[Cite as *Burnell v. Cleveland Mun. School Dist. Bd. of Edn.*, 2015-Ohio-5431.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103069

KIM BURNELL, ET AL.

PLAINTIFFS-APPELLANTS

vs.

CLEVELAND MUNICIPAL SCHOOL DISTRICT BOARD OF EDUCATION, ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-830560

BEFORE: E.T. Gallagher, J., Kilbane, P.J., and McCormack, J.

RELEASED AND JOURNALIZED: December 24, 2015

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EILEEN T. GALLAGHER, J.:

{¶1} This cause came to be heard on the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. Plaintiff-appellants, Kim Burnell, Karen Cunningham-Frank, Barbara Delgado, Iris Diaz, Layla Dibe, Emmett Erwin, Vito Federici, Karen Jozwiak, Brett Katz, Sarah Morrow, Heidi Stevens, and Michael Worth (collectively "appellants"), appeal the dismissal of their complaint for declaratory judgment against defendant-appellees, Cleveland Municipal School District Board of Education[1] and Denise W. Link (collectively "CMSD" or "the Board"). They assign one error for our review:

> In the Common Pleas Court journal entry dated May 20, 2015, the court erred when it mischaracterized the action as an appeal and subsequently dismissed the action for lack of subject matter jurisdiction for want of a specific statute granting it authority to hear the matter.

{¶2} We find some merit to the appeal, affirm the trial court's judgment in part, reverse it in part, and remand the case to the trial court solely for a determination as to whether appellants received a proper hearing.

I. Facts and Procedural History

{¶3} CMSD employed appellants as teachers under limited contracts during the 2013-2014 school year. Near the end of the school year, the appellant teachers were notified in writing that CMSD did not intend to renew their contracts for another year. As provided by statute, the teachers requested (1) an explanation in writing as to why

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[1] CMSD is the Cleveland Metropolitan School District. The caption identifies CMSD as Cleveland Municipal School District because Burnell used this name in the caption of the complaint.

their contracts were not being renewed, and (2) a hearing to challenge CMSD's decision not to renew their contracts.

{¶4} Appellee Denise Link ("Link"), chairwoman of the CMSD Board, scheduled a hearing at the next regularly scheduled meeting and established rules for the hearing. Pursuant to Link's rules, each teacher, and his or her representative, were afforded 20 minutes to present an oral argument. Each of the teachers' principals and other administrators who recommended that his or her limited contract not be renewed, were present at the hearing, but the teachers were not permitted to question them.

{¶5} Following the teachers' oral arguments, Link asked the teachers and their representatives to leave the room. According to the complaint, after the teachers had gone, the Board heard testimony from CMSD administrators in executive session. When the Board returned to public session, the Board moved to adopt a resolution not to re-employ all 12 of the limited contract teachers, and the resolution passed.

{¶6} Appellants subsequently filed a complaint for declaratory judgment against CMSD, alleging CMSD deprived appellants of their statutory right to a hearing before voting not to renew their contracts. Appellants alleged they were denied a hearing because they were not permitted to present evidence, cross-examine witnesses, or respond to the evidence and arguments made against them.

{¶7} CMSD responded by filing a motion to dismiss pursuant to Civ.R. 12(B)(1) and (B)(6), arguing the trial court lacked subject matter jurisdiction to hear the case. CMSD argued that because R.C. 3311.81 specifically states that school board decisions

"shall be final and shall not be subject to further appeal," the trial court had no authority to review the board's decision. The trial court agreed and dismissed the complaint. In its journal entry, the court stated:

> Defendants filed a motion to dismiss on 9/12/14. Ohio R.C. 3311.81(C) states that "the decision of the board shall be final and shall not be subject to further appeal." There is no specific statute granting authority to the common pleas court to hear this matter. Therefore, this court lacks jurisdiction to hear an appeal.

Appellants now appeal this judgment.

II. Law and Analysis

A. Standard of Review

{¶8} In their sole assignment of error, appellants argue the trial court erred in finding that it lacked jurisdiction and in dismissing their complaint pursuant to Civ.R. 12(B)(1) and (B)(6). They contend their complaint was not an appeal, but an independent action to enforce their statutory right to a hearing.

{¶9} In determining whether a court lacks subject matter jurisdiction pursuant to Civ.R. 12(B)(1), the trial court must consider whether the plaintiff has alleged any cause of action that the court has authority to decide. *Mickey v. Rokakis*, 8th Dist. Cuyahoga No. 97053, 2012-Ohio-273, ¶ 7. When making this determination, the trial court is not confined to the allegations of the complaint and "may consider material pertinent to such inquiry without converting the motion into a motion for summary judgment." *Southgate Dev. Corp. v. Columbia Gas Transm. Corp.*, 48 Ohio St.2d 211, 358 N.E.2d 526 (1976), paragraph one of the syllabus.

{¶10} A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted tests the sufficiency of the complaint. *Volbers-Klarich v. Middletown Mgt., Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434, ¶ 11. Thus, when ruling on a Civ.R. 12(B)(6) motion, a court may not rely on evidence or allegations outside the complaint. *State ex rel. Fuqua v. Alexander*, 79 Ohio St.3d 206, 207, 680 N.E.2d 985 (1997). However, CMSD's assertion that the complaint fails to state a claim upon which relief may be granted is based on its defense that the trial court lacked subject matter jurisdiction. We review the trial court's decision on a motion to dismiss for lack of subject matter jurisdiction de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5.

B. Jurisdiction

{¶11} Although R.C. 3311.81(C) states that a school board's decision is final and not subject to appeal, nothing prevents aggrieved limited contract teachers from bringing an action to enforce their right to a hearing under R.C. 3311.81(B). R.C. 2721.03, which governs declaratory judgment actions, gives a person the right to bring a declaratory judgment action to enforce rights provided by statute, writing, or other legal provision. R.C. 2721.03 states, in relevant part:

> [A]ny person whose rights, status, or other legal relations are affected by * * * statute * * * may have determined any question of construction or validity arising under the * * * statute,* * * and obtain a declaration of rights, status, or other legal relations under it.

Indeed, the Ohio Supreme Court has held that a declaratory judgment is a remedy provided in addition to other legal and equitable remedies, where speedy relief is

necessary to preserve rights that might otherwise be impaired. *Herrick v. Kosydar*, 44 Ohio St.2d 128, 339 N.E.2d 626 (1975).

{¶12} CMSD asserts that the teachers' rights are governed by their collective bargaining agreement ("CBA"), which precludes appellants from bringing a declaratory judgment action. CMSD cites R.C. 3311.81(F), which provides, in part, that the Board and the teachers' union "shall negotiate the due process procedures preceding a teacher's receipt of a written notice indicating the intent of the board not to re-employ the teacher." However, this section does not authorize CMSD and the union to negotiate the due process procedures to be applied to the hearings required by R.C. 3311.81(C).

{¶13} Additionally, R.C. 3311.81(F) states that the requirements of R.C. 3311.81, including R.C. 3311.81(C), "prevail over any conflicting provisions of a collective bargaining agreement entered into on or after the effective date of this section." R.C. 3311.81 became effective on October 1, 2012. The parties entered into the CBA on July 1, 2013, which thus became effective after the effective date of R.C. 3311.81. Therefore, the provisions of R.C. 3311.81 supersede any contrary provisions in the CBA.

{¶14} As previously stated, declaratory judgment actions are separate actions, independent of other legal remedies. R.C. 2721.03; *Kosydar*, 44 Ohio St.2d 128, 339 N.E.2d 626. R.C. 2721.13 further provides that declaratory judgments under R.C. 2721.13 "are remedial and shall be liberally construed and administered." Thus, even if the CBA provides the teachers with a remedy, that remedy does not preclude the teachers from bringing this declaratory judgment action to enforce their rights under R.C. 3311.81.

{¶15} The teachers' complaint presents two separate kinds of relief (1) declaration that they were deprived of their right to hearing under R.C. 3311.81(C), and (2) damages resulting from the Board's decision not to renew their contract. Pursuant to R.C. 3311.81(C), the trial court has jurisdiction to determine whether the teachers received an adequate hearing but lacks jurisdiction to review the Board's decision not to renew the teachers' contracts. R.C. 3311.81(C) provides, in relevant part: "*Following the hearing*,* * * the board shall act on the question of teacher's re-employment," and "[t]he decision of the board shall be final and shall not be subject to further appeal." (Emphasis added.)

{¶16} Thus, the common pleas review of the hearing is separate from its review of the Board's decision "following the hearing." In other words, if the trial court determines, for example, that the teachers had an appropriate hearing, R.C. 3311.81(C) prohibits the court from reviewing the CMSD's decision not to renew the teachers' contracts and any requests for relief related to that decision. Obviously, if the court finds the teachers did not receive a fair hearing, it may remand the case to CMSD to hold a proper hearing.

{¶17} Although the trial court has jurisdiction to decide if the teachers received a proper hearing under R.C. 3311.81(C), the trial court properly determined that it lacked jurisdiction to hear the teachers' requests for reinstatement of employment, lost compensation, benefits, and seniority. These claims require review of the board's decision not to renew their contracts, which is not subject to appeal.

{¶18} Accordingly, the sole assignment of error is sustained in part and overruled in part.

III. Conclusion

{¶19} The trial court has jurisdiction to hear appellants' claim for a judgment declaring that CMSD failed to provide the limited contract teachers an adequate hearing as required by R.C. 3311.81(C), even though R.C. 3311.81(C) specifically provides that the Board's decisions are final and not subject to appeal. However, the trial court lacks subject matter jurisdiction to determine if any of the teachers are entitled to reinstatement of employment, lost compensation, benefits, and seniority as requested in their complaint. CMSD's decisions on these issues are not "subject to further appeal."

{¶20} The trial court's judgment is affirmed in part, reversed in part, and the case is remanded to the trial court to conduct a hearing to determine whether CMSD complied with the hearing requirements of R.C. 3311.81(C).

It is ordered that appellant and appellee share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN T. GALLAGHER, JUDGE

MARY EILEEN KILBANE, P.J., and
TIM McCORMACK, J., CONCUR