

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

BOARD OF EDUCATION OF THE : APPEAL NO. C-100399
CITY SCHOOL DISTRICT OF THE : TRIAL NO. A-1001252
CITY OF CINCINNATI, :

Plaintiff-Appellant, :

DECISION.

vs. :

ROGER T. CONNERS :

and :

DEBORAH CONNERS, :

Defendants-Appellees. :

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: March 11, 2011

Frost Brown Todd LLC, Scott D. Phillips, and Austin W. Musser, for Plaintiff-Appellant,

1851 Center for Constitutional Law, Maurice Thompson, and Tyler Kahler, for Defendants-Appellees,

Jones Day and Chad A. Readler, for Amicus Curiae Ohio Alliance for Public Charter Schools.

Please note: This case has been removed from the accelerated calendar.

SUNDERMANN, Judge.

{¶1} The Board of Education of the City School District of the City of Cincinnati (“CPS”) appeals the trial court’s entry of judgment on the pleadings in favor of Roger and Deborah Conners. Because we conclude that the deed restriction that CPS sought to enforce against the Connerses was void as against public policy, we affirm the judgment of the trial court.

{¶2} In June 2009, CPS offered nine properties for public auction. The printed marketing materials for the auction, the purchase and sale agreement, and the quitclaim deed all provided that conveyance of any of the properties would include a deed restriction that would prohibit the use of the property for school purposes. At the auction, Roger Conners was the only person to bid on the former Roosevelt School, located at 1550 Tremont Street in Cincinnati. Subsequent to the bid, the Connerses entered into a purchase and sale agreement with CPS to purchase the property for \$30,000. Title to the property was conveyed to the Connerses by a quitclaim deed on June 30, 2009.

{¶3} In October 2009, the Connerses received conditional approval from Cincinnati’s Office of the Zoning Hearing Examiner to “reopen the school as a charter school.” In January 2010, CPS received a letter from the Buckeye Institute for Public Policy Solutions informing it that the Connerses would be opening a charter school at the site.

{¶4} CPS filed a complaint for declaratory judgment and injunctive relief, seeking a declaration that the deed restriction prohibiting the use of the property as a school was valid and enforceable and seeking to enjoin the Connerses from taking any action toward opening a school on the property. The trial court concluded that

the deed restriction was against public policy and entered judgment on the pleadings in favor of the Connerses.

{¶5} In its sole assignment of error, CPS asserts that the trial court erred in granting judgment on the pleadings to the Connerses. Under Civ.R. 12(C), the trial court could grant judgment on the pleadings only if there was no material issue of fact and if the moving party was entitled to judgment as a matter of law. We review the trial court's entry of judgment on the pleadings de novo.¹

{¶6} CPS argues that, by granting judgment on the pleadings, the trial court interfered with CPS's statutory right to contract. According to CPS, the deed restriction was clear and unambiguous and was agreed to by the Connerses. CPS is correct that, under R.C. 3317.17, it was capable of "contracting and being contracted with * * * [and] disposing of real and personal property." But Ohio courts have long recognized that contract terms that are contrary to public policy are void.²

{¶7} The long history of the application of the public-policy exception has included the corresponding struggle to determine what public policy is. "[P]ublic policy is the community common sense and common conscience, extended and applied throughout the state to matters of public morals, health, safety, welfare, and the like. Again, public policy is that principle of law which holds that no one can lawfully do that which has a tendency to be injurious to the public or against the public good. Accordingly, contracts which bring about results which the law seeks to prevent are unenforceable as against public policy."³

¹ *Mayfield Clinic, Inc. v. Fry*, 1st Dist. No. C-030885, 2004-Ohio-3325, ¶6.

² See, generally, *King v. King* (1900), 63 Ohio St. 363, 59 N.E. 111; *Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Co. v. Kinney* (1916), 95 Ohio St. 64, 115 N.E. 505; *J.F. v. D.B.*, 116 Ohio St.3d 363, 2007-Ohio-6750, 879 N.E.2d 740.

³ 17 Ohio Jurisprudence 3d (1980) 528, Contracts, Section 94.

{¶8} Here, rather than bringing about a result that the state has sought to prevent, the deed restriction acts to prevent a result that the state seeks to facilitate. R.C. 3313.41 provides for the disposal of real or personal property by a school board. Under R.C. 3313.41(G)(1), “[w]hen a school district board of education decides to dispose of real property suitable for use as classroom space, prior to disposing of that property under divisions (A) to (F) of this section, it shall first offer that property for sale to the governing authorities of the start-up community schools established under Chapter 3314.”

{¶9} Despite the statute’s clear indication of the state’s policy preference of making classroom space available to community schools, CPS argues that public policy is not clear on the subject. CPS points to other statutes that regulate the operation of community schools as evidence that Ohio public policy is not clearly on the side of community schools. But that the legislature has regulated community schools does not negate its enactment of a statute that clearly favors school boards first offering classroom space that is not being used to community schools. We conclude that the trial court properly determined that the facilitation of community schools having access to classroom space was clear Ohio public policy. And the deed restriction that sought to prevent the use of the property for educational purposes was void as against this clear policy.

{¶10} We note also that we are not persuaded by CPS’s argument that the property was not “suitable” for classroom use. This argument is belied by the deed restriction itself, which allows the possibility that the restriction would not apply should CPS itself decide to use the property for school purposes in the future.

{¶11} Because the deed restriction was void as against public policy, the Connerses were entitled to judgment as a matter of law. We therefore affirm the judgment of the trial court.

Judgment affirmed.

HILDEBRANDT, P.J., and CUNNINGHAM, J., concur.

Please Note:

The court has recorded its own entry this date.

