.131 applies only to small, rural districts that fail to maintain schools at particular grade levels.

In their second point, Appellants assert that the trial court erred in granting Clayton School District's and the Transitional School District's motions for summary judgment because Senate Bill 781 (1998) (SB 781) does not preempt Section 167.131 as to the St. Louis Public

School District, in that no conflict exists between SB 781 and Section 167.131, and in any event, SB 781 and Section 167.131 should be harmonized so as to give effect to all provisions.

In their third point, Appellants contend that the trial court erred in granting Clayton School District's motion for summary judgment because Section 167.151 does not limit Appellants' rights under Section 167.131 in that the discretion regarding admittance of students given to school districts under Section 167.151 is specifically revoked as to Students whose rights are being asserted under Section 167.131.

In their fourth point, Appellants maintain that the trial court erred in denying Appellants' motion for summary judgment, because it misapplied Section 167.131, in that Students reside within the St. Louis Public School District, an unaccredited school district, and attend Clayton School District schools, thereby obligating Clayton School District to prepare special tuition bills for Students, and requiring the Transitional School District to pay those bills.

Standard of Review

Our review of a grant of summary judgment is essentially *de novo*. ITT Commercial Finance Corp. v. Mid-Am. Marine Supply Corp., 854 S.W.2d 371, 376 (Mo. banc 1993). We view the record in the light most favorable to the party against whom judgment was entered, and afford that party the benefit of all reasonable inferences. Id. For entry of summary judgment in its favor, a movant has the burden of proving that no genuine issues of material fact exist and that it is entitled to judgment as a matter of law. Id. at 381. Whether or not summary judgment was proper is a question of law, and we need not defer to the trial court's order granting summary judgment. Id. at 376.

If the trial court's grant of summary judgment can be sustained on any theory as a matter of law, we cannot reverse. Moran v. Kessler, 41 S.W.3d 530, 537 (Mo.App. W.D. 2001). We

will affirm the trial court's grant of summary judgment for the Clayton School District and the Transitional School District if the same is correct under any theory supported by the record developed below and presented on appeal. See Thomas Berkeley Consulting Eng'r, Inc. v. Zerman, 911 S.W.2d 692, 696 (Mo.App. E.D. 1995) (citing Zafft v. Eli Lilly & Co., 676 S.W.2d 241, 243 (Mo. banc 1984)).

Discussion

In their four points on appeal, Appellants maintain that the trial court erred in finding that Section 167.131 does not apply to the St. Louis Public School District, because it only applies to small, rural districts; that SB 781 preempts Section 167.131 even if Section 167.131 did apply; and that Section 167.151 limits the application of Section 167.131 to Appellants.

Section 167.131, entitled **District without accredited school shall pay tuition and provide transportation—rate**, provides:

1. The board of education of each district in this state that does not maintain an accredited school pursuant to the authority of the state board of education to classify schools as established in section 161.092, RSMo, shall pay the tuition of and provide transportation consistent with the provisions of section 167.241, RSMo, for each pupil resident therein who attends an accredited school in another district of the same or an adjoining county.
2. The rate of tuition to be charged by the district attended and paid by the sending district is the per pupil cost of maintaining the district's grade level grouping which includes the school attended. The cost of maintaining a grade level grouping shall be determined by the board of education of the district but in no case shall it exceed all amounts spent for teachers' wages, incidental purposes, debt service, maintenance and replacements. The term "**debt service**", as used in this section, means expenditures for the retirement of bonded indebtedness and expenditures for interest on bonded indebtedness. Per pupil cost of the grade level grouping shall be determined by dividing the cost of maintaining the grade level grouping by the average daily pupil attendance. If there is disagreement as to the amount of tuition to be paid, the facts shall be submitted to the state board of education, and its decision in the matter shall be final. Subject to the limitations of this section, each pupil shall be free to attend the public school of his or her choice.

Subsection 1 of Section 167.151, entitled **Admission of nonresident and other tuition pupils--certain pupils exempt from tuition--school tax credited against tuition--owners of agricultural land in more than one district--teacher as parent of pupil**, provides:

1. The school board of any district, in its discretion, may admit to the school pupils not entitled to free instruction and prescribe the tuition fee to be paid by them, except as provided in sections 167.121 and 167.131.

Appellants contractually obligated themselves to pay Students' tuition to Clayton School District. In return, Students were contractually granted by Clayton the status of a full-time tuition-paying student, subject to the same rights, privileges, duties and responsibilities as a resident, non-tuition paying student. As such, we find that Appellants are barred from claiming that someone else, other than they, are obligated to pay the tuition. Such a claim completely contradicts the terms of their contractual arrangement with Clayton. "When a contract uses plain and unequivocal language, it must be enforced as written." Lake Cable, Inc. v. Trittler, 914 S.W.2d 431, 436 (Mo.App. E.D. 1996). Equitable concerns, on public policy grounds, cannot work to defeat contractual provisions that do not otherwise violate the law or public policy; courts must enforce contracts as written, unless to do so would violate the law or public policy. East Attucks Community Housing, Inc. v. Old Republic Sur. Co., 114 S.W.3d 311, 323 (Mo.App. W.D. 2003). This Court is not at liberty to disregard the terms of the contract between Appellants and Clayton School District for payment of tuition, even where there may be a statutory alternative for payment. See, e.g., Alverson v. Alverson, 249 S.W.2d 472, 475 (Mo.App. St.L. 1952) (where a contract is lawfully entered into between a husband and wife in which husband agrees to pay a certain amount for wife's alimony, the court in which the divorce is pending will have no right to disregard that contract and must enforce it as written, despite fact

that parties may have opted for statutory alimony instead of by contract). In accord, Edmondson v. Edmondson, 242 S.W.2d 730, 735 (Mo.App. 1951).

There was no contingency in the contract changing its terms once the School District in which Appellants live lost its accreditation. The St. Louis Public School District's loss of accreditation did not and does not affect the terms of Appellants' contract with the Clayton School District to pay Students' tuition. Also, the terms of the contract recognize Students as having all the rights of a student who actually lives in the Clayton School District and does not pay tuition. Therefore, Appellants are essentially demanding that Clayton School District recognize Children not as residents of Clayton but of the City of St. Louis, which contradicts the terms of the Tuition Agreement.

Furthermore, Appellants cite no legal authority by which they have the power to order Clayton School District to bill someone else for their Children's tuition. Clayton's Tuition Agreements with Appellants say Appellants agree to pay the tuition for their Children, and that is as far as Clayton is required to look to see who is legally responsible for paying the bill.

In summary, the terms of the Tuition Agreements are binding on Appellants and Clayton, regardless of the accreditation status of the St. Louis City School District. Therefore, Clayton is under no obligation to issue "Special Tuition Bills" to the Transitional School District for Appellants' Children's tuition.

Appellants also argue that Section 167.131 "hardly could be more plain and direct" in its language that a "board of education that does not maintain an accredited school ... shall pay the tuition of ... each pupil resident therein who attends an accredited school in an adjoining county." Appellants claim that Students fall clearly within this statute and therefore the

Transitional School Board is obligated to pay Students' tuition at the Clayton School District schools.

There are two problems with this argument. First of all, logistically, the Transitional School Board cannot be obligated to pay a tuition that Appellants are already contractually obligated to pay. That would result in a double payment. As long as Appellants remain contractually bound to make tuition payments to the Clayton School District, no one else can be so obligated. Second, Appellants did not show that no genuine issues of material fact exist that the St. Louis Public School District does not maintain any accredited schools in the City of St. Louis. Such a circumstance is a condition required under the statute. Furthermore, in this case, the St. Louis Public School District itself lost its accreditation – but Section 167.131 makes no mention of a formerly accredited school *district* losing its accreditation. Rather, the statute only refers to a board of education of each district that does not *maintain an accredited school*. The affidavit of Dr. Dan Edwards, Assistant Superintendent for the St. Louis Public School District, affies that the “St. Louis Public School District maintains, and during the 2007-08 school year did maintain, high schools that were and are accredited by the North Central Commission on Accreditation and School Improvement, a widely recognized and respected organization involved in reviewing educational curricula and staff and accrediting both colleges and high schools.”

In any event, we find that Appellants have contractually obligated themselves to pay Students' tuition to Clayton Schools; the Tuition Agreements by their terms give Students the same status as students who reside in Clayton School District, and Appellants cannot both accept that status by contract, then claim City School District status for Children “out of the other side of their mouths”; Section 167.131's application to Students in the case *sub judice* is dubious at

best, and irrelevant in this case anyway since Appellants are contractually obligated to pay Students' tuition, therefore precluding any other entity's obligation to do so. Any finding to the contrary would violate the terms of the contract Appellants voluntarily entered into with Clayton School District, which this Court is precluded from doing.

We find, based on the foregoing reasoning, that Respondents were entitled to judgment as a matter of law on Appellants' claims. Our findings above make resolution of the issues of the preemptive status of SB 781 and Section 167.151 unnecessary and therefore as presented, moot. Although the trial court did not rely upon the contractual issue in its judgment, and it may have relied on a different legal theory as to why Section 167.131 does not apply in the instant case, we will uphold summary judgment if it could have been properly granted on grounds other than those relied upon. Peet v. Randolph, 33 S.W.3d 614, 619 (Mo.App. E.D. 2000).

For all of the foregoing reasons, Points I and IV are denied, and Points II and III are dismissed as moot.

Conclusion

We would affirm the amended judgment of the trial court. Because of the general interest and importance of the issues involved in this case, we transfer the case to the Missouri Supreme Court pursuant to Rule 83.02.

Sherri B. Sullivan, J.

Robert G. Dowd, Jr., P.J., and
Clifford H. Ahrens, J., concur.