

FARAZ C.,

Appellant

v.

MONTGOMERY COUNTY BOARD OF
EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-02

OPINION

INTRODUCTION

In this appeal, Appellants challenge the Montgomery County Board of Education's (Local Board) decision to charge them tuition for their three children to attend Winston Churchill High School. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellants have responded to the Motion.

FACTUAL BACKGROUND

Appellants' three children began attending Winston Churchill High School at the beginning of the 2006-2007 school year in grades 9, 10, and 12, respectively. By letter dated September 18, 2006, the school notified Appellants that mail at their address at 10 Redbud Court in Potomac, Maryland had been returned to the school. The school asked the Appellants to submit proof of residency in Montgomery County. (Slatcoff Letter).

Appellants submitted various documentation to the Residency Compliance Office. Dr. Anita Moscow, Residency Compliance Officer, reviewed the documents and determined that Appellants' principal residence was in Herndon, Virginia. Dr. Mostow found insufficient evidence that the property in Herndon had been sold or that the property on Redbud Court would be ready for occupancy anytime soon. She advised Appellants that they would have to pay tuition for their three children to remain enrolled at Churchill. (Mostow Letter, 10/19/06; *See also* McDonald Letter).

By letter dated November 21, 2006, Appellants' attorney asked that the school system reconsider its decision in light of the fact that, for the past year, Appellants had paid Maryland State and Montgomery County income and real property taxes based on the Redbud Court property. He stated that Appellants had therefore established residency and paid the school taxes for their children to attend Churchill. (Koch Letter). Dr. Mostow responded to the letter. She

acknowledged the Appellants' ownership of property in Montgomery County, but stated that their "actual residence is in Herndon, Virginia." She again advised that the family would need to pay tuition for the children to remain at Churchill. (Mostow Letter, 12/11/06).

Appellants appealed the decision to the local Superintendent. In that letter, they stated that they purchased a home at 10 Redbud Court in Potomac, Maryland and that they resided there for five months prior to temporarily relocating to Silver Spring while construction on home renovations was completed. Appellants argued that under the school system's regulations, a property tax bill was sufficient to establish residency. (Appeal to Superintendent, 1/24/07).

The appeal was assigned to hearing officer, Ms. Elaine Lessenco, for review. Ms. Lessenco met with Mr. C and his attorney. Mr. C told Ms. Lessenco that, after living in Herndon, Virginia for 13 years, the family moved to the Redbud Court home in Montgomery County in June 2006. When they decided to remodel the home, they temporarily moved out, expecting that the renovations would take less time than they actually have. Mr. C stated that his parents now live in the house in Herndon. (Hearing Officer Report).

Ms. Lessenco also spoke with the Assistant Principal at Churchill. The Assistant Principal reported the following: (1) Appellants' son told the health room technician that the family was living in Virginia;¹ (2) a utility bill for Redbud Court, dated August 1, 2006, was for only \$7.39, indicating that the house had not been occupied since June 2006; and (3) a pupil personnel worker and the school registrar made a home visit in September and observed the Redbud house in the progress of being built, not renovated. They observed that there was no finish work on the exterior of the house, that windows had been newly installed, and that there were studs on the inside of the house without any drywall. (Hearing Officer Report).

Ms. Lessenco also spoke with the school counselor who reported that the family had used several addresses including the one on Redbud Court; the father's business address in Langley Park, Maryland; and the sister-in-law's address in Silver Spring. Information provided on the Silver Spring address failed to document that the family was living there. In addition, the school counselor reported that the mother confirmed that the family was living in Virginia, and had answered a telephone call placed to a Virginia phone number as recently as February 5, 2007. (Hearing Officer Report).

Ms. Lessenco recommended that the request to waive tuition be denied based on lack of documentation that the family was living in Montgomery County, and documentation supporting a finding that the family's primary residence is in Herndon, Virginia. (Hearing Officer Report). The Chief Operating Officer (COO), acting as the Superintendent's Designee, adopted the

¹In response to this, Mr. C claimed that his son makes up stories. (Hearing Officer Report).

recommendations of hearing officer and denied Appellants' request that their three children be permitted to attend Churchill free of charge. (Bowers Letter, 2/9/07).

Appellants appealed to the Local Board. In their letter, they stated that they moved into the Redbud Court home in June of 2006, and lived there for approximately one month prior to moving in with Mr. C's sister in Silver Spring while renovations were being completed on their home.² At that time, the renovations were set to be completed at the end of March, 2007. Appellants argued that the local regulations, which base free school attendance in Montgomery County on residence in the County, are inconsistent with State law which bases free school attendance on the jurisdiction where the child is domiciled with the child's parent. Appellants claimed that the Redbud Court home is their domicile, as evidenced by the address on Mr. C's driver's license; his address for tax purposes; the Redbud Court utility bill in his name; and the family's intent to live in the Redbud Court home permanently. (Letter of Appeal to Local Board).

Enclosed with the appeal was a copy of the Real Property Data Search Report for 10 Redbud Court from the Maryland State Department of Assessments and Taxation (SDAT). The tax information shows Appellants as the owners of the property, purchased on January 18, 2005 for \$574,900. It also shows that as of January 1, 2006, there were no improvements on the land, no primary structure, and no enclosed area. The categories for number of stories, basement, type of structure, and exterior of structure are blank. (SDAT Report).

In response to the appeal, the Superintendent provided the Local Board with additional information. He stated as follows:

A search of the Maryland Department of Assessment and Taxation real property index for Montgomery County shows that [Appellant] purchased premises identified as 10 Redbud Court, Potomac, Maryland, on or about January 18, 2005. The property consisted of 19,270 square feet of unimproved real property. The data search clearly stated that there was no structure on the lot and no value is given for improvements to the lot. In addition, recent pictures, showing new construction, are attached. A review of County permits and inspection information shows that most of the mechanical and electrical inspections failed as recently as December 2006, and no new inspections are scheduled at this time. The structure is not habitable.

²This is inconsistent with Appellants' previous assertion that they lived at the Redbud Court address for five months.

Moreover, it is clear that as of March 15, 2007, the family was living at 1105 Bicksler Drive, Herndon, Virginia. A home visit was made to that address on that date. A youngster named [U.C.] answered the door. When asked if his mother or father was home, he ran downstairs and then came back and said his mother, who he identified as [T.F], was in the shower. In response to questions, the boy said [his siblings] also were there and were upstairs. He said they all lived there.

(Superintendent's Memorandum, 3/21/07).

In a unanimous decision, the Local Board upheld the COO's decision to charge Appellants tuition for their children to attend Churchill. The Local Board explained that the record in the case does not support a finding that Appellants and their children are bona fide residents of Montgomery County. Rather, the Local Board found the evidence, including statements from the family, supported a finding that the family's actual or bona fide residence was in Herndon, Virginia. This appeal to the State Board followed.

ANALYSIS

In the appeal, Appellants argue that because they have established their domicile in Montgomery County, their children are entitled to attend school there free of charge. They cite §7-101(b) of the Education Article which states that "each child shall attend a public school in the county where the child is domiciled with the child's parent, guardian, or relative providing informal kinship care . . ." Appellants argue that domicile, not residence, is the issue that determines whether his children attend school in Montgomery County free of charge. The Appellants, however, have missed an important step in this analysis. In order to qualify for free tuition in any county in Maryland, the student first must show that he/she is a resident of the State.

The State Board has long held that bona fide residency in this State is a condition of free attendance at Maryland's public schools. *Gustafson v. Board of Education of Allegany County*, 7 Ops. MSBE 308 (1996). In reaching this holding, the State Board interpreted §7-101(a) ("All individuals who are 5 years old or older and under 21 shall be admitted free of charge to the public schools of this State") and §7-301(a)(1) (" . . . each child who resides in this State and is 5 years old or older and under 16 shall attend a public school . . .), reading them in *pari materia* because they deal with the same subject matter, share a common purpose, and form part of the same system. *See also* COMAR 13A.08.01.01A. The State Board construed these provisions harmoniously, giving a consistent and logical effect to each provision, to require bona fide residency in the State even though the free school provision in §7-101(a) does not literally include a residence requirement within its terms.

The bona fide residency requirement helps ensure that only those individuals who actually reside in Maryland receive the benefit of free education in Maryland's public schools. Thus the issue of bona fide residency within the State must be determined before deciding what jurisdiction within Maryland a child should attend school. If bona fide residency is not established, there is generally no right to attend public school in Maryland free of charge.

For a description of bona fide residency, we look to State Board regulation. The term "bona fide resident" is defined by State Board regulation concerning the enrollment collection requirements for the calculation of State financial assistance for the 24 public school systems in Maryland. COMAR 13A.02.06.02B(6). A bona fide resident of Maryland is a student who (1) is living with a parent or guardian who resides in Maryland; (2) has been determined to be a bona fide resident of Maryland in accordance with local school system policies and procedures; (3) is from another country and attending school under an Maryland State Department of Education approved program which provides for a tuition waiver; or (4) is homeless as defined by 42 U.S.C. 1302. COMAR 13A.02.06.02B(6)(a). A bona fide resident does not include a student who (1) lives in another State but attends school in Maryland under a cooperative agreement; (2) has no parent or legal guardian residing in Maryland and is temporarily living in Maryland for the primary purpose of attending a public school; and (3) is a resident of another State but is placed in a foster home or facility by an out of state agency financially responsible for the child's education. COMAR 13A.02.06.02B(6)(b).

Based on the record in this case, we find that Appellants have failed to demonstrate that they were bona fide residents of the State of Maryland. There is no evidence that the children were living with their parents in the State. Here is a summary of the evidence that was before the Local Board at the time of its decision:

- Mail sent to the Redbud Court address was returned to the school;
- Appellants' son, a senior at Churchill, told the health room technician that the family was living in Virginia;
- The mother confirmed to the health room technician that the family was living in Virginia;
- The Maryland State Department of Assessment and Taxation real property index shows that there was no structure at the Redbud Court address as of January 1, 2006;
- During a September 2006 visit to the Redbud Court address, Churchill's pupil personnel worker and registrar observed a house in the process of being built, not renovated - windows were being installed, there was no finish work on the outside of the house, and there were studs without any drywall;
- Montgomery County permits and inspection information showed that the mechanical and electrical inspections for the property failed as of December 2006;
- The mother answered a telephone call to the Virginia phone number on

- February 5, 2007, three days after the hearing with the hearing officer; and During a home visit to the Herndon address on March 15, 2007, Appellants' younger child, U.C., stated that his family lived there and that his mother and three siblings were upstairs.

The totality of the evidence that was before the Local Board clearly supports a finding that Appellants' primary residence was in Herndon, Virginia.

On appeal to the State Board, Appellant maintains that a structure existed on the Redbud Court property at the time of purchase, as evidenced by the 2003 SDAT assessment that shows the existence of an improvement on the land at that time. This evidence was not before the Local Board at the time of its decision and should not be considered by the State Board. Moreover, the fact that there was once a structure on the property does not negate the fact that for the time Appellants claim to have lived at the Redbud Court address, the SDAT assessment shows no improvement on the property. As argued by the Local Board, this demonstrates that there was a structure on the property that was torn down. (*See* Local Board's Reply to Appellant's Response). In addition, the 2007 Real Property Data Search Report submitted by the Appellants shows that a primary structure was built at the Redbud Court address in 2007.

Appellants have also submitted a printout from the Washington Suburban Sanitary Commission covering dates from December 21, 2004 through February 5, 2006 to demonstrate that there was a structure at Redbud Court. This evidence was also not before the Local Board and should not be considered. Nevertheless, while the printout shows that there was once water and sewer usage at the property, it demonstrates nothing regarding the time that Appellants claim to have lived at the property. It also shows that beginning on June 1, 2005 through February 5, 2006, there were no water/sewer charges to the property.

Although there is no denying that Appellants own property in Potomac, Maryland at 10 Redbud Court, ownership of property is not sufficient to establish residency in the State for free attendance at Maryland's public schools. *See Klingensmith v. Howard County Board of Education*, MSBE Op. No. 01-32. While Appellants claim to have resided at the Redbud property beginning in June of 2006 before temporarily moving out, and claim to have lived in Silver Spring, there is no credible evidence to support these assertions. Appellants have presented no material facts that prove that they were bona fide residents of the State of Maryland during the time in question. Nor have they presented any material facts that prove they ever left their home in Virginia to establish residence in Maryland.

CONCLUSION

Because we find that Appellants were not bona fide residents of the State of Maryland, and were therefore not entitled to free school attendance in the State, we do not reach Appellants'

argument that domicile within a county determines where a child attends school free of charge.³ We therefore affirm the Local Board's decision not to allow Appellants' children to attend school without the payment of tuition because they were residents of Virginia.



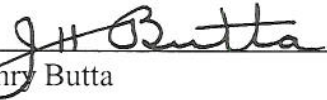
Dunbar Brooks
President



Beverly A. Cooper
Vice President



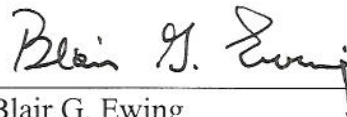
Lelia T. Allen



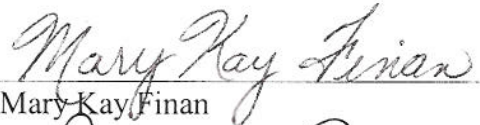
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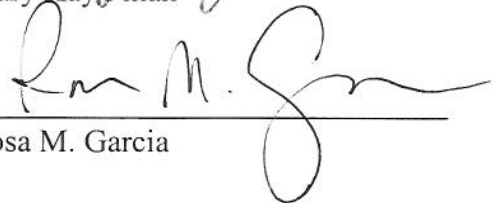
Charlene M. Dukes



Blair G. Ewing



Mary Kay Finan



Rosa M. Garcia

³Even if we were to apply the domicile standard as argued by Appellant, there is no evidence to support a finding that Appellants were ever domiciled in Montgomery County. The evidence only shows that they owned property in Montgomery County.

Richard L. Goodall

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January 30, 2008