

STATE OF MICHIGAN
COURT OF APPEALS

LANSING SCHOOLS EDUCATION
ASSOCIATION, MEA/NEA, CATHY
STACHWICK, PENNY FILONCZUK,
ELIZABETH NAMIE, and ELLEN WHEELER,

FOR PUBLICATION
August 9, 2011
9:00 a.m.

Plaintiffs-Appellants,

v

LANSING SCHOOL DISTRICT BOARD OF
EDUCATION and LANSING SCHOOL
DISTRICT,

No. 279895
Ingham Circuit Court
LC No. 07-000483-AW

Defendants-Appellees.

ON REMAND

Before: SAAD, P.J., and FITZGERALD and BECKERING, JJ.

SAAD, P.J.

Our Supreme Court remanded this case for consideration of issues raised but not addressed in this Court's previous opinion, *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 282 Mich App 165; 772 NW2d 784 (2009), rev'd 487 Mich 349; 792 NW2d 686 (2010). Plaintiffs appeal the trial court's order that granted summary disposition to defendants, on plaintiffs' claims for declaratory, mandamus, and other relief under MCL 380.1311a(1) of the Revised School Code. For the reasons set forth in this opinion, we again affirm.

I. FACTS AND PROCEDURAL HISTORY

The facts and procedural history were set forth in our previous opinion:

Plaintiffs, Lansing Schools Education Association, MEA/NEA, Cathy Stachwick, Penny Filonczuk, Ellen Wheeler, and Elizabeth Namie, filed their complaint for a declaratory judgment, a writ of mandamus, and injunctive relief on April 9, 2007. Stachwick, Filonczuk, Wheeler, and Namie are teachers in the Lansing public school system and are members of the Lansing Schools Education Association, MEA/NEA, which is the exclusive bargaining representative for Lansing public school teachers. According to plaintiffs' complaint, students hit two of the teachers with a chair, one student slapped one of the teachers, and one

student threw a wristband toward one of the teachers and it struck the teacher in the face. Plaintiffs further assert that school administrators were informed of each incident and the students were suspended, but they were not expelled.

Plaintiffs alleged in their complaint that the expulsion of the students is required by § 1311a(1) of the Revised School Code (RSC), MCL 380.1311a(1). Plaintiffs asked the trial court for a declaratory judgment on the rights and legal relations of the parties under the statute. Plaintiffs asserted that each incident constituted a physical assault by a student in grade six or above and that expulsion of each student was mandatory. In addition to a declaratory judgment, plaintiffs asked the trial court for a writ of mandamus ordering defendants to follow the statute and expel the students and to issue a permanent injunction to enjoin defendants from future violations of MCL 380.1311a(1). Plaintiffs further asked the court to find the school officials who failed to follow the statute guilty of a misdemeanor and to cancel the contract of the school superintendent or principal who failed to comply with the statute.

In lieu of an answer, defendants filed a motion for summary disposition under MCR 2.116(C)(8). Defendants argued that plaintiffs lack standing to assert their claims under the RSC because they have no legally protected interest in the district's decision to suspend or expel students under MCL 380.1311a(1). Defendants further argued that the RSC does not create a private cause of action by teachers or education associations, but merely sets forth the powers and duties of the school board in disciplinary proceedings. According to defendants, a private cause of action cannot be inferred under the statute because exclusive remedies are set forth in MCL 380.1801 to 380.1816. Defendants maintain that, if plaintiffs had standing to bring their claim, MCL 380.1311a(1) provides that the school board has the sole power to determine whether a student physically assaulted a teacher and findings by a school board are generally deemed conclusive by our courts. Defendants claim that plaintiffs are not entitled to a writ of mandamus or declaratory judgment because there is no clear legal right of performance and the decision whether to expel the students involves the exercise of discretion.

In response, plaintiffs assert that the Legislature enacted MCL 380.1311a(1) to provide safe environments for teachers and, therefore, teachers have a legal interest in teaching in a safe environment. Plaintiffs further asserted that the plaintiff teachers suffered injuries in fact when they were assaulted and their legally protected interest in their own safety was invaded when the assaults occurred. Further, plaintiffs opined, "By refusing to expel students as required by statute, Defendants invaded the Plaintiff Teachers' legally protected interest in having a safe work environment. . . ." According to plaintiffs, they have standing to assert their claims for the above reasons and because, as a remedial statute, MCL 380.1311a(1) should be liberally construed in favor of the teachers. Alternatively, plaintiffs argue that a private cause of action should be inferred because there is no other adequate remedy or procedure to enforce the statute. Plaintiffs also maintained that the school board does not have the exclusive power

to determine whether an assault occurred and that its duty to expel a student who commits an assault is not discretionary.

The trial court heard oral argument on June 20, 2007, and granted defendants' motion for summary disposition. The trial court reasoned that, while MCL 380.1311a(1) requires the expulsion of a student who commits a physical assault, the Lansing School Board has the discretion to determine whether a physical assault occurred within the meaning of the statute. The court further concluded that trial courts should not oversee the individual disciplinary decisions of a local school board. Accordingly, the court issued a written order that granted summary disposition to defendants. [*Lansing Sch Ed Ass'n*, 282 Mich App at 167-169.]

In our prior opinion, we affirmed the trial court's grant of summary disposition and held that plaintiffs lacked standing to maintain their lawsuit because they failed to establish the elements for standing under *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726; 629 NW2d 800 (2001), overruled *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010). Our Supreme Court reversed, overruling *Lee* and its progeny. The majority formulated a new standing doctrine: "[A] litigant has standing whenever there is a legal cause of action[.]" and "[w]here a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing." *Lansing Sch Ed Ass'n*, 487 Mich at 372. "Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment." *Id.* The Court applied this new test and held that "in this case, plaintiffs have standing because they have a substantial interest in the enforcement of MCL 380.1311a(1) that will be detrimentally affected in a manner different from the citizenry at large if the statute is not enforced." *Id.* at 373. Pursuant to the Supreme Court's remand instructions, we now consider "whether plaintiffs meet the requirements of MCR 2.605" as well as the issues that we did not previously reach. *Id.* at 378.

II. ANALYSIS

A. Standards of Review

This Court reviews de novo a trial court's decision on a motion for summary disposition in an action for declaratory judgment. *Farm Bureau Ins Co v Abalos*, 277 Mich App 41, 43; 742 NW2d 624 (2007). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The court accepts all well-pleaded factual allegations as true and construes them in a light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(8) is appropriately granted "where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* (Citations omitted.)

"A trial court's decision whether to issue a writ of mandamus is reviewed for an abuse of discretion." *Carter v Ann Arbor City Attorney*, 271 Mich App 425, 438; 722 NW2d 243 (2006). "But whether defendant had a clear legal duty to perform and whether plaintiff had a clear legal

right to the performance of that duty, thereby satisfying the first two steps in the test for assessing the propriety of a writ of mandamus, are questions of law, which this Court reviews de novo.” *Id.*, citing *Tuggle v Dep’t of State Police*, 269 Mich App 657, 667; 712 NW2d 750 (2005). A trial court’s decision whether to grant injunctive relief is reviewed for an abuse of discretion. *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 8; 753 NW2d 595 (2008).

B. Law and Analysis

i. Section 1311a of the Revised School Code

MCL 380.1311a(1) mandates the permanent expulsion of a student “in grade 6 or above” who “commits a physical assault against a person employed by . . . the school board[,]” provided that the assault is reported to school officials. The statute defines “physical assault” as “intentionally causing or attempting to cause physical harm to another through force or violence.” MCL 380.1311a(12)(b). The statute provides in pertinent part:

(1) If a pupil enrolled in grade 6 or above commits a physical assault at school against a person employed by or engaged as a volunteer or contractor by the school board and the physical assault is reported to the school board, school district superintendent, or building principal by the victim or, if the victim is unable to report the assault, by another person on the victim’s behalf, then the school board, or the designee of the school board as described in section 1311(1) on behalf of the school board, shall expel the pupil from the school district permanently, subject to possible reinstatement under subsection (5). . . .

* * *

(12) As used in this section:

* * *

(b) “Physical assault” means intentionally causing or attempting to cause physical harm to another through force or violence. [MCL 380.1311a (emphasis added).]

Plaintiffs allege that the three students committed assaults against teachers, though they acknowledge that the school board determined that the students’ conduct did not constitute physical assault under 1311a(12)(b). Also, plaintiffs do not dispute that the school board has discretion to determine whether an assault occurred. But, plaintiffs argue that the mandatory language of the statute requires defendants to expel the students on the facts alleged here, and they ask this Court to determine that they have a right to compel the students’ expulsion.

ii. Plaintiffs’ Claim for Declaratory Relief

a. Actual Controversy

MCR 2.605(A)(1) provides: “In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.” *Farm Bureau Ins*, 277 Mich App at 43. An actual controversy exists when declaratory relief is needed to guide a plaintiff’s future conduct or to preserve the plaintiff’s legal rights. *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43, 55; 620 NW2d 546 (2000). “[T]he existence of an ‘actual controversy’ is a condition precedent to the invocation of declaratory relief.” *PT Today, Inc, v Comm’r of Financial & Ins Services*, 270 Mich App 110, 127; 715 NW2d 398 (2006). “In the absence of an actual controversy, the trial court lacks subject-matter jurisdiction to enter a declaratory judgment.” *Leemreis v Sherman Twp*, 273 Mich App 691, 703; 731 NW2d 787 (2007).

This Court has long recognized that the ability of litigants to obtain declaratory relief serves important purposes:

Declaratory judgment has been heralded as one of the most significant procedural reforms of the century. Its purpose is to enable parties, in appropriate circumstances of actual controversy, to obtain an adjudication of their rights before actual injury occurs, to settle matters before they ripen into violations of law or a breach of contractual duty, to avoid a multiplicity of actions by affording a remedy for declaring in one expedient action the rights and obligation of all litigants, or to avoid the strictures associated with obtaining coercive relief, when coercive relief is neither desired nor necessary to resolve the matter. [*Skiera v Nat Indem Co*, 165 Mich App 184, 189; 418 NW2d 424 (1987), quoting 3 Martin, Dean & Webster, Michigan Court Rules Practice (3d ed), Rule 2.605, p 422.]

See also *Detroit v State*, 262 Mich App 542, 550-551; 686 NW2d 514 (2004), quoting *Shavers v Attorney General*, 402 Mich 554, 588-589; 267 NW2d 72 (1978) (“[D]eclaratory relief is designed to give litigants access to courts to preliminarily determine their rights” and “[t]he court is not precluded from reaching issues before actual injuries or losses have occurred.”).

We hold that an actual controversy is lacking in this case. Declaratory relief would serve none of the purposes that have been identified as constituting an actual controversy appropriate for declaratory judgment. Plaintiffs do not allege imminent injury; the alleged physical injuries have already occurred. They do not seek to prevent a violation of a criminal law, nor is there a contractual issue for which the parties are in need of guidance. Declaratory relief does not appear necessary to guide plaintiffs’ future conduct in order to preserve their legal rights. *Citizens for Common Sense in Government*, 243 Mich App at 55.

Perhaps most importantly, we question whether the requested relief can be granted in this case. Our Supreme Court has long recognized the necessity of having all interested parties before it in order to have a case that is appropriate for declaratory judgment. *Central High Sch Athletic Ass’n v Grand Rapids*, 274 Mich 147, 153; 265 NW 322 (1936) (“We have grave doubts that a declaratory judgment would be res judicata of anything with only the present parties before us. All interested parties should be before the court.”). See also *Skiera*, 165 Mich App at 188, citing *Washington-Detroit Theatre Co v Moore*, 249 Mich 673, 677; 229 NW2d 618 (1930) (“It has [] been held that, as part of the requirement that there be an actual controversy, it is

necessary that all the interested parties be before the court.”). The declaration of rights that plaintiffs request would necessarily affect the rights of the students whose expulsion plaintiffs seek to compel, and these students are not parties to this action.

Conspicuously absent from this discussion is any concern for the protection of the rights of the students who face permanent expulsion. Student disciplinary proceedings are inherently complex with various competing interests at stake. To be sure, plaintiffs have a substantial interest in the enforcement of MCL 380.1311a(1). *Lansing Sch Educ Ass’n*, 487 Mich at 374. The Legislature adopted § 1311a(1) “to create a safer school environment and, even more specifically, a safer and more effective working environment for teachers.” *Id.* But at least equally substantial are the students’ constitutionally protected interests in a public education.

Expulsion proceedings implicate students’ due process protections, the minimum of which are notice and an opportunity to be heard. See *Goss v Lopez*, 419 US 565, 581; 95 S Ct 729; 42 L Ed 2d 725 (1975). In *Goss*, the Supreme Court held that a student must be afforded at least rudimentary due process protections before even a *temporary* suspension from school. *Id.* The Court cautioned that “[l]onger suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures.” *Id.* at 584. See also *Birdsey v Grand Blanc Comm Sch*, 130 Mich App 718, 726; 344 NW2d 342 (1983) (applying *Goss* and recognizing that “more stringent due process requirements [are] associated with permanent expulsion.”)¹

By this suit, plaintiffs seek the permanent expulsion of these students without affording them even the most rudimentary due process protections to which they are entitled. The court cannot grant the requested relief without simultaneously depriving the students of their protected right to an education without due process. In light of the implications of the students’ absence from this action, we conclude that plaintiffs failed to present an actual controversy under MCR 2.605(A)(1).

b. Failure to State a Claim

We further hold that the trial court correctly granted summary disposition under MCR 2.116(C)(8) because plaintiffs failed to state a claim upon which relief may be granted. Section 1311a(1) imposes a duty on defendants to expel students who commit physical assaults against teachers. MCL 380.1311a(1) gives school boards discretion to determine whether a student has committed a “physical assault” on a school employee, volunteer, or contractor. In the exercise of

¹ A student’s entitlement to rudimentary due process protections is well settled. Case law in this area after *Goss* has mainly centered on disputes about what process is due under certain circumstances. See, e.g., *Birdsey*, 130 Mich App at 722 (student’s confession to principal was admissible in expulsion hearing because the proceeding was civil and not criminal in nature, and *Miranda* warnings do not apply); *Newsome v Batavia Local Sch Dist*, 842 F2d 920 (CA 6, 1988) (students do not have a federal due process right to cross-examine witnesses at expulsion hearings).

that discretion, the school board determined that the students' conduct did not rise to the level of "physical assault" as defined by § 1311a(12)(b) to include an intent to cause or to attempt to cause "physical harm." MCL 380.1311a(12)(b). No further factual development could provide a basis for recovery. *Maiden*, 461 Mich at 119. The finding by the school board that physical assaults did not occur is an unalterable fact that precludes recovery. And, because this fact arises from the school board's application of law to a set of facts, we cannot and will not undermine the school board's statutory role by presuming the factual predicate to the legal conclusion that expulsion is mandated.

We disagree that plaintiffs' allegations of physical assaults must be accepted as true for purposes of the MCR 2.116(C)(8) motion. A legal duty to permanently expel the students arises under § 1311a(1) only upon a legal conclusion that physical assaults, as defined in § 1311a(12)(b), occurred. The operative issue of whether such "physical assaults" occurred is a legal conclusion reached only after applying legal standards to a complex set of facts. It is not a factual allegation, per se. See e.g., *Capitol Properties Group, LLC, v 1247 Ctr Street, LLC*, 283 Mich App 422, 426; 770 NW2d 105 (2009) (a "legal conclusion is insufficient to state a cause of action"); *Davis v Detroit*, 269 Mich App 376, 379 n 1; 711 NW2d 462 (2006) ("only factual allegations, not legal conclusions, are to be taken as true under [MCR 2.116(C)(8)]"). The plaintiffs failed to allege facts to support a legal duty on the part of defendants to expel the students. Because the school board already has determined that no assaults occurred, no factual development could justify recovery.

iii. Plaintiffs' Claims for Mandamus and Injunctive Relief

A writ of mandamus is an extraordinary remedy. *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 492; 688 NW2d 538 (2004). It is "an inappropriate tool to control a public official's or an administrative body's exercise of discretion." *Genesis Center, PLC v Commissioner of Financial and Ins Servs*, 246 Mich App 531; 633 NW2d 834 (2001). Plaintiffs must show that they have a clear legal right to performance of the specific duty sought, and that the defendants have the clear legal duty to perform the act requested. *Tuggle*, 269 Mich App at 668. See also *Baraga Co v State Tax Comm*, 466 Mich 264, 268; 645 NW2d 13 (2002) (A plaintiff must prove that "it has a clear legal right to performance of the specific duty sought to be compelled and the defendant has a clear legal duty to perform such act."). In addition, the act sought to be compelled must be ministerial, "involving no exercise of discretion or judgment." *Carter*, 271 Mich App at 438.

Plaintiffs are not entitled to a writ of mandamus or other injunctive relief. As discussed, the school disciplinary proceedings resulted in findings by the school board that no physical assaults occurred. In the absence of such findings, no duty to expel the students arose under MCL 380.1311a(1). A student's permanent expulsion is certainly far from being a ministerial task to be ordered in the absence of clear and indisputable legal grounds under the statute, and in the absence of the students themselves from this action.

Affirmed.

/s/ Henry William Saad
/s/ E. Thomas Fitzgerald