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2013 IL App (3d) 120252-U

Order filed January 16, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

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COMMITTEE OF TEN FOR PETITION	)	Appeal from the Circuit Court
TO DETACH FROM DISTRICT 202,	)	of the 12th Judicial Circuit,
JULIA CORKEY, DAVID CORKEY,	)	Will County, Illinois,
WILFREDO RAMIRO, SAMANTHA	)	
GERTH, ROSSINI DY, LEONARD DY,	)	
DEAN WASHINGTON, DR. JAY SHAHE,	)	
MARY VONK, and ERIC HURKES,	)	
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	
	)	
REGIONAL BOARD OF SCHOOL	)	Appeal No. 3-12-0252
TRUSTEES OF WILL COUNTY, an	)	Circuit No. 11 MR 391
administrative agency in the State of Illinois,	)	
MARY CARROL, President; VERONICA	)	
BOLLERO, Vice President; JENNIFER	)	
BERTINO-TARRANT, Ex-Officio Secretary;	)	
RICHARD DOMBROWSKI, Member;	)	
NANCY TERLEP BARTELS, Member;	)	
JACKIE PICKERING, Member;	)	
PLAINFIELD COMMUNITY	)	
CONSOLIDATED SCHOOL DISTRICT	)	
NO. 202, and INDIAN PRAIRIE	)	
COMMUNITY UNIT SCHOOL DISTRICT	)	
NO. 204,	)	The Honorable
	)	Bobbi N. Petrunaro,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Justices O'Brien and Lytton concurred in the judgment.

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**ORDER**

¶ 1 *Held:* We defer to a regional board's decision regarding a petition for detachment and annexation where its holding is not against the manifest weight of the evidence.

¶ 2 **FACTS**

¶ 3 On November 8, 2010, plaintiffs filed their petition (the petition) for detachment and annexation. The petition sought to detach property, commonly known as the Tamarack South subdivision (Tamarack)<sup>1</sup>, from Plainfield School District 202 (District 202) and annex it to Indian Prairie Community Unit School District 204 (District 204).

¶ 4 Plaintiffs sought detachment and annexation under section 7-6(I) of the School Code (105 ILCS 7/6(I) (West 2010)). At the subsequent hearing before the Regional Board of Trustees of Will County (the Board), the following evidence was presented.

¶ 5 Eric Hurckes is a Tamarack resident and his daughter attends school in District 202. Hurckes' daughter is in an accelerated program, but her teachers believe she needs a more challenging educational environment.

¶ 6 Dean Washington is a Tamarack resident and his children participate in Naperville Park District sports programs and events. These events allow his family to meet and socialize with other Naperville families. Washington considers the other families in the area his extended family. The only attribute his family does not have in common with the other families is school

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<sup>1</sup> Tamarack consists of 48 lots, two of which serve as retention. Eight students currently reside in Tamarack.

districts.

¶ 7 Julie Corkey is a Tamarack resident and her son receives speech therapy. District 202 determined therapy was necessary, but the only location for therapy in District 202 is ten miles from Tamarack. District 204, however, has numerous locations within minutes of the Corkey home. Additionally, District 204 provides full day kindergarten class, which is not available in District 202. Finally, Julie is paying for preschool outside of District 202, because the closest available preschool in District 202 is ten miles away.

¶ 8 District 202 has 17 elementary schools, 7 middle schools and 4 high schools. Its approximate student enrollment is 28,099. Its number of certified staff is 1,695. The average composite ACT score for the year 2010 was 20.6. The average all state performance test score for the year 2008-2009 was 83.6 and 83.8 the following year. The average ISAT score for the year 2008-2009 was 86.2 and 86.9 the following year. The average PSAE score for the year 2008-2009 was 64.4 and 63.0 the following year. The average IAA score for 2008-2009 was 84.6 and 80.6 the following year. All scores exceed State score averages.

¶ 9 District 204 has 21 elementary schools, 7 middle schools and 3 high schools. Its approximate student enrollment is 28,905. Its number of certified staff is 1,886. The average composite ACT score for the year 2010 was 23.9. The average all state performance test score for the year 2008-2009 was 89.0 and 89.6 the following year. The average ISAT score for the year 2008-2009 was 92.4 and 92.6 the following year. The average PSAE score for the year 2008-2009 was 73.1 and 75.7 the following year. The average IAA score for 2008-2009 was 66.5 and 68.1 the following year. All scores exceed State score averages. The average teacher salary, years of teaching experience and teachers with advanced degrees are higher in District 204

than in District 202.

¶ 10 Both districts are in compliance with State and Federal Annual Yearly progress reports. Both districts grade out the same under the No Child Left Behind Act (20 U.S.C. § 6301 *et seq.*) (West 2010)). Both districts' facilities, staff and instructional programs are recognized and meet the standards set by the Illinois State Board of Education.

¶ 11 In 2009, the property tax revenue from Tamarack was \$197,303. This amount represents .01% of the total tax revenue for District 202. District 202 loses this income annually if the plaintiffs' petition is granted. District 202 would also lose general aid payments of \$1,922 for each of the 8 students annually if the petition is granted. District 202 is subject to a deficit reduction plan in the amount of \$6,000,000. District 204 is not subject to any deficient reduction plan.

¶ 12 At the conclusion of the hearing, the Board took seven separate votes pertaining to the petition. Five members were present, constituting a quorum of the seven-member Board. The votes were transcribed into a written order. The quoted material below is taken from the written order.

¶ 13 First, the Board considered whether "there is a sufficiency of signatures" in the petition. Four of the five members present voted affirmatively. The remaining member voted against such a finding.

¶ 14 Second, the Board considered whether "either school district would suffer substantial detriment." All five members voted against that finding.

¶ 15 Third, the Board considered whether "detachment and annexation is in the best interest of the children." All five members voted affirmatively.

¶ 16 Fourth, the Board considered whether “the plaintiffs proved that Tamarack was not contiguous to District 202.” Three of the five members voted against such a finding, with the two remaining members voting in favor.

¶ 17 Fifth, the Board considered whether “there is contiguity with District 204.” Four of the five members voted affirmatively. The remaining member voted against such a finding.

¶ 18 Sixth, the Board considered whether “the plaintiffs presented sufficient evidence to support the petition.” Three of the five members voted against such a finding, with the two remaining members voting in favor.

¶ 19 Seventh, and finally, the Board considered whether “the petition to detach/annex should be granted.” Three of the five members voted affirmatively. The remaining two members voted to deny the petition.

¶ 20 After the seventh vote, the regional superintendent stated: “Okay. We have a 3-2 vote \*\*\* to grant the Petition. Congratulations.” To this plaintiffs replied: “Thank you.” Upon entering the written orders, however, the superintendent noted, “[t]he Regional Board having 7 members, an affirmative vote of 4 is required to ‘decide a measure’ as set forth at 105 ILCS 5/6-18 [(West 2010)].” The superintendent entered a corrected order denying plaintiffs’ petition.

¶ 21 Plaintiffs sought review in the circuit court. Upon hearing argument, the court affirmed the Board’s order denying plaintiffs’ petition. Plaintiffs now appeal.

¶ 22 ANALYSIS

¶ 23 Plaintiffs maintain that the Board decision denying their petition to annex Tamarack to District 204 was against the manifest weight of the evidence. Plaintiffs argument focuses on the second and third findings of the Board. Specifically, the Board unanimously found that neither

“school district would suffer substantial detriment” and also that granting the petition would be “in the best interest of the children.” Plaintiffs believe these two findings alone justify reversal of the Board’s decision. We disagree.

¶ 24 At the outset, we note that defendants call our attention to the fact that the specific question tendered to the Board, in regard to its second finding, did not expressly refer to the “best interest” of the children. Instead, the Board was simply asked at the hearing whether annexation would have “a positive effect on the welfare of the children.” The written order should have parroted this language. For purposes of this appeal, we reject the “best interest” language and instead use the “positive effect” language on which the Board actually voted.. We find the following rule of law instructive on this matter: “When there is a conflict between the trial court's oral pronouncement and its written order, the oral pronouncement controls.” *Danada Square LLC v. KFC National Management Co.*, 392 Ill. App. 3d 598, 608 (2009), *In re Tr. O.*, 362 Ill. App. 3d 860, 868 (2005). We now turn to the merits of plaintiffs’ appeal.

¶ 25 The decision of the Board is an “administrative decision.” Thus, we review the Board’s finding, not the circuit court’s determination. *Tinder v. Illinois Department of Public Aid*, 346 Ill. App. 3d 510, 512 (2004). It is the role of a regional board and not of the courts to make findings of fact, and its determinations and decisions will not be set aside on administrative review unless they are shown to be contrary to the manifest weight of the evidence. *Board of Education of Golf School District No. 67 v. Regional Board of School Trustees of Cook County*, 89 Ill. 2d 392, 396 (1982). The findings of a regional board on questions of fact are *prima facie* true and correct. *Board of Education*, 89 Ill. 2d at 396. The supreme court has observed that “[i]t must remain for local boards to weight the relevant factors to determine the action best

serving our entire education system. When the entire record indicates \* \* \* that the board has considered the applicable statutory standards and is supported in its conclusion by substantial evidence, its determination must be affirmed.” *School Directors of School District No. 82 v. Wolever*, 26 Ill. 2d 264, 268 (1962). It is not for a court to reweigh evidence or substitute its judgment for that of the Regional Board. *Board of Education*, 89 Ill. 2d at 397.

¶ 26 Section 7-6(I) of the School Code provides the following:

“(I) The regional board of school trustees \*\*\* shall hear evidence as to the school needs and conditions of the territory in the area within and adjacent thereto and as to the ability of the districts affected to meet the standards of recognition as prescribed by the State Board of Education, and shall take into consideration the division of funds and assets which will result from the change of boundaries and shall determine whether it is to the best interests of the schools of the area and the educational welfare of the pupils that such change in boundaries be granted.” 105 ILCS 5/7-6(I) (West 2010).”

¶ 27 Under section 7-6, petitions for detachment and annexation should be granted only where the overall benefit to the annexing district and the detachment area clearly outweighs the resulting detriment to the losing district and the surrounding community as a whole. *Board of Education*, 89 Ill. 2d at 397. The *Dukett v. Regional Board of School Trustees of District No. 3*, 342 Ill. App. 3d 635, 641 (2004) court explained:

“In applying this benefit-detriment test, reviewing courts

are to consider differences between school facilities and curricula, the distances from the petitioners' homes to the respective schools, the effect the detachment would have on the ability of either district to meet state standards of recognition, and the impact of the proposed boundary change on the tax revenues of both districts.

[Citation.]

In addition to the factors enumerated above, courts may consider the 'whole child' and 'community of interest' factors. [Citation.] These factors explore the identification of the petitioning territory with the district to which annexation is sought and the corresponding likelihood of participation in school and extracurricular activities. [Citation.] The whole child factor recognizes that extracurricular participation in social, religious, and even commercial activities is important in a child's development as a beneficial supplement to academics. Moreover, it is appropriate to consider the personal preferences or convenience of the petitioning parents and their children; however, more than the personal preferences on the part of the petitioners are required to support a change in school district boundaries. [Citations.]”

¶ 28 We begin by answering plaintiffs' charge that the Board's independent findings that neither “school district would suffer substantial detriment” and that there would be “a positive effect on the welfare of the children” if they were to attend District 204, standing alone, justify



reversal. The above case law and the Board's remaining findings illustrate that these conclusions alone are not dispositive as to the question of detachment/annexation. Case law requires that a detachment/annexation petition be granted only where the overall benefit *clearly outweighs* the resulting detriment. *Board of Education of Marquardt School District No. 15 v. Regional Board of School Trustees of DuPage County*, 2012 IL App (2d) 110360 § 19. One could reasonably find that there was no *substantial* detriment to the school districts and that there was some positive benefit on the welfare of the children, but that benefit did not clearly outweigh any existing detriment when examining all relevant factors.

¶ 29 An examination of the record shows that the Board properly considered *all* relevant factors. Upon review, we cannot say that the Board's decision denying plaintiffs' petition was contrary to the manifest weight of the evidence.

¶ 30 District 202 stands to annually lose \$197,303 in tax revenue and \$1,922 in general aid payments for each student if the petition is granted. District 202 is currently subject to a deficit reduction plan in the amount of \$6,000,000. District 204 is not subject to any deficient reduction plan.

¶ 31 Both districts grade out the same or meet federal and state standards. Both districts have similar statistics with regard to schools, teachers, facilities and programs. While the standardized test scores for District 204 are *marginally better overall* than the scores for District 202, both Districts exceed State score averages. The record is devoid of any evidence which would support a finding that either district is offering anything but excellent educational programs. Regardless, however, test scores cannot be considered in a vacuum. *Board of Education of Community High School District No. 94 v. The Regional Board of School Trustees of Du Page*, 242 Ill. App. 3d

229, 239 (1993). When comparing statistics such as test scores, a regional board must consider other socio-economic factors which might skew the test score results. *Board of Education*, 242 Ill. App. 3d at 239.

¶ 32 While the four Board members found that “there is contiguity with District 204,” only two members found that “the plaintiffs proved that Tamarack was not contiguous to District 202.” Moreover, only two Board members found that plaintiffs presented sufficient evidence to support the petition.”

¶ 33 In coming to our decision, we stress the deferential standard of review applicable in this appeal. It is not our place to substitute our judgment for that of an expert administrative body such as the Board. Because we cannot say that the Board’s decision was against the manifest weight of the evidence, we affirm its decision to deny plaintiffs’ petition.

¶ 34 Affirmed.