



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION GRANTING
RESPONDENT'S MOTION FOR
SUMMARY DECISION

OAL DKT. NOS. EDS 06986-19
AND EDS 10527-19
AGENCY REF. NOS. 2019-29778
AND 2020-0307

L.A. ON BEHALF OF J.A.,

Petitioner,

v.

**WILLINGBORO TOWNSHIP BOARD
OF EDUCATION,**

Respondent.

(CONSOLIDATED)

L.A., petitioner, pro se

Patrick Madden, Esq., for respondent (Madden and Madden, attorneys)

Record closed: October 14, 2020

Decided: October 23, 2020

BEFORE **JEFFREY N. RABIN**, ALJ:

STATEMENT OF THE CASE

Respondent, Willingboro Township Board of Education, filed a motion for summary decision seeking to have this matter dismissed, claiming petitioner, L.A., lacks standing because she lost custody of her daughter, J.A.

PROCEDURAL HISTORY

On April 22, 2019, petitioner filed a petition for due process with the Office of Special Education Policy and Procedure (OSEPP), Department of Education (DOE). The underlying due process petition was transmitted to the Office of Administrative Law (OAL), where it was filed on May 23, 2019, to be heard as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14 F-1 to -13. (OAL Dkt. No. 06986-19.) Petitioner filed a second petition, transmitted to OAL on or about July 3, 2019, (OAL Dkt. No. 10527-19) and these matters were consolidated on or about November 27, 2019. On July 8, 2019, petitioner filed for emergent relief, which was heard on July 11, 2019, and denied on July 12, 2019.

In September 2019, both respondent and petitioner filed motions for summary decision, and respondent filed a motion to compel production of a doctor's note which petitioner said she had in her possession at the hearing of July 11, 2019. Pursuant to several telephone hearings, oral argument on the motions was scheduled for March 4, 2020. However, on March 3, 2020, respondent's counsel advised this court that the New Jersey Division of Child Protection and Permanency (DCPP) had filed an action and had removed J.A. from the custody of her mother, petitioner L.A. The within consolidated matter was stayed through May 5, 2020, pending receipt of documentation related to the DCPP action.

A telephone hearing scheduled for April 14, 2020, was adjourned in advance. A telephone hearing was scheduled for May 5, 2020, but petitioner failed to appear. Telephone hearings took place June 3, 2020, and August 11, 2020, with all parties awaiting final documentation from DCPP. During a telephone hearing on September 10, 2020, respondent advised this court that the Superior Court had issued an order determining that legal and physical custody of J.A. remain with DCPP.

Respondent filed the within motion for summary decision on September 11, 2020. Petitioner submitted no reply brief or affidavit, and the record closed on October 1, 2020.

FINDINGS OF FACT

Based on the evidence submitted for purposes of the underlying due process files and the prior emergent hearing, and on the brief submitted by respondent for purposes of the within motion for summary decision, I **FIND** the following to be the undisputed facts:

1. Petitioner, L.A., was the mother of minor, J.A., a fifteen-year-old student born on June 13, 2005. J.A. was a student eligible for special education under the classification of “Multiply Disabled.”
2. J.A. attended Burlington County Special Services School from 2008 through 2017, when petitioner removed J.A. because of alleged problems with J.A.’s feeding, personal hygiene, and medications. J.A. attended the Kingsway Regional School District (Kingsway) during the 2017-2018 school year.
3. J.A.’s most recent IEP approved by L.A. was dated March 2, 2018. L.A. removed J.A. from Kingsway on August 8, 2018. J.A. did not attend school during the 2018-2019 school year.
4. An IEP meeting was conducted on April 12, 2019, resulting in a proposed IEP calling for J.A. to be enrolled at Mercer County Special Services School. Petitioner rejected the proposed IEP and filed the aforementioned due process appeals.
5. On or about March 4, 2020, DCPP assumed physical custody of J.A. DCPP subsequently filed an action against petitioner in Superior Court of New Jersey, Chancery Division–Family Part, County of Burlington, docketed as FM-03-99-20.

6. By order dated August 17, 2020, the Superior Court issued a Child Protection Order (Order), ordering that DCPD continue its legal and physical custody of J.A., and that DCPD “shall be responsible for all decisions related to the child’s health, education and welfare. [L.A.] shall not interfere in any way with decisions made on the child’s behalf by the Division [DCPD].” J.A. continued in DCPD custody at Voorhees Pediatric Facility, Voorhees, NJ. (Respondent Motion Brief of September 11, 2020, Exhibit B.)

LEGAL ANALYSIS

The issues are whether petitioner, L.A., has standing to continue to pursue the within action, and whether that issue is properly decided on a motion for summary decision.

“Standing” is the term for the ability of a party to demonstrate to a court that they have a sufficient connection to a matter to pursue a legal action or would suffer legal harm from the case. Standing is a “threshold justiciability determination whether the litigant is entitled to initiate and maintain an action before a court or other tribunal.” In re Six Month Extension of N.J.A.C. 5:91-1, 372 N.J. Super. 61, 85 (App.Div. 2004). For a party to have standing, they “must present a sufficient stake in the outcome of the litigation, adverseness with respect to the subject matter and a substantial likelihood that the party will suffer harm in the event of an unfavorable decision.” In re Camden County, 170 N.J. 439, 449 (2002).

The Superior Court Order from August 17, 2020, called for J.A. to remain in DCPD custody for an indeterminate amount of time, subject to later hearings on the matter. J.A. continues to live at Voorhees Pediatric Facility. That Order was clear that both legal and physical custody of J.A. were to remain with DCPD. It further ordered that DCPD “shall be responsible for all decisions related to the child’s health, education and welfare.” It is clear from the Order that decisions regarding J.A.’s education were to be made by DCPD, not petitioner L.A.

Pursuing litigation regarding a child's education is a major decision regarding educational programming, and without legal custody of a child, that parent lacks the legal authority to pursue that litigation. Beck v. Beck, 86 N.J. 480, 487 (1981). L.A.'s due process petitions were filed to challenge the Individualized Education Program (IEP) and resulting educational programming in place for her daughter. Because L.A. was no longer able to make decisions about J.A.'s education and no longer had legal custody of J.A., L.A. no longer had standing to pursue an IEP challenge.

It must also be noted that DCPD had been making decisions regarding J.A.'s education since March 2020. Therefore, the issues under appeal by L.A. in her two due process filings—the last IEP in effect from March 2018 and J.A.'s resulting educational programming—are now moot. At such time that petitioner L.A. may again have legal and physical custody of her daughter, she certainly would be able to file a new due process petition challenging the educational programming in place at that time.

Accordingly, I **CONCLUDE** that L.A. lacked standing to continue litigating OAL Dkt. Nos. EDS 06986-19 and EDS 10527-19.

The issue then becomes whether it is appropriate to dismiss these cases on a motion for summary decision. Summary decision may be granted when the papers and discovery that have been filed show that there is no genuine issue as to any material fact challenged and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). No evidentiary hearing need be held if there are no disputed issues of material fact. Frank v. Ivy Club, 120 N.J. 73, 98, cert. denied, 498 U.S. 1073 (1991). "When the evidence is so one-sided that one party must prevail as a matter of law, the [tribunal] should not hesitate to grant summary [decision]." Della Vella v. Bureau of Homeowner Protection, OAL Dkt. No. CAF 17020-13, 2014 WL 1383908 (N.J.Ad. 2014)(quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995)).

Further, the non-moving party has the burden "to make an affirmative demonstration . . . that the facts are not as the movant alleges." Spiotta v. William H. Wilson, Inc., 72 N.J. Super. 572, 581 (App.Div. 1962). This requirement, however, does not relieve the moving party from having to initially establish in its moving papers that

there was no genuine issue of fact and that they were entitled to prevail as a matter of law. It is the “movant’s burden to exclude any reasonable doubt as to the existence of any genuine issue of fact.” Conti v. Board of Education, 286 N.J.Super. 106 (App. Div. 1995) (quoting Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 74 (1954)).

For an adverse party to a motion for summary decision to prevail they must, by responding affidavit, set forth specific facts showing that there was a genuine issue which could only be addressed in an evidentiary proceeding. N.J.A.C. 1:1-12.5(b).

Respondent, Willingboro Board of Education, is the moving party to the within motion for summary decision. They have established that there are no genuine issues of fact as to whether petitioner has standing to continue litigating OAL Dkt. Nos. EDS 06986-19 and EDS 10527-19.

Petitioner, on the other hand, did not file a brief or affidavit or submit any arguments in response to respondent’s motion for summary decision and, at the telephone hearing of August 11, 2020, did not offer any legal arguments or evidence asserting that there are any genuine issues of fact still in question which might prove that she has standing.¹

I **CONCLUDE** that respondent has proven by a preponderance of the evidence that petitioner lacks standing in this matter, that there are no genuine issues of fact remaining, and that this matter is ripe for a summary decision.

ORDER

The petitioner’s motion for summary decision is **GRANTED** and OAL Dkt. Nos. EDS 06986-19 and EDS 10527-19 are **DISMISSED** without prejudice.

¹ Petitioner’s only contemporaneous submission was an email dated September 15, 2020, in which she reiterated that this court should be considering evidence regarding J.A.’s educational programming, and in which she supplied a link to a YouTube video entitled “Nancy Schaefer exposes the EVIL CPS” dated April 14, 2009. As the within matter is not an appeal of the DCPD case from Superior Court, any such video regarding “Child Protective Services” is irrelevant to the within motion.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2019).

October 23, 2020 _____

DATE



JEFFREY N. RABIN, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

JNR/dw

APPENDIX

EXHIBITS

For petitioner:

None

For respondent:

Brief, dated September 11, 2020