

Matter of R.T. v King

2014 NY Slip Op 30853(U)

March 12, 2014

Supreme Court, Albany County

Docket Number: 5896-13

Judge: Jr., George B. Ceresia

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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of the Application of
R.T., on behalf of her infant son,
D.T.,

Petitioner,

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

-against-

DR. JOHN B. KING JR., Commissioner of
Education for the State of New York,

Respondent.

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJI # 01-13-ST5193 Index No. 5896-13

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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The infant petitioner was enrolled as an eighth grade student in the Jenny F. Snapp

Middle School within the Union-Endicott Central School District (“School District”) during the 2011-2012 school year. In late May 2012 the School Principal became aware of reports that the infant petitioner, together with other students, was planning a Columbine-style shooting. By letter dated June 1, 2012, the School Principal suspended him for a period of five days, commencing on June 1, 2012. In a separate letter dated June 5, 2012 the District Superintendent scheduled a hearing to be held on June 7, 2012. Following the hearing the Superintendent (who had acted as the hearing officer), in a written decision dated June 11, 2012, sustained the charges¹, and imposed a one year suspension until May 30, 2013. The petitioner appealed the determination to the School District which sustained the Superintendent’s determination in a decision dated August 20, 2012. On August 27, 2012 the petitioner filed an appeal of the School District’s determination, pursuant to Education Law § 310, with the New York State Commissioner of Education. Having received no decision with regard to the appeal, the petitioner, on October 29, 2013, commenced the above-captioned CPLR Article 78 proceeding for an order compelling Commissioner King to render a decision, and for the Court to retain jurisdiction for purposes of reviewing the substantive decision of the Commissioner.

The respondent has made a motion to dismiss the CPLR Article 78 petition on grounds that issues raised in the petition are moot. In support of the motion, the respondent indicates that the appeal was determined by the respondent in a written decision dated

¹The infant plaintiff had been charged with engaging in conduct that was violent, by threatening to use a weapon on students; and engaging in conduct that endangered the safety, morals, health and welfare of others, by threatening to come to school and shoot students.

October 28, 2013.²

“It is a fundamental principle of our jurisprudence that the power of a court to declare the law only arises out of, and is limited to, determining the rights of persons which are actually controverted in a particular case pending before the tribunal” (see Hearst Corp. v Clyne, 50 NY2d 707, at 713 [1980], citations omitted; see also Matter of City of New York v New York State Public Employment Relations Board, 54 AD3d 480, 481-482 [3rd Dept., 2008]). “This principle, which forbids courts to pass on academic, hypothetical, moot, or otherwise abstract questions, is founded both in constitutional separation-of-powers doctrine, and in methodological strictures which inhere in the decisional process of a common-law judiciary” (Hearst Corp. v Clyne, *supra*, at 713-714; see also Saratoga County Chamber of Commerce v Pataki, 100 NY2d 801, 810-811 [2003], cert denied 540 US 1017; Matter of NRG Energy, Inc. v Crotty, 18 AD3d 916, 918-919 [3rd Dept., 2005]; Matter of Orsi v Board of Appeals of the Town of Bethlehem, 3 AD3d 698, 700-701 [3d Dept., 2004]; Matter of Kowalczyk v Town of Amsterdam Zoning Board of Appeals, 95AD3d 1475, 1477 [3d Dept., 2012]).

The Court agrees with the respondent that the petitioner’s cause of action sounding in mandamus to compel has been rendered moot by reason that the Commissioner has issued his determination. As such, there is no further relief which could be granted. With regard to petitioner’s request that the Court retain jurisdiction once a determination was issued, the petition does not allege facts and/or arguments which demonstrate how, or in what respect

²Notably, the Commissioner’s determination relied upon the mootness doctrine in denying the appeal, relying upon the fact that the infant’s suspension had been fully served, and the petitioner had not requested any further relief.

the October 28, 2013 determination of the Commissioner qualifies for relief under any provision of CPLR 7803.³ Notably, the petitioner did not oppose the motion. Nor did the petitioner seek leave to amend the petition after receipt of the October 28, 2013 determination. The Court finds that the petition does not otherwise state a cause of action in that it does not allege facts supporting a cause of action against the respondent under CPLR 7803 (2), (3) or (4).

Under all of the circumstances, the Court finds that the motion to dismiss the petition must be granted, and the petition dismissed.

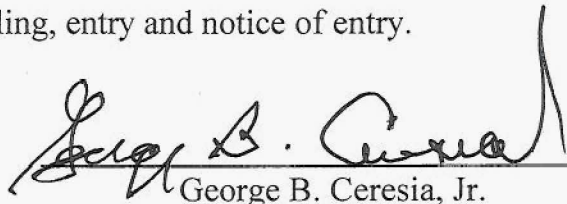
Accordingly, it is

ORDERED, that the respondent's motion to dismiss the petition is granted; and it is **ORDERED and ADJUDGED**, that the petition be and hereby is dismissed.

This shall constitute the decision, order and judgment of the Court. The original decision/order/judgment is returned to the attorney for the respondent. All other papers are being delivered by the Court to the County Clerk for filing. The signing of this decision/order/judgment and delivery of this decision/order/judgment does not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

ENTER

Dated: March 12, 2014
Troy, New York


George B. Ceresia, Jr.
Supreme Court Justice

³Nor, for that matter could it, since it was verified on October 23, 2013.

Papers Considered:

1. Notice of Petition dated October 23, 2013 and Petition
2. Notice of Motion dated January 16, 2014 and Supporting Affirmation
3. Affidavit of Lisa Struffolino, sworn to January 15, 2014