IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Thomas J. Harclerode,	:	
Appellant	:	
	:	
v.	:	
	:	
Everett Area School District	:	
Superintendent and School	:	No. 853 C.D. 2008
Board	:	Submitted: October 3, 2008

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

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER **FILED: November 13, 2008**

Thomas J. Harclerode (Harclerode) appeals from an order of the Court of Common Pleas of Bedford County (trial court) sustaining the preliminary objections of Everett Area School District Superintendent and School Board (Everett) to Harclerode's complaint. For reasons that follow, we affirm the trial court.

On July 26, 2007, Harclerode filed a pro se complaint against Everett seeking that Everett "place an [a]ddendum in their [b]iology books showing the evidence against the theory that [l]ife began by [t]ime and [c]hance."[1] On September 10, 2007, Everett filed preliminary objections to Harclerode's

[1] This theory is commonly referred to as the Darwinian Theory.

complaint. The trial court held a hearing and thereafter sustained Everett's preliminary objections on the basis of ineffective service. On December 18, 2007, Harclerode reinstated his complaint and again, Everett filed preliminary objections. A hearing was held on March 24, 2008, and on April 11, 2008, the trial court sustained Everett's preliminary objections finding that Harclerode lacked standing to bring the action. Harclerode timely filed a pro se notice of appeal to this Court.[2]

Harclerode argues the lower court erred in finding that he did not have standing to pursue the complaint against Everett. Specifically, he contends that because he is a taxpayer, and he is extremely distressed over the fact that his taxes are going towards teaching the Darwinian Theory, he has standing to bring this action. We disagree.[3]

Harclerode must show a "substantial interest" sufficient to satisfy the general rule for taxpayer standing. *Reich v. Berks County Intermediate Unit No. 14*, 861 A.2d 1005 (Pa. Cmwlth. 2004). The Pennsylvania Supreme Court has defined "substantial interest" as "an interest in the outcome of the suit which surpasses 'the common interest of all citizens in procuring obedience to the law.' To surpass the common interest, the interest is required to be, at least, substantial, direct, and immediate." *Reich* at 1009 (citing *In re Application of Biester*, 487 Pa. 438, 442-43, 409 A.2d 848, 851 (1979)). Clearly, the fact that Harclerode is extremely distressed over Everett's biology books not containing evidence against

[2] In reviewing a decision of a lower court on preliminary objections, this court considers a pure question of law and its standard of review is plenary. *Banacol Mktg. Corp. v. Penn Warehousing & Distrib., Inc.,* 904 A.2d 1043 (Pa. Cmwlth. 2006).

[3] Harclerode also argues the trial court improperly granted Everett's preliminary objections because he alleged sufficient facts to overcome the "preliminary objections standard." However, since the standing issue is dispositive in this case, we will not address this issue.

Darwinism is not a substantial, direct and immediate interest sufficient to give him standing to bring this action.

In his brief Harclerode argues: other taxpayers share his concerns, he is the most knowledgeable on the subject matter, and he has seven great grandchildren that may be attending school in the school district, thus he meets the requirement of a substantial, direct and immediate interest in the suit.

In ruling upon preliminary objections, this Court must accept as true all well-pleaded allegations of material facts set forth in the complaint as well as all of the inferences reasonably deducible from those facts. *Stilp v. Commonwealth*, 596 Pa. 62, 940 A.2d 1227 (2007). The contentions that: other taxpayers share Harclerode's concerns, he is most knowledgeable on the subject matter, and he has seven great grandchildren in the school district, are not raised in his complaint, and therefore cannot be considered.[4]

There is a narrow exception to the general rule that a party must show "substantial interest" to establish taxpayer standing. A taxpayer may still have standing even where his interest is not substantial, direct and immediate, if the taxpayer can show that: "(1) the government action would otherwise go unchallenged; (2) those … beneficially affected [are] not inclined to challenge the action; (3) judicial relief is appropriate; (4) redress through other channels is unavailable; and (5) no other persons are better situated to assert the claim." *Reich* at 1009 (citing *Biester*, 487 Pa. at 446, 409 A.2d at 852-53).

[4] Harclerode's complaint contains only eight paragraphs and only one paragraph contains an averment wherein standing can be inferred, i.e., the averment that he is a taxpayer in the school district and he is extremely distressed that his taxes are going towards teaching Darwinism.

Everett contends that Harclerode can not meet the third of these factors because judicial relief is not appropriate. In support of this argument, Everett cites *Aubrey v. School Dist.*, 437 A.2d 1306 (Pa. Cmwlth. 1981), and *Regan v. Stoddard*, 361 Pa. 469, 65 A.2d 240 (1949), for the proposition that judicial relief is rarely, if ever, appropriate where a plaintiff seeks to have the courts exercise control over educational policy decisions and measures adopted pursuant to the discretionary authority of a Board of School Directors.

In *Regan*, certain taxpayers challenged the administration of schools in various aspects, one of which was the selection of the courses of study. The relief requested included changing the courses of study. The Court adopted the words of the lower court which stated in pertinent part: "[i]t would be presumptuous to superimpose judicial control upon the exercise of discretion by trained educators." *Regan*, 361 Pa. at 474, 65 A.2d at 242. "[T]he mere fact that there is not universal agreement upon a controversial subject such as education does not give to every taxpayer the right to maintain a [complaint] to force the adoption of his policies and philosophies." *Id.*

Similarly, in *Aubrey*, a student and her parents brought an action against the school board because the student could not graduate with her class due to the fact she had failed her health class. The Court held:

> [t]he district's graduation and curriculum requirements are in accordance with state law and regulations, which mandate the successful completion of a health education class. The courtroom is not the proper forum for resolution of personal conflicts arising from the State Board of Education's 1969 decision to include sex education in the public school curriculum, the district's program to comply with that decision, nor the pupil's failing grade on a test of that subject matter.

Aubrey at 1307-08. In the instant case it is within the school board's discretionary power to select courses of study. *See* Section 508 of the Public School Code of 1949, Act of March 10, 1949, P.L. 30, *as amended*, 24 P.S. §5-508.

The trial court correctly concluded that Harclerode had not made any factual averments in his complaint to support a finding that he had met any of the five factors enumerated in the exception, but for purposes of this opinion we need only focus on the third factor. Based on the decisions in *Regan* and *Aubrey*, we agree with Everett that judicial relief is not appropriate. We therefore hold that the trial court did not err when it found Harclerode lacked standing to bring this action. *See Stilp.*

For the foregoing reasons, we affirm the order of the trial court.

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JOHNNY J. BUTLER, Judge

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O R D E R

AND NOW, this 13th day of November, 2008, the order of the Court of Common Pleas of Bedford County, dated April 11, 2008, is hereby affirmed.

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JOHNNY J. BUTLER, Judge