

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN J. DELEKTA,

Plaintiff-Appellant,

v

MEMPHIS COMMUNITY SCHOOLS, BOARD OF EDUCATION, HAROLD BURNS, DONALD DIAGLE, VICTORIA ROBINSON, DOUGLAS PRATT, GREG KREUGER, KEVIN WATKINS, KARYN MCCUE, KEITH N. SMITH, and JAMES L. LIEBZEIT,

Defendants-Appellees.

UNPUBLISHED

October 12, 2004

No. 249325

St. Clair Circuit Court

LC No. 03-000271-CZ

Before: Kelly, P.J., and Gage and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants summary disposition. We affirm.

This case involves a high school grading dispute. Following his junior year at Memphis High School, plaintiff was ranked first in his class. During his senior year, he dually enrolled at St. Clair Community College and Memphis High School, although he did not take any classes at the actual high school. Plaintiff participated in an employer-based paralegal program through the St. Clair County Intermediate School District (ISD). In this program, he was assigned to work at his mother's law office. Plaintiff's mother awarded him and "A+" for the course, even though the highest grade authorized by the ISD grading scale was an "A." The Memphis Community School District, which includes Memphis High School, employed a grading system that allowed for "A+" grades. The report card issued by Memphis High School reflected an "A" for the course in question. Plaintiff's mother sought to have the grade changed, and ultimately filed a complaint after her requests were denied. Plaintiff alleged that the failure to record an "A+" could adversely impact his class standing.

Plaintiff first argues that the trial court erred in finding that there was no question of material fact with respect to whether a school district policy prohibiting the "weighting" of grades applied to plaintiff. We review de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition pursuant to MCR 2.116(C)(10) "tests the factual support of a

plaintiff's claim." *Id.* The trial court considers "the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of any material fact exists to warrant a trial." *Ritchie-Gamester v Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). When reviewing a summary disposition motion, trial and appellate courts should draw all reasonable inferences in favor of the nonmoving party. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617; 537 NW2d 185 (1995).

Pursuant to MCL 380.1282(1), a school district's board of education has the authority to implement a grading system.¹ Plaintiff does not dispute that defendant Board of Education has the statutory authority to establish the school district's grading system under this provision. Rather, he argues that defendant Memphis Community Schools' Policy No. 5117, entitled "Accepting Grades and Credits from Other Schools,"² does not apply to Memphis High School students who complete a course through the ISD.

We find plaintiff's argument to be without merit. There is no dispute that the paralegal training course plaintiff completed was administered through the ISD, not plaintiff's high school. The highest grade plaintiff's mother was authorized to award under the ISD policy was an "A." Therefore, the policy applied to plaintiff's situation, and the grade in question could not be weighted or adjusted under that policy.

Plaintiff next argues that the trial court erred in finding that he failed to state a claim that defendants violated his due process rights. Summary disposition pursuant to MCR 2.116(C)(8) is appropriate when a party has failed to state a claim on which relief may be granted. *Horace v Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998). This motion tests the legal sufficiency of a claim, and all "well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). A motion pursuant to MCR 2.116(C)(8) should be granted only "where the claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992).

The federal and state constitutions provide that no person will be deprived of life, liberty, or property without due process of law. US Const, Am XIV; Const 1963, art 1, § 17. Where a fundamental right is not implicated, the policy at issue is examined to determine if it is rationally related to a legitimate governmental interest. *Landon Holdings, Inc v Grattan Twp*, 257 Mich App 154, 173; 667 NW2d 93 (2003). Due process claims fail if a plaintiff is unable to show that he was deprived of a vested right deserving of constitutional protection. *Slocum v Holton Bd of Ed*, 171 Mich App 92, 99-100; 429 NW2d 607 (1988). "To have a property interest deserving of

¹ MCL 380.1282(1) provides: "The board of a school district shall establish and carry on the grades, schools, and departments it considers necessary or desirable for the maintenance and improvement of its schools and determine the courses of study to be pursued."

² Policy No. 5117 provides: "One/half (1/2) semester credit will be given to each transferred course a student has completed for one (1) full semester. No grades will be considered weighted. No credit will be given for religious instruction or driver's education classes."

constitutional protection, a person must have more than an abstract need, desire, or unilateral expectation of it. There must, instead, be a legitimate claim of entitlement to it.” *Id.* at 100, citing *Bd of Regents of State Colleges v Roth*, 408 US 564, 577; 92 S Ct 2701; 33 L Ed 2d 548 (1972).

We will not substitute our judgment for that of a school board, and we limit our inquiry to whether a school board’s action was “arbitrary and unreasonable.” *Snyder v Charlotte Public School Dist*, 421 Mich 517, 529; 365 NW2d 151 (1984). Our inquiry proceeds with the presumption that the board’s action was “reasonable and proper unless there is a clear showing of abuse.” *Id.* Here, plaintiff failed to show that he was deprived of a vested property interest. He received the highest grade authorized by the ISD’s grading system. His belief that he was deprived of an “A+” on his report card does not give rise to a legally protected right. See *Slocum, supra* at 100-101. Moreover, we agree with the trial court that plaintiff failed to create a question of material fact regarding whether others in his class received the benefit of the purported “past practice” of weighting grades earned through the ISD.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Hilda R. Gage

/s/ Brian K. Zahra