NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued November 1, 2023
Decided December 14, 2023

Before

DIANE S. SYKES, *Chief Judge*

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-3057

CHRISTINE SIMMONS, as Parent and Natural Guardian of T.S. and Individually,
Plaintiff-Appellant,

v.

J.B. PRITZKER, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:22-cv-00123

Manish S. Shah,
Judge.

O R D E R

Plaintiff Christine Simmons's son, T.S., attended school in the Ottawa Township Public School District. During his time there, an individualized education plan ("IEP") governed his education. For T.S., that meant extra test-taking time, plus transition services that could put him on a path to succeed after high school. His IEP, though, did not contemplate any form of remote learning. Yet like other students in Illinois, T.S. suddenly found himself staying home from school in the spring of 2020. This suit stems from his mother's dissatisfaction with that transition. Unfortunately for Ms. Simmons,

Article III requires injury, not mere dissatisfaction. Ms. Simmons lacks standing, so we affirm.

I

The Individuals with Disabilities Education Act ("IDEA") supplies the legal backdrop for this case. That statute provides educational supports for students with greater educational needs, all to the end of equipping each with a free appropriate public education. 20 U.S.C. § 1401(9). For those students with disabilities, the statute requires an IEP that lays out their current performance levels, appropriate goals, and a plan to achieve them. § 1414(d). That plan must include "the special education and related services and supplementary aids and services … to be provided to the child." § 1414(d)(1)(A)(i)(IV). Schools may not make unilateral changes to an IEP. Instead, they must give "[w]ritten prior notice" before changing a child's "educational placement." 20 U.S.C. § 1415(b)(3). A school that does make a change "shall ensure that the parents of each child with a disability are members of any group that makes" that decision. § 1414(e).

IDEA also funds these local services. § 1411(a). The Department of Education makes grants to states, conditioned on certain assurances of compliance with IDEA's terms. *See* 34 C.F.R. §§ 300.100–300.174. Plaintiffs allege that Illinois took in over $500 million in IDEA funds in 2020, and over $600 million in 2021. In doing so, Illinois officials assured the Department of Education that (for example) "[c]hildren with disabilities and their parents are afforded the procedural safeguards required by" IDEA and its implementing regulations.

Turn now to T.S. During the school year that began in the fall of 2019, he was sixteen years old. He and his mother, plaintiff Christine Simmons, lived in the Ottawa Township High School District #140. Because T.S. had been diagnosed with a general learning disability, he received certain accommodations: time-and-a-half on tests, other test adjustments, and certain classes aimed at helping him matriculate into an independent adult life.

When the pandemic struck, things changed. Defendant J.B. Pritzker, the Governor of Illinois, issued an executive order on March 13, 2020, proclaiming that "all public and private schools in Illinois serving pre-kindergarten through 12th grade students must close for educational purposes through March 30, 2020." Ill. Exec. Order 2020-05. Two weeks later, Governor Pritzker and the Illinois State Board of Education

("ISBE") issued a joint statement extending remote learning. Eventually, in June, Governor Pritzker issued another executive order permitting a return to school. Ill. Exec. Order 2020-40.

Soon after that second order, in fall 2020, T.S. returned to school in person on a half-day basis. He never returned to fully remote learning, and Ms. Simmons informs us that he ultimately graduated.

This dispute began when, unhappy with T.S.'s remote learning, Ms. Simmons allegedly filed an administrative due process complaint under IDEA, arguing that the switch to remote learning effected a "change in placement" under the statute. *See* 20 U.S.C. § 1415(f). Ms. Simmons later abandoned that proceeding and now concedes she did not exhaust her administrative remedies.

After that, Ms. Simmons joined with Hsinyi Liu and filed a complaint in the Northern District of Illinois, seeking to certify a class of similarly situated parents and children. Ms. Liu, like Ms. Simmons, has a child with a learning disability—he goes by B.W. in this suit, and he went to school in Chicago. Their complaint named a wide range of defendants: Governor Pritzker, ISBE, ISBE's superintendent Carmen Ayala, and the students' schools (Chicago Public Schools, Ronald Amundsen Public School, Ottawa Township High School #140) plus the schools' leaders (Pedro Martinez of Chicago Public Schools, Miguel del Valle of the City of Chicago Board of Education, and Michael Cushing of the Ottawa Township High School District #140). The seven-count complaint alleged violations of IDEA; the Rehabilitation Act, 29 U.S.C. § 794; the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*; the Fourteenth Amendment's equal protection and substantive due process protections; Illinois state law; and the Racketeer Influence and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c). The plaintiffs sought equitable relief, including declaratory judgments that the defendants had violated the law and the assignment of a Special Monitor to oversee administration of IDEA rights for the proposed class. And they requested nominal and punitive damages as appropriate under their causes of action.

The district court granted the defendants' motions to dismiss, finding that mootness, sovereign immunity, failure to exhaust administrative remedies, and pleading deficiencies variously doomed the plaintiffs' claims. This appeal followed.

II

Recent events have limited the scope of this appeal. Just before oral argument, Ms. Liu settled her claims and dismissed her appeal. Her claims no longer remain in the case—and so neither do the City of Chicago defendants.

Oral argument further narrowed the dispute. There, Ms. Simmons conceded that she did not have standing to pursue any prospective relief. We agree. The notion that she might be harmed in the future relies on "a highly attenuated chain of possibilities," including a new or resurgent pandemic, which "does not satisfy the requirement that threatened injury must be certainly impending." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013).

Simmons also agreed that T.S. has turned 18 years old and graduated from high school. Although parents have certain rights of their own under IDEA, *see Winkelman ex rel. Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 529 (2007), IDEA allows states to transfer those rights to students who reach the age of majority. 20 U.S.C. § 1415(m)(1). Illinois has done so, and now its parents' rights transfer when their children turn eighteen. *See* 105 ILCS 5/14-6.10; 23 Ill. Adm. Code 226.690(a)(1) ("all other rights accorded to parents under Part B of the Individuals with Disabilities Education Act … shall transfer to the student"). Although the state permits students to re-delegate their rights to a parent or other adult, *see* 23 Ill. Adm. Code 226.690, Ms. Simmons conceded T.S. did not do so. She also has conceded that she is not entitled to compensatory education, which the complaint requested, and which might have sent T.S. back to school. Ms. Simmons has no IDEA rights left for us to vindicate.

Nor is Ms. Simmons entitled to litigate on behalf of T.S. No court has issued any order under Fed. R. Civ. P. 17 suggesting she has that authority, and Ms. Simmons has not argued otherwise.

As Ms. Simmons confirmed at oral argument, the only remaining claims are those she brings in her own right. That boils down to nominal damages (to the extent they are available) under the ADA, the Rehabilitation Act, and RICO. Ms. Simmons lacks standing here too. Standing requires injury in fact. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). "To establish injury in fact, a plaintiff must show that *he or she* suffered 'an invasion of a legally protected interest' that is 'concrete and particularized.'" *Id.* (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)) (emphasis added). The

plaintiff herself must have suffered the injury, and Ms. Simmons pleaded no injury under any of the three statutes.

Ms. Simmons did not plead any injury of her own under the ADA. Her complaint does not allege that she is disabled; instead, it focuses on T.S.'s alleged injury. Her only connection to the injury is as T.S.'s parent and guardian. She does not allege any discrimination based on her "relationship or association" with T.S. 42 U.S.C. § 12112(b)(4). Instead, the complaint assumes that the relevant injury is to T.S. Now that T.S. is eighteen and can litigate in his own right, she is left with nothing.

Those same facts consign her Rehabilitation Act claim to the same fate: her allegations refer exclusively to "Student Plaintiffs" in describing the injury that might support standing. Ms. Simmons is not a student—she pleads no injury and has no standing.

Likewise for her RICO claim, which alleges fraud in the defendants' IDEA representations to the Department of Education. That claim pleads two kinds of injury. The first is deprivation of rights under IDEA—rights that Ms. Simmons now lacks. The second is regressions in skills T.S. might have learned at school. Once more, she identifies no injury of her own.

Federal courts decide only cases and controversies. Plaintiff offers us neither.

AFFIRMED