

COPY

IN THE SUPERIOR COURT OF FULTON COUNTY

FILED IN OFFICE
OCT 28 2005
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

STATE OF GEORGIA

CONSORTIUM FOR ADEQUATE *
SCHOOL FUNDING IN GEORGIA, INC., *
et al., *
Plaintiffs *

Civil Action No. 2004CV91004

v. *
STATE OF GEORGIA, et al., *
Defendants. *

ORDER ON DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' COMPLAINT

This matter comes before the Court on Defendants' Motion to Dismiss Plaintiffs' Complaint. After a review of the record and considering the arguments and submissions of counsel, the Court finds as follows:

Plaintiffs, which include an association of public school districts interested in school funding issues ("Consortium Districts"), specified public school districts ("Plaintiff Districts"), as well as individual students who attend school in the Plaintiff Districts ("Plaintiff Students"), brought the present declaratory judgment action attacking the constitutionality of Georgia's system of public school finance.

Count I of the Complaint alleges that the State's system for funding public education violates the rights of Plaintiff Students to obtain an adequate education guaranteed them by the Georgia Constitution. Ga. Const., Art. VIII, Sec. I, Par. I. Plaintiff Districts and Consortium Districts further claim that the State's school funding system has prohibited their board members and officers from fulfilling their constitutional and statutory responsibilities to provide their students with an adequate

education. Plaintiffs allege in Count II that Plaintiff Students and other students in the Plaintiff Districts and Consortium Districts are denied an equal opportunity for an adequate education in violation of the equal protection provision of the Georgia Constitution. Ga. Const., Article I, Section I, Paragraph I.

Defendants, including the State of Georgia, the State Board of Education, the Georgia State School Superintendent and members of the Georgia State Board of Education, seek to dismiss Plaintiffs' complaint, alleging that various threshold procedural issues prevent the Court from hearing this dispute and that Plaintiffs have failed to state a claim upon which relief may be granted.

I. *Threshold Procedural Issues.*

A. Sovereign Immunity

Defendants assert that Plaintiffs' action is barred by the doctrine of sovereign immunity. In IBM v. Evans, 265 Ga. 215, 216 (1995), the Georgia Supreme Court held, "[t]his court has long recognized an exception to sovereign immunity where a party seeks injunctive relief against the state or a public official acting outside the scope of lawful authority." See also In the Interest of A.V.B., 267 Ga. 728 (1997) ("Sovereign immunity does not protect the state when it acts illegally and a party seeks only injunctive relief"). Here, as in IBM, Plaintiffs seek a declaration that the State is acting unlawfully and ask for injunctive relief.

Defendants attempt to distinguish this case from IBM, asserting that, while in form Plaintiffs seek declarative and injunctive relief, in substance the remedy they seek is purely monetary thereby thwarting the "primary purpose of sovereign immunity [which]

is to protect state coffers.” A.V.B. at 728. The Court rejects this distinction. Here, Plaintiffs ask the Court to “[e]njoin Defendants from further executing or implementing Georgia’s school funding system.” At present, this is the only relief that Plaintiffs seek. Accordingly, the Court finds the doctrine of sovereign immunity inapplicable to the case at hand.

B. Separation of Powers

Defendants assert that the Court is without jurisdiction to hear the present dispute because it would improperly usurp the budgeting powers accorded Georgia’s legislative and executive branches. The Court finds that this issue is controlled adversely to Defendants by McDaniel v. Thomas, 248 Ga. 632 (1981). McDaniel addressed whether Georgia’s former system of school funding passed constitutional muster. As in the present case, the defendants in McDaniel urged that “the question of how public education can best be funded is nonjusticiable and is more suitably handled by other branches of government.” *Id.* at 633, 285 S.E.2d 156 (punctuation omitted). The Georgia Supreme Court expressly rejected this argument, holding that “we would regard our own refusal to adjudicate plaintiffs’ claim of constitutional infringement an abdication of our constitutional duties.” *Id.* citing Board of Educ. Levittown v. Nyquist, 83 A.D.2d 217, 443 N.Y.S.2d 843 (1981). Accordingly, this Court rejects the argument that the “separation of powers” doctrine prevents it from hearing this matter.

C. Standing

Defendants assert two separate standing challenges. First, Defendants make a general argument that all Plaintiffs lack standing to pursue this matter based upon the absence of a case or controversy. Second, Defendants specifically attack the standing of

Plaintiff Districts and Consortium Districts to bring the equal protection claim. With regard to the general attack, the Georgia Supreme Court has adopted a two-part standing test in Amdahl Corp. v. Georgia Dept. of Admin. Servcs., 260 Ga. 690, 695-696 (1990) based on a test set forth in Association of Data Processing Serv. Orgs. v. Camp, 397 U.S. 150 (1970). "Under the two-fold test, a complainant has standing if the complainant alleges that the challenged action has caused him injury in fact and if the complainant is asserting an interest arguably within the zone of interests to be protected" by the law at issue. Amdahl at 696 (citations and punctuation omitted). This Court finds that Plaintiff Students clearly meet both parts of the Amdahl standing test. Moreover, as entities responsible for the local supervision and administration of the State's public school system, this Court finds that Plaintiff Districts and Consortium Districts are asserting claims that fall within the "zone of interests" to be protected by the constitutional provisions at issue.¹ *Id.* Whether the Plaintiff Districts and Consortium Districts may properly assert that they have suffered an injury in fact is best addressed with regard to Defendants' specific standing challenge.

Defendants claim that the Plaintiff Districts and Consortium Districts, as subordinate entities of their respective county governments, do not have the standing to

¹ Since Amdahl, the U.S. Supreme Court decided Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561 (1992), which established a three-part standing test that differs somewhat from Amdahl.

First, the plaintiff must have suffered an injury in fact--an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of-- the injury has to be fairly ... traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. (cits. and punc. omitted)

It appears that the Georgia appellate courts have yet to address or adopt the Lujan standing test.

pursue an equal protection claim against the State. They cite a long line of authority that provides: “[a] county or municipal corporation, created by the legislature, does not have standing to invoke the equal protection . . . [clause] of the state or federal Constitution in opposition to the will of its creator.” City of Atlanta v. Spence, 242 Ga. 194, 195 (1978).²

In response, Plaintiff Districts and Consortium Districts do not contest that they are derivative bodies of the State. *See* O.C.G.A. § 20-2-50. Rather, they assert that this doctrine does not apply to the facts of this case, relying upon Stewart v. Davidson, 218 Ga. 760 (1963). In Stewart, members of a county board of education and a city board of education petitioned for mandamus against members of the Georgia State Board of Education and the Georgia State School Superintendent to require that they calculate funding due plaintiff school boards under a State law, without giving effect to the last sentence of that law which the plaintiff school boards alleged to be unconstitutional. The effect of the sentence in question was to reduce significantly the monies owed by the State to the plaintiff school boards. The Georgia Supreme Court rejected the defendants’ attack on plaintiffs’ standing. The Court noted that, as the parties responsible for collecting and expending school funds on a local level, the plaintiff school boards were injured by the unconstitutional provision that reduced funding they otherwise were entitled to receive. “It is not a valid argument to contend that since petitioners are public officers of a subordinate unit of the State they can not attack this State law. The only

² However, Spence continues: “[t]his does not mean that the city does not have standing to raise other constitutional questions . . .” *Id.* at 196. Accordingly, this line of authority would not, in and of itself, bar the ability of Plaintiff Districts and Consortium Districts to pursue their adequate education claim.

requisite right to make the attack is a showing that it is hurtful to the attacker." *Id.* at 764.³

Based upon the decision in the Stewart case, as well as on the specific facts and circumstances of the present case, the Court finds that Plaintiff Districts and Consortium Districts have standing to challenge the constitutionality of Georgia's present school funding system.

The Court has reviewed the other threshold procedural issues raised by Defendants with respect to the existence of a "case or controversy," "insubstantiality," and "subject matter jurisdiction," and finds that none of them would bar the Court from hearing this dispute.

II. Failure to State a Claim Upon Which Relief Can Be Granted

Defendants claim that Plaintiffs have failed to state a cognizable cause of action on their two constitutional claims. Georgia law establishes a high standard in order for a claim to be dismissed at the pleading stage pursuant to O.C.G.A § 9-11-12 (b) (6).

³ The Court finds the recent decision of the North Carolina Supreme Court to be persuasive on this standing issue. Hoke County Bd. of Educ. v. State, 358 N.C. 605, 599 S.E.2d 365 (2004). Hoke County concerned a similar school funding dispute -- a declaratory judgment action as to whether the state defendants had fulfilled their constitutional obligation to provide North Carolina school children with a "sound, basic education." The North Carolina high court determined that local school boards were proper parties even though they did not possess the individual constitutional right at issue.

In declaratory actions involving issues of significant public interest, such as those addressing alleged violations of education rights under a state constitution, courts have often broadened both standing . . . parameters to the extent that plaintiffs are permitted to proceed so long as the interest sought to be protected by the complainant is arguably within the "zone of interest" to be protected by the constitutional guaranty in question. *See, e.g. Seattle Sch Dist. V. State*, 90 Wash.2d 476, 490-95, 585 P.2d 71, 80-83 (1978).

Hoke County at 615, 599 S.E. 2d 365 at 376-377 In reaching this decision, the Hoke County court considered the key supervisory and management role played by local school boards. *Id.* at 617, S.E.2d at 377. "As such the school boards clearly held a stake in the trial court's determination of whether or not the student plaintiffs were being denied their right to an opportunity to a sound basic education." *Id.* at 617, 599 S.E.2d at 377-378.

A motion to dismiss for failure to state a claim upon which relief may be granted should not be sustained unless (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof, and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought. In deciding a motion to dismiss, all pleadings are to be construed most favorably to the party who filed them, and all doubts regarding such pleadings must be resolved in the filing party's favor.

Bakhtiarnejad v. Cox Enters. Inc., 247 Ga. App. 205, 207- 208 (2000). Here, Plaintiffs clearly and specifically allege that the students in the Consortium School Districts and the Plaintiff School Districts are deprived of basic educational opportunities by virtue of the State's school funding system. Thus, for purposes of this motion, the Court must consider these allegations to be true. *Id.*

A. Adequate Education

Plaintiffs contend that the existing system of funding public education violates Article VIII of the Georgia Constitution. Paragraph I of Section I of Article VIII states: “[t]he provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia. Public education for the citizens prior to college or postsecondary level shall be free and shall be provided by taxation”

Defendants assert that the Court's consideration of this constitutional issue is foreclosed by the Georgia Supreme Court's decision in McDaniel v. Thomas, 248 Ga. 632 (1981). In McDaniel a group of parents, children and school officials who resided in school districts with relatively low property tax bases challenged Georgia's system of school financing as it existed in the late 1970s. One of the challenges asserted by the McDaniel plaintiffs concerned provisions in Georgia's 1976 Constitution outlining the

obligation of the state to provide citizens with an adequate education. The trial court conducted an evidentiary proceeding, made detailed findings of fact and rejected the plaintiffs' adequate education challenge.

On appeal, the Supreme Court noted the difficulty of establishing a "judicially manageable standard for determining whether or not pupils are being provided an adequate education" and determined that "it is primarily the legislative branch of government which must give content to the term adequate." *Id.* at 644. However, the Supreme Court clearly determined that a state duty to provide an adequate education existed. "This court has construed the 'adequate education' provisions of the Georgia Constitution as requiring the state to provide basic education opportunities to its citizens." *Id.* at 645.

While the trial court's decision rejecting the plaintiffs' adequate education claim was ultimately affirmed, the decision was based, not on a lack of duty, but rather on a lack of evidence that the duty had been breached. "In the absence of evidence to show that existing state funding for public education deprives students in any particular school districts of basic educational opportunities, [the] contention that low wealth districts fail to provide an 'adequate education' must be rejected." *Id.*

As reflected in McDaniel, the question of whether the state has met its constitutional mandate to provide an adequate education is a factual issue to be decided on an evidentiary record. At the stage of the proceedings in this case, no evidence of any kind has been introduced. Thus, the Court finds that while McDaniel imposes a high burden on the Plaintiffs to demonstrate a breach of this constitutional mandate, it does not foreclose the Plaintiffs' adequate education claim.

Defendants seek to distinguish the McDaniel Court's language about adequate education by pointing out the differences in Georgia's 1976 Constitution that governed when McDaniel was decided and Georgia's 1983 Constitution that governs today.

McDaniel concerned two separate "adequate education" provisions in Georgia's 1976 Constitution. The first such provision stated:

The provision of an adequate education for the citizens of Georgia shall be a primary obligation of the State of Georgia, the expense of which shall be provided for by taxation.

Ga. Const. of 1976, Art. VIII, Sec. I, Par. I. This provision is extremely similar to the subsequent provision found in the 1983 Constitution and cited above which is our current Constitution. Not only is the language of the two provisions similar, but no substantive change to this provision was intended by the drafters of the 1983 Constitution. Transcript of Meetings, Select Committee on Constitutional Revision, Legislative Overview Committee, Vol. I., June 18, 1981, pp. 14; 19.⁴

The second constitutional provision regarding an adequate education addressed in McDaniel provided:

Freedom from compulsory association at all levels of public education shall be preserved inviolate. The General Assembly shall by taxation provide funds for an adequate education for the citizens of Georgia.

Ga. Const. of 1976, Art. VIII, Sec. VIII, Par. I. As noted in McDaniel, this constitutional amendment was first ratified by the voters in 1962. While this provision was carried over into Georgia's 1976 Constitution, it was eliminated from the 1983 Constitution.

⁴ Previously, the appellate courts have looked to these transcripts when considering the history and / or meaning of a constitutional provision. See Fulton v. Baker, 261 Ga. 710, 711 (1991); Nelms v. Georgian Manor Condo Ass'n, Inc., 253 Ga. 410, 413 (1984).

Defendants argue that without this provision there is no constitutional requirement that the General Assembly, as opposed to the counties, provide any school funding at all.

The parties do not dispute that this provision of the 1976 Constitution was originally adopted as part of a concerted legislative effort to resist public school desegregation by, among other things, providing State funds as tuition grants enabling students to attend private schools. 1961 Ga. Laws 35; 595. The Court finds that the elimination of this provision from the 1983 Constitution was not motivated by a desire to negate the State's constitutional obligation to provide its citizens with an adequate education. See Transcript of Meetings, Select Committee on Constitutional Revision, Legislative Overview Committee, *supra*; see also Busbee, An Overview of the New Georgia Constitution, 35 Mercer L.R. 1, 12-13 (1984) (“[m]ost importantly, the new education article does not change or diminish the basic obligations of the state to provide ‘an adequate public education’ for the citizens”).

The Court finds that changes in the 1983 Constitution did nothing to alter the State's constitutional mandate, as outlined in McDaniel, to provide an adequate education to its citizens.” McDaniel, 248 Ga. at 645. In light of this mandate and the detailed factual allegations of Plaintiffs' Complaint alleging that this mandate has been breached, this Court must deny the Defendants' motion to dismiss Plaintiffs' adequate education claim at the pleading stage.

B. Equal Protection

As with the adequate education claim addressed above, the key Georgia authority on Plaintiffs' equal protection claim is McDaniel. In McDaniel, the Supreme Court rejected an equal protection challenge to Georgia's system of school finance as it existed

at that time. Plaintiffs assert that the present matter presents a different set of facts that distinguish it from McDaniel. This Court disagrees.

The Georgia Supreme Court outlined the equal protection question presented in McDaniel as follows:

This court has construed the 'adequate education' provisions of the Georgia Constitution as requiring the state to provide basic educational opportunities to its citizens The question now presented is whether the state equal protection provisions impose an *additional* obligation on the state to *equalize* educational opportunities.

Id. at 645 (emphasis found in original). The Georgia Supreme Court answered in the negative. The Court determined that -- while vital -- education was not a "fundamental right" for the purposes of state equal protection analysis. *Id.* at 646-647. Accordingly, the Court did not apply the "strict scrutiny" test to determine whether educational opportunities must be equalized. Instead, it used the "rational basis" test and looked to see whether the school funding system had a rational and reasonable basis.

The Supreme Court found the State's funding system was not invidiously discriminatory and, that because the system bore some rational relationship to legitimate state purposes, it did not violate state equal protection even though it was unequal. *Id.* at 648.

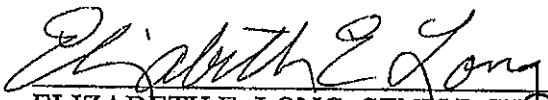
Here, Plaintiffs have contended only that the State's school funding system fails to provide students with an equal opportunity to obtain an adequate education. To the extent that this contention is merely a restatement of the claim that the State is obligated to provide an adequate education, the Court has already dealt with this contention, confirming the State's obligation, and denying Defendants' motion to dismiss that issue

at this point in the proceedings. To the extent that the contention is that the opportunity of every student to obtain an adequate education must be the same, that is, must be equalized, it is inconsistent with the contrary holding of the McDaniel Court. There is no claim by the Plaintiffs that the system is invidiously discriminatory or unrelated to legitimate State purposes. Consequently, McDaniel governs and the Court must grant Defendants' Motion with respect to the equal protection claim.

Conclusion

Based upon the foregoing, it is hereby ordered and adjudged that Defendant's Motion to Dismiss Plaintiffs' Complaint shall be denied as to Plaintiffs' Count I concerning the alleged failure of the State's school funding system to provide children with an adequate education and shall be granted as to Plaintiffs' Count II concerning the alleged denial of equal protection.

SO ORDERED this 25th day of October, 2005.


ELIZABETH E. LONG, SENIOR JUDGE
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