[Cite as *Lewis v. Ohio High School Athletic Assn.*, 2015-Ohio-3459.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JA'SEAN LEWIS	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff - Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
OHIO HIGH SCHOOL ATHLETIC ASSOCIATION, et al.	:	Case No. 2015CA00009
	:	
	:	O P I N I O N
Defendants - Appellants	:	

CHARACTER OF PROCEEDING: Appeal from the Stark County Court of Common Pleas, Case No. 2014 CV 02601

JUDGMENT: Dismissed

DATE OF JUDGMENT: August 24, 2015

APPEARANCES:

For Plaintiff-Appellee

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and Dr. Daniel B. Ross, Commissioner

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Baldwin, J.

{¶1} Appellants the Ohio High School Athletic Association (OHSAA) and Dr. Daniel B. Ross, Commissioner appeal a judgment of the Stark County Common Pleas Court granting a preliminary injunction to allow appellee Ja'Sean Lewis to participate in high school basketball for the 2014-2015 season.

STATEMENT OF FACTS AND CASE

{¶2} Appellee began his freshman year of high school in the 2010-2011 school year at Africentric Early College High School in the Columbus City School District. Appellee attended Africentric for three years. During that time, he earned 11 credits of 21 ½ attempted, and had an exceptionally high number of absences and tardies.

{¶3} Prior to the start of the 2013-2014 school year, appellee and his mother moved to Stark County, Ohio. In August of 2013, appellee moved into the household of Kent and Teresa McClelland in the Plain Local School District. The McClellands were awarded temporary custody of appellee.

{¶4} Appellee was diagnosed with attention deficit disorder (ADD) by the McClellands' family doctor in November of 2013. During the first nine-week grading period at GlenOak high school in the Plain Local Schools appellant earned an A, two B's and a C, the highest grades he had earned to date. Although appellee had been academically ineligible to play basketball due to his grades from the final nine week grading period of 2013 at Africentric, based on his improved grades at GlenOak the

school began the process of having appellee declared eligible. OHSAA declared appellee eligible under the transfer bylaw in December of 2013.

{¶5} During the 2013-2014 basketball season, appellee played in 21 of GlenOak's 25 games. He led the team in rebounds and blocked shots, and was fourth on the team in total points. Appellee was 6 feet, 7 inches tall and attracted attention from college recruiters from Notre Dame College and Malone University.

{¶6} Appellee began attending classes at GlenOak as a fifth year senior in the 2014-2015 school year. The administration at GlenOak determined that pursuant to the bylaws of OHSAA, appellee had exhausted his eight semesters of eligibility for athletic participation prior to the start of the 2014-2015 school year and was not a candidate for waiver of the eight-semester rule pursuant to bylaw 4-3-3, which provides in pertinent part:

{¶7} "EXCEPTION 2: If the student is a "child with a disability" as that term is defined at 42 U.S.C. Section 12102 (ADA) and the Regulations promulgated thereunder, and the student's specific disability has contributed significantly to the student's inability to meet the requirements of this bylaw, that student may be declared eligible by the Commissioner's office if, in the sole discretion of the Commissioner's office, the Commissioner's office determines that:

{¶8} "a) the student does not pose a safety risk to himself/herself or others; and

{¶9} "b) the student does not enjoy any advantage in terms of physical maturity, mental maturity or athletic maturity over other student-athletes; and

{¶10} "c) the student's participation does not affect the principles of competitive equity; and

{¶11} "d) there is no evidence of 'red-shirting' or other indicia of academic dishonesty."

{¶12} After Glenoak refused to submit a waiver request on appellee's behalf, appellee filed the instant action for declaratory judgment, breach of contract, injunction and equitable relief against OHSAA, OHSAA Commissioner Dr. Daniel B. Ross, the Plain Local School District, and Brent May, superintendent of the Plain Local Schools on November 10, 2014. Appellee also filed a motion for a preliminary and permanent injunction.

{¶13} On November 17, 2014, the trial court entered judgment ordering appellee to submit all records to OHSAA and ordered OHSAA to make a decision on appellee's claim despite the fact that the school district was unable to submit the waiver request. Upon receipt of all documentation from appellee, the Commissioner's office of OHSAA processed the waiver as if it was a waiver request received from a member school. As a part of this process, OHSAA solicited feedback from each of the schools in GlenOak's competitive league, known as the Federal League, as to whether appellee would affect the principles of competitive equity. Responses received from Lake High School, Canton McKinley High School, North Canton Hoover High School, Jackson High School and Perry High School all indicated that appellee's participation would affect competitive equity in the Federal League. Several schools indicated that appellee's participation would also affect competitive equity in seeding for sectional tournaments. OHSAA determined that appellee was not eligible for a waiver of the eight semester rule.

{¶14} An administrative appeals hearing was heard on December 22, 2014. By a vote of 3-0, the appeals panel found that regardless of whether or not appellee was

disabled and such disability affected his three years at Africentric, there was reliable, credible and probative evidence to support the decision of the Commissioner's office that appellee did not qualify for the waiver due to maturity and competitive equity. The panel found that all of the responding athletic directors objected to appellee's participation and believed he would adversely impact competitive equity in the league. The panel noted that appellee needed the year of high school participation to get a college scholarship, but Exception 2 to Bylaw 4-3-3 was "never intended to provide a student-athlete another year of eligibility to hone his/her skills for the next level of competition."

{¶15} The case came before the Stark County Common Pleas Court for a hearing on appellee's motion for a preliminary injunction on January 7, 2015. On January 13, 2015, the trial court granted injunctive relief. The court found in pertinent part, "Dr. Moore contacted each of the Federal League schools as to whether Ja'Sean's athletic ability would have a significant impact if allowed to compete. She chose not to contact others outside of the Federal League even though the persons who dealt with Ja'Sean, such as the Glenoak Coach or the Aquinas Coach would have a better perspective. These coaches considered his athletic ability to place him less than a starting player. This Court determines that the decision of the OHSAA was arbitrary in that its decision did not evaluate evidence before it, but on evidence not before it, such as teacher evaluations." Judgment Entry, January 13, 2015. Appellee participated in the remainder of the basketball season at GlenOak High School after appellants' request for a stay of the judgment was denied.

{¶16} Appellants assign two errors:

{¶17} "I. THE TRIAL COURT'S JUDGMENT ENTRY ENJOINING THE OHIO HIGH SCHOOL ATHLETIC ASSOCIATION FROM ENFORCING THE BYLAWS OF THE MEMBER SCHOOLS OF THE ASSOCIATION AND THE INTERPRETATIONS AND DECISIONS RELATED TO THESE BYLAWS RELATIVE TO PLAINTIFF/APPELLEE IS A CLEAR ABUSE OF DISCRETION.

{¶18} "II. THE TRIAL COURT'S JUDGMENT ENTRY ENJOINING THE OHIO HIGH SCHOOL ATHLETIC ASSOCIATION AND DR. DANIEL B. ROSS, COMMISSIONER FROM ENFORCING THE BYLAWS OF THE OHSAA MEMBER SCHOOLS WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶19} Appellee has moved to dismiss this appeal as moot, as he has graduated and no case or controversy exists between the parties. Appellants argue that the appeal is not moot because they are enjoined from taking action against the Plain Local School District.

{¶20} The order appealed from grants only a preliminary injunction. The trial court did not yet find that appellee was eligible to play based on the exception to the eight semester rule found in Bylaw 4-3-3. The judgment clearly contemplates a final hearing at some point in the future. The judgment states in pertinent part:

{¶21} "As to the application for a preliminary injunction, this Court makes the following ruling and incorporates all the evidence and exhibits presented at the hearing for the final hearing in this case to avoid unnecessary repetition. . . The Court determines that Plaintiff is likely to be successful on the merits and that irreparable harm to Plaintiff will occur in denying the temporary injunction in that the possibility of his skill enhancement will be lost. . . The Court therefore grants the application for a preliminary

injunction as requested by Plaintiff in accordance with the prayer requested." Judgment Entry, January 13, 2015.

{¶22} The judgment includes language that there is no just cause for delay and this is a final, appealable order.

{¶23} A preliminary injunction is a provisional remedy, which is defined as a "remedy other than a claim for relief." R.C. § 2505.02(A)(3); *State ex rel. Butler County Children Services Bd. v. Sage,* 95 Ohio St.3d 23, 24, 2002–Ohio–1494. Preliminary injunctions are considered interlocutory, tentative, and impermanent in nature. *Quinlivan v. H.E.A. T. Total Facility Solutions, Inc.,* 6th Dist. Lucas App. No. L–10–1058, 2010–Ohio–1603, ¶ 3, citing *Burns v. Daily*, 114 Ohio App.3d 693, 708 (1996).

{¶24} R.C. § 2505.02(B)(4) provides that an order that grants or denies a provisional remedy is appealable if both of the following apply:

{¶25} "(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy;" and

{¶26} "(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action."

{¶27} In order to satisfy the second requirement of R.C. § 2505.02(B)(4), an appellant must show that it will be deprived of a meaningful and effective remedy if it cannot appeal now. *Quinlivan,* 2010–Ohio–1603 at ¶ 4; *E. Cleveland Firefighters, IAFF Local 500 v. E. Cleveland,* Cuyahoga App. No. 88273, 2007–Ohio–1447, ¶ 4. Specifically, the appealing party must demonstrate that it "would have no adequate

remedy from the effects of that [interlocutory] order on appeal from final judgment." *Empower Aviation,* 2009–Ohio–6331, ¶ 18, 185 Ohio App.3d 477, quoting *State v. Muncie*, 91 Ohio St.3d 440, 451(2001).

{¶28} As to appellee, the appellants may not have had an adequate remedy from the effects of the preliminary injunction on appeal from final judgment in the instant case because the preliminary injunction allowed appellee to finish the basketball season. However, at this point, the preliminary injunction is moot as to appellee because the basketball season has ended and he has graduated from GlenOak high school, with no further opportunity for athletic participation.

{¶29} However, appellants have an adequate remedy against the Plain Local Schools on appeal from final judgment. While the effect of the court granting the preliminary injunction in accordance with appellee's prayer for relief did enjoin appellants from taking action against the school district, appellants have an adequate remedy on appeal from final judgment. There has yet to be a determination that appellee was eligible for participation in the 2014-2015 basketball season pursuant to the exception to the eight semester rule. The court merely finds that he was likely to be successful on the merits of his claim that he was eligible pursuant to the exception to the eight semester rule.

{¶30} Although the court could have ordered the trial of the action on the merits to be advanced and consolidated with the hearing on the preliminary injunction pursuant to Civ. R. 65(B)(2), the court's judgment only addresses the preliminary injunction and allows the evidence received upon the application for preliminary injunction to become a

part of the record for the trial on the merits. The trial on the merits has not yet taken place due to the appeal of the preliminary injunction.

{¶31} The judgment entry is not final and appealable to the extent it enjoins appellants from taking action against the Plain Local School District, as they have an adequate remedy at law on appeal from final judgment. The judgment is moot as to appellee Ja'Sean Lewis.

{¶32} The appeal is dismissed. Costs are assessed to appellants.

By: Baldwin, J.

Hoffman, P.J. and

Farmer, J. concur.