Town of Searsburg v. State of Vt., Dep't of Educ., No. 690-10-08 Wncv (Toor, J., Mar. 30, 2009)

STATE OF VERMONT
WASHINGTON COUNTY

TOWN OF SEARSBURG, Plaintiff v. STATE OF VERMONT, DEPT. OF EDUCATION; and MICHELLE O'HEARN DEBLOIS, Defendants	SUPERIOR COURT Docket No. 690-10-08 Wncv

RULING ON MOTION TO DISMISS and
CROSS-MOTIONS FOR SUMMARY JUDGMENT

This case is brought by the Town of Searsburg ("the Town"), seeking a declaratory judgment that a ruling of the Department Education was in violation of the Vermont and United States constitutions. The ruling in question has to do with whether Searsburg must pay the tuition for Defendant Deblois' son to attend school in Brattleboro. Searsburg denied the request for payment, Deblois appealed that denial to the Department of Education, and the Department reversed the Town's ruling.

The Town claims that Deblois filed her appeal to the Department too late, rendering the Town's decision final. The Town further argues that the statute upon which the Department's residency determination is based, 16 V.S.A. §1075, is unconstitutional on its face and as applied. The Town and Deblois have filed cross-motions for summary judgment and the Department has filed a motion to dismiss. The facts relevant to the summary judgment motions are essentially

undisputed, either because they have been expressly admitted or because, in the case of Deblois' cross-motion, because they have not been responded to at all and are thus deemed admitted. V.R.C.P. 56(c)(2).

Relevant Undisputed Facts

Michelle O'Hearn Deblois asked the Town to pay for her child's tuition at Brattleboro Union High School. Generally, pursuant to 16 V.S.A. § 822, because Searsburg does not have its own high school, it pays the tuition of its resident pupils to schools of their choice in other districts. The Town denied Deblois' request, however, on the grounds that they do not consider her child to be a resident of Searsburg. Deblois appealed that decision to the Vermont Department of Education, which ruled that Deblois' child is a Searsburg resident for tuition purposes, and that the Town is required to pay the child's tuition at Brattleboro.

To fully understand the arguments presented here, however, an understanding of the background to this dispute is necessary. Brattleboro Union High School is the second school that Deblois chose for her child for the 2008–2009 school year. Initially, she chose an out-of-state technical school. The Town denied her request for tuition at that school, also on the ground that they do not consider the child a Searsburg resident. The Town has taken this position because although the child's father lives in Searsburg, the child actually resides in Wilmington with Deblois, who has sole legal and physical parental rights and responsibilities.

Deblois appealed the Town's first tuition denial to the Department. In response, on July 21, 2008, the Department ruled that the child is a "'resident' of Searsburg, Vermont, as a matter of law," because the child's father resides there, and thus the child is entitled to school choice at Searsburg's expense under 16 V.S.A. § 822. *See* Declaratory Ruling p.1, Exhibit B to Affidavit of Michelle O'Hearn Deblois ("The effect of the statute is … to provide (at least) two-district

school choice to children of separated parents who are 'residents' of different districts"). However, the Department ruled that the particular school in question (an out-of-state technical school) was not a permissible choice for other reasons. The Department therefore did not require the Town to pay the tuition as requested. Id., pp. 2-3.

Deblois then chose Brattleboro Union High School. In a letter dated August 6, 2008, she notified the Town of that choice and again indicated the selection of Searsburg as her son's residence for the 2008–2009 school year. Deblois specifically cited the Department's July 21 residency ruling as authority for the request for tuition payment.

A week later, on August 13, 2008, the Town filed its first lawsuit against the Department in this court, challenging the Department's July ruling that the child is a Searsburg resident. Town of Searsburg v. State of Vermont, No. 534-8-08 Wncv (Vt. Super. Ct.).[1] In that complaint, the Town claimed that 16 V.S.A. § 1075, on its face and as applied, is unconstitutional. On the same day that it filed the complaint, the Town denied Deblois' request for Brattleboro tuition on the ground that the child is not a resident of Searsburg. The Town offered no reason for ignoring the Department's July ruling.

Six days later, Deblois notified the Department of the Town's second denial. She explained her understanding that Brattleboro, having a copy of the Department's July 21 residency ruling, would keep her child enrolled. There is no indication that Deblois was aware of the recently filed lawsuit between the Town and the Department.

Within the week, the Town amended its complaint to add Deblois as a named defendant, but the file contains no evidence that she was ever served, and she never appeared in that case. On October 1, the Town and Department filed a stipulation for voluntary dismissal of the lawsuit. The stipulation says, among other things, that there was no live controversy over

[1] The court takes judicial notice of the contents of that official court file.

residency in the case, and that the Town would not be precluded from "challenging any future determinations of residency in a live case." There is no indication in the record that notice of this stipulation was given to Deblois.

Three days before the dismissal was filed, the Town notified Deblois that because she had failed to appeal within thirty days its August 13, 2008 decision denying Brattleboro tuition, that decision had become final.

In a letter dated October 1, 2008, three days after the Town's letter, Deblois responded to the Town's claim that she was out of time to challenge its second denial. She explained that the Department had already ruled on the residency issue on July 21, 2008, and that her child was entitled to be treated as a resident of Searsburg. Also on October 1, Deblois notified the Department of the Town's position on the second request, provided a copy of the Town's September 29 letter, and sought an immediate ruling and order on the tuition issue allowing her child to remain enrolled at Brattleboro Union High School with tuition paid by the Town.

On October 6, 2008, Deblois wrote to the Department again to provide additional information. In the letter, Deblois reiterated that she had been relying on the Department's original residency ruling and had not formally appealed the Town's second denial sooner because she was under the impression that the Department's original ruling was final.

On October 7, 2008, the Department *again* ruled that because the father of Ms. Deblois' child is a Searsburg resident, the child is entitled to be treated as a resident of Searsburg for tuition purposes. The child is a minor and the Town has never contested that the child's father lives in Searsburg. Thus, concluded the Department, the child may elect to claim residence in Searsburg, regardless of which parent has custody or where the child physically resides.[2]

[2] The Town's letters to Deblois denying residency reflect its apparent belief that the child's residency is determined by where the child physically lives. Section 1075 plainly defines the child's residency as where both parents live,

The Department's uncomplicated analysis, in both rulings, follows directly from the unmistakably plain language of the statute defining a pupil's residency. Section 1075 unambiguously states:

> (a) For the purpose of this title, except as otherwise set forth herein, the legal residence or residence of a pupil shall be as follows:
>
> (1) in the case of a minor, legal residence is where his or her parents reside, except that:
>
> (A) if the parents live apart, legal residence is where either parent resides . . . .

16 V.S.A. § 1075.

The Town filed this case on October 15, 2008. The Town claims that its second tuition denial became final because Deblois did not appeal within thirty days. It also argues that 16 V.S.A. § 1075, on its face and as applied, violates Vermont's Common Benefits Clause, the Federal Equal Protection Clause, and the Federal Privileges and Immunities Clause (U.S. Const. art. IV, § 2).

Conclusions of Law

I. The Timing of Appeal to the Department

Citing 12 V.S.A. § 2383 as its only authority, the Town claims that its second residency determination became final when Deblois failed to appeal it to the Department within thirty days. However, even assuming *arguendo* that Section 2383 applies, the court finds that Deblois satisfied its provisions. The underlying statute, 16 V.S.A. § 1075(b), does not say that a parent must file any specific notice of appeal to trigger jurisdiction before the Department. Deblois in

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not where the child lives. In its opposition to dismissal in this case, the Town alternatively argues that section 1075(a)(1) has an implicit custody requirement, such that the child of parents living in separate towns is the resident of the town in which the parent with custody resides. The statute contains no such custody requirement, and the Town's "interpretation" would not account for situations in which custody is shared. In fact, the statute does not require the parents to be divorced or legally separated. It simply applies to parents who live in separate towns whether they are married, separated, divorced, in a civil union, formerly in a civil union, or never married.

fact notified the Department of the Town's second denial a few days after receiving notice of that denial. She did so even though she had every reason to assume that the Department's original residency ruling was final, and even though the Town was required to notify her in writing "within 24 hours" of her appeal rights and apparently did not do so. 16 V.S.A. § 1075(b). *See* Exhibits D and E to Affidavit of Michelle O'Hearn Deblois; Defendant Michelle O'Hearn Deblois' Statement of Undisputed Material Facts, ¶ ¶ 13-17.[3]

In any case, the Department chose to consider the appeal, and the Town cites nothing to suggest that the Department did not have discretion to do so, or that the thirty day period, if applicable, is jurisdictional. However or whenever the issue gets there, the Commissioner's residency determination "shall be final." There is no statutory right to review in superior court. The Town asserts no legal source giving this court authority to review the Department's decision to consider the appeal.

II. The Constitutional Claims

The Town does not explain in detail its constitutional claims in the complaint. It merely cites the basic facts detailed above, and summarily announces violations of Vermont's Common Benefits Clause, the federal Equal Protection Clause, and the federal Privileges and Immunities Clause (U.S. Const. art. IV, § 2).

a. The Equal Protection Clause and the Common Benefits Clause

In its response to the motions, the Town argues that it will be forced to violate the State and Federal Constitutions if it must "grant[] greater school choice to some children, while

[3] Indeed, although no party has raised the issue, at least on its face it appears that Deblois may have a good argument that the original residency ruling by the Department is *res judicata* with regard to the issue of residency. *See, e.g.*, Berlin Convalescent Center, Inc., v. Stoneman, 159 Vt. 53, 56 (1992)(barring litigation of a claim already resolved in a prior matter involving the same "parties, subject matter and causes of action"); Lamb v. Geovjian, 165 Vt. 375, 381 (1996) (applying res judicata to ruling of administrative board). Although the Town and Department stipulated that the first ruling would have no *res judicata* effect, it is unclear to the court how their stipulation has any relevance to Deblois, who was not a party to the stipulation but was a party in the Department proceedings.

denying it to others." Plaintiff's Opposition to Motion to Dismiss, p. 2. This, it argues, would "cause the Town of Searsburg to become an instrumentality of the State in depriving children of equal treatment of (sic) the law." Id. The Town further argues that because the Department's order would cost the Town money, it is sufficiently injured to have standing to sue. Id. pp. 2-4.

Even assuming, arguendo, that the Town has sufficient standing to assert this claim, it does not withstand analysis. Though the analysis under the Vermont Common Benefits Clause can be more probing than that under the federal Equal Protection Clause, both provisions generally protect similarly situated citizens from unequal treatment by the state. See Baker v. State, 170 Vt. 194, 212–215 (1999) (describing the test under the Common Benefits Clause and distinguishing it from that under the Equal Protection Clause). All that 16 V.S.A. § 1075(a)(1)(A) states is that a child is entitled to residency wherever either parent lives. The Town argues that this distinguishes between a class of pupils under the statute who "benefit" by being able to choose schools (those whose parents live in separate towns) and a class of pupils who have no choice (those whose parents live in the same town).

However, the classes plainly are not similarly situated. Startzell v. City of Philadelphia, Pennsylvania, 533 F.3d 183, 203 (3d Cir. 2008) ("An essential element of a claim of selective treatment under the Equal Protection Clause is that the comparable parties were 'similarly situated.' Persons are similarly situated under the Equal Protection Clause when they are alike 'in all relevant aspects.'"). Parents and children can be reasonably expected to have different needs and interests with regard to the location of the children's school when the parents live in separate towns rather than in the same town. Moreover, both classes have the right to schooling

provided by the town in which either parent lives. There simply is no meaningful Equal Protection claim on these facts.[4]

Under the Common Benefits Clause, the court first delineates "that 'part of the community' disadvantaged by the law." Baker, 170 Vt. at 213. That is the first step in deciding whether "the omission of a part of the community from the benefit, protection and security of the challenged law bears a reasonable and just relation to the governmental purpose" in distinguishing among members of the community. Id. at 214. Here, for the same reasons stated above, no group of children is disadvantaged by the law. There is no valid claim of a Common Benefits Clause violation.

b. The Privileges & Immunities Claim

The Town has utterly failed to articulate any claim under the Privileges and Immunities Clause. Its claim appears to be wholly unsupportable for several reasons. First, the Clause "will not come into play unless a basic or fundamental right is involved." Leverson v. Conway, 144 Vt. 523, 534 (1984), *vacated on other grounds*, 472 U.S. 1014 (1985). The Town has identified no such right.

Second, "[a] municipal corporation .. has no privileges or immunities under the Federal Constitution" with respect to instrumentalities of its own state. Williams v. Mayor and City Council of Baltimore, 289 U.S. 36, 40 (1933).

[4] The Town also argues that the Department's interpretation of the statute is not rational, although it is unclear which of the Constitutional claims this is intended to address. The Town asserts that the Legislature could not have intended to treat parents with only parent-child contact and no "custody" as parents with whom a child can be considered to reside**.** *See* Plaintiff's Opposition to Motion to Dismiss, pp. 4-6. To the contrary, the statute very clearly intends that. In the very same subsection it is apparent that when the Legislature wants to make distinctions based upon sole custody, it knows how: "if a parent with sole custody lives outside the state of Vermont the pupil does not have a legal residence in Vermont." 16 V.S.A. § 1075(a)(1)(A). This demonstrates that the preceding phrase, the one at issue here, provides that *regardless* of the nature of the custody arrangements the child may attend school in either parent's district.

Third, the Clause "is limited to circumstances wherein diversity of citizenship exists, a condition totally absent here." Blass v. Weigel, 85 F.Supp. 775, 781 (D.N.J. 1949) (citing Hague v. C.I.O., 307 U.S. 496, 511 (1939) ("The section, in effect, prevents a state from discriminating against citizens of other states in favor of its own.")). In this case, there is no diversity of citizenship.

The Town offers no support at all for its assertion that the Privileges and Immunities Clause has been violated. [5]

Order

The Town's motion for summary judgment is denied. Ms. Deblois' motion for summary judgment is granted. The Department's motion to dismiss is granted. The Town is ordered to comply with the Department's final order treating Deblois' child as a resident of Searsburg for tuition purposes.

Dated at Montpelier, Vermont this 27th day of March, 2009.

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Helen M. Toor
Superior Court Judge

[5] The Town's good faith basis for bringing the Privileges and Immunities claim is not immediately apparent. See V.R.C.P. 11(b)(1),(2). While the Town did not expressly oppose dismissal of this claim in its opposition memorandum, it did not voluntarily withdraw the claim either. Had a motion for sanctions been filed pursuant to Rule 11, the court might have considered awarding Deblois her attorney's fees in connection with this claim.