Filed 4/26/12 New West Charter Middle Sch. v. LAUSD CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

NEW WEST CHARTER MIDDLE SCHOOL, Plaintiff and Appellant, v. LOS ANGELES UNIFIED SCHOOL DISTRICT et al., Defendants and Appellants.	B228863 (Los Angeles County Super. Ct. No. BS126609)

APPEAL from a judgment of the Superior Court of Los Angeles County. David P. Yaffe, Judge. Dismissed.

Procopio, Cory, Hargreaves & Savitch, Gregory V. Moser, Kendra J. Hall, and John C. Lemmo, for Plaintiff and Appellant.

Orbach, Huff & Suarez, David M. Huff, Marley S. Fox, and Joanna Braynin for Defendants and Appellants.

PROCEDURAL BACKGROUND

On October 30, 2009, New West Charter Middle School (appellant) submitted a request to the Los Angeles Unified School District (the District) for Proposition 39[1] facilities for the 2010-2011 school year. On February 1, 2010, the District made a preliminary offer, which appellant rejected. On April 1, 2010, the District provided notice to appellant of its final notice of space. In that letter, the District indicated that it had "not completed its space identification issues" and thus was "unable to make any findings."

Appellant rejected the District's final notice of space offered for the 2010-2011 school year and filed a verified petition for writ of mandate to compel the District[2] to comply with its obligations under Proposition 39 for the 2010-2011 school year. Specifically, New West sought an order requiring, inter alia, the District to: (1) provide a contiguous public school facility to New West that would accommodate all of its 564 middle school students in conditions reasonably equivalent to those they would enjoy if they attended District schools, near to where it wished to be located; (2) provide corrective and supplemental assistance to enable New West to utilize that space by August 29, 2010; (3) refrain from taking any action that would prevent or impair the District's ability to provide facilities to New West, as required by Proposition 39; and (4) comply fully with Proposition 39 and its implementing regulations.

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[1] "Proposition 39, approved in 2000, amended Education Code section 47614 to provide, in pertinent part, 'Each school district shall make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district.' (Ed. Code, § 47614, subd. (b).)" (*New West Charter Middle School v. Los Angeles Unified School Dist.* (2010) 187 Cal.App.4th 831, 834.)

[2] The petition was filed against the District, the Board of Education of the Los Angeles Unified School District, and Ramon C. Cortines, in his capacity as Superintendent of Schools. We refer to these three parties collectively as the District.

The District filed an answer in opposition to New West's petition for writ of mandate, averring that it had complied with Proposition 39.

The trial court held a hearing on appellant's petition for writ of mandate on August 24, 2010. After entertaining oral argument and lodging the administrative record into evidence, the trial court issued a minute order granting the petition for writ of mandate, "but not the writ of mandate requested by [appellant]." The trial court framed the issue as follows: "The issue is whether the uncontroverted evidence furnished by [the District] is sufficient to support a finding that [appellant's] in-district students cannot be accommodated at a single school site. Such evidence would be sufficient except for the fact that an applicable regulation, 5 C.C.R. Section 11969.2(d), provides that: [¶] 'If a school district's preliminary proposal or final notification . . . does not accommodate a charter school at a single school site, the district's governing board must first make a finding that the charter school could not be accommodated at a single site and adopt a written statement of reasons explaining the finding.' [The District] admits that its governing board did not make such a finding, nor did it adopt a statement of reasons explaining such a finding." Thus, the trial court determined that appellant was "entitled to a writ of mandate commanding [the District] to find whether [appellant's] in-district students can be accommodated at a single site and, if not, to adopt a written statement of reasons explaining that finding."

Approximately three weeks later, on September 15, 2010, judgment was entered, issuing a writ of mandate "requiring [the District] comply with the last sentence of 5 C.C.R. section 11969.2(d), to wit, [the District] shall make a finding whether [appellant] could not be accommodated at a single site for the 2010-2011 school year and adopt a written statement of reasons explaining the finding." The District was ordered to file a return to the writ on or before November 15, 2010, describing the action it took to comply with the writ.

The peremptory writ of mandate, issued September 22, 2010, ordered the District to set aside its preliminary proposal (dated February 1, 2010) and its final notification (dated April 1, 2010) presented to appellant; to make a written finding that appellant

cannot be accommodated at a single site and adopt a written statement of reasons, as required by California Code of Regulations, title 5, section 11969.2(d) if the District cannot accommodate appellant's projected in-district enrollment at a single school site; to issue a facilities proposal and notification under Proposition 39 based upon the finding of the District; and to file a return to the writ of mandate by no later than November 15, 2010, describing the action it took to comply with the writ

On November 12, 2010, appellant filed a notice of appeal[3] from the judgment.

On November 15, 2010, the District filed and served its return to the writ of mandate.

Apparently dissatisfied with the District's return, on November 18, 2010, appellant filed a motion for an order for the complete enforcement of writ and motion to set briefing schedule on the measure and amount of monetary damages. The District opposed appellant's motion. According to appellant's opening brief, the trial court declined to issue an order based on its belief that enforcement of its order was stayed as a result of the pending appeal and cross-appeal.

DISCUSSION

Code of Civil Procedure section 904.1 codifies the general list of appealable orders and judgments. "Generally, only judgments may be appealed." (*Public Defenders' Organization v. County of Riverside* (2003) 106 Cal.App.4th 1403, 1409 (*Public Defenders*).) The reason is simple: "A judgment is the final determination of the rights of the parties in an action or proceeding.' [Citation.]" (*Public Defenders*, *supra*, at p. 1409.) In other words, Code of Civil Procedure section 904.1 "effectively codifies the common law 'one final judgment rule': i.e., an appeal lies only from a *final judgment* that *terminates* the trial court proceedings by *completely disposing of the matter in controversy*." (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2011) ¶ 2:21, p. 2-18 (rev. #1, 2011).)

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3 The District later filed a notice of cross-appeal.

"Petitions for extraordinary writs, such as petitions for writs of mandate, are special proceedings. [Citation.] Accordingly, an order granting or denying a petition for an extraordinary writ constitutes a final judgment for purposes of an appeal." (*Public Defenders, supra*, 106 Cal.App.4th at p. 1409.)

But the analysis does not stop there. "'"[W]here no issue is left for future consideration except the fact of compliance or noncompliance with the terms of the first decree, that decree is final, but where anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory."' [Citations.]" (*Public Defenders, supra*, 106 Cal.App.4th at p. 1410.) "An interlocutory order or judgment has two characteristic features: It is not final for purposes of appeal, and is also not final in the trial court, when it may be modified after further evidence or law has been considered." (*Yeboah v. Progeny Ventures, Inc.* (2005) 128 Cal.App.4th 443, 448–449.)

Here, the judgment and writ of mandate contemplate further judicial action. The District must make findings, prepare a written statement, and then issue a facilities proposal based upon those findings and that statement. (Cal. Code Regs., tit. 5, § 11969.2, subd. (d).) Only after the District complies with its responsibilities under the implementing regulations can the trial court evaluate the District's findings and facilities proposal. (See, e.g., *Hamilton v. Board of Supervisors* (1969) 269 Cal.App.2d 64, 65 ["Unless and until proper findings are made by the board we cannot know what evidence it believed or relied on"].)

In other words, what appellant asks us to do on appeal is evaluate the propriety of the District's offer and determine whether the District should have offered appellant different accommodations. Specifically, appellant asserts that "[t]he trial court's judgment should not only have directed the District to issue written findings, but also should have required the District to make an offer to [appellant] of reasonably equivalent accommodations for <u>all</u> of [appellant's] over 500 students." But, absent the requisite findings and written statement from the District, the trial court could not do so, and, at this stage of the proceedings, neither can we.

Our decision should come as no surprise to the parties. As aptly summarized in appellant's opening brief, a point which the District did not address in its respondent's brief: "Here, the Implementing Regulations specifically required the District governing body to make findings, but it failed to do so until after [appellant's] Petition for Writ of Mandate was granted. (5 C.C.R. § 11969.2(d).) The District's failure to comply with this requirement of Proposition 39—even after repeated demands—rendered it impossible for the trial court to find that any decision of the District with regard to the accommodations provided to [appellant] was supported by substantial evidence." (fn. omitted.)

In light of our conclusion, we need not reach the merits of the District's argument on cross-appeal, namely that appellant's claim is barred by the doctrine of laches.

DISPOSITION

The appeal and cross-appeal are dismissed. Parties to bear their own costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD