

MERCY I.,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-15

OPINION

INTRODUCTION

Appellant challenges the decision of the Howard County Board of Education (“local board”) denying her daughter enrollment at Ellicott Mills Middle School (“Ellicott Mills Middle”) because Appellant failed to establish that she is a bona fide resident of the geographic attendance area serving that school.¹ The local board filed a motion for summary affirmance maintaining that its decision was not arbitrary, unreasonable or illegal. The Appellant responded to the motion and the local board replied to the response.

FACTUAL BACKGROUND

In 1998, the Appellant and her former husband purchased a house at Loveknot Place in Columbia, Maryland. The residence is in the Oakland Mills Middle School attendance area.

Sometime around the start of the 2009-2010 school year, the Appellant’s then husband left the family and moved out of the country, providing no financial support. The Appellant received notices that the bank was going to foreclose on the Loveknot Place home. Facing potential eviction from the residence, the Appellant and her children moved in with friends in Ellicott City. For several years, the Appellant’s children were classified as homeless students. At some point, however, the Appellant moved the family back in to the home at Loveknot Place. In July 2014, the school system advised the Appellant that her children no longer met the homeless student criteria because they had been living in the family home for some time despite the threat of foreclosure.

During the 2015-2016 school year, Appellant moved her family into an apartment on High Hawk Court in Columbia, which is in the attendance area for Ellicott Mills Middle School. The record contains the lease from 2015-2016 and a lease renewal agreement renewing the lease from October 2016 through September 30, 2017.

During the 2016-2017 school year, Appellant’s daughter, C., was a seventh grader attending Ellicott Mills Middle. In December 2016, the school system became aware of a

¹ This appeal initially also involved Appellant’s son, G, who is in high school. The parties reached a Settlement and Resolution Agreement with regard to G in which the school system has permitted him to remain enrolled in Howard High School through the 2019-2020 school year, at which time he is slated to graduate.

potential residency issue when administrators at Howard High School, where Appellant's son G was enrolled, received returned envelopes addressed to the High Hawk Court address marked undeliverable.

Several months later, on April 19, 2017, Pupil Personnel Worker (PPW), Neil Gwinn, met with Appellant and another family, the Oludairo family. The Oludairos were planning to move into the High Hawk Court apartment with the Appellant and, because of the shared living arrangement, the Appellant and the Oludairos needed to complete and submit a Multiple Family Disclosure form indicating that they would all be living in the apartment together. The paperwork requires completion by the owner/lessee of the apartment and the family living with the owner/lessee. The PPW requested that Appellant sign the Family Disclosure form stating that she lived at the High Hawk Court address, but Appellant refused to sign. The PPW checked with the leasing agent who advised that the Appellant did not live at the High Hawk Court address, despite the fact that Appellant's name and those of her children were on the lease. The leasing agent told the PPW that the Appellant had been allowing the Oludairo family to live at the apartment without her. The Oludairo family signed an affidavit stating that they lived at the High Hawk Court address.

In May 2017, Appellant's divorce became final and she was awarded sole ownership of the house at Loveknot Place. Appellant took steps to refinance, but was denied a loan because of a lien on the property. In addition, the home had incurred structural and cosmetic damage caused by a sewage back up which flooded several portions of the house.

The pupil personnel office conducted residency surveillance of High Hawk Court and Loveknot Place on June 7 and 9, 2017. On those days, the surveillance showed the Appellant driving her children from the Loveknot Place property to school. The school system's investigation concluded that the Appellant was not living at the High Hawk Court address, which is in the Ellicott Mills Middle district. Rather, it showed that Appellant and her children were residing at the Loveknot Place address, which is in the Oakland Mills Middle district.² In addition, the investigation showed that C's overall attendance had been good, but that tardiness was an issue for her.

By letter dated June 9, 2017, Christopher Rattay, the principal of Ellicott Mills Middle, advised the Appellant of the residency decision, stating that the school had information that the High Hawk Court address was not her bona fide residence and that C was improperly attending Ellicott Mills. The letter explained that C would be withdrawn from Ellicott Mills as of June 12, 2017 and the Appellant would have to enroll her at the appropriate districted school. The principal of Howard High sent a similar letter to the Appellant regarding her son. Both letters were mailed to the High Hawk Court address and were returned to the schools marked "undeliverable." A sticker placed on one of the returned envelopes by the post office noted the Loveknot Place address as the new address for the Appellant.

Although the letters were returned as undeliverable, the Appellant somehow received notice of the residency decision. By email dated June 23, 2017, Appellant requested an appeal to

² According to the record, PPWs had previously conducted surveillance the year before on June 10, 14, and 16, 2016, which also disclosed the same thing. It is not clear why surveillance was done at that time, but it could have been related to the school attendance for the Appellant's two oldest children. In addition, it is unclear why surveillance was not conducted immediately after the April incident with the Oludairos. We note that surveillance is mentioned several times in the appeal record but the only specific dates mentioned are the ones in June 2016 and June 2017.

Maryann Thomas, Specialist for Residency and Student Reassignment. Appellant attached June and July 2017 BGE bills addressed to her at the High Hawk Court apartment.

In a memorandum dated July 12, 2017, Ronda Lennon, PPW, provided information about the residency case to Cassandra Miller, Residency and Student Reassignment Specialist, and Restia Whitaker, Coordinator of Pupil Support Services. She stated, “[n]umerous database searches, including court records, reveal [xxxx] Loveknot Place as the address of record for the [Appellant’s] family. This includes the most recent driver’s license change in 2016.” She also shared that residency surveillance conducted in June 2016 and June 2017 “confirms that the family resides on Loveknot Place and that [the children] are brought to school from that address.” She further mentioned the fact that representatives from the management office for the High Hawk Court apartment stated that the Appellant did not live there and had other families living there instead.

On July 14, 2017, Ms. Miller attempted to contact the Appellant to schedule a residency hearing for July 18, 2017, at 11:00a.m. On July 17, 2017, Ms. Miller spoke to the Appellant. Based on the information that the Appellant provided to Ms. Miller, Ms. Miller advised the Appellant to follow up with the PPWs with residency documentation to resolve the matter without a residency hearing. Appellant did not follow up with the PPWs, who ultimately determined that Appellant was not a bona fide resident of the geographic attendance area for Ellicott Mills Middle.

On September 5, 2017, Appellant contacted the Reassignment and Residency Office and met with Ms. Miller and Restia Whitaker. Appellant claimed to be unaware of the need to follow up with the PPWs over the summer and requested an expedited appeal and residency hearing. Ms. Miller emailed the Appellant on September 6 to propose September 8 as the date for a hearing. Appellant responded that a date the following week would be better. The Reassignment and Residency Office offered September 12 or 19 as hearing dates. After three attempts to coordinate a hearing, the Reassignment and Residency Office scheduled the hearing on September 20, 2017.

There is documentation in the record from computer searches conducted by the school system during September 2017 that show the Appellant used the Loveknot Place property as her address. One report is from Accurant that shows the address as one used by the Appellant and the other is a Maryland Judiciary Case Search report showing that she used the address in multiple court cases.

The Appellant did not appear for the September 20 hearing. That same day, Ms. Miller advised the Appellant that the hearing went forward without her participation and that she found that the Appellant was not a bona fide resident of the High Hawk Court address. She stated that C’s designated school for the 2017-2018 school year would be Oakland Mills Middle based on the Loveknot Place address.

In response to an email from the Appellant, Ms. Miller issued a second letter dated September 22, 2017, advising that the Appellant could submit additional or new residency information within 30 days of the date of the letter. On September 27, 2017, Ms. Miller sent out a third letter requesting updated residency information to include the following:

- Current letter from landlord confirming your residence and that you are under a current lease as of 9/26/17.

- Current BGE bill – the issued date for the bill submitted is July 19, 2017. Please submit the most current BGE bill.

The letter also said that there were additional questions about the information displayed on the submitted BGE bill in relation to residency, but it did not explain the issue regarding the bill. Appellant was advised that C's last day of school at Ellicott Mills Middle would be October 6, 2017.

On September 28, 2017, Appellant filed an appeal of the residency decision to the local board.

On October 6, 2017, Linda Wise, Executive Director of Student Services, and Ms. Whitaker met with the Appellant to discuss and review the updated documentation that Ms. Miller requested in her September 27 letter. On October 12, 2017, Appellant met with Rhonda Lemon and Pat Kelly, PPWs, to deliver a new lease for a residence at Joyful Way, effective from October 10, 2017 to August 19, 2018. The lease lists the Appellant and her children as occupants of the apartment. At the meeting, Appellant mentioned something to the PPWs about the new address being better for her child, G, because it is in the Howard High School attendance area. As a result of that comment, on October 13, 2017, Ms. Whitaker advised her staff that the PPWs had determined that the Joyful Way apartment was a "temporary" or "superficial" residence established for school attendance and not the Appellant's bona fide residence.

On October 16, 2017, Appellant advised the principal of Ellicott Mills that she moved to Joyful Way and listed her Loveknot Place house for rent. Appellant was not permitted to enroll C in school there.

On October 19, 2017, Appellant met with James LeMon, Executive Director of Family, School and Community Services, and Ms. Whitaker to express her concern about her daughter not attending school during the appeal process and to schedule home visits for Loveknot Place and Joyful Way.

On October 23, 2017, Ms. Kelly and Mr. Fowlkes conducted home visits of the Loveknot Place property and the Joyful Way apartment. Ms. Kelly's report states as follows:

First, we visited [xxxx] Joyful Place, Apartment E. I went to [G's] room. His bed was there. It was unmade and had been slept in. His clothes were in the closet and some were on the floor along with socks and tennis shoes. We knocked on [C's] bedroom door. She was sitting on her bed. Her bed was there and her clothes were in the closet. I looked in the bathroom. There were toiletries, washcloths, and towels. You could tell the bathroom was being used. In the kitchen, there was food, dirty dishes, and pots and pans on the stove. There were some things from the night before. There was plenty of food in the refrigerator. There was not a lot of furniture in the small living room. There was a bed frame that needed to be put together and a few boxes.

Secondly, we visited [xxxx] Loveknots. There was a refrigerator with some food in it and a small table and two chairs. The den has some old furniture and papers scattered around. The basement had

been flooded and in bad need to repair. It is going to be restored. [Appellant] is going to send us some papers from the contractor who will restore the water damage. [Appellant] said that repairs could be done. I saw [S's] room.³ The bed had been slept in. His clothes were in the room. [Appellant] admitted that [S] stayed there. She came by often to check on him. She said that she was going to have the gas and electric turned off at this place because she couldn't afford it. [S] is upset because he wanted to stay there, but she told him he will have to move with the family to Joyful Place. [Appellant's] room had a gigantic king size bed in it. She said that it would not fit into the apartment. That is true. She said that she was going to get rid of it.

The house needs a lot of work cosmetically and structurally. She could not rent it out until it was renovated. She can't sell it because there is a lien on it for thousands of dollars. Because the ex-husband owes back taxes.

In conclusion, I think that they are probably staying at both places but mainly Joyful Place. However, I can't be sure.

In an email dated October 25, 2017, Ms. Whitaker advised the Appellant that based on the home visits and documentation provided by the Appellant that the school system had concluded that Appellant's bona fide residence is the home that she owns at Loveknot Place, which is located in the Oakland Mills Middle district. Ms. Whitaker expressed her concern that the Appellant had not yet enrolled C in school at Oakland Mills while she is pursuing the appeal process.

The record contains an email dated November 9, 2017, from the principal at Ellicott Mills Middle to Ms. Whitaker stating that the director of admissions of a private school in which Appellant was attempting to enroll C had contacted him. The director had asked the Appellant why C was not enrolled in school and shared that the Appellant had said that Oakland Mills Middle would not allow C to enroll. The principal of Ellicott Mills then explained that there were residency issues, but, in his view, Appellant was able to enroll C in school at Oakland Mills Middle. Ms. Whitaker sent that information from the principal to Ms. Miller who viewed it as part of Appellant's "pattern of false statements."

Appellant sent additional information to the local board in which she claimed she moved into the Joyful Way apartment on October 10, 2017 and that she now resided in the Ellicott Mills attendance zone. She attached her lease to the Joyful Way apartment, a change of address on her driver's license listing the Joyful Way address dated October 16, 2017, and a November 2017 BGE utility bill addressed to her at Joyful Way. Appellant indicated that Ellicott Mills Middle would not reenroll her daughter in school despite the new documentation so she placed her daughter on home schooling through the Keystone online program.

In a decision issued December 21, 2017, the local board unanimously rejected the lease of the Joyful Way apartment as a current lease for the Appellant, stating that the "facts and circumstances did not confirm that location as the Appellant's bona fide residence." The local

³ S is Appellant's oldest son who is in grade 12 at Oakland Mills High School.

board determined that the Joyful Place address is a temporary residence or superficial residence established for the purpose of attendance in Howard County Public Schools. The local board instead upheld a determination that the Appellant was a bona fide resident of Loveknott Place.⁴

STANDARD OF REVIEW

Local board decisions involving a local policy or a controversy and dispute regarding the rules and regulations of the local board are considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

Local Board's Motion to Dismiss

As a preliminary matter, we address the local board's request to dismiss this case as moot. The local board argues that the Appellant's daughter is not currently enrolled in the Howard County Public School System and that she has not been denied enrollment in the Appellant's school of choice. We disagree, she has been denied enrollment in Ellicott Mills Middle School. But for that denial, Appellant would enroll C in the Howard County Public School System.

A case is moot when "there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts (or agency) can provide. *In Re Michael B.*, 345 Md. 232, 234 (1997); *see also Mallardi v. Carroll County Bd. of Educ.*, MSBE Op. No. 00-07 (2000). The controversy here still exists and an effective remedy can be provided. In our view, therefore, the case is not moot.

Residency Decision

State law invests local boards with the authority to determine the geographical boundaries of the school in its jurisdiction. Md. Code Ann., Educ., §4-109(c). The local board has determined its boundaries, and requires students to attend the school serving the attendance area in which their parents have bona fide residency, unless one of the enumerated exceptions apply. Policy 9000(IV)(D & F). "Bona fide residence" is defined as the "person's actual residence maintained in good faith. It does not include a temporary residence or superficial residence established for the purpose of attendance in the Howard County Public School System." Policy 9000(III.B). The policy places the burden of proof to establish bona fide residency on the parent. Policy 9000(V)(F).

A parent can establish residency by providing the school system with the following documentation:⁵

- Homeowners
 - Deed/deed of trust with all requires signatures or, if home

⁴ Oddly, the local board stated in its decision that it was reviewing the September 20, 2017 decision issued by Ms. Miller even though it also clearly considered the October 25, 2017 decision issued by Ms. Whitaker that dealt with the new residency information regarding Joyful Way.

⁵ Other provisions apply for families in shared housing situations.

was just purchased and no deed is available, signed settlement papers followed by deed/deed of trust with all required signatures within 30 days of enrollment; and

- Any one of the following that was issued within 45 days prior to registration:
 - Television service bill;
 - Bill for land line telephone;
 - Gas and electric bill; or
 - Current water and sewer bill
- Renters
 - Original , current lease with all required signatures; and
 - Gas and electric bill or water a sewer bill issued within 45 days prior to registration; or
 - If the lease stipulates that rent payments include utilities, a telephone service bill or landline phone bill issued within 45 days prior to registration.

Policy 9000-IP(I)(A)(8).

Consistent with the school system’s residency policy, the Appellant submitted a valid lease for the Joyful Way apartment through August 19, 2018 and the BGE bill from November 2, 2017. Because the Appellant had moved into the apartment on October 10th, her BGE bill was not dated within 45 days of registration at Ellicott Mills. It was however 45 days since its issuance when the local board rendered its decision. The Appellant’s provision of such documentation establishes the presumption of residency. *See Stacey M. v. Anne Arundel Count Bd. of Educ.*, MSBE Op. No. 10-11 (2010).

The burden of proof then shifts to the local board to rebut the presumption of residency with contradictory evidence. *See David and Nino K. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 11-32 (2011). Given the record in this case, particularly Appellant’s prior false representations regarding her residency and the fact that she still owned the Loveknot Place home, we understand the local board’s hesitancy to believe the Appellant’s claim that she was actually living at the Joyful Place apartment. However, it is up to the local board to present the evidence to rebut the presumption that the Appellant was living at Joyful Way.

The school system could have conducted additional surveillance, but it did not. That leaves the record with outdated surveillance from June 2017 showing that, at that time, the family was living at Loveknot Place. It does not rebut anything about where the family has been living since October 10, 2017.

The fact that the Appellant owns the home on Loveknot Place does not serve to rebut the presumption. An individual can own property in a county and reside in another location in the same county. Appellant chose to leave a home in which there were sewage leaks and that was in need of substantial work and rent an apartment in an area that suited her desire to have her child attend a certain school. It is not uncommon for parents to choose to live somewhere because they desire to live in a particular school attendance zone.

The only additional evidence in the record after Appellant submitted the Joyful Way lease is the PPW report of the home visits conducted by the PPWs on October 23, 2017. Our

reading of the report supports a finding that the Appellant was actually living with her younger son, G, and her daughter, C, at the Joyful Place apartment, while the oldest son S was living at Loveknot Place. We are aware that the final sentence of the report equivocates because it says that the family is “probably staying at both places but mainly Joyful Place” and then the PPW says that she “can’t be sure.” It is our view, however, that this inconclusiveness does not jibe with the rest of the report which makes no suggestion that anyone other than S is living at the Loveknot Place house.

The issue before us is to determine whether the local board acted arbitrarily, unreasonably or illegally in determining that Loveknot Place is the Appellant’s bona fide residence and that the Joyful Way apartment is merely a “temporary” or “superficial” residence established for the sole purpose of school attendance. A local board decision may be arbitrary or unreasonable “if a reasoning mind could not have reasonably reached the conclusion the local board . . . reached” or if the decision “is contrary to sound educational policy.” COMAR 13A.01.05.05B.

The local board has provided no evidence to rebut the presumption that the Appellant lives at the Joyful Way apartment with her daughter. If no sufficient evidence supports a decision, we must conclude that no reasoning mind could have found that the Appellant was a bona fide resident of the Loveknot Place home at the time of the local board’s decision.

The local board has provided no evidence to rebut the presumption that the Appellant was living at the Joyful Way apartment with her daughter when it issued its decision. If no sufficient evidence supports a decision, we must conclude that no reasoning mind could have found that the Appellant was a bona fide resident of the Loveknot Place home at the time of the local board’s decision.⁶

CONCLUSION

For all of these reasons, we reverse the decision of the local board and find that the Appellant is a bona fide resident of Joyful Way. We direct the local board to enroll C in school at Ellicott Mills Middle School.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

⁶ Based on the record in this case, we do not dispute the school system’s findings that as of June 9, 2017, the Appellant and her family were not bona fide residents of the High Hawk Court address and appeared to be living at Loveknot Place.

Justin M. Hartings

Stephanie R. Iszard

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

April 24, 2018