In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-10-00558-CV

IN RE VIDOR INDEPENDENT SCHOOL DISTRICT

Original Proceeding

MEMORANDUM OPINION

Vidor Independent School District seeks mandamus relief from a temporary restraining order that (a) prohibits the District from placing a student, J.C., in the District's disciplinary alternative education program ("DAEP"), (b) requires the District to place the student in the school's special assignment class ("SAC"), and (c) mandates that the student receive credit for each day he serves in special assignment class on his placement in the alternative education program. We conditionally grant relief and direct the trial court to immediately vacate the temporary restraining order.

The District contends the trial court abused its discretion in entering a temporary restraining order in the absence of subject matter jurisdiction to overturn the placement of the student in the District's DAEP (also known as "SWIS"). The District also contends

that the student lacks standing to appeal this placement to the district court. J.C. contends that he has standing to petition a district court for an injunction because the administrative remedy is inadequate.[1]

The District's school disciplinary policy provides for a three-level disciplinary process under the Board's Policy FNG.[2] *See* Vidor ISD Student Code of Conduct, *available at* http://www.vidorisd.org/CodeOfConduct/CoC1011/StudentCodeofConduct 1011.pdf, at 19; *see also* Student Rights and Responsibilities, Student and Parent Complaints/Grievances, FNG(Local), *available at* http://www.tasb.org/policy/pol/private /181907/pol.cfm?DisplayPage=FNG(LEGAL).pdf, at 3-4. Under Policy FNG(Local), at Level One the student and his parents file a complaint with the campus principal that results in a conference followed by a written response. At Level Two the student and his parents request a conference with the superintendent, and the superintendent holds a conference followed by a written response. At Level Three the student or his parents file a written appeal to the Board of Trustees, which results in placement of the item on the Board's agenda for recorded presentations by the student or parent or a representative of the student or parent and the administration. *See* FNG(Local) at 3-6. The Board may issue its decision any time up to and including the next regularly scheduled board

[1] J.C. is represented by his parents and is acting through them.

[2] Both parties assert that Policy FNG(Local) applies here. Because the application of this policy is not contested in this proceeding, we assume that document describes the procedure that applies to this case.

meeting. *Id.* at 6. The lack of a response before that date upholds the Level Two administrative decision.

J.C. engaged in conduct for which he has been disciplined. On November 2, 2010, the District placed J.C. in his high school's Special Assignment Class ("SAC") pending disciplinary placement. On November 5, 2010, J.C., his parents, and the principal convened a disciplinary placement conference.[3] At the conclusion of the conference, the principal determined that J.C. had engaged in behavior that substantially disrupted or materially interfered with school activities, a general conduct violation of the District's Student Code of Conduct. J.C. does not dispute that he is subject to discipline for his misbehavior. J.C. also does not dispute that he is eligible for DAEP placement for engaging in behavior that substantially disrupts or materially interferes with school activities. The validity of the placement order was not placed at issue in J.C.'s pleadings in the trial court and is not before this Court.[4]

[3] When a student is removed from class for violating the School Code of Conduct, the conference must be scheduled not later than the third class day after the day on which a student is removed from class. *See* Tex. Educ. Code Ann. § 37.009(a) (West 2006). The District contends the conference occurred on the third day after removal, while J.C. maintains that he was removed from class on November 1 and placed in SAC on November 2, and contends that the conference occurred on the fourth day after J.C. was removed from class and assigned to SAC.

[4] J.C.'s application for temporary restraining order states that the principal's decision "is not what is before this court" because "courts have consistently declined to intervene in disciplinary action."

At the conclusion of the conference, the principal assigned J.C. to attend the District's SWIS program for a period of thirty days to begin on November 10, 2010.[5] The principal ordered that all of the days J.C. served in SAC prior to beginning SWIS would count towards the thirty-day DAEP placement. The principal also agreed to reduce the DAEP placement from thirty days to fifteen days if J.C. wrote a letter of apology. J.C. wrote the letter of apology, thus reducing the length of his placement to fifteen days, but he did not report to SWIS. On November 10, 2010, J.C. filed an application for temporary restraining order and temporary injunction with the 163rd District Court in Cause No. B-100713-C. A temporary restraining order issued on that day, but that order was dissolved by the district court on November 16, 2010, and it is not before this Court.

J.C. appealed the disciplinary action to the District superintendent in accordance with the District's policy. That appeal was heard on November 29, 2010. Evidently, the superintendent confirmed the principal's action, because on December 2, 2010, J.C. filed an application for a temporary restraining order and temporary injunction with the 128th District Court in Cause No. A-100750-C. In the application, J.C. alleges that his failure to exhaust his administrative remedies is excused because that remedy would be inadequate. In particular, J.C. alleges that the appeal remedy pursuant to FNG(Local) "provides no adequate or timely remedy to prohibit immediate and irreparable injury . .

[5]District policy requires a written order. *See* http://www.vidorisd.org/CodeOf Conduct/CoC1011/StudentCodeofConduct1011.pdf, at 18. The principal's order is not included in the mandamus record.

.," because the SWIS placement is not deferred while the appeal is pending. J.C.'s petition concedes that the applicable District policy provides that the placement order is not deferred during the appeal process. Thus, J.C. does not dispute that the District is properly applying its policy in this case. The sole relief sought in the application is a temporary restraining order restraining the District "from directly or indirectly placing Plaintiff in the DAEP Program (SWIS), maintain the status quo by continuing placement in SAC, and receive credit each day he serves thereof toward his SWIS placement." The petition also requests temporary injunction enjoining the District "from indirectly placing Plaintiff in the DAEP Program (SWIS), maintain the status quo by continuing placement in SAC, and receive credit each day he serves thereof toward his SWIS placement during the pendency of this action and Order that Plaintiff continue to be placed in SAC and receive credit each day he served[.]" Other than recovery of his expenses in obtaining temporary relief, J.C. requested no other relief in his petition.

On December 2, 2010, the trial court signed an *ex parte* temporary restraining order "operative until the date of the hearing hereinafter ordered, restraining and enjoining Vidor Independent School District from placing Plaintiff in the DAEP Program (SWIS), maintain the status quo by continuing placement in SAC, and receive credit each day he serves thereof toward his SWIS placement" upon the filing of a $500 bond. According to the District, J.C. reported to the high school campus on December 3, 2010. Evidently, J.C. has been attending SAC since that date under the authority of the

temporary restraining order that requires the District to keep J.C. in SAC and give J.C. credit toward his SWIS placement for every day J.C. attends SAC.

When the trial court issued the temporary restraining order, it set the temporary injunction hearing for December 15, 2010. Although the parties do not identify the date of the next regularly scheduled board meeting, the next regularly scheduled meeting of the Board may occur while the temporary restraining order is still in force. *See* Vidor ISD School Board Meeting Schedule, *available at* http://www.vidorisd.org/board.php #schedule.

In its mandamus petition, the District argues that the trial court misapplied section 37.009 of the Texas Education Code by enjoining the District from enforcing its disciplinary placement and substituting the trial court's own discipline for those determined by the school officials authorized to discipline public school students. *See* Tex. Educ. Code Ann. § 37.009(a) (West 2006) ("If school district policy allows a student to appeal to the board of trustees or the board's designee a decision of the principal or other appropriate administrator, . . . the decision of the board or the board's designee is final and may not be appealed.").

J.C. does not claim that the District has failed to afford J.C. the process accorded to him by the applicable District policy. The Student Code of Conduct states that disciplinary consequences will not be deferred pending the outcome of an appeal. *See* Student Code of Conduct, at 19. Rather, J.C. contends that the process is not an adequate administrative remedy for his grievance because his punishment is not deferred during his

appeal. J.P. contends that "[b]y the time the Vidor ISD School Board Policy appeal process may be exhausted, the disciplinary period of assignment will be expired and this case will be moot." The temporary restraining order requires the District to keep J.C. in SAC and to give J.C. credit towards his SWIS placement while the temporary restraining order is in effect. Although J.C. alleged that unless the temporary restraining order issued he might serve out his SWIS placement before the Board could hear his appeal, the practical effect of the temporary restraining order is to allow J.C. to serve out his SWIS placement in SAC without the Board's hearing his appeal. Moreover, because the temporary restraining order does not state that the Board may hear J.C.'s appeal and render a decision on his placement, the Board cannot order J.C. to report to SWIS without violating the trial court's order. Under the terms of the temporary restraining order, all or most of the fifteen-day disciplinary period will have expired before the trial court conducts an evidentiary hearing on J.C.'s application for injunctive relief.

A temporary restraining order cannot have the effect of adjudicating the central question of the suit based merely on one party's pleadings and a non-evidentiary *ex parte* hearing. *See In re Newton*, 146 S.W.3d 648, 651-52 (Tex. 2004). The temporary restraining order signed by the trial court in this case grants J.C. all of the relief he has requested in his petition, provides affirmative relief by ordering the District to give J.C. credit on his SWIS placement for the time J.C. attended SAC, and interferes with the District's lawful exercise of its power to discipline its students. *See Friona Indep. Sch. Dist. v. King*, 15 S.W.3d 653, 659 (Tex. App.—Amarillo 2000, no pet.). School districts

have the right to control and discipline their students. *Id.* The trial court abused its discretion by entering a temporary restraining order and in scheduling an injunction hearing in such a way that J.C. accomplished the primary object of the petition without a trial. *See id.*

J.C. argues that he was not required to pursue the administrative process if that remedy is inadequate. He cites a breach of contract case in which the implementation of a new policy required the teachers to work longer hours without additional compensation. *See Houston Fed'n of Teachers, Local 2415 v. Houston Indep. Sch. Dist.,* 730 S.W.2d 644, 645-46 (Tex. 1987). The Supreme Court held that the teachers would suffer irreparable harm because it was undisputed that receiving compensation months later would not provide adequate compensation and the Commissioner of Education was not authorized to order immediate injunctive relief. *Id.* The Court held that the court of appeals erred in dismissing the case without considering the merits of the teachers' petition for a temporary injunction. *Id.* J.C. also cites a case in which a school district appealed the denial of its plea to the jurisdiction in an age and gender discrimination suit filed by a teacher who failed to file a grievance after the alleged discriminatory action. *Harlandale Indep. Sch. Dist. v. Rodriguez,* 121 S.W.3d 88, 91 (Tex. App.—San Antonio 2003, no pet.). The appellate court held that the trial court properly dismissed the teacher's claims for failure to exhaust administrative remedies. *Id.* at 92-94. The court mentioned the exception to the general rule regarding exhaustion of administrative remedies that applies when irreparable harm will be suffered and the agency is unable to

provide relief. *Id.* at 94. In both of these cases cited by J.C., there was an existing controversy before the trial court and the issue was whether the plaintiff had exhausted the available administrative remedy. Here, the only relief being sought by J.C. is from the administrative process itself, and his pleadings do not present an underlying controversy over which the trial court would have jurisdiction after J.C. exhausted his administrative remedies. To the contrary, the District's disciplinary action, pursuant to section 37.009(a), is not appealable and J.C. concedes that the merits of the disciplinary action are not before the trial court. *Compare* Tex. Educ. Code Ann. § 37.009(a), *with* Tex. Educ. Code Ann. § 37.009(f) (West 2006); *see Tarkington Indep. Sch. Dist. v. Ellis*, 200 S.W.3d 794, 797-99 (Tex. App.—Beaumont 2006, no pet.).

The District argues that the trial court must dismiss the entire case because placement of a student in DAEP does not have due process implications. *See Stafford Mun. Sch. Dist. v. L.P.*, 64 S.W.3d 559, 563 (Tex. App.—Houston [14th Dist.] 2001, no pet.). J.C. sought injunctive relief in the trial court "to protect Plaintiff's due process right [and] afford him his right of appeal" to the Board. The process afforded to J.C. under the applicable policy does not permit J.C. to defer placement until the Board acts on J.C.'s appeal. J.C. has not identified a liberty or property interest that is violated by the District's policy, but the case cited by the District is an appeal from the denial of a plea to the jurisdiction. *Id.* at 561. The trial court has not had the opportunity to consider the District's jurisdictional challenge and determine whether J.C. could amend his pleadings to state a cause of action over which the trial court could have jurisdiction. *See*

generally State Bar of Tex. v. Jefferson, 942 S.W.2d 575, 576 (Tex. 1997) (declining relator's request to dismiss case in mandamus proceeding concerning temporary restraining order).

Because temporary restraining orders are not appealable, the District has no remedy by appeal. *See In re Office of Attorney Gen.*, 257 S.W.3d 695, 698 (Tex. 2008). A writ of mandamus is appropriate when a district court issues an order that is beyond its jurisdiction. *See Jefferson,* 942 S.W.2d at 576 (compelling trial court to vacate order enjoining investigative proceedings before investigatory panel of a grievance committee). Accordingly, we conditionally grant the petition for writ of mandamus. We direct the district court to vacate, instanter, its temporary restraining order signed December 2, 2010, and to furnish the Clerk of this Court proof of compliance by 4:00 p.m., December 13, 2010. We are confident that the trial court will comply, and our writ will issue only if the trial court fails to act in accordance with this Opinion.

PETITION CONDITIONALLY GRANTED.

PER CURIAM

Submitted on December 10, 2010
Opinion Delivered December 13, 2010

Before McKeithen, C.J., Kreger and Horton, JJ.