Board of Educ. of the Bay Shore Union Free School Dist. v Commissioner of Educ.
2009 NY Slip Op 31929(U)
June 26, 2009
Supreme Court, Albany County
Docket Number: 6555-08
Judge: George B. Ceresia
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

BOARD OF EDUCATION OF THE BAY SHORE UNION FREE SCHOOL DISTRICT,

Petitioner,

For A Judgment Pursuant to Article 78 of the Civil Practice Law and Rules,

-against-

COMMISSIONER OF EDUCATION, RICHARD P. MILLS, in his official capacity as the COMMISSIONER OF EDUCATION THE STATE EDUCATION DEPARTMENT, LITZA D. LOPEZ And DAVID M. PEPPER, as parents of STUDENT R.A.,

Respondents.

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJI # 01-08-ST9188 Index No. 6555-08

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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner School District commenced the instant CPLR Article 78 proceeding seeking review of a June 19, 2008 determination of the respondent Commissioner of Education which reversed a suspension and directed that it be annulled and expunged from respondent student R.A.'s record. By decision, order and judgment dated January 9, 2009 this Court vacated respondent Commissioner's determination that the underlying finding of guilt was not supported by substantial evidence and remanded the matter to the Commissioner for a determination with respect to the penalty imposed. Respondents Lopez, Pepper and R. A. have now moved for reconsideration and or reargument with respect to the scope of the remand.

Respondents Lopez, Pepper and R. A. allegedly raised three additional arguments addressed to the merits rather than the penalty in their administrative appeal to respondent Commissioner. Only one of these issues was mentioned and none were addressed by the Commissioner because he overturned the underlying determination on the ground that it was not supported by substantial evidence. They were also not properly before the Court because they were not addressed in the administrative determination (see Matter of Scherbyn v Wayne-Finger Lakes Bd. of Coop. Educ. Servs., 77 NY2d 753, 758 [1991]; Matter of Police Benevolent Assn of N. Y. State Troopers v Vacco, 253 AD2d 920, 921 [3d Dept 1998]). As a result, petitioner and respondent Commissioner oppose the motion to reargue on the

ground that the issues were not before the Court and are thus not properly the subject of a motion to reargue. They also contend that the motion is untimely as it was not made within 30 days as required by CPLR rule 2221 (d) (3).

However, the Court finds that the motion actually seeks to resettle the decretal provisions of the decision, order and judgment. Resettlement is intended to provide a means to correct non-substantive errors or omissions in Court orders and judgments (see Siegel, NY Prac § 250, at 425 [4th ed]). Given such purpose, resettlement will often involve errors which were not addressed or argued by the parties in the underlying motion or proceeding.

In the instant case, the limitation on the scope of the remand was not raised by the parties nor was it necessary to the Court's determination or discussed in the body of the decision. Furthermore, the decision indicated that a remand on the issue of the penalty was necessary because vacatur of the Commissioner's determination effectively revived such issue. The remand was limited to the penalty because that was the only issue addressed in the Commissioner's decision which would be revived by the vacatur. It is clear that the Court did not consider that portion of the Commissioner's determination which stated that the Commissioner need not address the parties' remaining contentions, especially since the Commissioner's decision did not provide any detail as to what the additional contentions were. Moreover, there was clearly no intent on the part of the Court to limit administrative review to exclude matters which were properly before the Commissioner. Since such contentions have never been addressed, a remand should include all issues which were revived by the vacatur of the Commissioner's determination.

There is also no specific time limit for a motion to resettle an order or judgment (see

Washington v Fuchs, 243 AD2d 707 [2d Dept 1997]; Ansonia Assoc. v Ansonia Tenants Coalition, 171 AD2d 411, 412 [1st Dept 1991]). Moreover, the Court has inherent authority to correct errors in its orders and judgments (see e.g. Woodson v Mendon Leasing Corp., 100 NY2d 62, 68 [2003]).

Accordingly, it is

ORDERED, that the motion for reconsideration is hereby granted, and it is further

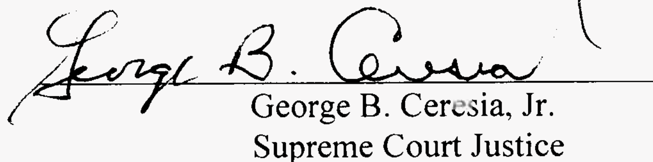
ORDERED, that the last sentence of the prior decision, order and judgment of this Court dated January 9, 2009 before the decretal paragraphs is amended to eliminate "to review the penalty imposed," and it is further

ORDERED, that the fifth decretal paragraph of the prior decision, order and judgment of this Court dated January 9, 2009 is hereby amended to read "the matter is remanded to the Commissioner of Education for further proceedings consistent with this decision/order/judgment."

This shall constitute the decision and order of the Court. All papers are returned to the attorney for the respondents Lopez, Pepper and R. A. who is directed to enter this Decision and Order without notice and to serve all attorneys of record with a copy of this Decision and Order with notice of entry.

ENTER

Dated: June 26 2009
Troy, New York



George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Notice of Motion dated March 31, 2009;
2. Affidavit of Paul L. Dashefsky, Esq. sworn to March 31, 2009 with Exhibits A-D annexed;
3. Affirmation of Michael G. McAlvin, Esq., dated April 14, 2009 with Exhibits A-G annexed;
4. Memorandum of Law dated April 16, 2009;
5. Memorandum of Law dated April 20, 2009.