STATE OF MICHIGAN

COURT OF APPEALS

REBECCA NEPH, Guardian of NATHAN PEREIRA, a Minor,

Plaintiff-Appellee,

v

LAKEVILLE COMMUNITY SCHOOLS,

Defendant-Appellant.

UNPUBLISHED
May 7, 1996

No. 176843
LC No. 94-028821

Before: O'Connell, P.J., and Hood and C.L. Horn*, JJ

PER CURIAM.

Defendant appeals as of right the circuit court's order granting plaintiff injunctive relief. We reverse.

Nathan Pereira (plaintiff) was a student at LakeVille Memorial High School, which is operated by defendant. During lunch on March 23, 1994, plaintiff and other boys were suspected of gluing coins onto a table. An administrator searched plaintiff and the other boys for the glue. During the search of plaintiff, the administrator discovered a substance in a small white container that the administrator concluded was marijuana. As a result, on March 23, 1994, plaintiff was suspended from the high school for possession of marijuana.

On April 12, 1994, the LakeVille Board of Education (the board) voted to expel plaintiff from school for the remainder of the 1993-1994 school year. On April 15, 1994, the board reconsidered plaintiff's expulsion in an open hearing requested by plaintiff's mother. Following the presentation of plaintiff's position, the board voted to uphold the expulsion.

On April 22, 1994, plaintiff filed a petition for injunctive relief, alleging that his right to due process was violated because (1) the small amount of marijuana for which he was expelled was

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* Circuit judge, sitting on the Court of Appeals by assignment.

discovered during an illegal search, (2) the school administration failed to prepare and keep a written statement of the charges against him, and (3) because the board failed to give him its decision in writing, he was not given adequate notice of the length and conditions of the expulsion. He also argued that he was denied equal protection and that his expulsion was arbitrary.

Defendant filed a request to show cause. Plaintiff responded that he would suffer irreparable harm without the injunction, that the public interest would not be harmed by granting the injunction because it was an extremely small amount of marijuana, and that his expulsion was arbitrary and violated equal protection. Following the hearing on plaintiff's petition, the trial court granted him injunctive relief, finding that expulsion was inappropriate and not warranted, and ordering that he be permitted to return to school and allowed to make up any necessary requirements.

Defendant first argues that the trial court erred in granting plaintiff injunctive relief. We initially note that because the 1993-1994 school year has ended, this issue is moot as to these parties. *City of Detroit v Detroit Police Officers Association*, 174 Mich App 388, 391-392; 435 NW2d 799 (1989). However, a moot issue may still be considered if it is likely to recur in the future yet evade appellate review. *In re Closure of Jury Voir Dire*, 204 Mich App 592, 594; 516 NW2d 514 (1994). Because we find that this issue is likely to recur in the future, we will address the merits of defendant's appeal.

A trial court's grant of a preliminary injunction will not be disturbed absent an abuse of discretion. *Fruehauf Trailer v Hagelthorn*, 208 Mich App 447, 449; 528 NW2d 778 (1995). In reviewing disciplinary orders of a school administration, courts are bound by the administration's factual findings if they are supported by competent, material and substantial evidence. *Birdsey v Grand Blanc Community Schools*, 130 Mich App 718, 723-724; 344 NW2d 342 (1983).

In this case, the trial court made no findings concerning whether the requisites for injunctive relief had been met. See, e.g. *Michigan State Employees Ass'n v Dep't of Mental Health*, 421 Mich 152, 157-158; 365 NW2d 93 (1984); *Saxon v Dep't of Social Services*, 191 Mich App 689, 694; 479 NW2d 361 (1991). Instead, the trial court concluded:

> It is the opinion of this Court that Plaintiff should receive some form of reprimand, however, mindful of the importance and necessity of education, does not feel expulsion is warranted and is inappropriate in this case [sic].
>
> This Court believes that the facts in this case constitute unique circumstances which would obviate the penalty imposed. Plaintiff does not appear to be disruptive, is an above-average student academically and is well regarded by his teachers. He in fact is described as an excellent all-around student by several of his teachers.
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> * * *

> Had this been a repeat incident or had the plaintiff a record of insubordination and disruption, expulsion may certainly be justified. In this instance we have a so called model student-citizen, first offender who was found with a minimal amount of marijuana, ownership of which is in dispute. This Court believes education is extremely important and deprivation of it should be limited to more serious situations with a student's previous conduct being taken into account.

MCL 380.1311; MSA 15.41311 provides that a school board or principal may authorize or order the suspension or expulsion from school where a student is *guilty of a gross misdemeanor*. Gross misdemeanor is defined in the High School Student Handbook, which defendant distributed, to include the "use and possession of illegal drugs and narcotics." The handbook also provides that a gross misdemeanor may result in recommendations for long-term suspension or expulsion.

In this case, given plaintiff's admission that the substance that he possessed was marijuana, we find that there was competent, material and substantial evidence to support defendant's finding. After the substance was discovered, plaintiff explained that he had found the box and because he believed it was marijuana, he did not know what to do with it, so he left it in his pocket. Further, in plaintiff's Petition for Injunctive Relief and "Brief on Show Cause," he admitted that the substance was marijuana, but argued that it was an extremely small amount. In addition, plaintiff's counsel acknowledged that plaintiff admitted that the substance that he possessed was marijuana. At the hearing, plaintiff's counsel stated, "Nathan comes in and says, Well, yeah, it was marijuana." A plaintiff's statement that he possessed marijuana is sufficient evidence that he possessed marijuana. *Id.*, pp 724, 727. Moreover, the record is devoid of evidence presented by plaintiff that the substance was not marijuana. Given plaintiff's clear admission that the substance that he possessed was marijuana, we conclude that the trial court abused its discretion in granting plaintiff injunctive relief.

Defendant next argues that the search of plaintiff during which the marijuana was found was legal. Because plaintiff did not argue the legality of the search in the trial court, this issue is waived on appeal. *Severn v Sperry Corp*, 212 Mich app 406, 415; 538 NW2d 50 (1995).

Defendant also argues that plaintiff's due process rights were not violated during the expulsion. However, we need not address the merits of this claim because plaintiff's counsel conceded below that plaintiff's due process rights were not violated and therefore this issue is abandoned on appeal. *Vugterveen Systems, Inc v Olde Millpond Corp*, 210 Mich App 34, 47; 533 NW2d 320 (1995).

Defendant finally argues that plaintiff's equal protection and civil rights were not violated by the expulsion based on his argument that no disciplinary action was taken against a special education student who was found to have possessed marijuana. Because no record was developed regarding the identity of the student and that such a student was found to have possessed marijuana, this issue is waived on appeal. *Harkins v Department of Natural Resources*, 206 Mich App 317, 323; 520 NW2d 653 (1994).

We conclude that because there was competent, material and substantial evidence to support defendant's finding, the trial court abused its discretion in granting plaintiff's motion for injunctive relief and ordering that defendant permit him to return to school.

Reversed.

/s/ Peter D. O'Connell
/s/ Harold Hood
/s/ Carl L. Horn