

1989 WL 197568

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United States District Court, N.D. Illinois, Western
Division.

PEOPLE WHO CARE, et al., Plaintiffs,

v.

ROCKFORD BOARD OF EDUCATION, SCHOOL
DISTRICT # 205, et al., Defendants.

No. 89 C 20168. | Dec. 22, 1989.

Attorneys and Law Firms

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defendants.

Opinion

MEMORANDUM OPINION AND ORDER

ROSZKOWSKI, District Judge.

*1 This action comes before the Court on proposed intervening defendants, Lillian V. Hinkle and Ardis M. Cody's motion to intervene as of right pursuant to Fed.R.Civ.P. 24(a)(2) and motion to vacate and dissolve Part III(E)(10) of ex parte Interim Agreed Order and September 20, 1989, Order. For the reasons set forth in the opinion below, this Court grants proposed intervening defendants, Lillian V. Hinkle and Ardis M. Cody's motion to intervene for the sole and limited purpose of presenting their motion to vacate and dissolve Section III(E)(10) of this Court's July 7, 1989 Interim Agreed Order. Further, this Court denies the companion motion to vacate and dissolve Part III(E)(10) of the Interim Agreed Order and the September 20, 1989 Order.

For the reasons also set forth in the opinion below, this Court holds that Section III(E)(10) of the Interim Agreed Order was not intended to affect detachment petitions filed prior in time to the complaint in the underlying desegregation action and, therefore, allows intervening defendants to proceed in front of the Special Hearing Board on their detachment petition. Lastly, this Court reaffirms that any detachment petitions which were filed

after the initiation of the underlying lawsuit are enjoined from proceeding. In addition, any action by potential detachers can only be taken in accordance with Section III(E)(10) of the Interim Agreed Order and by order of this Court.

I. BACKGROUND

The intervening defendants are the title owners of approximately 80 acres of real property currently located within the boundaries of the Rockford Special Charter District No. 205. In addition, the property is adjacent to, contiguous with and bounded on three sides by Hononegah Community High School District No. 207 and Kinnikinnick Community Consolidated Schools District No. 131. Intervening defendants have indicated a plan to develop the property in question by building and selling homes. To that end, on July 3, 1979, intervening defendant's father petitioned the Winnebago County Board for rezoning of the property from agricultural to rural residential to facilitate the development of a residential subdivision. That petition was granted on September 27, 1979.

On February 15, 1989, the intervening defendants filed a petition for detachment from the Rockford Special Charter District No. 205 and for annexation to the Hononegah Community High School District No. 207 and the Kinnikinnick Community Consolidated Schools District No. 131. Pursuant to Illinois statute, *Ill. Rev. Stat.* ch. 122, para. 7-2.4 *et seq.*, a Special Hearing Board was organized to hear and make a determination with respect to the detachment petition.

On May 11, 1989, the instant lawsuit was initiated by People Who Care, *et al.* Following numerous hearings and negotiations, on July 7, 1989, this Court entered an Interim Agreed Order which resolved the preliminary injunction phase of the lawsuit and provided for certain immediate remedial action by the Rockford Board of Education and for a "planning process" which would evaluate any racial disparity, segregation or segregative effects from the Board's Reorganization Plan. Included in the Interim Agreed Order was the following language:

*2 10. The establishment of School District boundaries shall be subject to approval of this Court. As a result, any proposed changes in School District boundaries by detachment, annexation, division, dissolution, or any combination of such methods or other methods of boundary change or School District creation found in Article 7, 11A, 11B, 11C or 12 of the *Illinois School Code* (*Ill.Rev.Stat.*, Ch. 122, 1989), shall require approval of this Court.

Interim Agreed Order, Section III(E)(10).

On September 6, 1989, the Special Hearing Board convened in order to take evidence and render a decision on petitioner's motion for detachment. At that hearing, School District No. 205 moved to stay the proceedings before the Special Hearing Board which motion was denied. However, the Board did enter an order continuing the hearing until September 20, 1989 to give this Court an opportunity to clarify Section III(E)(10) of the Interim Agreed Order. On September 20, 1989, this Court held oral hearings on this matter, at which time intervening defendant appeared and was heard, this Court entered an oral order essentially enjoining intervening defendant from detaching.

On October 20, 1989, intervening defendants filed the instant motions to intervene as of right and to vacate and dissolve Part III(E)(10) of this Court's July 7, 1989 Interim Agreed Order and September 20, 1989 order.

II. DISCUSSION

A. Motion to Intervene

Hinkle and Cody propose to intervene pursuant to Fed.R.Civ.P. 24 which states as follows:

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: ... (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed.R.Civ.P. 24(a)(2). Rule 24 further states the procedures to be followed in a motion to intervene:

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

Fed.R.Civ.P. 24(c).

The pleading which accompanies Hinkle and Cody's motion to intervene pursuant to Fed.R.Civ.P. 24(c) is the motion to vacate Part III(E)(10) of the Interim Agreed Order. Therefore, it appears to this Court that the sole and limited purpose for Hinkle and Cody's motion to intervene is to bring the instant motion to vacate. On that

basis, and that limited basis only, this Court grants Hinkle and Cody's motion to intervene. Intervening defendants are granted intervenor status for the sole purpose of pursuing their motion to vacate Part III(E)(10) of the Interim Agreed Order and are specifically not provided with intervening status as to liability on the underlying discrimination suit.

B. Motion to Vacate Part III(E)(10) of the Interim Agreed Order

*3 This Court now holds that there is no need to rule on the merits of intervening defendant's motion to vacate this Court's July 7, 1989 Interim Agreed Order. Because this Court allows intervening defendant's to go forward with their detachment proceedings in front of the Special Hearing Board for the reasons set forth below, this Court finds as moot all the claims presented by intervening defendant's in their motion to vacate and dissolve.

C. Intervening Defendant's Detachment Proceedings

It is quite clear to this Court that the instant detachment proceedings were initiated almost three months prior to the initiation of the underlying desegregation case. However, the parties have not briefed, nor does this Court recall the issue being raised on oral argument on September 20, 1989. This Court believes that the filing of the detachment petition prior in time to the filing of the underlying desegregation case is virtually dispositive of the issue of intervening defendant's right to proceed with detachment in front of the Special Hearing Board.

However, this Court notes that all information points to the fact that this is the only pending detachment proceeding which was filed prior to the filing of the underlying desegregation suit. This Court has absolutely no intention of allowing detachment or the attendant proceedings to proceed relating to petitions which were filed after the May 11, 1989 filing date of the underlying desegregation action. This Court still considers Section III(E)(10) to operate as a bar to any potential detachers proceeding with any detachment petitions which were filed after that May 11, 1989 filing date.

This Court raises three specific reasons for its ruling at this time. First, the parties to the underlying action had constructive, if not actual, notice of the petition for detachment as of the date of filing that petition; second, this Court never intended the inclusion of Section III(E)(10) to retroactively apply to pre-filed petitions; and third, as a substantive matter, the detachment of barren land should have no effect on the ongoing planning process so far as the purposes behind Section III(E)(10) are concerned. Some limited comment on each of these reasons is warranted.

1. Constructive/Actual Notice of Intervening Defendant's Petition

On the date of filing of the petition to detach, February 15, 1989, the parties to the underlying desegregation case were put on constructive, if not actual, notice of the pendency of the detachment proceedings. At the time of negotiations leading to the entry of the Interim Agreed Order on July 7, 1989, this Court was never made aware, nor was the issue ever raised, of the pendency of detachment petitions. This particular circumstance, pre-filed detachment petitions, was never contemplated by this Court in the inclusion of Section III(E)(10) of the Interim Agreed Order. Certainly, the parties to the underlying suit had ample opportunity to raise the issue and specifically provide for that circumstance in the Interim Agreed Order. In fact, the general language contained in Section III(E)(10) was never intended to cover this eventuality and the Court will not retroactively give it that effect when the parties had the opportunity to address the issue.

2. Court's Intention in Including Section III(E)(10) of the Interim Agreed Order

*4 As alluded to above, this Court never intended Section III(E)(10) of the Interim Agreed Order to retroactively apply to pre-filed petitions. The inclusion of that section, as this Court interprets it, was to preclude a series of detachment petitions being filed by property owners within the Rockford Special Charter District No. 205, following the filing of the underlying desegregation suit, in order to avoid the effects of an order which this Court might fashion, or the effects of some potential settlement between the parties, relating to the underlying desegregation action.

This Court did not intend Section III(E)(10) to apply to pre-filed detachment or annexation petitions. The parties to the underlying suit did not bring the fact of any detachment or annexation petitions to the attention of the Court at the time of the entry of the Interim Agreed Order. Had the Parties done so, the Interim Agreed Order would certainly have reflected more specificity in distinguishing, for example, between types of petitions. While a detachment of property on a fully developed parcel or an existing and fully developed subdivision might have some important impact on the planning process and on the collection of reliable data, annexation or detachment of barren or undeveloped land would not. Had the instant problem been brought to the attention of the Court at the time of the entry of the Interim Agreed Order, the Order would have been more specific in this regard.

Again, this Court's intention in including Section

III(E)(10) in the Interim Agreed Order was to maintain district boundary integrity to facilitate the collection of data for use in the planning process ordered by this Court in the July 7, 1989 Interim Agreed Order. No pre-filed petitions were contemplated by the inclusion of that section.

3. Detachment of Undeveloped Land

This Court noted above that Section III(E)(10) was included to preserve the integrity of the data collection for the planning process and that no pre-filed petitions were contemplated by the inclusion of Section III(E)(10). This is especially true in this case because the tract of land at issue here is totally undeveloped.

Given that the purpose of the inclusion of Section III(E)(10) was to avoid difficulties in the collection of data on, *inter alia*, the racial composition of the district, the impact that an undeveloped tract of land has on the collection of that data is irrelevant. There are no households or students which would be included in the data, and the tax revenues which that 80-acre farm tract generates is negligible in the larger tax revenue picture. Therefore, even if pre-filed detachment petitions were contemplated, this particular petition is not the type for which this Court had concern in including Section III(E)(10).

4. Detachment Petitions Filed After May 11, 1989

As discussed in Section II(C), *supra*, this Court has no intention of allowing wholesale detachments from Special Charter District # 205 or from allowing detachments to in any way inhibit or impede the planning process which this Court has set in motion pursuant to the July 7, 1989 Interim Agreed Order. Therefore, while this Court holds today that the Hinkle and Cody petition was not intended to be covered by Section III(E)(10) of the Interim Agreed Order, any detachment petition which was instituted following May 11, 1989, is still considered covered under that section and any such potential detachers are still enjoined from proceeding before any Special Hearing Board or other state administrative agency or court in furtherance of that detachment petition.

CONCLUSION

*5 For the reasons set forth in the foregoing opinion, this Court (1) grants Hinkle and Cody's motion for status as an intervening defendant for the limited purpose of presenting the motion to vacate and dissolve Section III(E)(10) of the Interim Agreed Order; (2) denies

intervening defendant's motion to vacate and dissolve Section III(E)(10) of the Interim Agreed Order; (3) clarifies Section III(E)(10) of the Interim Agreed Order by holding that detachment petitions filed in advance of the filing of the instant desegregation action were not contemplated by Section III(E)(10), are not covered by Section III(E)(10), no injunction will issue relating to intervening defendant's detachment petition currently before the Special Hearing Board and no further order of this Court is deemed necessary in order to effectuate any

detachment granted pursuant to the applicable state statutes; and (4) further clarifies the Interim Agreed Order noting that any detachment petitions filed after May 11, 1989 are still enjoined from proceeding without leave of this Court and are still bound by the language in Section III(E)(10) of the Interim Agreed Order.