2013 IL App (3d) 120463-U

Order filed April 29, 2013

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

THOMAS J. BRADY and JENNIFER A. BRADY,	)	Appeal from the Circuit Court of the 13th Judicial Circuit, Grundy County, Illinois,
Plaintiffs-Appellees,	)	
v.	)	
REGIONAL BOARD OF SCHOOL TRUSTEES, GRUNDY and KENDALL COUNTIES, ILLINOIS, NEWARK COMMUNITY HIGH SCHOOL DISTRICT NO. 18, KENDALL, GRUNDY and LA SALLE COUNTIES, ILLINOIS, and MORRIS COMMUNITY HIGH SCHOOL DISTRICT NO. 101, GRUNDY and KENDALL COUNTIES, ILLINOIS,	)	Appeal No. 3-12-0463 Circuit No. 11-MR-90
Defendants-Appellants.	)	Honorable Robert C. Marsaglia, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Wright concurred in the judgment.
Justice Carter dissented.

ORDER

¶ 1 *Held*: The Regional Board's order denying detachment petition pursuant to the Illinois School Code (105 ILCS 5/7-6(i) (West 2010)) was not clearly erroneous, and is therefore confirmed. The trial court's order reversing the decision of the Regional

Board is reversed.

¶ 2 Plaintiffs, Thomas and Jennifer Brady (the Bradys), filed a detachment petition to detach their property from the Newark Community High School District No. 19 (Newark) and annex it to Morris Community High School District No. 101 (Morris). A detachment petition hearing was held and the Regional Board of School Trustees of Grundy and Kendall Counties (Regional Board) denied the Bradys' petition.

¶ 3 Plaintiffs filed a complaint under the Administrative Review Act with the Grundy County circuit court, seeking reversal of the Regional Board's order denying their petition to annex their home to Morris School District. On May 4, 2012, the trial court granted plaintiffs' petition and reversed the Regional Board's decision, finding that it was against the manifest weight of the evidence.

¶ 4 The defendant, Newark, appeals, claiming that the Regional Board's decision was not clearly erroneous and its denial of plaintiffs' detachment petition should stand. We reverse the judgment of the circuit court and affirm the decision of the Regional Board.

¶ 5 BACKGROUND

¶ 6 On May 27, 2011, plaintiffs filed a petition with the Regional Board to detach their property from the Newark School District and annex it to the Morris School District. At the hearing on the detachment petition, Mr. Brady testified that his home is within the boundaries of Nettle Creek Grade School District and the Newark High School District. The Bradys, along with their sons Jacob, age 15, and Samuel, age 11, have lived in the district for three years. Plaintiffs' home is 9½ miles away from Morris High School and 10½ miles away from Newark High School.

¶ 7 Mr. Brady testified that football is a very significant sport for the entire family. Mr. Brady's brother and nephew each received a full scholarship to play college football. Mr. Brady's brother continued on to play in the National Football League for 13 years. Both Jacob and Samuel participated in the youth-organized football league in Morris for the past two years. Neither son can play football at the high school level unless they attend Morris, as Newark does not have a football program.

¶ 8 Mr. Brady believes his children should attend Morris High School because his family has strong ties to the community—Jacob's friends are going to Morris, it would be beneficial for extracurricular activities, they regularly shop and bank in Morris, family members live close to Morris High School, and Morris has a vocational center on campus. After reviewing curriculum guides and extracurricular activities, Mr. Brady determined that Morris has more to offer his sons than Newark. In Morris, the boys could participate in sports where they could potentially receive a scholarship, whereas in Newark they could not.

¶ 9 Mrs. Brady also testified that she prefers her sons attend Morris. In regard to the extracurricular activities, Mrs. Brady stated that her sons are interested in football, track and basketball. Of the three, Newark only offers basketball. Mrs. Brady opined that her sons' educational needs would be better met at Morris; Jacob's in particular. Jacob encountered difficulties in English that required special education classes in the subject. While he is no longer in those specialized courses, Morris does offer English classes at varying levels in addition to an architecture class and the opportunity to take vocational classes.

¶ 10 Subsequent to the plaintiffs filing of the detachment petition, the Morris School Board accepted Jacob as a tuition-based student for the 2011-2012 school year. Mr. Brady wrote a

letter to the Illinois High School Association to determine if his son could participate in sports at Morris immediately. The Illinois High School Association ruled that Jacob would be precluded from interscholastic activities for Morris High School for the 2011-2012 school year given his status as a tuition-based student. The Illinois High School Association's decision regarding Jacob's ineligibility for interscholastic activities is one reason why plaintiffs are seeking detachment.

¶ 11 Pauline Berggren, the superintendent for Newark, testified on behalf of the Board of Education of Newark. The board opposed the detachment petition because it believes it has a sound educational program and that boundary lines should be upheld. Newark offers approximately 80 different courses and vocational classes to its students. The vocational center is 8 to 10 miles away from Newark High School and students are bused there. No students have done worse academically due to busing to and from the vocational center. Berggren believed the curriculum offerings between Newark and Morris are comparable and stated that Morris offers more courses simply due to the fact that it is a larger high school. She believes that Newark could offer Jacob an academic program for his freshman year comparable to that he could receive at Morris. She pointed to the Illinois interactive report card for the two schools, which revealed that Newark is smaller than Morris, but has slightly higher standardized test scores. Newark also has slightly higher graduation and attendance rates than Morris. While the amount of tax revenue potentially lost from this detachment is small, Berggren stated that any amount of money helps Newark's budget.

¶ 12 Pat Halloran, the superintendent of Morris, testified that Morris can accommodate two more students and granting the petition would not affect Morris's ability to meet state recognition

standards. He reviewed the Morris and Newark interactive report cards and did not see any significant differences between the two schools. He also stated Morris has a longstanding tradition of excellence in football.

¶ 13 After reviewing all detachment petition hearing testimony and exhibits, the Regional Board unanimously voted to issue a resolution and order denying the Bradys' detachment petition.

¶ 14 The Bradys filed two petitions for rehearing of the detachment petition. The Regional Board denied both. Having exhausted their administrative remedies, plaintiffs filed a complaint in the Grundy County circuit court pursuant to the Administrative Review Act.

¶ 15 Following a hearing, the trial court issued a written order reversing the Regional Board's decision denying the Bradys' detachment petition. The court adopted the board's finding that there was no significant detriment to Newark, and found that the Regional Board's ruling was against the manifest weight of the evidence. This timely appeal followed.

¶ 16 ANALYSIS

¶ 17 I. Standard of Review

¶ 18 Pursuant to the Illinois School Code (105 ILCS 5/7-2.7, 7-7 (West 2010)), the decision of a regional board on a detachment petition is an administrative decision governed by the Administrative Review Act. 735 ILCS 5/3-101 *et. seq.* (West 2002). When reviewing an administrative agency's order that involves mixed questions of law and fact, the standard of review is "clearly erroneous." *Dukett v. Regional Board of School Trustees of Calhoun*, 342 Ill. App. 3d 635, 639 (2003). A regional board's findings of fact, however, are deemed *prima facie* true and correct and are reviewed under a manifest weight of the evidence standard. *Board of*

Education of Golf School District No. 67 v. Regional Board of School Trustees of Cook County, 89 Ill. 2d 392, 396 (1982); 735 ILCS 5/3-110 (West 2002). An agency's decision will be deemed clearly erroneous only where the reviewing court, on the entire record, is " 'left with the definite and firm conviction that a mistake has been committed.' " *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001) (quoting *U.S. v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)).

¶ 19 "It is the role of the regional board, not a reviewing court, to make findings of fact and to weigh the relevant factors, and the board's determinations and decisions will not be rejected on administrative review unless they are contrary to the manifest weight of the evidence." *Board of Education of St. Charles Community Unit School District No. 303 v. Regional Board of School Trustees of the Kane County Educational Service Region*, 261 Ill. App. 3d 348, 358 (1994) (citing *Golf*, 89 Ill. 2d at 396). "Accordingly, this court will not reweigh the evidence or substitute its judgment for that of the regional board." *Id*. The court remains cognizant, however, of its duty to " 'examine the evidence in an impartial manner and to set aside an order which is unsupported in fact.' " *Id*. (quoting *Carver v. Bond/Fayette/Effingham Regional Board of School Trustees*, 146 Ill. 2d 347, 355 (1992)). "When the record indicates the boards have considered the applicable statutory factors and their decision is supported by substantial evidence, the decision must be affirmed." *Carver*, 146 Ill. 2d at 363.

¶ 20 II. Detachment Petition

¶ 21 The Board argues that its decision to deny the petition should stand because it is the Regional Board, not the court, which is empowered to examine detachment petitions and render decisions on the same. The Board contends that it executed its duties pursuant to statute and its

decision was not clearly erroneous.

¶ 22 Section 7-6 of the School Code provides that a Regional Board of School Trustees:

> "shall hear evidence as to the school needs and conditions of the territory in the area within and adjacent thereto and as to the ability of the districts affected to meet the standards of recognition as prescribed by the State Board of Education, and shall take into consideration the division of funds and assets which will result from the change of boundaries and shall determine whether it is to the best interests of the schools of the area and the educational welfare of the pupils that such change in boundaries be granted." 105 ILCS 5/7-6(i) (West 2010).

¶ 23 "[P]etitions for detachment and annexation should be granted only where the overall benefit to the annexing district and the detachment area clearly outweighs the resulting detriment to the losing district and the surrounding community as a whole." *St. Charles*, 261 Ill. App. 3d at 358-59 (citing *Carver*, 146 Ill. 2d at 356). In applying this benefit-detriment test, regional boards, and the courts reviewing the decisions, are to consider differences between school facilities and curricula, the distances from the petitioners' homes to the respective schools, the effect detachment would have on the ability of either district to meet state standards of recognition, and the impact of the proposed boundary change on the tax revenues of both districts. *Id*.

¶ 24 In addition, the regional board and the reviewing court may consider the "whole child" and "community of interest" factors that explore the identification of the petitioning territory with the district to which annexation is sought, and the corresponding likelihood of participation in

school and extracurricular activities. *Carver*, 146 Ill. 2d at 356. The "whole child" factor recognizes that extracurricular participation in social, religious, and even commercial activities are important in a child's development as a beneficial supplement to academics. *Golf*, 89 Ill. 2d at 397. Moreover, it is not inappropriate to consider the personal preferences or convenience of the petitioning parents and their children; however, more than the personal preferences on the part of the petitioners is required to support a change in school district boundaries. *Board of Education of Community High School District No. 94 v. Regional Board of School Trustees of Du Page County*, 242 Ill. App. 3d 229, 236 (1993).

¶ 25 Finally, mere absence of substantial detriment to either district is not sufficient to support petition for detachment and annexation. In the absence of substantial detriment to the losing district, the petitioner must establish some benefit to the educational welfare of the students in the detachment area. *Fosdyck v. Regional Board of School Trustees, Marshall, Putnam, & Woodford Counties*, 233 Ill. App. 3d 398, 407 (1992).

¶ 26 A. Regional Board's Findings

¶ 27 Here, the trial court adopted the Regional Board's finding that there was no significant detriment to Newark (the detaching district) after considering the statutory factors. The Regional Board also found that there was no significant detriment to Morris (the annexing district), and from the record it appears as though the trial court adopted that finding as well. Specifically, the Regional Board found that: (1) the equalized assessed valuation for Newark High School is $106,509,772 and the Brady property represents significantly less than 1% of the total equalized assessed valuation and that Newark High School is currently assessing at its highest tax rate; (2) it was established that Newark High School would be impacted only in a minimal way due to this

detachment, it would not be required to close, lay off any teachers, or reduce any freshman class offerings. The state recognition of Newark High School would not be impacted if this detachment occurs; and (3) Morris High School would have only a minimal impact on its state recognition and has the ability to accommodate two additional students.

¶ 28 While the superintendent of Newark testified that the amount of tax revenue from this detachment petition is small, the superintendent of Morris testified that he was supporting the petition because it seemed like the appropriate thing to do. Testimony was elicited from both education professionals that the schools' curricula were comparable. Superintendent Berggren testified that the offerings between Newark and Morris are comparable and stated that Morris offers more courses simply because they are a bigger high school. After reviewing the interactive report cards, Superintendent Halloran stated that he did not see any significant difference between the schools. When asked why Morris was supporting the detachment petition, he stated because "it seemed like the appropriate thing to do."

¶ 29 On review, we agree with both the defendants and the trial court that the evidence demonstrates that Newark and Morris are substantially similar and any differences are negligible. The trial court, having adopted the Regional Board's finding in that regard, continued with its analysis based on the "whole child" and "educational welfare of the pupils" factors.

¶ 30 B. The Trial Court's Analysis

¶ 31 In reversing the Regional Board, the trial court held that the Regional Board's decision was against the manifest weight of the evidence. We find that this was error. The Board clearly weighed the applicable statutory factors; its findings of fact are sufficiently supported by the record. As such, the decision of the Regional Board must be affirmed. See *Carver*, 146 Ill. 2d at

363.

¶ 32 Indeed, the Board is vested with such power by section 7-6(i), which specifically gives the Board power to determine if it is in the best interests of the schools and pupils for the boundary change to be granted. This court embraced the directives of the statute in *Eble v. Hamilton*, 52 Ill. App. 3d 550, 554 (1977), where it held that detachment petitions are best left to local determinations without interference by the courts as long as statutory guidelines have been met and evidence supports the decision. More recently, the Regional Board's power to make such decisions has been addressed by our supreme court in *Carver*, where it emphasized that "[t]he judiciary is ill equipped to act as a super school board in assaying the complex factors involved in determining the best interest of the schools and the pupils affected by a change in boundaries." (Internal quotation marks omitted.) *Carver*, 146 Ill. 2d at 362-363.

¶ 33 In making its determination, the trial court relied heavily on *Fosdyck* and *Eble*, *supra*. In *Fosdyck*, the property owners petitioned to detach their property from their current school district and annex it to the adjacent district. *Fosdyck*, 233 Ill. App. 3d at 400. The regional board denied the petition, and the owners filed a complaint seeking administrative review. The trial court affirmed the board's decision. *Id*. The Fourth District appellate court reversed, finding the board's decision to be against the manifest weight of the evidence, as the evidence overwhelmingly supported the plaintiff's position that the educational welfare of the students in the detachment area would be enhanced by detachment and that more than personal preference and convenience was at stake. *Id*. at 409. Specifically, the plaintiff lived closer to the annexing school (4.1 miles) than to the detaching school (8.8 miles). *Id*. at 400. In addition, Mrs. Fosdyck owned a business located only six blocks from the annexing high school and 2.5 blocks from the

annexing grade school. *Id*. at 401. This allowed her to drive her children to school in the mornings, and allowed them to walk to her business after school to get a ride home. *Id*. Mrs. Fosdyck's business was approximately a five minute drive from their home. If the property remained in the detaching district, however, the children would have to be bused to and from the Lowpoint-Washburn school which would take approximately 45 minutes to an hour in each direction. *Id*.

¶ 34 The decreased travel time to the annexing school would allow the Fosdyck's oldest son to start an after-school job which would otherwise be impossible if he had to take the bus from the detaching school every day. *Id*. In addition, the oldest stated that he would quit school before he attended Lowpoint-Washburn. *Id*.

¶ 35 There was also evidence presented that the detaching school's academic curriculum exceeded Lowpoint-Washburn's in all areas. The petitioners presented ample evidence to support their contention that their ties to the annexing area went above and beyond personal preference. Specifically that two of the children have deformities in their lower back, which required regular, after-school appointments with a chiropractor located in Metamora three days a week. *Id*. at 401-02.

¶ 36 On the other hand, the trial court found *Eble* distinguishable from the Bradys' case, noting that it was 1977 case while Fosdyck was a 1992 case, and that the clearest difference was the distances from the detachment area to the respective schools. In *Eble*, the school district appealed from the trial court's order reversing the decision of the hearing board, which denied the detachment petition. *Eble*, 52 Ill. App. 3d at 550. The petitioners were tenant farmers seeking to detach their 181-acre property from the Malden High School District and annex it to

the Princeton High School District. *Id*. at 551. While petitioners presented considerable evidence concerning the alleged advantages of courses and school activities available at Princeton, they conceded that the educational opportunities of the two districts were comparable. The record further indicated the granting of the petition would not greatly affect the finances or the ability to meet state standards of recognition for either district. *Id*. at 552. The petitioners testified that they wanted to detach their property for their own convenience and because they attend church, shop and bank in the Princeton district. *Id*. Also, the petitioners lived 7 miles away from Princeton high school and only 1.5 miles away from Malden high school. *Id*. After taking all of this evidence into consideration, this court determined that the detachment would be solely for the personal preference and convenience of the petitioners, and that there was sufficient evidence to deny the petition. *Id*. at 554.

¶ 37 Here, the trial court's reliance on the facts of *Fosdyck* and its application of those facts to the Bradys' petition is misplaced. We find that a review of the record reveals that the main goal of the Bradys' petition is for their sons to play high school football at Morris. Unlike in *Fosdyck*, there was no evidence elicited that leads this court to believe that Jacob would quit school if forced to attend Newark. There was no evidence presented that busing to and from Morris would be any shorter than that from Newark. Similarly, while the Bradys do most their business in Morris, it does not appear from the evidence that the Bradys would suffer near the inconvenience or hardship that the petitioners in *Fosdyck* would have. The Bradys may bank, play and attend church in Morris, but again, convenience is not enough to warrant granting a detachment petition. *Board of Education of Community High School District No. 94*, 242 Ill. App. 3d at 236.

¶ 38 As the comparisons of *Fosdyck* and *Eble* illustrate, reasonable minds may differ as to the

application of the "whole child" and "community interest" factors when it comes to the educational welfare of the children in the detachment area. What does remain clear, however, is that it is not the function of this court to act as a "super school board" and impose our judgment over that of the Regional Board. *Carver*, 146 Ill. 2d at 362. It is apparent from the record before us that the Regional Board carefully considered the facts, weighed the evidence, and made a determination to deny the petition after applying the requisite statutory factors. There was substantial evidence to support such a finding. Having found that Newark and Morris were substantially similar and that any differences were negligible, the Regional Board determined that aside from being able to participate in high school football, there was no cognizable benefit to the educational welfare of the children in the detachment area, and therefore denied the Bradys' petition.

¶ 39 The Regional Board's denial of the Bradys' detachment petition was not clearly erroneous. Accordingly, we reverse the judgment of the Grundy County circuit court and uphold the decision of the Regional Board.

¶ 40 CONCLUSION

¶ 41 For the foregoing reasons, the judgment of the circuit court of Grundy County is reversed and the decision of the Regional Board is confirmed.

¶ 42 Regional Board confirmed; circuit court reversed.

¶ 43 JUSTICE CARTER, dissenting.

¶ 44 I respectfully dissent from the majority's order in the present case. I would find that the Regional Board's denial of the Bradys' petition for detachment from Newark and annexation to Morris was clearly erroneous. In the instant case, the evidence established that the curriculum of

each school was comparable, that the distance from the property to each school was relatively equal, and that neither school district would suffer significant detriment if detachment and annexation were allowed. The only factors in the analysis that were not neutrally weighted were the "whole child" and the "community of interest" factors, which weighed entirely in favor of granting the Bradys' petition. Under those circumstances, in my opinion, it was error for the Regional Board to deny the petition. See *Carver*, 146 Ill. 2d at 358-59 (in the absence of substantial detriment to either school district, some benefit to the educational welfare of the students in the detachment area, including an increase in the students' ability to participate in school and extracurricular activities, is sufficient to justify the grant of a petition for detachment and annexation). In reaching that conclusion, I would give no weight to the absence of evidence that Jacob would quit school if he was forced to attend Newark. *Cf*. *Fosdyck*, 233 Ill. App. 3d at 401. I believe that the majority's emphasis on that fact is misplaced since the decision for Jacob not to attend Newark had already been made as Jacob was attending Morris for the 2011-12 school year as a tuition-based student and, as such, was precluded from participating in interscholastic activities for the year by the Illinois High School Association.

¶ 45 For the reasons stated, I respectfully dissent from the majority's order in the present case. I would reverse the Regional Board's ruling and affirm the ruling of the trial court.