T.B., a minor, individually and by his Parent J.K., Plaintiff, v. MOUNT LAUREL BOARD OF EDUCATION, Defendant.

Civil No. 09-4780 (JBS/KMW)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

2011 U.S. Dist. LEXIS 66682

June 20, 2011, Decided
June 20, 2011, Filed

COUNSEL: [*1] Jamie Epstein, Esq., Cherry Hill, NJ, Counsel for Plaintiff.

Carl Tanksley, Jr., Esq., PARKER MCCAY PA, Lawrenceville, NJ, Counsel for Defendant.

JUDGES: HON. JEROME B. SIMANDLE, United States District Judge.

OPINION BY: JEROME B. SIMANDLE

OPINION

SIMANDLE, District Judge:

I. INTRODUCTION

This case involving a claim for attorney fees under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, as well as a claim under the New Jersey Law Against Discrimination (NJLAD), N.J. Stat. Ann. § 10:5-1, is before the Court on multiple motions. Defendant Mount Laurel Board of Education moves for judgment on the pleadings as to the NJLAD claim pursuant to Federal Rule of Civil Procedure 12(c), arguing that the claim is not sufficiently supported by the Amended

Complaint's allegations and that this Court lacks jurisdiction over it [Docket Item 20]; Defendant seeks to dismiss the claim for fees pursuant to Federal Rule of Civil Procedure 12(b)(6) because of a settlement offer that Defendant claims satisfies the statutory requirements for a prohibition on attorney fee-shifting in cases that could have settled [Docket Item 21]; and Defendant moves to sanction Plaintiff J.K. for allegedly misrepresenting the status [*2] of her legal representation to an Administrative Law Judge, citing Federal Rule of Civil Procedure 60(b)(3) [Docket Item 22]. Plaintiff moves to have a late-filed opposition to Defendant's motions considered by the Court [Docket Item 28], and Plaintiff also moves for partial summary judgment as to the fee- shifting claim pursuant to Federal Rule of Civil Procedure 56(a) [Docket Item 29].

II. BACKGROUND

T.B. is a child who resides within the Mount Laurel School District and has been deemed eligible for special education and related services pursuant to the IDEA. During the 2008-09 school year, J.K., the mother of T.B., and the school district were unable to agree through informal negotiations upon specific terms of an individualized education plan for T.B. [1] On January 23, 2009, J.K. filed a petition with the school district for a due process hearing pursuant to 20 U.S.C. § 1415. (Pl.'s Ex. 1 to summary judgment motion "Due Process Petition".) The petition alleges that T.B.'s then-current education plan was a fill-in- the-blank form filled with illegible handwriting. (Id. at 3.) The existing plan stated that T.B. needed one-on-one instruction, and the petition states T.B. was not receiving [*3] it. (Id.) Moreover, the petition alleges, the existing plan's assessment of T.B.'s behavior was not current, and the goals and objectives were inadequate. The petition complains that the behavior plan was not developed by a behavior consultant, and was not based on an assessment of T.B.'s behaviors. Finally, the petition addresses the disciplinary measures taken with respect to T.B. It states that T.B. had been improperly suspended on numerous occasions without the existing plan distinguishing between behaviors that were part of T.B.'s disability and other discipline-worthy behaviors, and adds, without further details, that T.B. had been subject to "corporeal punishment/adverse conditioning." (Id.)

> 1 An individualized education plan, or IEP, is "a detailed written statement arrived at by a multi-disciplinary team summarizing the child's abilities, outlining the goals for the child's education and specifying the services the child will receive." Jeremy H. v. Mount Lebanon School Dist., 95 F.3d 272, 275 n.4 (3d. Cir. 1996) (citation omitted).

The petition sought seven specific remedies: (1) an independent psychiatric evaluation; (2) an independent behavior assessment and behavior intervention [*4] plan,

the implementation of which will be overseen by the behavior expert; (3) a prohibition on "corporeal punishment/adversive conditioning;" (4) a prohibition on discipline for behaviors that are a manifestation of T.B.'s disability; (5) a one-to-one aide; (6) compensatory education for the period the district failed to provide an appropriate education; and (7) a legible individualized education plan with reasonable and measurable goals. (Id.)

In response to the due process petition, district administrators scheduled a meeting with J.K., which took place in February 2009. (Def.'s Ex. 2 to summary judgment motion at 1.) After this meeting, Dr. Diane Willard, Director of Child Study Team and Special Services for the District, made an offer substantially but not entirely acceding to the requests made in the due process petition. (Id.) The District agreed to an independent psychiatric evaluation, an independent behavior assessment and behavior intervention plan, a one-to-one aide, and a legible individualized education plan with reasonable and measurable goals. And they agreed that the individualized plan would note J.K.'s request that T.B. not be "restrained" and an alternate plan to [*5] be implemented with delineated procedures when T.B. acts out aggressively. The district also offered to discuss and determine the necessary compensatory education at a later time. (Id.)

J.K. did not accept the offer. On February 25, 2009, the matter was transmitted to the Office of Administrative Law for a hearing scheduled for March 9, 2009. After some continuances for Plaintiff to seek legal advice, the parties subsequently attempted to resolve the matter on a number of occasions, but were still unable to reach a resolution.

Finally, on July 15, 2009, the parties met and were able to agree on settlement terms. ALJ James-Beavers memorialized those terms in an order issued July 20, 2009. (Pl.'s Ex. 2 to summary judgment.) They included: (1) provision of a one-to-one aide; (2) evaluation from a psychiatrist of J.K.'s choice at the district's expense for a reasonable hourly rate; (3) a functional behavioral assessment and positive behavior intervention plan from a behavior consultant of J.K.'s choice at the district's expense for a reasonable hourly rate, including having the behavioral consultant address the need to adopt different disciplinary procedures; (4) fifty hours of compensatory [*6] education from a certified special education teacher by September 30, 2009; (5) a legible IEP for the 2009-2010 school year with current levels of functioning in goals and objectives written in measurable and observable terminology; and (6) an agreement not to use corporal punishment or aversive conditioning on T.B. The parties were ordered to comply with the terms. (Id.)

Plaintiff brings this action to collect attorney fees as provided for in the IDEA, and brings a new claim for monetary damages and fees based pursuant to NJLAD. De-

fendant seeks to dismiss both claims, arguing that their attempt to settle the IDEA issue in February means attorneys fees are inappropriate; that there is no basis in the pleadings for the NJLAD claim, over which this Court lacks subject matter jurisdiction anyway; and that Plaintiff should be denied attorney fees for allegedly falsely telling ALJ James-Beavers in March 2009 that she needed an extension of time to obtain counsel when she was already being represented. Plaintiff, who failed to timely oppose these motions, seeks to have a late-filed opposition brief considered. Plaintiff also moves for partial summary judgment as to the fee-shifting issue.

III. [*7] DEFENDANT'S MOTIONS

Defendant's Rule 12(b)(6) motion

Although Plaintiff's opposition will be stricken as untimely, the Court must nevertheless examine whether dismissal is merited under Rule 12(b)(6). See Stackhouse v. Mazurkiewicz, 951 F.2d 29, 30 (3d Cir. 1991); Anchorage Assocs. v. Virgin Islands Bd. Of Tax Review, 922 F.2d 168, 175 (3d Cir. 1990). A complaint must allege, in more than legal boilerplate, those facts about the conduct of each defendant giving rise to liability. Twombly, 550 U.S. at 555; Fed. R. Civ. P. 11(b)(3). [*14] These factual allegations must present a plausible basis for relief (i.e., something more than the mere possibility of legal misconduct). See Ashcroft v. Iqbal, 129 S.Ct. 1937, 1951 (2009).

In its review of Defendant's motion to dismiss, the Court must "accept all factual allegations as true and construe the complaint in the light most favorable to the plaintiff."Phillips v. County of Allegheny, 515 F.3d 224, 231 (3d Cir. 2008) (quoting Pinker v. Roche Holdings Ltd., 292 F.3d 361, 374 n.7 (3d Cir. 2002)).

Defendant asserts that 20 U.S.C. § 1415(i)(3)(D), which prohibits fee-shifting when certain kinds of settlement offers are made, forecloses this request for attorney's fees in this case because of the content of the February settlement offer. Under Rule 12(b)(6), the Court cannot consider a document not referenced in the pleadings unless it is integral to the Complaint. See In re Burlington Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997) (quoting Shaw v. Digital Equip. Corp., 82 F.3d 1194, 1220 (1st Cir. 1996). In this case, the content of the February settlement offer is not integral to the Complaint. Quite simply, neither of Plaintiff's claims depend in any way on the content [*15] of that offer. Therefore, Plaintiff's motion is procedurally improper.

The argument as to 20 U.S.C. § 1415(i)(3)(D) is, however, procedurally appropriate as opposition to Plaintiff's motion for summary judgment. It will therefore be considered in that context, below. [4]

4 Since, as explained below, the Court finds that Plaintiff is entitled to summary judgment despite 20 U.S.C. § 1415(i)(3)(D), it would be futile to convert Defendant's motion to dismiss into a motion for summary judgment.

Defendant's Rule 12(c) motion

Defendant asks the Court to reject supplemental jurisdiction over the NJLAD claim, but Defendant confusingly combines this argument with one about the sufficiency of the pleadings and places both arguments under the heading of Rule 12(c). Since the Court must review its own subject matter jurisdiction pursuant to Rule 12(h)(3), and since this resolves the issue, the Court will begin and end with an examination of whether to exercise supplemental jurisdiction over this claim.

In order for the Court to entertain a state law claim between non-diverse parties, the state law claim must share a common nucleus of operative facts with a claim over which the Court has original jurisdiction. [*16] See United Mine Workers of America v. Gibbs, 383 U.S. 715, 725 (1966). Even when a state and federal claim share a common nucleus of operative facts, when "the state issues substantially predominate, whether in terms of proof, of the scope of the issues raised, or of the comprehensiveness of the remedy sought, the state claims may be dismissed without prejudice and left for resolution to state tribunals." Gibbs, 383 U.S. at 726; see also 28 U.S.C. § 1367(c)(2).

In this case, Plaintiff fails to demonstrate that there is a common nucleus of operative facts. The federal claim rests only on facts about the negotiation and litigation history between the parties in the first half of 2009 and has no substantive claim to adjudicate. The state claim, on the other hand, rests on the substantive conduct of the school toward T.B. In short, the facts underlying each claim have no relevance to the other claim, even though they both relate, in some sense, to a common set of underlying events.

Even if the two claims are sufficiently connected to meet the threshold requirement of a common nucleus of operative facts, the state claim substantially predominates over the federal claim in this action. Plaintiff [*17] seeks to use the end stages of a longer state administrative process regarding the IDEA claim, in which the only dispute is the propriety of a fee award, to open a brand new state law action in federal court. The NJLAD claim is the only one requiring further proceedings since the necessary facts to resolve the federal fee-shifting claim are undisputed, as explained below in Part IV.B. Permitting the state claim to go forward would be "allowing a federal tail to wag what is in substance a state dog." See Borough of W. Mifflin v. Lancaster, 45 F.3d 780, 789 (3d Cir. 1995) (quoting Gibbs, 383 U.S. at 727).

Other than a handful of paragraphs composed for this preliminary motion, the Court is not aware of any resources having been spent litigating the NJLAD claim in this Court. The Court is satisfied that judicial economy, fairness to the parties, and convenience all dictate that the Court decline to exercise supplemental jurisdiction over the claim.

Defendant's Rule 60 motion

Rule 60 of the Federal Rules of Civil Procedure, titled "Relief from Judgment or Order" provides that "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, [*18] or proceeding" for certain specified reasons, including "(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party." Rule 60, Fed. R. Civ. P. Defendant asserts that Plaintiff fraudulently misrepresented her status with regard to legal representation because she advised the Office of Administrative Law of a desire to seek representation during a March 12 hearing in order to obtain an extension, and therefore the Court should deny the application for legal fees.

Defendant does not seek relief from a judgment or order, so Rule 60 is inapposite. Perhaps recognizing this, Defendant cites case law relating to fraud on the court, arguing that the Court has the inherent power to sanction a party for fraud on the Court, and that the appropriate sanction here is denial of fees. Defendant is correct that district courts possess the inherent power to sanction one "who defiles the judicial system by committing a fraud on the court." See Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir. 1989).

Defendant's motion will be denied for four reasons. First, reduction of fees rather than outright denial would be the proportionate penalty for [*19] a party wrongfully obtaining a continuance. Second, this is not the Court that was allegedly defrauded. Since the power to sanction a party for fraud on the court arises this Court's authority to properly manage its own affairs, Aoude, 892 F.2d at 1118, the place to seek sanctions for the alleged conduct was before the Court allegedly defrauded. Third, the allegations are too vague to determine whether Plaintiff asked for an extension in order to "seek counsel" in the sense of seek advice or to "seek counsel" in the sense of obtain a new attorney -- it appears that only the latter interpretation would be false. And fourth, and most importantly, Defendant's motion does not attach or cite any evidence. The motion will therefore be denied.

IV. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

A. Summary Judgment Standard

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is material only if it might affect the outcome of the suit under the applicable rule of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). Summary judgment will not be denied [*20] based on mere allegations or denials in the pleadings; instead, some evidence must be produced to support a material fact. Fed. R. Civ. P. 56(c)(1)(A); United States v. Premises Known as 717 S. Woodward Street, Allentown, Pa., 2 F.3d 529, 533 (3d Cir. 1993). However, the court will view any evidence in favor of the nonmoving party and extend any reasonable favorable inferences to be drawn from that evidence to that party. Hunt v. Cromartie, 526 U.S. 541, 552 (1999).

B. Analysis

The IDEA authorizes an order for attorney fees as part of the costs to the parents of a child with a disability who is the "prevailing party." 20 U.S.C. § 1415(i)(3)(B). In Buckhannon Bd. v. West Virginia D.H.H.R, the Supreme Court explained the proper interpretation of the term "prevailing party" in the context of resolutions other than final judgments as the result of litigation. 532 U.S. 598, 605 (2001). Although Buckhannon was not an IDEA case, the Third Circuit Court of Appeals has applied it to IDEA's identical language. John T. ex rel. Paul T. v. Delaware County Intermediate Unit, 318 F.3d 545, 556, 556-7 (3d Cir. 2003). Under Buckhannon, a party benefiting from a settlement agreement can be a prevailing [*21] party if the "change in the legal relationship of the parties" was in some way "judicially sanctioned." Buckhannon, 532 U.S. at 605.

The settlement in this case is indisputably judicially sanctioned. A stipulated settlement is judicially sanctioned where it: 1) contains mandatory language; 2) is called an Order3) bears the signature of a judicial officer; and 4) provides for judicial enforcement. See P.N. v. Clementon Bd. of Educ., 442 F.3d 848, 853-54 (3d Cir. 2006) (citing John T., 318 F.3d at 556, 558 (3d Cir. 2003)). When, as here, the order of an Administrative Law Judge compels the parties to comply with the settlement terms, it is sufficiently judicially sanctioned to meet the test. Id. at 854 (citing Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375 (1994)) ("Kokkonen suggests settlement of an administrative proceeding is the equivalent of an administrative decree on the merits where, as here, the parties' obligation to comply with the terms of the settlement agreement has been made part of the order of dismissal."). [5]

5 The recently decided Third Circuit case on the topic of prevailing party status does not affect this result. See Singer Management Consultants, Inc. [*22] v. Live Gold Operations, Inc., No. 09-2238, Slip Op. (3d Cir. June 15, 2011). The

Court in Singer found that a party who succeeded in getting a temporary restraining order, but whose claim was mooted by the defendant's change in legal position after the order (which was eventually vacated), was not a prevailing party under 42 U.S.C. § 1988. Id. at 13-16. The Court did not alter the rule that a final settlement agreement enforced by consent decree can make one a prevailing party. Id. at 16. Here, a settlement agreement is enforced by the final order of a judicial officer.

The question in this case is therefore whether this judicially sanctioned resolution caused a "change in the legal relationship of the parties." Buckhannon, 532 U.S. at 605. A resolution meets this standard when it "modifies the defendant's behavior in a way that directly benefits the plaintiff." Clementon, 442 F.3d at 855 (quoting Ridgewood Bd. of Educ. v. N.E. ex rel. M.E., 172 F.3d 238, 251 (3d Cir. 1999)). Purely technical or trifling success is insufficient. Texas State Teachers Ass'n v. Garland Indep. Sch. Dist., 489 U.S. 782, 792 (1989).

There is no dispute that, as against the status quo prior to February 2009, [*23] the judicially-approved settlement materially altered the legal relationship of the parties, compelling the school to provide certain resources it had not previously been compelled to provide. Defendant maintains, however, that as indicated in the February 2009 offer to Plaintiff, it was already seeking to provide Plaintiffs with all items previously requested long before the final settlement. Therefore, Defendant reasons, the order confirming the July 15 settlement did not modify Defendant's behavior.

The Court assumes for the sake of argument that Defendant is correct that Plaintiff must prove that the July 15 settlement was more favorable to Plaintiff than the February offer in order to show a modification of Defendant's behavior. [6] Even so, the undisputed facts show that the final settlement that the ALJ ordered the parties to comply with was more favorable than the initial offer in at least three ways: the initial offer was only to "put in the IEP that the parent has requested that T.B. not be restrained," but not to actually change the disciplinary procedures; T.B.'s behavior intervention plan is, under the final settlement, to be overseen by the expert who developed it, an important [*24] provision not offered in the February letter; and, unlike the final settlement's concrete requirement of fifty hours of compensatory education, the initial offer was only an offer to discuss the appropriate compensatory education, containing no promise of compensatory education in any amount. Each of these standing alone is a significant modification.

6 The nature of the Court's inquiry into causation post-Buckhannon is not entirely clear, since Buckhannon's requirement of a judicial imprimatur builds in a requirement that it was legal action that brought about the result. And the IDEA

already provides a check to prevent unnecessary litigation after an appropriate settlement offer. See 20 U.S.C. § 1415(i)(3)(D)(i) (prohibiting an award of fees if an offer is made and rejected sufficiently early, and the Court finds that "the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement"). So long as Buckhannon and the statute are met, it may be that no further inquiry is required. But see Wheeler v. Towanda Area School Dist., 950 F.2d 128, 131 (3d Cir. 1991) (describing the implied element of causation). Since in this case the final settlement [*25] was materially more favorable than even the February voluntary offer, the Court need not determine how causation must be assessed in light of Buckhannon.

The undisputed facts show that the ALJ ordered the parties to comply with a settlement that materially altered the legal status of the parties from their status both before and after the February 2009 offer. Therefore, Plaintiff was the prevailing party in this action. Plaintiff is therefore entitled to reasonable attorney fees pursuant to 20 U.S.C. § 1415(i)(3)(B).

IV. CONCLUSION

Defendant's motion to dismiss the fee claim and to punish Plaintiff for fraud on the court will be denied. The Court declines to exercise supplemental jurisdiction over the NJLAD claim, mooting Defendant's Rule 12(c) motion. Having found that Plaintiff was the prevailing party before the Office of Administrative Law, the Court will grant Plaintiff summary judgment on the fee-shifting claim. Given Plaintiff's counsel's history before this Court, he should take special care in preparing his Rule 54.2 filing. The accompanying Order will be entered.

June 20, 2011
Date

/s/ Jerome B. Simandle

JEROME B. SIMANDLE

United States District Judge