

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: J.R. :
 :
 v. : No. 1063 C.D. 2008
 : Submitted: October 24, 2008
 :
 Midd-West School District, :
 Appellant :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
 HONORABLE ROCHELLE S. FRIEDMAN, Judge
 HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE FRIEDMAN

FILED: December 23, 2008

Midd-West School District (District) appeals from the May 2, 2008, order of the Court of Common Pleas of the 17th Judicial District of Pennsylvania, Snyder County Branch (trial court), which vacated the adjudication of the District's Board of Directors (Board) expelling J.R. from school, ordered J.R.'s immediate reinstatement and remanded the matter to the Board to conduct a new expulsion hearing. We quash the District's appeal.

On October 29, 2007, the Board held a formal expulsion hearing for J.R., a student at Midd-West high school, who was charged with violating the District's policy against using illegal drugs at a school-sponsored event.¹ At the hearing, J.R. requested a continuance pursuant to 22 Pa. Code §12.8(b)(2), which allows a student to request the rescheduling of a formal hearing when the student

¹ The District alleged that J.R. smoked marijuana while acting as a student counselor at a school-sponsored overnight camp for fifth graders.

demonstrates good cause for the extension. J.R. asserted that she had good cause because: (1) she had retained a toxicologist to retest and analyze her urine sample, and he had not yet completed the testing;² (2) her attorney, Mr. Manchester, had just been apprised of potential fact witnesses, and he needed to interview them; and (3) the District had emailed Mr. Manchester telling him that District Superintendent Richard Martz (Martz) relied on students' statements to bring the charges against J.R., but he failed to attach the statements to the email so that Mr. Manchester could investigate the statements for impeachment purposes. (R.R. at 17a-23a). Mr. Manchester stated that he previously had attempted to contact the District's counsel about agreeing to an extension but was advised that the hearing would be held on October 29th. Finally, Mr. Manchester noted that while the District and its witnesses, at most, would be inconvenienced by the continuance, J.R. was facing permanent expulsion from school if she was found guilty of the charges brought against her.

Ultimately, the Board decided to close the record on October 29th, denying J.R.'s request for a continuance in its entirety. At that point, J.R., her parents and Mr. Manchester left the hearing, asserting that the Board was violating J.R.'s constitutional rights to due process and to be represented by competent counsel.³ Mr. Manchester indicated that he did not want to take the chance that

² J.R.'s test was negative for the presence of marijuana, but the District's Superintendent, Richard Martz, nevertheless took the position that the drug samples were tainted and that he was going to discount the results. (R.R. at 17a, 174a-75a.)

³ Mr. Manchester argued that to go forward on October 29th without allowing him the opportunity to cross-examine and possibly impeach the District's witnesses at a later date, after he had had the opportunity to review the witnesses' prior statements and interview potentially **(Footnote continued on next page...)**

staying to cross-examine the District's witnesses would waive J.R.'s due process challenges. (R.R. at 35a-36a.) Thereafter, relying on the testimony of the District's witnesses, the Board found that J.R. violated the District's policy, and the Board expelled J.R. from school.

J.R. appealed to the trial court, which heard argument on whether the Board abused its discretion and/or violated J.R.'s constitutional rights by denying her request for a continuance. Reasoning that the Board was sitting in its quasi-judicial capacity during the expulsion hearing, the trial court applied the "abuse of discretion" standard described in *Gillespie v. Department of Transportation, Bureau of Driver Licensing*, 886 A.2d 317 (Pa. Cmwlth. 2005),⁴ and held that the Board's denial of J.R.'s request for a continuance was manifestly unreasonable in

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exculpatory witnesses, prevented him from competently performing his duties as J.R.'s legal counsel. (R.R. at 20a-32a.)

⁴ The decision to grant or deny a continuance is exclusively within the discretion of the tribunal, and the court will not disturb the tribunal's determination in the absence of an abuse of discretion. *Gillespie*. In *Gillespie*, we explained that:

Judicial discretion, broadly defined, is the option which a judge may exercise either to do or not to do that which is proposed to him. As a guide to judicial action, it means a sound discretion exercised with due regard for what is right and equitable under the circumstances and under the law. Abuse of discretion is not merely an error of judgment; however, if in reaching a conclusion, the law is overridden or misapplied, *or the judgment exercised is manifestly unreasonable* or the result of partiality, prejudice, bias, or ill will, as shown by evidence or the record, discretion is abused.

Id. at 319 (quoting *Commonwealth v. Korn*, 467 A.2d 1203, 1205 (Pa. Cmwlth. 1983)) (emphasis in original).

light of the prejudice J.R. would suffer if denied as compared to the inconvenience the District would incur if granted. Accordingly, the trial court vacated the Board's decision, ordered the District to reinstate J.R. and remanded the matter for a new expulsion hearing.

The District now appeals to this court,⁵ arguing that the trial court abused its discretion by vacating the Board's decision and remanding for a new expulsion hearing based solely on the Board's denial of J.R.'s continuance request. However, before we address the merits of the District's appeal, we must determine whether this court has jurisdiction to review the trial court's May 2, 2008, order.⁶

Under section 762(a) of the Judicial Code, 42 Pa. C.S. 762(a), this court has jurisdiction from *final* orders of the courts of common pleas. Unless expressly provided for by statute or rule,⁷ no appeal to this court lies from an

⁵ Our scope of review is limited to determining whether the trial court abused its discretion, committed an error of law or violated constitutional rights. *Burns by and through Burns v. Hitchcock*, 683 A.2d 1322 (Pa. Cmwlth. 1996).

⁶ Although neither party questions our jurisdiction to review the trial court's opinion and order, we may raise the issue of our subject matter jurisdiction on our own motion. *Husted v. Board of Directors*, 427 A.2d 272 (Pa. Cmwlth. 1981).

⁷ See section 5105(c) of the Judicial Code, 42 Pa. C.S. §5105(c) (granting right of appeal from interlocutory order if allowed by law or rule); section 702(b) of the Judicial Code, 42 Pa. C.S. §702(b) (giving discretion to the appellate court to permit an appeal from an interlocutory order upon lower court certifying that order involves controlling question of law about which there exists substantial ground for difference of opinion and that an immediate appeal may materially advance the ultimate termination of the matter); Pa. R.A.P. 311 (discussing interlocutory appeals as of right); and Pa. R.A.P. 1311 (discussing interlocutory appeals by permission). Pa. R.A.P. 311(f)(2) provides that an appeal may be taken as of right from an order of a common pleas court remanding a matter to an administrative agency that decides an issue **(Footnote continued on next page...)**

interlocutory order. *Kramer v. Zoning Hearing Board*, 641 A.2d 685 (Pa. Cmwlth. 1994). In ascertaining what a final order is, this court must look beyond the technical effect of the order to its practical ramifications. *Kramer*. To be final, the judgment must end the litigation, dispose of the entire case or have the practical consequence of putting the litigant out of court.⁸ *Id.* It is well settled that a court order remanding a matter to an administrative agency for additional hearings generally is interlocutory and not a final order from which an appeal may be taken. *Id.*

Here, the trial court's order remanding the matter to the Board for a new expulsion hearing does not end the litigation, dispose of the entire case or have the practical consequence of putting the District out of court. Thus, the trial court's May 2, 2008, order is interlocutory, and we do not have jurisdiction to consider the District's appeal from that order. 42 Pa. C.S. §762(a); *Kramer*.

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which would ultimately evade appellate review if an immediate appeal is not allowed; however, there is no issue raised by the *District* in *its* appeal that will evade appellate review if this immediate appeal is not allowed.

⁸ Pennsylvania Rule of Appellate Procedure (Pa. R.A.P.) 341(b) defines a final order as any order that: (1) disposes of all claims and all parties; or (2) is expressly defined as a final order by statute; or (3) is entered as a final order pursuant to subdivision (c) of this rule (relating to cases where more than claim for relief is presented in an action). There are some orders that have the practical consequence of putting a litigant out of court, such as orders denying class certification or denying a party the right to intervene, but that are not considered final orders under Pa. R.A.P. 341. Pa. R.A.P. 341 *Note*. However, under the appropriate circumstances, these orders might fall under Pa. R.A.P. 312 (Interlocutory Appeals by Permission) or Pa. R.A.P. 313 (Collateral Orders). *Id.*

Accordingly, we quash the District's appeal.⁹

ROCHELLE S. FRIEDMAN, Judge

⁹ We note that, in filing its petition for review, the District clearly has preserved its objections to the trial court's determination that the Board abused its discretion in denying the continuance and remanding the matter for a new expulsion hearing.

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ORDER

AND NOW, this 23rd day of December, 2008, the appeal of the Midd-West School District from the May 2, 2008, order of the Court of Common Pleas of the 17th Judicial District of Pennsylvania, Snyder County Branch, is hereby quashed.

ROCHELLE S. FRIEDMAN, Judge