

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Brookwood Presbyterian Church,	:	
Appellant-Appellant,	:	
v.	:	No. 12AP-487 (C.P.C. No. 08CVF-05-7539)
Ohio Department of Education,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on July 25, 2013

Buckley King, LPA, and Diem N. Kaelber, for appellant.

Michael DeWine, Attorney General, and Mia Meucci Yaniko, for appellee.

APPEAL from the Franklin County Court of Common Pleas
DORRIAN, J.

{¶ 1} Appellant, Brookwood Presbyterian Church ("Brookwood"), appeals from the May 8, 2012 judgment of the Franklin County Court of Common Pleas, which vacated the May 9, 2008 determination of appellee, Ohio Department of Education ("Department"), to deny Brookwood eligibility to be a sponsor of a community school and remanded Brookwood's application to the Department for further proceedings. Because we find the common pleas court did not err in failing to address certain arguments made by Brookwood, which had been rendered moot, we affirm.

I. FACTS

{¶ 2} In November 2007, Brookwood submitted an application to the Department requesting approval as a sponsor of community schools in Ohio pursuant to R.C. 3314.02(C)(1)(f), which allows "education-oriented," tax-exempt entities under Section 501(c)(3) of the Internal Revenue Code to sponsor community schools.

Brookwood Presbyterian Church v. Ohio Dept. of Edn., 127 Ohio St.3d 469, 2010-Ohio-5710, ¶ 2 ("*Brookwood II*"). In March 2008, the Department determined Brookwood was not an "education-oriented" entity as required by R.C. 3314.02(C)(1)(f) and denied Brookwood eligibility to sponsor community schools. Brookwood sought reconsideration, and again the Department determined Brookwood was not eligible. *Id.* Brookwood filed an administrative appeal in the Franklin County Court of Common Pleas. In response, the Department filed a motion to dismiss, arguing that the trial court lacked subject-matter jurisdiction. The common pleas court agreed and granted the motion to dismiss. *Id.* at ¶ 3. Brookwood then appealed to this court, which affirmed the trial court's dismissal. *Id.* at ¶ 4 and *Brookwood Presbyterian Church v. Ohio Dept. of Edn.*, 10th Dist. No. 09AP-303, 2009-Ohio-4645 ("*Brookwood I*"). Brookwood appealed to the Supreme Court of Ohio, and the Supreme Court reversed. *Brookwood II*. The Supreme Court found the Department's determination to be appealable in accordance with R.C. 119.12 and remanded Brookwood's case back to the Franklin County Court of Common Pleas on November 30, 2010.

{¶ 3} Following the Supreme Court's decision, on February 11, 2011, the Department filed a motion to remand the issue back to the Department in order to conduct an administrative hearing and create a record on the underlying question of whether Brookwood is an education-oriented entity for the purpose of R.C. 3314.02(C)(1)(f)(iii). Brookwood then filed a motion for judgment in its favor for failure of appellee to file a complete record, pursuant to R.C. 119.12, which the Department opposed.

{¶ 4} Both parties' motions were denied by a magistrate, who rendered a decision on April 1, 2011. The magistrate granted the Department 30 days to file a complete record. Brookwood and the Department filed objections, and the trial court overruled the same. On February 16, 2012, the common pleas court entered an order adopting the magistrate's decision denying the motions. On March 15, 2012, the Department filed the record.

{¶ 5} The parties then filed briefs with the common pleas court regarding the merits of the Department's denial of eligibility. Brookwood argued that the Department's order was not supported by reliable, probative, and substantial evidence, was not in accordance with law and was arbitrary, as it was not made with reference to any criteria

adopted by rule in violation of R.C. 3314.015(B)(3), was facially discriminatory against religious entities based on the Department's application of a religious test, and was unconstitutional in violation of the Equal Protection Clauses of the United States and Ohio Constitutions. Brookwood asked the common pleas court to reverse the decision of the Department and render judgment in its favor by finding Brookwood eligible to be a sponsor of community schools. Brookwood also requested fees in accordance with R.C. 2335.39; however, it did not accompany the request with any argument or authority in support thereof. The Department filed a brief in response, arguing that it had applied the criteria outlined in R.C. 3314.02(C)(1)(f)(iii), which reads as follows:

Any person or group of individuals may propose under this division the establishment of a new start-up school to be located in a challenged school district. The proposal may be made to any of the following entities:

* * *

(f) Any qualified tax-exempt entity under section 501(c)(3) of the Internal Revenue Code as long as all of the following conditions are satisfied:

(i) The entity has been in operation for at least five years prior to applying to be a community school sponsor.

(ii) The entity has assets of at least five hundred thousand dollars and a demonstrated record of financial responsibility.

(iii) The department has determined that the entity is an education-oriented entity under division (B)(3) of section 3314.015 of the Revised Code and the entity has a demonstrated record of successful implementation of educational programs.

(iv) The entity is not a community school.

(Emphasis added.) In determining whether Brookwood was an "education-oriented entity," pursuant to R.C. 3314.02(C)(i) and (F)(iii), the Department applied Ohio Adm.Code 3301-102-02(K)(6), which reads:

"Eligible entity" means any of the following:

* * *

(6) Any qualified tax-exempt entity under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) (January 2009), if all of the following conditions are satisfied:

(a) The entity has been in operation for at least five years prior to the application date;

(b) The entity has net assets of at least five hundred thousand dollars that are owned by the entity and verifiable by an audited financial statement provided by a certified public accountant and has demonstrated a record of financial responsibility;

(c) *The department has determined that the entity is an education-oriented entity;*

(d) The department has determined that the entity has a demonstrated record of successfully implementing educational programs; and

(e) The entity is not a community school.

(Emphasis added.) On May 8, 2012, the Franklin County Court of Common Pleas rendered its decision. The court found the Department's determination that Brookwood is not eligible to apply to sponsor community schools because it is not an "education-oriented entity" was "not in accordance with law because it was not made 'pursuant to criteria adopted by rule' as required by R.C. 3314.015(B)(3)." (Decision, 7.) The court reasoned that R.C. 3314.015(B)(3) required that the determination of whether an entity is an "education-oriented entity" be made "pursuant to criteria adopted by rule" of the Department. While Ohio Adm.Code 3301-102-02(K)(6)(c) contains the words "education-oriented entity," it sets forth no criteria, however, for determining whether an entity is an "education-oriented entity." (Decision, 7.)

{¶ 6} The court acknowledged Brookwood had raised additional arguments, including "that [the Department's] Decision is not supported by reliable, probative and substantial evidence and that the Court should reverse the Decision and render judgment that Brookwood is eligible to be a sponsor of community schools." (Decision, 8.) Nevertheless, the court declined to address the merits of these issues, noting "[i]t is a fundamental principle of appellate review that a court does not review, for the first time on appeal, an issue not addressed or decided below." (Decision, 8, citing *Young v. Univ. of*

Akron, 10th Dist. No. 06AP-1022, 2007-Ohio-4663, ¶ 22. The court found that the determination of whether Brookwood is an "education-oriented entity" must be made by the Department from "criteria yet to be adopted by rule." (Decision, 8.) The court therefore vacated the Department's determination to deny Brookwood eligibility and remanded the application back to the Department for further proceedings.

II. ARGUMENT

{¶ 7} On appeal before this court, Brookwood brings forth the following three assignments of error:

[1.] The trial court erred in remanding this matter back to ODE and failing to reverse ODE's Decision denying Brookwood's sponsor application under R.C. 3314.015(B)(3) on the ground that Brookwood is not an education-oriented entity solely because it is a church when the Decision is facially discriminatory against religious entities based on ODE's application of a religious test and unconstitutional in violation of the Equal Protection Clauses of the United States and Ohio Constitutions.

[2.] The trial court erred in remanding this matter back to ODE and failing to reverse ODE's Decision denying Brookwood's sponsor application under R.C. 3314.015(B)(3) on the ground that Brookwood is not an education-oriented entity solely because it is a church when the Decision is not supported by reliable, probative and substantial evidence as the record contains overwhelming evidence of documents submitted by Brookwood to ODE establishing Brookwood is an education-oriented entity.

[3.] The trial court erred in remanding this matter back to ODE and failing to reverse ODE's Decision and enter judgment for Brookwood based on ODE's failure to properly certify and file the complete record to the lower court.¹

Brookwood agrees that the common pleas court properly vacated the Department's determination as unlawful as it was made without reference to any criteria adopted by rule. However, Brookwood argues that the court should have further found that the Department's decision (1) was not supported by reliable, probative, and substantial

¹ The common pleas court declined to reverse the Department's determination and enter judgment for Brookwood based on the Department's failure to properly certify and file the complete record to the common pleas court in its February 16, 2012 order adopting the Magistrate's Decision filed on April 1, 2011.

evidence, (2) was unlawful because it was arbitrary, discriminatory, and unconstitutional, and (3) was based on a "sole arbitrary criterion * * * invented * * * was because Brookwood and its national parent is a church." (Appellant's brief, 9.) Thus, Brookwood argues that, by failing to make these additional findings, the common pleas court erred. The court also erred, according to Brookwood, by not finding judgment in favor of Brookwood based on the Department's failure to file a complete copy of the record.

{¶ 8} We find the common pleas court did not err in failing to make the additional findings, which Brookwood suggests. By finding that the Department's determination was not in accordance with law because it was not made "pursuant to criteria adopted by rule," the court rendered moot Brookwood's remaining arguments.²

{¶ 9} Actions are moot when " 'they involve no actual genuine, live controversy, the decision of which can definitely affect existing legal relations.' " *Ridgeway v. State Med. Bd. of Ohio*, 10th Dist. No. 06AP-1197, ¶ 11, quoting *Lingo v. Ohio Cent. RR., Inc.*, 10th Dist. No. 05AP-206, 2006-Ohio-2268, ¶ 10. Because the Department's denial of eligibility was vacated, no actual genuine, live controversy exists which could definitely affect Brookwood's existing legal status. " 'Actions become moot when resolution of the issues presented is purely academic and will have no practical effect on the legal relations between the parties.' " *Foster v. Foster*, 10th Dist. No. 11AP-371, 2011-Ohio-6460, ¶ 3, quoting *Saffold v. Saffold*, 8th Dist. No. 72937, ¶ 5 (May 13, 1999). It would have been a purely academic exercise for the common pleas court to address the merits of Brookwood's additional arguments—especially considering that the rules which the Department will apply in determining the same have yet to be adopted. Likewise, it would be a purely academic exercise for this court to address the merits of Brookwood's assignments of error.

{¶ 10} Ohio courts exercise judicial restraint in cases that do not present actual controversies. *Tschantz v. Ferguson*, 57 Ohio St.3d 131, 133 (1990). "It has been long and well established that it is the duty of every judicial tribunal to decide actual controversies between parties legitimately affected by specific facts and to render

² App.R. 12(A)(1)(c) requires a court of appeals to decide each assignment of error and give reasons in writing for its decision, "[u]nless an assignment of error is made moot by a ruling on another assignment of error." The common pleas court herein was acting in the role of a court of appeals when it reviewed the Department's determination.

judgments which can be carried into effect. It has become settled judicial responsibility for courts to refrain from giving opinions on abstract propositions and to avoid the imposition by judgment of premature declarations or advice upon potential controversies. The extension of this principle includes * * * questions which are moot." *Fortner v. Thomas*, 22 Ohio St.2d 13, 14 (1970), citing *Miner v. Witt*, 82 Ohio St. 237 (1910). It is appropriate for this court, at this time, to exercise such restraint.

III. CONCLUSION

{¶ 11} We find the trial court did not err in declining to address Brookwood's additional arguments and, therefore, we overrule all three of appellant's assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and SADLER, JJ., concur.
