IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ROSA RIVERA, et. al., Plaintiffs	:	
	:	Civil Action No. 1:11-cv-147
v.	:	Chief Judge Yvette Kane
LEBANON SCHOOL DISTRICT, Defendant	:	

MEMORANDUM OF LAW IN SUPPORT OF LEBANON SCHOOL DISTRICT'S MOTION FOR SUMMARY JUDGMENT

NOW COMES the Lebanon School District, by and through its counsel of record, John E. Freund, III, Esquire and King, Spry, Herman, Freund & Faul, LLC, and submits this Memorandum of Law in Support of its Motion for Summary Judgment.

I. PROCEDURAL HISTORY:

Plaintiffs initiated this civil action by complaint filed on January 21, 2011. In their Complaint, Plaintiffs allege that the District violated their civil rights, and they seek an injunction directing the District to repay amounts paid in excess of $300.00 per truancy citation. The District filed a Motion to Dismiss, which was denied by the Court on November 16, 2011. In its decision, the Court emphasized that the Plaintiffs' allegation that the District was actively involved in the reduction of some but not all of the truancy fines was sufficient to survive that procedural hurdle. Further, the Court highlighted Plaintiffs' allegation that the District "plays an active role in truancy adjudication." (Op. p. 5).

By order dated June 28, 2012, the Court certified a plaintiff class of persons against whom the Magisterial District Court 52-01-01 or 51-02-01 imposed fines

exceeding $300 per citation for truancy violations in the Lebanon School District who have paid an amount exceeding $300 plus costs on any single citation.[1]

The District has filed a Motion for Summary Judgment. This Memorandum is filed in support of that motion pursuant to the Court's March 29, 2012 Scheduling Order.

II. STATEMENT OF FACTS

The facts in this case have been set forth in detail in the attached Concise Statement of Material Facts.

III. QUESTIONS PRESENTED:

1. Whether Plaintiff has established that Defendant's actions resulted in the reduction of truancy fines.

Suggested answer: No

2. Whether Plaintiffs' claims are time-barred.

Suggested answer: Yes

3. Whether PA-NAACP lacks standing to bring this action.

Suggested answer: Yes

IV. STANDARD OF REVIEW:

The standard for summary judgment is well set.[2]

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[1] All unpaid fines greater than $300.00 have been reduced. (Ex. A to Motion for Class Certification)

[2] A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995).

If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The mere existence of some evidence in support of the

V. ARGUMENT

Plaintiffs claim that the District must repay truancy fines that were imposed by Magisterial District Judges more than three years ago. Their claims must fail because there is no legal basis by which the District can be held responsible either for the manner in which the courts impose fines or for reimbursement of fines imposed by the courts. Further, Plaintiffs' claims are barred by the applicable statute of limitations and other state law principles. Because there is no evidence that any NAACP member has a claim against the District, PA-NAACP must be removed as a plaintiff.

A. Plaintiffs' claims must fail because no evidence supports Plaintiffs' claims that the District affected the imposition or reduction of truancy fines.

Plaintiffs have asserted a cause of action under 42 U.S.C. §1983. As a primary matter, §1983 does not create any new substantive rights, but it provides a remedy for violation of a federal constitutional or statutory right conferred elsewhere. Doe v. Delie, 257 F.3d 309, 314 (3d cir. 2001)(*citing* Baker v. McCollan, 443 U.S. 137, 144 n. 3, 99 S.Ct. 2689, 61 L.Ed. 2d 433 (1979)). A *prima facie* case under §1983 requires Plaintiffs to demonstrate: (1) that the alleged wrongful conduct was committed by a person acting under color of state law; and (2) that the conduct deprived Plaintiffs of a right, privilege,

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nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986). Since a motion for summary judgment is designed to go beyond the pleadings, factual specificity is required of a party who opposes such a motion. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986).

Thus, in order to defeat a properly supported motion for summary judgment, a party may not merely restate the allegations of his complaint. Farmer v. Carlson, 685 F.Supp. 1335, 1339 (M.D. Pa. 1988). Nor can a party rely on self-serving conclusions, unsupported by specific facts in the record. Celotex Corp. A non-moving party must point to concrete evidence in the record which supports each essential element of his case. Id. If the party fails to provide such evidence, then he is not entitled to a trial and the moving-party is entitled to summary judgment as a matter of law. Fed. R. Civ. P. 56(e); Celotex Corp.

or immunity secured by the Constitution or laws of the United States. Nicini v. Morra, 212 F.3d 798, 806 (3d Cir. 2000). Both elements must be present to sustain a §1983 claim.

Here, Plaintiffs' claims rely on their factual assertion that the School District actively influenced the fines that were imposed, collected and/or reduced by the courts. These assertions have no support in the record. Further, the District is precluded from taking any of the actions alleged by Plaintiffs as a matter of law. In denying the District's Motion to Dismiss, this Court repeatedly noted that the allegations of the Complaint were sufficient to survive that procedural hurdle. However, Plaintiffs have produced no evidence of record to support their assertions. Therefore, Plaintiffs' claims must now fail.

1. *There is no evidence to demonstrate that the District influenced the Court's imposition or reduction of any fines*

In their Complaint, Plaintiffs allege that the District requests fines in an excessive amount and that the District makes recommendations on punishment for truancy citations. (Complaint ¶¶ 12, 13, 15). Plaintiffs further allege that the District requested and was instrumental in having some but not all of the unpaid fines reduced to $300.00. (Complaint ¶¶ 18, 19, 21). In denying the District's motion to dismiss, the Court stated that the Complaint states a claim challenging

> Defendant's actions in "selectively seeking reduction of statutorily excessive fines," "using undisclosed criteria to determine which excessive fines imposed would be selected for adjustment, and in failing to provide Plaintiffs and Plaintiff class members with any opportunity to establish whether fines imposed on them met the criteria." (Doc. No. 1 ¶¶ 32-33.)

Op. at page 5.

There is nothing in the record to support any of Plaintiffs' allegations. To the

contrary, the record demonstrates that District staff have no involvement with or control over the manner in which truancy fines may be reduced. (Defendant's Concise Statement "DCS" ¶ 2) In addition, District staff have no records regarding truancy fines or reductions made to truancy fines. (DCS ¶¶ 3, 4) Nothing in the record supports a conclusion that the District has any involvement with or control over the manner in which truancy fines are imposed. (DCS ¶ 1) The district magistrate's office fills in the fine amount on each citation. (DCS ¶ 1, N.T. Bowman p. 36 ln. 11 – p. 37 ln. 2) The District does not even maintain information about determinations of guilt or innocence. (DCS¶ 1, N.T. Bowman p. 26)

The foregoing are not self-serving statements. Information provided by or obtained by Plaintiffs in the course of discovery establishes that the District has no control over the fines that are imposed or the manner in which they are reduced or collected. Plaintiffs do not know how truancy fines are calculated. (Hummel p. 12) No one from the District was present when Plaintiffs plead guilty to the truancy citations and the fines were imposed. (DCS ¶ 11) None of the Plaintiffs ever spoke with the District about the fines imposed, or whether they should be reduced. (DCS ¶ 10)

All information regarding truancy fines is issued by the courts, and not by the District. Plaintiffs contacted the courts, not the District, to determine the payment status of truancy fines. (DCS ¶ 17) A judge told Madeline Echevarria that the District had nothing to do with the truancy fines. (DCS ¶ 15) Lenora Hummel received information from the Magisterial District Justice indicating that her unpaid fines were reduced to $300.00. (DCS ¶ 13) Rosa Rivera received reimbursement checks from the court system but did not receive anything from the District regarding the reduction of any

fines. (DCS ¶ 18) The District's solicitor received a letter from Magisterial District Judge Dissinger stating that truancy fines are established by the Magisterial District Judge. (DCS ¶ 8)

Nothing in the record supports Plaintiffs' position that the District wrongfully accepted or retained money. There is nothing in the record to support Plaintiffs' position that the District took action to reduce any fines. The District does not have any records regarding the amounts of truancy fines imposed. (DCS ¶ 4) The District receives checks from the district justices once or twice a month and the source of the funds is not specified. (DCS ¶¶ 4, 5) Therefore, even if the District wanted to refund fines of more than $300.00, it does not have the information necessary to do so. Thus, there is no basis to determine that the District discriminated against those who paid their fines in full by not providing reimbursement of fines paid in excess of $300.00 per truancy citation.

2. *The School District has no legal authority to impose or reduce fines*

The Public School Code contains no provision under which the School District has authority to impose a fine. 24 P.S. § 1-101 et. seq. The general powers granted to the School District with regard to generation of income relate solely to taxation. 24 P.S. § 5-507. Rather, the School District is statutorily mandated to enforce the compulsory school attendance law,[3] and to report all truancy violations to the Department of Education. 24 P .S. §§ 13-1354 (mandatory reporting of truancy), 1355 (penalty against school employee for failure to comply with compulsory education law).

[3] The Public School Code requires that every child of compulsory school age attends a day school, and further requires parents to send school-age children to school. 24 P.S. § 13-1333.

It is, instead, solely within the purview of the courts to (a) determine whether the compulsory education law has been violated, and (b) impose fines. Truancy violations are established, by law, as a summary criminal offense. 24 P.S. § 13-1333(a)(1). Magisterial district judges have jurisdiction over summary offenses. 42 Pa.C.S. § 1515(a)(1). Further, the law specifically provides that a parent (or child) may not be convicted without opportunity for a hearing before a district justice. 24 P.S. § 131333(a)(2). Fines may be imposed against parents for violation of compulsory attendance requirements only after summary conviction before a district justice. 24 P.S. § 131333(a)(1). Fines are defined as a sentencing alternative only in the criminal context, and nowhere within the Public School Code. 42 Pa.C.S. § 9726; see also, 18 Pa.C.S. § 1101(7) (setting maximum fine of $300.00 for summary offense). Only a district justice, and not a school district, has discretion regarding what fine or other sentence to imposed, and whether to suspend a sentence. 24 P.S. § 13-1333(a)(3), (4). Thus, only the district justice has authority to impose or reduce a fine.

3. *The School District has no legal authority to collect fines*

As indicated above, the Public School Code does not grant school districts the authority to impose fines. Similarly, the law does not provide for school districts to collect fines. Instead all fines imposed and collected pursuant to the School Code are to be *paid to* the treasurer of the proper school district. 24 P.S. § 1-109 (emphasis added). Further, that portion Pennsylvania's Constitution that establishes the judiciary specifically provides that district justices must remit all fines collected by it to the school district or other entity as provided by law. Art. 5, § 13(a). Because the school district's role is limited to presenting truancy issues to the court system for adjudication and no

authority over fines is granted to the District, there is no legal basis by which the District can be ordered to change fines or to repay them.

B. Plaintiffs' claims are barred by law

The statutory timeframe to appeal the fines complained of has long passed. Further, Plaintiffs' challenge to the fines imposed is directed to the wrong entity. The Rules of Court do not support a collateral challenge to sentencing decisions.

1. *Plaintiffs' challenge to the fines imposed is time-barred*

Plaintiffs are precluded by law from appealing or otherwise challenging the truancy fines because at least three years have passed since the fines were imposed. (DCS ¶ 22) A fine or other sentence imposed by a Magisterial District Judge is subject to de novo hearing upon appeal filed within 30 days following conviction. 24 P.S. § 13-1333(a)(1); Pa.R.Crim.P. 460.6. Although none of the fines at issue here were appealed, the rules of criminal procedure additionally provide that the imposition of sentence immediately following a determination of guilt following the trial de novo constitutes a final order for purposes of appeal, which must be filed within 30 days. Pa.R.Crim.P. 720(A), (D).

Here, all of the fines complained of were imposed in 2009 or earlier. (DCS ¶ 22) Thus, Plaintiffs are barred from challenging the fines as a matter of law.

2. *Plaintiffs' challenge to the truancy fines is directed to the wrong entity*

A challenge to the legality of a sentence must be presented to the sentencing court or on direct appeal. Aviles v. Pennsylvania Dept. of Corrections, 875 A.2d 1209 (Commw. Ct. 2005) Plaintiffs have not requested resentencing. Further, if any plaintiff lacks the ability to pay the fines imposed, the court that imposed the fine retains

authority to issue a payment plan. 42 Pa.C.S. § 9730. The named plaintiffs have established payment plans with the issuing authorities under this provision of the law. (DCS ¶ 26).

Although the statutory timeframe to appeal the fines has passed, Plaintiffs could request resentencing or direct appeal nun pro tunc. See, e.g., Commonwealth v. Stock, 679 A.2d 760 (Pa. 1996) (granting nunc pro tunc appeal from summary convictions and discussing availability of nunc pro tunc process in extraordinary circumstances). Both remedies must be presented to the state courts.

C. PA-NAACP lacks standing to bring this action.

An association has standing to bring suit on behalf of its members when: (1) its members would otherwise have standing to sue in their own right; (2) the interests at stake are germane to the organization's purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. PA Prison Society v. Cortes, 622 F.3d 215 (3d Cir. 2010) The organization must make specific allegations establishing that at least one identified member has suffered or would suffer harm. Id. The United States Supreme Court has noted that the requirement of naming affected members has never been waived except where all the members of the organization were affected by the challenged activity. Summers v. Earth Island Institute, 555 U.S. 488 (2009); citing, NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958) (all organization members affected by release of membership lists). This case is distinguishable also from Liberty Resources, Inc. v. Philadelphia Housing Auth., 528 F.Supp.2d 553 (E.D. Pa. 2007). There, the Court noted that an organization may sue on behalf of its members when "its members, or any one of them,

are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit." 528 F.Supp.2d at 563 (internal quotations deleted).

PA-NAACP has not identified any individual NAACP members who have paid an amount exceeding $300 plus costs on a single truancy citation. (DCS ¶ 23) None of the named Plaintiffs are members of the NAACP. (DCS ¶ 21) Rather, the record demonstrates that no later than August, 2009, the PA-NAACP was actively advising its individual members regarding truancy fines. (DCS ¶ 24) Because of that advocacy, fines were reduced or imposed using alternative sanctions. (Id., specifically, NAACP discovery response at p. 5 ("reducing some of the fines'); p. 7 (sentence for community service)). At least three NAACP members filed truancy appeals which remain pending. (DCS ¶ 25[4])

Because the record does not establish that any PA-NAACP member is a member of the class presented to the Court, PA-NAACP lacks standing to participate.

[4] The interrogatory response inaccurately indicates that the appellees "stand guilty." As indicated above, a summary appeal is a de novo proceeding. 24 P.S. § 13-1333(a)(1); Pa.R.Crim.P. 460.6

VI. CONCLUSION:

For the foregoing reasons, the Lebanon School District is entitled to an Order granting Summary Judgment and, therefore, respectfully requests such an Order from this Court.

Respectfully Submitted,
KING, SPRY, HERMAN, FREUND & FAUL

By: s/ John E. Freund, III
John E. Freund, III, Esquire
ID No. PA25390
Rebecca A. Young, Esq.
Atty ID: 83845
One West Broad Street, Suite 700
Bethlehem, PA 18018
Phone (610) 332 – 0390

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CERTIFICATE OF SERVICE

The undersigned, Rebecca A. Young, Esq., attorney for the Lebanon School District, hereby certifies that a true and correct copy of the foregoing document has been filed electronically and served electronically upon the following counsel of record on this day, July 19, 2012

Benjamin Geffen, Esquire
Michael Churchill, Esquire
Public Interest Law Center of Philadelphia
1709 Benjamin Franklin Parkway
Second Floor
Philadelphia, PA 19103

Thomas B. Schmidt, III
Pepper Hamilton, LLP
100 Market Street, Suite 200
P. O. Box 1181
Harrisburg, PA 17108

BY: s/ Rebecca A. Young, Esq.
Rebecca A. Young, Esq.

Date: July 19, 2012