2017 IL App (5th) 170050-U

NO. 5-17-0050

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NANCY J. RAHN, JESSICA O. RAHN, JUSTIN C. RAHN, and VIVIAN M. BOSSLER,	)	Appeal from the Circuit Court of Monroe County.
Plaintiffs-Appellants,	)	
v.	)	No. 16-MR-18
REGIONAL OFFICE OF EDUCATION OF MONROE & RANDOLPH COUNTIES; REGIONAL BOARD OF SCHOOL TRUSTEES OF MONROE-RANDOLPH COUNTIES; WATERLOO COMMUNITY UNIT SCHOOL DISTRICT NO. 5; and RED BUD COMMUNITY UNIT SCHOOL DISTRICT NO. 132,	)	Honorable Dennis B. Doyle,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE OVERSTREET delivered the judgment of the court.
Presiding Justice Barberis and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: The Board's denial of the plaintiffs' petition to detach and annex was clearly erroneous in light of the evidence presented for the Board's consideration.

¶ 2 The plaintiffs, Nancy J. Rahn, Jessica O. Rahn, Justin C. Rahn, and Vivian M. Bossler, petitioned the Regional Board of School Trustees of Monroe-Randolph Counties

(the Board) to detach a 40-acre tract of land from the boundaries of Waterloo Community Unit School District No. 5 (Waterloo) and annex it into the boundaries of Red Bud Community Unit School District No. 132 (Red Bud). After a hearing, the Board denied the plaintiffs' petition by a 4-3 vote. On administrative review, the circuit court affirmed the Board's decision. For the reasons that follow, we reverse.

¶ 3 FACTS

¶ 4 The plaintiffs collectively own a 40-acre tract of farm land in rural Randolph County. The land lies within Waterloo's school district boundaries but is contiguous to Red Bud's. Nancy is Justin's mother; Jessica is Justin's wife; and Vivian is Justin's aunt.

¶ 5 In 2010, Nancy and her husband built Jessica and Justin a home on the northwest quarter of the 40-acre tract. The home's address is 6362 Faust Road, Red Bud, Illinois, and Jessica and Justin reside there with their two young daughters.

¶ 6 In April 2016, pursuant to sections 7-1 and 7-6 of the Illinois School Code (105 ILCS 5/7-1, 7-6 (West 2016)), the plaintiffs filed a *pro se* petition with the Board requesting that their land be detached from Waterloo's boundaries and annexed into Red Bud's. The petition alleged, among other things, that the "time saved on commute would have a significant direct educational benefit to the children." The petition indicated that the "bus route distance" from 6362 Faust Road to Waterloo was approximately 19.1 miles and that the one-way commute time was over an hour. The petition further indicated that the bus route distance to Red Bud was 7.8 miles, with a one-way commute time of 20 minutes.

¶ 7 In May 2016, the Board held a hearing on the plaintiffs' petition to detach and annex. At the commencement of the hearing, a statement by Red Bud's superintendent was read and admitted as an exhibit to the record. The statement advised that Red Bud was neither for nor against the proposed detachment and annexation and would respect the Board's decision either way.

¶ 8 Jessica testified that her oldest daughter was in preschool and would soon be entering kindergarten. Jessica testified that although she believed that her girls would receive a quality education in either school district, attending Red Bud as opposed to Waterloo would be more beneficial to their educational welfare. Noting that Red Bud served fewer students than Waterloo, Jessica explained that Red Bud offered smaller class sizes and that students remained at the same attendance center from kindergarten until eighth grade.

¶ 9 Referencing maps of the districts' respective school bus routes, an e-mail from Red Bud's superintendant regarding school bus "trip time[s]," and a copy of Waterloo's school bus pick-up and drop-off schedule, Nancy testified that a significant educational benefit that would result by granting the plaintiffs' petition would be reduced commute times to and from school. Nancy explained that if her granddaughters attended school in Waterloo, they would have to be driven a "mile or two" to the bus stop around 6:30 a.m. before beginning a 70-minute ride to school. If the girls were allowed to attend school in Red Bud, on the other hand, the bus would pick them up at their house around 7:30 a.m., and they would be on the bus for no more than 20 minutes. Nancy testified that the plaintiffs were concerned that the lengthy commutes to and from Waterloo might

negatively impact the girls' academic performance. Nancy opined, "The education day is very rigorous[,] and a two-hour bus commute per day would directly impact their educational experience, especially factoring in extracurricular activities." Nancy suggested that the difference in the commute times alone provided a sufficient basis upon which to grant the plaintiffs' petition. Nancy also indicated that unlike Red Bud's bus route, Waterloo's included stretches of "curvy country roads" that could prove problematic in inclement weather.

¶ 10 Nancy testified that Red Bud was also the girls' community of interest. She explained that her family had a "long history of Red Bud as their community" and that several generations had previously served on the Red Bud school board. Nancy noted that the "whole child concept" recognizes that children who attend school in their "natural community" tend to benefit socially as well as educationally.

¶ 11 Waterloo's superintendent, Brian Charron, testified that his district considers Red Bud "a neighbor and a friend." He further testified that both districts would provide a quality education for Jessica's daughters. Charron opined that the slight differences in the districts' class sizes did not suggest a direct educational benefit with respect to either and that having to transition between attendance centers was not necessarily detrimental. Charron testified that Waterloo's school board had unanimously voted to oppose the plaintiffs' petition, but he could not explain why. He acknowledged that if the petition were granted, the resulting loss in tax revenue would not impact Waterloo's $25 million operating budget. He further acknowledged that the plaintiffs' information regarding the

time the girls would spend on Waterloo's school bus was correct, "give or take 10 minutes."

¶ 12 In a closing argument to the Board, Nancy asserted that the plaintiffs had proven by a preponderance of the evidence that it was in the girls' best interests that the school district boundaries be changed. Noting that there was no evidence that changing the boundaries would result in a detriment to either district, Nancy maintained that the determination should be made solely on the girls' educational welfare.

¶ 13 In response, referencing section 7-6 of the School Code, counsel for Waterloo noted that the Board could not consider the effect that the detachment might have on "the whole child" unless it first determined that changing the existing boundaries would be a "significant direct educational benefit" to the child. Counsel further stated, "The statute also says that you can consider these bus rides when there's as much distance as there is here, but it doesn't make it the only factor."

¶ 14 After briefly convening in executive session, the Board returned and denied the plaintiffs' petition by a 4-3 vote. Before adjourning, the Board's president stated that the Board saw "no significant direct educational welfare advantage for the [girls] to be in the Red Bud School District versus the Waterloo School District." The Board subsequently issued a written order seemingly adopting the president's statement by reiteration. The order noted, among other things, that Jessica and Nancy had presented the case in support of the plaintiffs' petition and that the hearing on the petition had been transcribed. The order also recited the statutory criteria set forth in section 7-6. The order did not indicate the basis for the Board's decision, however, and failed to include findings of fact as

required by law. See *Violette v. Department of Healthcare & Family Services*, 388 Ill. App. 3d 1108, 1112 (2009).

¶ 15 In June 2016, the plaintiffs filed a complaint for judicial review of the Board's decision in the circuit court of Monroe County. See 105 ILCS 5/7-7 (West 2016). Specifically referencing the evidence of the plaintiffs' connections to the Red Bud community and the disparity in the anticipatable bus-ride times, the complaint alleged that the plaintiffs had presented unrebutted evidence that granting their petition to detach and annex would directly benefit the girls' educational welfare. The complaint further noted that there was no evidence that granting the plaintiffs' petition would be a detriment to either Waterloo or Red Bud.

¶ 16 In November 2016, the circuit court heard arguments at a hearing on the plaintiffs' complaint for judicial review. At the outset, the plaintiffs essentially conceded that both districts were "academically equal." The plaintiffs maintained, however, that the majority of the Board had apparently ignored the evidence regarding the distances of "the bus rides." The plaintiffs argued that pursuant to section 7-6, it was proper to consider that evidence because the difference in the distances, as alleged in their petition, was greater than 10 miles. The plaintiffs emphasized that there was no evidence that granting their petition would harm either school district.

¶ 17 Noting that section 7-6 specifically refers to "distance between attendance centers" and is silent as to "bus routes," counsel for Waterloo argued that the plaintiffs had failed to provide the Board with any relevant information regarding distances. Counsel further argued that the distance information cited in the plaintiffs' petition was not evidence that

the Board could properly consider. Suggesting that "travel distance" was irrelevant, counsel maintained that the plaintiffs could not ask the Board "to consider how long it takes on the bus because that's not one of the factors." Counsel argued that the plaintiffs had failed to meet their burden of proof.

¶ 18 In January 2017, the circuit court entered a written order summarily affirming the Board's denial of the plaintiffs' petition to detach and annex. In February 2017, the plaintiffs filed a timely notice of appeal pursuant to Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff. Jan. 1, 2015). The plaintiffs and Waterloo subsequently submitted briefs and arguments pursuant to Illinois Supreme Court Rules 341 (eff. Jan. 1, 2016), 342 (eff. Jan. 1, 2005), and 343 (eff. July 1, 2008).

¶ 19 DISCUSSION

¶ 20 A regional board's decision to grant or deny a petition to detach and annex pursuant to section 7-6 is an administrative decision for purposes of the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2016)). 105 ILCS 5/7-7 (West 2016). As such, we review the ruling of the Board, "not the judgment of the circuit court." *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386 (2010). Additionally, the parties agree that we may consider the propriety of the Board's decision in the present case despite the deficiencies in its written order. See *Dresner v. Regional Board of School Trustees of Kane County*, 150 Ill. App. 3d 765, 780-81 (1986). The parties further agree that the Board's decision should be reviewed under the "clearly erroneous" standard. *Beggs v. Board of Education of Murphysboro Community Unit School District No. 186*, 2016 IL 120236, ¶ 50. "An administrative decision is clearly

erroneous when the reviewing court is left with the definite and firm conviction that a mistake has been committed." *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 273 (2009).

¶ 21 A party seeking a detachment and annexation pursuant to section 7-6 must generally prove by a preponderance of the evidence that "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." *Carver v. Bond/Fayette/Effingham Regional Board of School Trustees*, 146 Ill. 2d 347, 356 (1992); see also *Pochopien v. Regional Board of School Trustees of the Lake County Educational Service Region*, 322 Ill. App. 3d 185, 192-93 (2001). However, "in the absence of substantial detriment to either school district, some benefit to the educational welfare of the students in the detachment area is sufficient to justify the granting of a petition for detachment and annexation." *Carver*, 146 Ill. 2d at 358. Where the record discloses that granting a party's petition "would affect neither district in any substantial measure, the determination should turn solely on the welfare of the pupils in the area subject to detachment." *Fosdyck v. Regional Board of School Trustees, Marshall, Putnam, & Woodford Counties*, 233 Ill. App. 3d 398, 407 (1992).

¶ 22 In *Carver*, the supreme court stated that the factors to be considered when deciding whether to grant a petition for detachment and annexation pursuant to section 7-6 include "the distances from the petitioners' homes to the respective schools." *Carver*, 146 Ill. 2d at 356. The court further stated that "the 'whole child' and 'community of interest' factors" may also be considered. *Id.* As recently amended, however, section 7-6

specifically limits a regional board's ability to consider these factors. See Pub. Act 99-475, § 5 (eff. Jan. 1, 2016) (adding 105 ILCS 5/7-6(i)(1)-(5)). In pertinent part, section 7-6 now states,

> "(2) The community of interest of the petitioners and their children and the effect detachment will have on the whole child may be considered only if the regional board of school trustees first determines that there would be a significant direct educational benefit to the petitioners' children if the change in boundaries were allowed.
>
> (3) When petitioners cite an annexing district attendance center or centers in the petition or during testimony, the regional board of school trustees may consider the difference in the distances from the detaching area to the current attendance centers and the cited annexing district attendance centers only if the difference is no less than 10 miles shorter to one of the cited annexing district attendance centers than it is to the corresponding current attendance center." 105 ILCS 5/7-6(i) (West Supp. 2017).

¶ 23 Here, when denying the plaintiffs' petition, the Board advised that it saw "no significant direct educational welfare advantage for the [girls] to be in the Red Bud School District versus the Waterloo School District." In the context of the statutory language and Waterloo's closing argument to the Board, that statement indicates that in its discretion, the Board did not consider the "community of interest" and "whole child" factors when reaching its decision. Additionally, the parties seemingly agree that the Board's ruling turned on its evaluation of the plaintiffs' evidence regarding the

differences in the bus commutes, as the remaining factors set forth in section 7-6 are inapplicable in the present case. See 105 ILCS 5/7-6(i)(1), (4), (5) (West Supp. 2017). Accordingly, at issue is the Board's implicit determination that the commute evidence was insufficient to establish that granting the plaintiffs' petition was in the best interests of the girls' "direct educational welfare." 105 ILCS 5/7-6(i) (West Supp. 2017).

¶ 24 On appeal, the parties' arguments mirror those advanced in the circuit court. The plaintiffs assert that we should reverse the Board's ruling given the uncontested evidence that the shorter bus commutes to and from Red Bud would be educationally beneficial to the girls and that neither school district would be harmed by the requested change in boundaries. In response, suggesting that the Board rightfully ignored the evidence of the "commute times and bus routes," Waterloo argues that the plaintiffs failed to meet their burden of proof. Emphasizing that section 7-6 sets forth a "minimum-distance metric" that must be met before the issue of distance can even be considered, Waterloo contends that the plaintiffs failed to present any relevant evidence that would have allowed the Board to consider the differences in the bus times and routes. Waterloo thus maintains that "the discussion of commute times must be excluded from consideration." We conclude that Waterloo's present arguments have been waived, however, and that the Board's denial of the plaintiffs' petition was clearly erroneous under the circumstances.

¶ 25 "It is quite established that if an argument, issue, or defense is not presented in an administrative hearing, it is procedurally defaulted and may not be raised for the first time before the circuit court on administrative review." *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 212 (2008). This rule recognizes

"the justice of holding a party to the results of his or her conduct where to do otherwise would surprise the opponent and deprive the opponent of an opportunity to contest an issue in the tribunal that is supposed to decide it." *Id*. at 213. Moreover, under the doctrine of judicial admissions, an admission by a party's attorney at an evidentiary proceeding "supersedes all proofs upon the point in question." *Standard Management Realty Co. v. Johnson*, 157 Ill. App. 3d 919, 924 (1987). "A judicial admission is a formal act which waives or disposes of the production of evidence, by conceding for the purposes of litigation that a proposition of fact is true." *Dauen v. Board of Fire & Police Commissioners of the City of Sterling*, 275 Ill. App. 3d 487, 491 (1995). "A judicial admission is not evidence at all, but rather has the effect of withdrawing a fact from contention." *Dunning v. Dynegy Midwest Generation, Inc.*, 2015 IL App (5th) 140168, ¶ 49. "In other words, if a fact is judicially admitted, the adverse party has no need to submit any evidence on that point." *People v. Wright*, 2012 IL App (1st) 073106, ¶ 92.

¶ 26 What constitutes a judicial admission must be decided under the circumstances in each case. *Smith v. Pavlovich*, 394 Ill. App. 3d 458, 468 (2009). A statement made by a party during closing arguments can constitute a judicial admission. *Lowe v. Kang*, 167 Ill. App. 3d 772, 777 (1988). Before a statement can be held to be such an admission, however, "it must be given a meaning consistent with the context in which it was found." *Pavlovich*, 394 Ill. App. 3d at 468. "It must also be considered in relation to the other testimony and evidence presented." *Id*.

¶ 27 Here, at the hearing before the Board, the maps of the districts' respective school bus routes, the e-mail from Red Bud's superintendant regarding bus "trip time[s]," the

copy of Waterloo's school bus schedule, and the copy of the plaintiffs' petition were all admitted as exhibits without objection. Although the maps, e-mail, and bus schedule contain no specific distance information, the petition alleges that the bus route distance to Waterloo is approximately 19.1 miles and that the bus route distance to Red Bud is 7.8 miles, the difference of which is "no less than 10 miles." 105 ILCS 5/7-6(i)(3) (West Supp. 2017). As previously indicated, Nancy used the maps, e-mail, and schedule to establish that the commute times to Red Bud were significantly less than the commute times to Waterloo. Without objection, Nancy specifically established that the girls' morning commute to Waterloo would commence around 6:30 a.m. and last approximately 70 minutes, while their morning commute to Red Bud would commence approximately an hour later and take no more than 20 minutes. This evidence was unrebutted, and Waterloo's superintendent acknowledged that the plaintiffs' information regarding the time the girls would spend on Waterloo's school bus was correct, "give or take 10 minutes." In his closing argument to the Board, counsel for Waterloo advised the Board that it could "consider these bus rides when there's as much distance as there is here."

¶ 28 Under the circumstances, we conclude that counsel's concession that the Board could consider the plaintiffs' bus ride evidence constituted a judicial admission that the distances involved in the present case satisfied the statutory threshold. Counsel's admission thus relieved the plaintiffs of the need to present any additional evidence on that point. *Hudson v. Augustine's, Inc.*, 72 Ill. App. 2d 225, 235 (1966). Although Waterloo now contends, as it did in the circuit court, that the evidence of the bus rides

should not have been considered, those arguments have been waived. *Cinkus*, 228 Ill. 2d at 212; see also *Hansen v. Ruby Construction Co.*, 155 Ill. App. 3d 475, 480 (1987) (noting that "a party cannot create a factual dispute by contradicting a previously made judicial admission"). Furthermore, any objections that Waterloo might have had with respect to the plaintiffs' failure to prove up the distances cited in their petition have also been waived. *Dauen*, 275 Ill. App. 3d at 491; see also *Bafia v. City International Trucks, Inc.*, 258 Ill. App. 3d 4, 8 (1994) (noting that "where the ground for the objection is of a character that can be remedied such as a lack of proper foundation, the objecting party must make the objection in order to allow an opportunity to correct it"). We therefore reject Waterloo's contention that the plaintiffs failed to meet their burden of proof.

¶ 29 The benefits derived from shorter commute times to and from school have long been recognized, especially where younger students are involved. See, *e.g.*, *Merchant v. Regional Board of School Trustees of Lake County*, 2014 IL App (2d) 131277, ¶¶ 95-96; *Board of Education of Jonesboro Community Consolidated School District No. 43 v. Regional Board of School Trustees of Union County*, 86 Ill. App. 3d 230, 233-34 (1980); *Burnidge v. County Board of School Trustees of Kane County*, 25 Ill. App. 2d 503, 509 (1960). The obvious advantages include savings of time, increased safety, and the "lessening of fatigue accompanying a long bus ride to and from school." *Burnidge*, 25 Ill. App. 2d at 509. Here, the Board was presented with uncontested evidence that granting the plaintiffs' petition would directly benefit the girls' educational welfare by significantly reducing their commute times. The uncontested evidence further established that neither school district would be negatively affected by the requested change in

boundaries. The evidence therefore established a *prima facie* case in favor of granting the plaintiffs' petition. Where an opposing party produces no evidence that contradicts or impeaches a *prima facie* case, "the trier of fact must rule for the burdened party." *Pochopien*, 322 Ill. App. 3d at 193. Under the circumstances, we thus conclude that the Board's denial of the plaintiffs' petition to detach and annex was clearly erroneous.

¶ 30 We acknowledge that in *Fixmer v. Regional Board of School Trustees of Kane County*, 146 Ill. App. 3d 660, 665 (1986), the court held that a reduction in the distance and time traveled on a school bus "is not, in itself," a sufficient basis for granting a petition to detach and annex. See also *First National Bank of Elgin v. West Aurora School District 129*, 200 Ill. App. 3d 210, 217 (1990). *Fixmer*, however, was decided before the *Carver* court held that "in the absence of substantial detriment to either school district, some benefit to the educational welfare of the students in the detachment area is sufficient to justify the granting of a petition for detachment and annexation." *Carver*, 146 Ill. 2d at 358. Furthermore, admonishing that "[s]chool district boundaries are not to be changed by reason of shopping, banking[,] or school preferences" (*id.*), the *Carver* court indicated that the only recognized consideration that would, in itself, be insufficient to grant a petition to detach and annex in the absence of substantial detriment to either school district would be the personal desires of the students' parents (*id*. at 356-59).

¶ 31 Lastly, we grant Waterloo's motion to strike pages A136-A148 from the appendix to the plaintiffs' opening brief. As counsel for Waterloo correctly observes, the pages were not included in the record filed on appeal, and the plaintiffs did not seek leave to

supplement the record pursuant to Illinois Supreme Court Rule 329 (eff. Jan. 1, 2006). See *Knouse v. Mohamednur*, 2017 IL App (1st) 161856, ¶ 13.

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, we reverse the circuit court's judgment affirming the Board's decision and remand with directions that the Board enter an order granting the plaintiffs' petition to detach and annex. See *Fosdyck*, 233 Ill. App. 3d at 410.

¶ 34 Reversed and remanded with directions.