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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JACK FLAHERTY, JR., et al.,

Plaintiffs

vs.

Civil Action No. 01-586

KEYSTONE OAKS SCHOOL DISTRICT,
et al.,

Defendant

19
4/23

PROCEEDINGS

Transcript of hearing on temporary restraining order
on Friday, April 13th, 2001, United States District Court,
Pittsburgh, Pennsylvania, before Honorable
Donetta W. Ambrose, U.S. District Judge.

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CLERK
U.S. DISTRICT COURT

APPEARANCES:

For the Plaintiff:

Pepper, Hamilton LLP
By: KIM M. WATTERSON Esq

American Civil Liberties
Foundation of Pennsylvania
By: WITOLD J. WALCZAK, Esq.

For the Defendant:

Peacock, Keller
By: DOUGLAS R. NOLIN, Esq.

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P R O C E E D I N G S

(In open court.)

THE COURT: Good morning, everyone. We have a hearing this morning scheduled on a request for a preliminary injunction in the case of Jack Flaherty, Jr., Jack Flaherty, Sr., and Carol Flaherty against Keystone Oaks School District, Carl DeJulio, Scott Hagy, Alex Covi, Joseph Perry, and Jeff Sieg.

Now, when I spoke to counsel two weeks ago, I had indicated that I could give you a half day today, and everyone indicated that would be sufficient, and that's all I can do. So giving a break for Shirley, that would probably be about eighty minutes apiece, maybe a little less.

There seem to be not a whole lot of facts in dispute here, and I think it would really help if we could start, whether by stipulation or something else, because if you're taking your time presenting facts that aren't in dispute, it might not be the best way to proceed.

Now, I know that Miss Watterson had indicated that she didn't think there were a lot of factual disputes.

MS. WATTERSON: No, Your Honor.

THE COURT: After having read the submissions of the Plaintiff, the cases cited by the Plaintiff, and I also had two cases that were given to me by the Defendant, I have an idea of what the facts are from what you have said; but

1 THE COURT: Mr. Sieg to Mr. Hagy.

2 MR. NOLIN: I have no objection.

3 THE COURT: Any objection?

4 MR. NOLIN: No objection.

5 THE COURT: It's admitted.

6 So check -- there are some exhibits that haven't
7 been requested for admission -- all the Defendants' were --
8 Exhibit 7, student handbook.

9 MS. WATTERSON: I'd move the admission of the
10 student handbook.

11 THE COURT: Any objection?

12 MR. NOLIN: No objection.

13 THE COURT: Exhibit 4, memo from Perry to Hagy.

14 MS. WATTERSON: Yes, Your Honor.

15 MR. NOLIN: No objection.

16 THE COURT: Okay, they're in; they're both
17 admitted.

18 MS. WATTERSON: Okay.

19 (Off the record discussion.)

20 THE COURT: Well, there are a couple things I want
21 to say before I give my ruling. There are a couple things
22 that bother me, and I want to say what they are.

23 First of all, I don't pretend to think that it's
24 easy to be either a teacher or an administrator in any public
25 school system today because I don't think it probably is. I

1 know a lot of things are going on, and it's a hard job. And
2 it's a job that I have a lot of confidence in; I'm a firm
3 believer in the public school system, and I really admire
4 those people who run the school and teach in the school.

5 There's one thing that concerns me here today, and
6 it has nothing to do with this case; but I feel -- not
7 directly, of course. It has something to do with the case;
8 but it bothers me, and that's this whole issue with
9 Mrs. King, who I hope is not going to be made a scapegoat in
10 this case, because I have a great fear about that.

11 It appears to me that what happened, according to
12 the credible evidence, in that classroom was perfectly
13 innocent. And I have a deep and abiding concern for the
14 position that she appears to be in at this time, and that is
15 of great concern to me, and it makes me very uncomfortable
16 and uneasy to see these letters that have been admitted into
17 evidence for someone who has given her life to the public
18 school system. That bothers me, and I have to say it.

19 In order for a preliminary injunction to be issued,
20 there are certain requirements, probability of irreparable
21 injury to the moving party in the absence of any relief --
22 and that's Mr. Flaherty, Jr. -- the possibility of harm to
23 the non-moving party -- and that's the individual Defendants
24 as well as the Keystone Oaks School District -- the
25 likelihood of success on the merits, and the public interest.

1 So if I take these in turn, I see that initially
2 when I deal with the first one, the submissions offered by
3 the Plaintiff were really excellent briefs, and I really
4 appreciated having the opportunity to have the issues laid
5 out for me; but it's clear that the loss of First Amendment
6 freedoms even for a minimal amount of time unquestionably
7 constitutes irreparable injuries, so I don't have to go any
8 further there. There's been a First Amendment violation.

9 The possibility of harm to the non-moving party:
10 Now, there's been some testimony here today about disruption
11 at Keystone Oaks High School, but I don't think any of it has
12 been attributable to Jack Flaherty or anything that he did.
13 There have been some conversations about fear or need for
14 security, the fact that he is mad at the principals, the
15 volleyball team is being made fun of, people might worry
16 about what might happen; but these are not the specific and
17 significant kind of disruption that the case law requires.
18 Worries about what might happen simply don't cut the mustard
19 when you read the cases on these kind of issues. We have to
20 have more than what the cases say appears to be
21 undifferentiated fears or apprehensions of disturbance.

22 The likelihood of success on the merits: As we
23 started out today, Miss Watterson said that the burden was on
24 the Defendant, and that is true. The Defendant must show
25 that Mr. Flaherty's conduct would materially and

1 substantially interfere with the operation of the school, the
2 work of the school, the rights of other students.

3 We have a whole lot of history here, it appears,
4 but it's history for which Mr. Flaherty has already been
5 punished and he has not challenged. What I have now before
6 me are messages, all from home except one.

7 In terms of those that have been posted from home,
8 I think the Defendant attributes too much of what other
9 people say to Mr. Flaherty. The language, particularly the
10 language about what he agreed with, is perfectly logical and
11 clear when you listen to his explanation following the
12 question. He thinks or thought Keystone Oaks was going to
13 give a good lashing to Baldwin at the volleyball game.

14 It is my opinion that the Defendants have not
15 produced any evidence of substantial and material disruption,
16 and I do not find that Mr. Flaherty's conduct materially and
17 substantially interfered with the educational process at
18 Keystone Oaks High School.

19 There is the issue of the one violation of the
20 school policy, but it is my opinion that the credible
21 evidence in this case, both the testimony and the exhibits,
22 is that the Plaintiff was on the Internet with the knowledge
23 and the permission of his teacher, and that that did not
24 materially or substantially interfere with any process at
25 Keystone Oaks High School.

1 So I find that there is more than a substantial
2 likelihood of success on the merits of this case in terms of
3 the Plaintiff and the Defendant's failure to meet its burden.

4 Finally, we reach the public interest; and the
5 public interest is always to protect the rights that we all
6 enjoy as members of a free society and protected by the First
7 Amendment, particularly in this case.

8 So I believe that the requirements for the issuance
9 of a preliminary injunction have been met, that there is a
10 probability and a reality of irreparable injury to the
11 Plaintiff, that the possibility of harm to the Defendant is
12 not substantial, that there is likelihood of success on the
13 merits, and the public interest is served by the granting of
14 a preliminary injunction.

15 Therefore, Defendants, together with the
16 representatives, agents, servants, and all others acting on
17 their behalf or in concert with them, are enjoined and
18 restrained from continuing to impose a ban against Plaintiff
19 Jack Flaherty, Jr.'s participation on the varsity volleyball
20 team, continuing to ban him from attending school-sponsored
21 events, from being present on school grounds after hours, and
22 from using the school's computers, and imposing any other
23 sanctions against him for his expressions or as retaliation
24 for his expressions or as retaliation for filing this action.

25 Now, that's the order that I've entered.

1 Mr. Flaherty, you know, I don't want you to leave
2 here today all puffed up and feeling that you can do anything
3 at Keystone Oaks High School, because you can't; and I'm a
4 mother, too, a mother of a substantially older child than
5 you, but nevertheless a mother. Give your parents some peace
6 in your final months at Keystone Oaks.

7 That's it. Okay.

8 MR. NOLIN: Your Honor, may I speak?

9 THE COURT: Yes.

10 MR. NOLIN: With all due respect to the Court,
11 based on the language of both Killion and Tinker, which
12 indicates that if a school can point to a well-founded
13 expectation of disruption, especially one based on past
14 incidents arising out of similar speech, the restriction may
15 pass constitutional muster. I believe that we have shown a
16 well-founded expectation of disruption, and it sounded to me
17 as if the Court felt that the expectation of disruption was
18 not enough to satisfy this punishment.

19 THE COURT: Well, then, it sounded to you
20 incorrectly. I think the expectation -- a well-founded
21 expectation of disruption is sufficient. I do not believe
22 that the evidence supports a well-founded expectation of
23 disruption.

24 Okay.

25 MR. NOLIN: Thank you.

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THE COURT: That's it.

(Whereupon, at 11:45 a.m., the hearing was concluded.)

* * * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Shirley Ann Hall 5-23-01
Shirley Ann Hall, RDR, CRR
Official Reporter

I N D E X

<u>PLAINTIFF WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Jack Flaherty, Jr.	9	34		
Ashley Contristano	113	115		
<u>DEFENDANT WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Carol King	65	70	72	
Scott Hagy	73	98	111	

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