

STATE OF MICHIGAN
COURT OF APPEALS

MELISSA GREENE,

Plaintiff-Appellant,

v

PLYMOUTH-CANTON COMMUNITY
SCHOOLS,

Defendant-Appellee.

UNPUBLISHED

July 22, 1997

No. 186157

Wayne Circuit Court

LC No. 94-413292

Before: MacKenzie, P.J., and Wahls and Markey, JJ.

PER CURIAM.

Plaintiff, Melissa Greene, appeals as of right from a judgment dismissing her complaint in this First Amendment action.¹ We find that plaintiff has no standing to raise the issues herein; therefore, her complaint was properly dismissed although for a different reason than that stated by the trial court.

On April 19, 1994, plaintiff filed her three-count complaint challenging the constitutionality of defendant's prior approval policy, adopted April 11, 1994 and entitled "Distribution of Non-School Sponsored Written Material on School Premises" (count I), the constitutionality of her suspension for circulating a flier at school² and search of her personal effects on February 23, 1994, pursuant to defendant's old School Rule 8, which stated in pertinent part that "[a]ny flyers or surveys must have prior approval from the building principal" (count II), and her April 1 and 22, 1994 suspensions from school for refusing to serve an administrative detention for leaving school and for defending herself against an assault at school, respectively (count III). Although the parties and the trial court have exhaustively addressed and reviewed the constitutional issues that plaintiff raises regarding defendant's new prior approval policy, we note at the outset that no one questioned whether plaintiff had standing to do so because she was only suspended under the old School Rule 8, not under the April 11, 1994 prior approval policy. Absent standing, there is no justiciable controversy for us to adjudicate.

As our Supreme Court recently stated in *Detroit Fire Fighters v Detroit*, 449 Mich 629, 633 and n 3; 537 NW2d 436 (1995),

Standing is a legal concept that focuses on whether the litigant's interest will ensure sincere and vigorous advocacy. Simply demonstrating an ability to vigorously advocate does not confer standing. Rather, demonstration that a **substantial interest** of the litigant **will be detrimentally affected in a manner different from the public at large** must be shown. Standing does not address the ultimate merits of the substantive claims of the parties [as it is a "jurisdictional issue that concerns the power of a court to hear and decide a case and does not concern the ultimate merits of the underlying substantive issues of the action"]. [Emphasis added.]

In order to have standing to bring a claim before the court, a plaintiff must show that she has a legally protected interest that is in jeopardy of being adversely affected. *Wortelboer v Benzie Co*, 212 Mich App 208, 214; 537 NW2d 603 (1995). The plaintiff must have alleged in her complaint a sufficient personal stake in the outcome of the controversy to ensure that the dispute sought to be adjudicated will be presented in an adversarial context that is capable of judicial resolution. *Id.* Typically, a plaintiff can establish that she has a personal stake in the matter by demonstrating an injury as a result of the defendant's action. *Id.* Mere evidence that a party has commitment to engage in litigation is insufficient to confer standing. *Michigan Soft Drink Ass'n v Dep't of Treasury*, 206 Mich App 392, 399; 522 NW2d 643 (1994); see, e.g., *Lewis v Casey*, 518 US ____; 116 S Ct 2174, 2179; 135 L Ed 2d 606, 616-617 (1996) ("the distinction between the two roles [of the judiciary and the political branches of government] would be obliterated if, to invoke intervention of the courts, no actual or imminent harm were needed, but merely the status of being subject to a governmental institution that was not organized or managed properly"). Moreover, plaintiff's overbreadth challenge to defendant's prior approval policy also does not grant her standing. Nowak, Rotunda, & Young, *Constitutional Law* (3rd ed), §16.8, p 843 ("it is not precise to think of the overbreadth problem as a form of standing or as a justiciability issue").

Here, plaintiff cannot assert any personal stake in the matter at hand because she was not "injured," i.e., suspended, pursuant to the April 11, 1994 prior approval policy. Rather, she was suspended pursuant to old School Rule 8. Her suspension based upon an application of the old school policy does not confer standing upon plaintiff to challenge the new prior approval policy that was never applied to her. Because she neither attempted to circulate a flier at school after April 11, 1994, nor was denied the ability to do so under the new prior approval policy, plaintiff cannot demonstrate a "substantial interest" in the new prior approval policy that would be detrimentally affected in a different manner than the interests of the high school population at large. *Detroit Fire Fighters, supra*. Accordingly, we find that plaintiff lacked sufficient interest to sincerely and vigorously advocate the constitutionality of defendant's prior approval policy because she was never injured by it, and it was never applied to her. *Id.*

We also note that in count II of her complaint, plaintiff raised a challenge to the constitutionality of School Rule 8, as stated in pertinent part:

32. In its February 24, 1994, suspension of Melissa Greene, the defendants relied upon **prior** School Rule 8

33. As established by voluminous authority, this **prior** School Rule 8 was unconstitutionally vague and overbroad.

34. In suspending Greene **under this unconstitutional rule**, the defendants violated Article 1, Section 5 of the 1963 Constitution of the State of Michigan. [Emphasis added.]

Our review of the lower court record and the briefs submitted on appeal evidence, however, that plaintiff neither briefed nor argued the merits of this claim, which she had standing to challenge. *Id.* Accordingly, plaintiff has waived her right to pursue relief on this basis. *Severn v Sperry Corp*, 212 Mich App 406, 415; 538 NW2d 50 (1995).

Affirmed. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ Barbara B. MacKenzie

/s/ Jane E. Markey

¹ The trial court originally decided the matter as a denial of plaintiff's motion for injunctive relief, but later, after defendant moved for and plaintiff acquiesced to the designation of the court's prior order as a judgment on the merits, the court entered this judgment as one that dismissed plaintiff's complaints.

² The flier that plaintiff circulated addressed events that had occurred earlier during a February 3, 1994 walkout from school in protest of activities engaged in by "avowed fascists among the student[] body." The flier, distributed on February 23, 1994, was entitled "The Administration's 'Facts' on the Walkout and Our Facts" criticized defendant for its inaction and mischaracterization of the walkout.