CONRAD, ET AL., TAX PAYERS OF GREENCASTLE-ANTRIM SCHOOL DISTRICT v. GREENCASTLE-ANTRIM SCHOOL DISTRICT, ET AL., C.P. C.D. Franklin County Branch, Eq. Doc. Vol. 7, Page 196

*Equity - Injunction - Sale of School Real Estate by School Board - Discretionary Action of Board - Limitations on Court Power to Interfere with Board Action - Exhaustion of Administrative Remedy*

1. School Boards are given broad discretion, and only when the board transcends the limits of its legal discretion is it amenable to the injunctive powers of a court of equity.

2. Arbitrariness and caprice must not be confused with bona fide differences of opinion.

3. An administrative denial of a hearing is an adjudication as defined by 2 Pa. C.S.A. Sect. 101.

4. Equity may not inquire into a controversy where an administrative remedy is statutorily prescribed.

*Frederic G. Antoun, Jr., Esq.*, Attorney for Plaintiffs

*Henry W. Rhoads, Esq.*, and *Rudolf M. Wertime, Esq.*, Attorneys for Defendants

OPINION AND ORDER

EPPINGER, P.J., June 6, 1979:

The Greencastle-Antrim School Board, with dissent, has determined to build a new elementary school. This action in equity asks us to enjoin the school district from taking any further steps toward completing the project.

There are four contentions relied upon by the plaintiffs: (1) that the decision to build the school is arbitrary and an abuse of discretion, (2) that the board did not act in accordance with the regulations promulgated by the Department of Education, 22 Pa. Code, Chapter 349, Sect. 701.1 of the Public School Code, Act of March 10, 1949, P. L. 30 as amended by the Act of June 27, 1973, P. L. 75 (No. 34) Sect. 1, 24 P.S. Sect. 7-701.1, (3) that a swimming pool and administrative area was considered to be an alternate and not properly included in the project, and (4) that the school board failed to properly adopt the project costs.

After the plaintiffs presented their evidence, including a



copy of the pertinent minutes of the board (which were a joint exhibit of the parties), the board demurred and made a motion for a compulsory nonsuit. We deferred decision and completed the taking of testimony. We now grant the board's motion for a compulsory nonsuit, finding plaintiffs have not sustained the burden in some parts and are not properly in equity as to other parts.

We have addressed the contention that a court of equity should interfere in the operations of a school board in an earlier opinion when this school district proposed to close and dispose of a school. In the case of *Beegle, et al. v. Greencastle-Antrim School District, et al.*, In Equity, Vol. 7, pg. 134 (Com. Pleas, Franklin County*), we said:

> School boards are given broad discretion in order to administer the public school system by the Public School Code, Act of March 10, 1949, P.L. 30, 24 P.S. 5-501, and it is only when the board transcends the limits of its legal discretion that it is amenable to the injunctive processes of a court of equity. *Detweiler v. Hatfield Borough School District*, 376 Pa. 555, 104 A.2d 110 (1954).

In that case we found that the plaintiffs had not met the heavy burden of proving an abuse of discretion noted in *Zebra v. School District of the City of Pittsburgh*, 449 Pa. 432, 296 A.2d 748 (1972).

We find in this case, as we did in that one, that the plaintiffs have not met the burden.

> "Arbitrariness and caprice must not be confused with bona fide differences of opinion and judgment. The former are indices of motivation and intention and differ only as concerns methods and modes of achievement and realization." *Dochenetz v. Bentworth School District*, 6 Pa. Cmwlth. 173, 185 (1972); *Kennedy, et al. v. Ringgold School District*, 10 Pa. Cmwlth. 191, 194, 309 A.2d 269 (1973).

The courts are not super school boards with authority to substitute their judgment for that of the duly elected members. On this ground, therefore, the board's motion is granted.

Despite the fact that Act 34, *supra*, was passed in 1973, the regulations of the Department of Education (Department) were published to become effective on November 4, 1978, merely one month before the school board's notice of the public hearing appeared in the newspaper. Nevertheless, the requirements of the regulations were binding and have the force

of law. See e.g., *Pa. Human Relations Commission v. Norristown Area School District*, 20 Pa. Cmwlth. 555, 559, 342 A.2s 464, 467 (1975); *Herdelin v. Greenberg*, 16 Pa. Cmwlth. 405, 408, 328 A.2s 552, 554 (1974).

The public hearing held on December 22, 1978 in Greencastle did not meet the requirements of the regulations (citation, *supra*). Among other things, Sect. 349.13(a) requires the board to prepare a description of the project at least 20 days before the public hearing and mail it to the news media for release not later than 14 days before the hearing. We conclude the description that was prepared was inadequate and was not mailed to the news media.

Despite this conclusion, we must again grant the motion for nonsuit for our court is not the appropriate forum for ruling on violations of the regulations. The Department is the first body to whom the plaintiffs should complain. Some did, but did not follow through properly.

The Public School Code, *supra*, (Act 34), 24 P.S. Sect. 7-731, gives the Department the power and duty to hold hearings on all projects (subsection 3) and to receive and investigate complaints from the public or other source concerning any school building construction or reconstruction project (subsection 5). On March 20, 1979, some of the plaintiffs requested the Department to hold a hearing on the proposed elementary school. By letter, a division chief, Dr. Thomas R. Heslep, denied the hearing saying that a full investigation of the Greencastle project had been completed and that no violation of laws, regulations or standards had been found, making specific findings regarding complaints raised in the request for a hearing.

The Administrative Agency Law, Title 2, Pennsylvania Consolidated Statutes, Section 702, Act of April 28, 1978, P.L. 202, No. 53, 2 Pa. C.S.A. Sect. 702, gives any person who is aggrieved by an adjudication of a Commonwealth agency and who has a direct interest in the adjudication the right to appeal to the court vested with jurisdiction of such appeal. Under Title 42 (relating to judiciary and judicial procedure), the Court having jurisdiction of such an appeal is the Pennsylvania Commonwealth Court. Act of July 9, 1976, P.L. 586, No. 142, Sect. 2, as amended April 28, 1978, P. L. 202, No. 53, Sect. 10(8); 42 Pa. C.S.A. Sect. 763(a).

The letter from Dr. Heslep denying the hearing was an adjudication within the statutory definition of the term found in 2 Pa. C.S.A. Sect. 101, where an adjudication is defined as:



> Any final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities or obligations of any or all of the parties to the proceeding, in which the adjudication is made....

Letters are adjudications for appeal purposes. See e.g., *State Bd. of Chiropractic Examiners v. Life Fellowship of Penna.*, 90 Dauph. 44, reversed on other grounds, 441 Pa. 293, 272 A.2d 478 (1968); *Department of Public Welfare v. Moultrie*, 91 Dauph. 32 (1969); *Roberts v. Office of Administration, Commonwealth of Pennsylvania*, 3 Pa. Cmwlth. 19, 372 A.2d 1233 (1977).

Those among the plaintiffs who did not request the Department to pass on whether the regulations had been complied with should have, and failing to do this, did not exhaust their administrative remedies. Those who did ask the Department for a hearing did not pursue their right to appeal to the Commonwealth Court. These failures are jurisdictional; equity has no right to inquire into a controversy where doing so would obviate a statutory procedure provided for its resolution. *Commonwealth v. Glen Alden Corporation*, 418 Pa. 57, 59, 210 A.2d 256 (1965). Where an administrative remedy is statutorily prescribed the general rule is that a court of law or equity is without jurisdiction to entertain the action. *Lilian v. Commonwealth*, 467 Pa. 15, 354 A.2d 250 (1976). Exhausting administrative remedies insures that the bodies best able to rule on a controversy — here, the Department of Education and the Commonwealth Court — do so.

All of the evidence in the case, including that submitted by the plaintiffs, shows that the swimming pool and administrative offices were under consideration from the very beginning. It is true they were talked about as alternates, but so long as the issue of their being included in the project was presented there is no error in including the two in the project. The cost estimates of the project remained constant throughout the period of consideration and included these two items; no extra expenditures for these facilities were sprung on anyone. As a basis for relief, this motion of the defendant's for a nonsuit is granted.

Finally this issue is raised: Did the school board properly adopt the project costs? This came before us after a motion to amend the pleadings was made by the plaintiff and granted by the court. We find the project costs were properly adopted.

The costs of the new elementary school (with the pool and administrative section) were discussed at board meetings begin-

ning in August, 1978. Plaintiffs testified that the construction costs totalled $4.8 million and the total project costs amounted to $5.2 million. These figures were publicized on December 8, 1978 in the Information Fact Sheet on the proposed new school and were openly discussed at the Act 34 public hearing on December 22, 1978. The particular figures adopted are not in question.

The manner in which the project costs were adopted conforms to the procedure required by the Department. In new school construction, the Department requires the board to follow a Plancon manual. In complying with these procedures, the board submitted Plancon D which contained the project costs. It was submitted to the Department on January 31, 1979 and approved on February 1, 1979.

Board approval must occur prior to submission of the Plancon and this was done here. At the January 18, 1979 meeting, the superintendent of schools requested board approval of the submission of Plancon D to the Department. This included certification of project costs. The board resolved by a 5-2 vote to approve the submission of the data. This approval appears in Resolution 79-24 in the minutes of January 18, 1979. As earlier noted, the minutes were a joint exhibit and therfore the plaintiffs' case established that the project costs were adopted by the school board. Furthermore, the notice of the public meeting appeared December 1, 1978. By action of the board on December 20, 1978, a regular meeting, the notice as published containing project costs was ratified and approved. Thus the board approved the project costs effective December 1, 1979.[1]

ORDER OF COURT

NOW, June 6, 1979, the defendants' demurrer and motion for a compulsory nonsuit are granted and the costs shall be paid by the plaintiffs.

[1] This procedure was questioned for compliance with the regulations which require the project costs to be approved prior to the scheduling of the public meeting. However, failure to comply with the regulations in this respect is like the failure to issue the project description and mail it to the news media. The avenue of complaint is through the Department.

*Editor's Note: not reported in this Journal.



WALTERS v. WALTERS, C.P. C.D. Fulton County Branch, No. 2 of 1979-C

*Child Custody - Best Interests and Welfare of Child the Sole Issue - Burden of Proof Shared Equally by Contending Parents - Meretricious Relationship of Parent Relevant*

1. The sole issue to be decided in a custody proceeding between contending parents is the best interests and welfare of the child.

2. The concern is for the child's physical, intellectual, moral and spiritual well-being.

3. The burden of proof is shared equally by the parents, since they each have an equal interest.

4. The standard of morals of a parent involved in a meretricious relationship and its subsequent effect on young children is a proper area for judicial concern.

*Newton C. Taylor, Esq.*, Attorney for Petitioner

*Dennis A. Zeger, Esq.*, Attorney for Respondent

OPINION AND ORDER

KELLER, J., June 20, 1979:

A petition to confirm custody was presented to the Court on January 2, 1979, and an order was signed on the same date directing that a Rule be issued upon the respondent to show cause why custody of Gregory Ross Walters and Melinda K. Walters should not be awarded to the petitioner, Patricia Kay Walters. A hearing was set for January 23, 1979. Counsel for the respondent accepted service of a true copy of the petition, order and rule on January 2, 1979. An answer to the petition was filed January 9, 1979. Hearing on the matter was commenced on January 23, 1979, and a continued hearing held on Monday, February 19, 1979. All evidence was received except the testimony of Dr. J. O. Strite, Psychiatrist, and by agreement of counsel that was received in Courtroom No. 1, Franklin County Courthouse, Chambersburg, Pa. on March 6, 1979.

This matter is now ripe for disposition. We enter the following Findings of Fact:

FINDINGS OF FACT

1. The petitioner is Patricia Kay Walters (mother), who