LENAPE REGIONAL HIGH SCHOOL DISTRICT BOARD OF EDUCATION, Plaintiff-Respondent, v. G.P. and M.P., Defendants-Appellants.

DOCKET NO. A-3967-08T23967-08T2

SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

2010 N.J. Super. Unpub. LEXIS 2091

March 16, 2010, Submitted
August 23, 2010, Decided

NOTICE: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

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PRIOR HISTORY: [*1]
On appeal from Superior Court of New Jersey, Law Division, Burlington County, Docket No. L-3094-08.

COUNSEL: Jamie Epstein, attorney for appellants.

Comegno Law Group, attorneys for respondent (Mark G. Toscano and Andrea L. Delmonte, on the brief).

JUDGES: Before Judges Skillman and Fuentes.

OPINION

PER CURIAM

In this suit between plaintiff, the Lenape Regional High School District Board of Education, and defendants, G.P. and M.P., on behalf of their disabled son, J.P., the Law Division found a valid and enforceable settlement between the parties concern-

ing tuition payments for the educational needs of J.P. Defendants now appeal from that order.

We reverse. In order to properly review the merits of defendants' arguments, we must first briefly describe the procedural history that led to this appeal.

I

This controversy began on September 23, 2008, when defendants filed a petition with the New Jersey Office of Special Education Programs seeking a determination of the amount plaintiff would be required to pay for J.P.'s educational expenses during the 2007-2008 and 2008-2009 school years. Plaintiff did not respond directly to this petition; instead, plaintiff moved to dismiss or stay the proceedings in lieu of filing [*2] an answer. [1]

1 The Administrative Law Judge (ALJ) assigned to the case granted plaintiff's motion and stayed the case for three months to permit the case pending before the Law Division to continue. Because plaintiff eventually prevailed before the Law Division, the ALJ dismissed the petition without prejudice pending the outcome of this appeal.

While the motion for a stay was pending in the administrative forum, plaintiff filed a verified complaint in the Law Division on October 7, 2008, [2] seeking a judicial determination as to the amount of tuition each party was obligated to pay for J.P.'s educational needs. On December 15, 2008, plaintiff requested an entry of default against defendants for their failure to file responsive pleadings, which the Deputy Clerk of the Superior Court filed on December 18, 2008. On December 19, 2008, the judge assigned to the case granted plaintiff's motion for an order to proceed summarily. Both of these orders were sent to defendants' counsel on January 5, 2009. The following day, plaintiff filed a notice of motion to enforce settlement, or in the alternative, for the entry of final judgment by default pursuant to *Rule* 4:43-2.

2 Plaintiff indicates in a [*3] footnote that this action was originally filed in the Chancery Division. However the clerk's office transferred the matter to the Law Division and assigned it a docket number prior to service being made on defendants.

On that same day, defendants sought to remove this controversy to the United States District Court for the District of New Jersey. Three weeks later, the District Court denied defendants' removal motion and remanded the case to the Law Division. The parties thereafter entered into a consent order concerning counsel fees defendants

owed to plaintiff as a consequence of their unsuccessful attempt to remove the case to federal court.

On February 18, 2009, plaintiff again moved before the Law Division for an order enforcing the alleged settlement between the parties, or as an alternative, for the entry of judgment by default. Defendants responded to the motion and the matter came before the trial court for argument on March 6, 2009. After considering the parties' respective positions, the motion judge found that the parties had reached a binding and enforceable settlement; he thus granted plaintiff's motion.

Against this procedural backdrop, we will now describe the salient [*4] facts underpinning this case.

II

J.P. is a child who has been classified as eligible for special education services under the Individuals with Disabilities Education Act (IDEA). 20 *U.S.C.A.* § 1400. He was first enrolled in the Lenape Regional High School District prior to the 2006-2007 school year. Although school officials originally recommended an in-district placement for J.P., his parents placed him in the New Hope Academy, located in Pennsylvania. Because plaintiff did not agree that this placement was necessary, J.P.'s parents filed a petition for a due process hearing before the Office of Special Education, requesting that the school district "assume responsibility for the placement of J.P. at the New Hope Academy for the 2006-2007 school year."

The parties initially sought to mediate the dispute by agreeing to "resolve and settle all outstanding issues involved in the dispute . . . for the 2006-2007 school year." During mediation, the parties agreed to a number of provisions concerning J.P.'s placement for the 2006-2007 school year, including the following:

> 2. Board will be responsible for the payment of fifty percent (50%) of J.P.'s educational tuition costs, up to $ 19,500.00, [*5] for J.P.'s attendance at the New Hope Academy for the 2006-2007 school year, including the cost of an extended school year, payable directly to the New Hope Academy[.]
>
> . . . .
>
> 4. In no event shall J.P.'s attendance at the New Hope Academy be considered a "stay-put" placement under the IDEA or *N.J.A.C.* 6A:14-1.1, *et seq.*, and that J.P.'s "stay-put" placement shall be considered to be the in-district placement in the Lenape Regional High School District for the purpose of this Stipulation.

5. Parents shall be responsible for, and pay for all other costs/expenses for J.P.'s attendance at the New Hope Academy for the 2006-2007 school year[.]

. . . .

9. This Stipulation is dispositive of all issues in dispute between the parties hereto, and is intended to constitute a final resolution of the petition filed herein . . . .

10. Parents upon the execution of this Stipulation fully and completely releases (sic) the Board from any and all claims they have or may have, of any kind whether contractual, common law, or statutory[.]

. . . .

12. This Stipulation is further contingent upon approval by the New Jersey Commissioner of Education, Department of Education, or a court of competent jurisdiction.

Pursuant [*6] to this agreement, an Individualized Educational Program Plan (IEP) review held on June 1, 2007, indicated that J.P.'s special education placement for the 2006-2007 school year was at the New Hope Academy. The IEP also indicated that a new agreement would need to be made regarding any disputes for the 2007-2008 school year.

By letter dated July 16, 2007, the attorney representing the school district confirmed that "Lenape will be in a position to issue the check for the 2006/2007 tuition after its next board meeting, which is scheduled for July 18, 2007." Plaintiff's counsel further indicated that "[w]ith respect to the 2007/2008 school year, I understand that J.P.'s IEP has been approved. Accordingly, you and I need to discuss the terms of the agreement for the 2007/2008 school year."

On August 6, 2007, plaintiff's counsel again advised that the parties "need[ed] to discuss J.P.'s arrangements for the 2007/2008 school year." Counsel also explained that the district would issue a $ 19,500 check for the prior year's tuition directly to New Hope Academy. Four days later, plaintiff informed defendants that payment for the 2006-2007 year had been officially disbursed.

Inexplicably, the parties [*7] had no further communications for more than ten months. The next letter, dated April 25, 2008, was sent by defendants' former counsel and sought reimbursement from plaintiff for tuition for school year 2007-2008. Plaintiff's counsel responded on May 1, 2008, indicating that he "did not believe that

anything formal had been presented." He thus invited defendants to submit an agreement similar to the one reached for the 2006-2007 school year, which he would then submit to the school board for approval.

On May 30, 2008, a meeting was held to review J.P.'s IEP and his continued attendance at New Hope Academy for the 2008-2009 school year. As had been the case for the IEP for the prior year, this IEP indicated that "[f]or the 2007-2008 and 2008-2009 school year[s], parents' attorney will need to contact Lenape District's attorney so that an agreement can be made between Lenape District and [G.P. and M.P.] to resolve and settle issues involved in the dispute for the 2007-2008 and for the 2008-2009 school year[s]."

By letter dated June 23, 2008, defendants' former counsel submitted a "draft Settlement Agreement" for plaintiff's counsel's review. According to defendants, this proposed agreement [*8] was practically identical to the settlement agreement for the 2006-2007 school year, except that it covered school years 2007-2008 and 2008-2009. As had been the case for the agreement reached for the 2006-2007 school year, this proposed agreement was subject to final approval by the board of education.

A few days later, plaintiff's counsel advised defendants' former counsel that he did not believe that the Lenape school board would approve the proposed agreement. Specifically, counsel noted that this proposal did not limit the district's contribution for costs and tuition to $ 19,500 and that it covered two years.

On July 3, 2008, plaintiff's counsel indicated that the district board would consider entering into an agreement if: there were two separate agreements, one for each school year; the agreement limited the district's contribution for tuition and costs to $ 19,500; and tuition payments were made directly to New Hope Academy. In response, defense counsel submitted a revised settlement agreement that separated the two school years, included the contribution cap of $ 19,500, but required the district "to reimburse" J.P.'s parents for the payment "of fifty percent (50%) of J.P.'s [*9] educational tuition costs for [his] attendance at the New Hope Academy." Thus, this provision made clear that the district would be required to make its payment directly to J.P.'s parents.

Ten days later, plaintiff's counsel sent defense counsel a revised stipulation that again obligated the district to make tuition payments directly to New Hope Academy. By letter dated August 5, 2008, defense counsel informed plaintiff's counsel that his clients were willing to agree to these terms provided that the language concerning the district's contribution read "not less than $ 19,500.00." Plaintiff responded by resubmitting its revised version of the settlement stipulation, which limited Lenape's contribution to $ 19,949, 50% of the actual amount owed for the 2007-2008 school year.

By email dated August 26, 2008, defendants' former counsel requested that both the agreements for school years 2007-2008 and 2008-2009 be forwarded to her clients for simultaneous executions. Three days later, plaintiff's counsel forwarded the agreement for the 2008-2009 school year containing terms nearly identical to the agreements for school years 2006-2007 and 2007-2008. The only difference in the contract for [*10] the 2008-2009 school year was the actual tuition cost. Lenape agreed to cover up to $ 20,542.75 in tuition expenses for that year.

By email sent on September 8, 2008, defendants' former counsel indicated that there would be a delay in finalizing the agreement. Counsel explained, however, that the delay had "nothing to do with you." One week later, plaintiff's counsel requested an update on the status of the agreements. On September 24, 2008, defendants' former counsel emailed plaintiff's attorney to inform him that her firm no longer represented defendants in this matter.

Parallel to these negotiations, defendants sought reimbursement for the payments they had made for their son's tuition at New Hope Academy for school years 2007-2008 and 2008-2009. In an email dated August 18, 2008, defense counsel requested that the district reimburse his clients $ 19,949.00 for the 2007-2008 school year tuition, and $ 20,542.75 for the 2008-2009 school year tuition.

On September 23, 2008, defendants' current counsel filed a second due process petition with the Office of Special Education seeking full reimbursement from plaintiff for J.P.'s tuition, student expenses, and transportation costs for the [*11] 2007-2008 and 2008-2009 school years. Plaintiff responded to this petition by filing this verified complaint in the Law Division seeking enforcement of the alleged agreement. From these facts, the trial court found that the parties had reached a valid and enforceable agreement. The court thereafter entered an order memorializing the decision.

III

Although the precise procedural posture of this appeal is unclear, we are satisfied that this matter is properly before us as a direct appeal from the order of the Law Division finding a valid agreement between the parties. [3] Because the parties did not execute a formal agreement, the first issue in contention on appeal concerns the authority vested in the attorneys to bind their respective clients.

3 Defendants did not file a responsive pleading to plaintiff's complaint, opting instead to simply file a brief in opposition to the relief requested. Because, in addition to seeking judicial recognition of an enforceable agreement, plaintiff also sought the entry of default against defendants, it can be argued that this

> matter should be viewed as an appeal from the denial of a *Rule* 4:50-1 motion. We are satisfied, however, that the trial court's ruling [*12] was more akin to a judicial declaration of a valid contract between the parties than a default judgment against defendants.

It is well-settled that unless an attorney is specifically authorized by the client to settle a case, the consent of the client is necessary. *Amatuzzo v. Kozmiuk*, 305 N.J. Super. 469, 475 (App. Div. 1997). From this record, we cannot discern, with any degree of certainty, that defendants' former counsel represented herself as having the authority to bind her clients in this respect. Her numerous correspondences with plaintiff's counsel evidenced only her role as an attorney attempting to negotiate an agreement that responded to her clients' needs. At no time did she place herself in the position of an agent with the express or implied authority to bind the principal parties.

The record in this respect is even stronger when reviewing the role of plaintiff's counsel. All of his communications with defense counsel consistently emphasized that formal approval by the district's board of education was required before any agreement would be considered final. In this case, we have no indication that the district's board of education formally approved the agreements it now [*13] seeks to enforce. Without the board's express and formal approval, no contract can be deemed legally enforceable. This is especially so when the record is also devoid of evidence showing that the board of education relied on the validity of these agreements to its detriment. Indeed the equities here favor the parents of a special needs child who strived to obtain an educationally sound environment for their son.

With this observation in mind, we must also consider the public policy implications concerning the resolution of controversies involving the educational needs of handicapped children. There is little doubt that these cases are better suited for resolution in the State Department of Education, Office of Special Education Programs, than in a civil courtroom. This administrative forum created by the State Department of Education has the presumed expertise to devise an outcome for this controversy that is responsive to both plaintiff's fiscal concerns and the child's educational well-being. [4]

> 4 In this respect, we note that in a due process hearing conducted under the IDEA to determine the suitability of a handicap child's placement, the school district bears the burden of proof. *N.J.S.A.* 18A:46-1.1.

Reversed.