

C.A.S. on behalf of minor children C.A.H. :
and C.B.S. :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
HOPEWELL VALLEY REGIONAL :
SCHOOL DISTRICT, MERCER COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner challenged the respondent Board’s determination that she is not domiciled within the confines of its district, and consequently that her minor children are not entitled to a free public education in Hopewell Valley Regional schools. Respondent Board contended that its investigation showed that petitioner and her children resided at a property owned by petitioner in Trenton during the period in question, and counterclaimed for tuition reimbursement.

The ALJ found that petitioner’s evidence taken as a whole did not counterbalance the more compelling evidence presented by the respondent Board, and also lacked credibility. The ALJ determined that the petitioner failed to meet her burden of proving that her permanent home is in Pennington, and, therefore, her children were not entitled to a free public education in respondent’s district. The ALJ dismissed petitioner’s appeal and granted the Board’s request for tuition in the amount of \$13,159.72.

Upon a full and independent review of this matter, the Commissioner determined that the petitioner’s exceptions were without merit, and adopted the Initial Decision of the OAL as the final decision in this matter.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

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This case is a challenge by petitioner, the mother of C.A.H. and C.B.S., to the respondent Board of Education’s determination that petitioner and her children are not domiciled in respondent’s district and that, accordingly, the children are not entitled to a free public education therein. *N.J.S.A.* 18A:38-1; *N.J.A.C.* 6A:22-3.1(a)(1) The record, including the hearing exhibits,¹ and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have petitioner’s exceptions, duly filed pursuant to *N.J.A.C.* 1:1-18.4. The Commissioner adopts the Initial Decision as the final decision in this case, for the reasons articulated therein.

Petitioner’s exceptions challenge the Administrative Law Judge’s (ALJ) findings of fact and credibility determinations. First, petitioner contends that she established residency in Pennington by “present[ing] a driver’s license, voter registration, dr bills [sic], utility bill, child custody orders all with the Pennington address” At the outset, the Commissioner notes that the cited custody orders – Petitioner’s Exhibits P-2 and P-3 – do not display petitioner’s address. Nor

¹ No hearing transcript was provided.

does petitioner's driver's license show petitioner's address as 109 Dunleigh Court. The "inquiry" marked as Petitioner's exhibit P-11 does not have the legal weight of a registered driver's license.

A water bill addressed to petitioner at 109 Dunleigh Ct., Petitioners Exhibit P-9, could be supportive of petitioner's assertion that she lives in Pennington. The addresses on the doctor bills – Petitioners Exhibit P-14 – could similarly be supportive of petitioner's residence, but are not conclusive. Such evidence must be weighed against the totality of testimony and exhibits presented in the OAL. Finally, regarding the two voter registration notices – marked as petitioner's exhibit P-10 – the one addressed to 109 Dunleigh Court is dated 1994, and the later, unsigned card shows a post office box number in Ewing.

Petitioner's second exception alleges that her children were barred from school immediately after the Initial Decision was issued. After having the Acting Executive County Superintendent look into the matter, the Commissioner is satisfied that the children were barred for a day in error and have since been attending school.

In her third exception petitioner complains that the ALJ gave no weight to the leases dated June 1, 2007 and November 1, 2008, respectively, between herself and Trina Stackhouse – Petitioner's Exhibits P-15 and P-16 – which purportedly evidence the existence of a tenant in petitioner's residential property at 625 Parkway Avenue in Trenton. The Commissioner cannot view as unreasonable the ALJ's apparent determination that this does not preclude petitioner's use of the building as a residence for herself and/or her children.

There is no description of the property in the produced leases, and petitioner testified that she uses space on the premises, to which she has access through a separate entrance. When considering that information along with the investigative reports² produced by respondent – indicating that petitioner and her children were rarely in or near 109 Dunleigh Court in the

² Respondent's Exhibit R-1 and the testimony of Investigator Frank Marchetti.

mornings and after school – the Commissioner cannot conclude that the ALJ was arbitrary or capricious in accepting the possibility that petitioner resides in her building in Trenton.

Petitioner criticizes respondent’s attendance investigator, Frank Marchetti, in her fourth exception. She argues that 1) he incorrectly listed the owner of 109 Dunleigh Court as John and Loretta Washington, 2) he could not remember [apparently while testifying at the OAL hearing] what time of day she introduced herself to him when she found him performing surveillance near 109 Dunleigh Court, and 3) he “stated that he saw a [sic]unidentified woman walking.” Petitioner also asserted that Marchetti’s position with the school district undermined the credibility of his testimony.

In connection with Marchetti’s testimony and report, petitioner also criticizes the ALJ for not deeming important 1) the fact that C.A.H. allegedly “returns home via school bus everyday [sic]”; and 2) the fact that petitioner introduced herself and C.A.H. to Marchetti outside the 109 Dunleigh Court parking lot.

Since the ownership of 109 Dunleigh Court is not an ultimate issue in this case, the Commissioner is not inclined to give great weight to the error concerning ownership that was set forth in Marchetti’s report. As to Marchetti’s reference to an unknown woman, his report indicates simply that the woman was unknown to him, and the Commissioner can draw no negative inferences from that statement.

Regarding Marchetti’s alleged inability to remember the time of day that C.A.S. introduced herself to him,³ and his alleged bias as respondent’s employee, the Commissioner notes that Marchetti’s report identified the time of day when C.A.S. introduced herself, and Marchetti’s employment does not *ipso facto* render him biased. It was incumbent upon the ALJ to evaluate Marchetti’s credibility, and the Commissioner may not disturb the ALJ’s determination that he was

³ Without the transcript the Commissioner cannot check the accuracy of this assertion by petitioner.

credible, unless a review of the record reveals that the ALJ's findings were arbitrary, capricious or unreasonable or not supported by sufficient, competent, and credible evidence in the record. *N.J.S.A. 52:14B-10(c)*; *see, also D.L. and Z.Y. on behalf of minor children T.L. and K.L. v. Board of Education of the Princeton Regional School District*, 366 *N.J.Super.* 269, 273 (App. Div. 2004). After examining the record before her, the Commissioner finds no basis to disturb the ALJ's assessment.

Petitioner's assertion that her case for residency is proven by the fact that C.A.H. traveled to the Dunleigh Court townhouse by bus on several afternoons is also flawed. It is true that out of seven afternoon surveillances of 109 Dunleigh during September and October, 2008, C.A.H. exited the school bus and walked to 109 Dunleigh Court five times. However, it is also true that C.B.S. was brought to the residence only once. In addition, out of eleven morning surveillances of 109 Dunleigh Court over that period of almost two months, C.B.S. never once went to school from 109 Dunleigh and C.A.H. did so only once. The record also reveals that a prior residency investigation – conducted in April and May, 2008, before C.A.S. was aware of the District's concerns – revealed that C.A.H. never went to school from 109 Dunleigh Court, and took the after school bus to Dunleigh Court on only two out of seven surveillance occasions. On those two occasions, he did not enter the residence. (Petitioner's Exhibit P-1)

In addition, Marchetti's surveillance at 625 Parkway Avenue in Trenton on September 17, 2008, revealed that C.A.S.'s car was parked there at 6:45 a.m. (Respondent's Exhibit R-1, at 2) Under the foregoing circumstances, the Commissioner cannot conclude that there is an evidentiary basis sufficient to warrant disturbing the ALJ's factual and credibility findings that C.A.H. and C.B.S. do not reside – and C.A.S. is not domiciled – in Pennington.

In petitioner's fifth exception she objects to the ALJ's acceptance of Vice Principal Lyndell Davis' testimony that C.A.H. admitted that he did not live in Pennington. Her contention is that the ALJ should have discounted Davis' testimony both because C.A.H. denied – at the OAL hearing – that he made such an admission to Davis, and also because Davis is allegedly biased against C.A.H. as a result of C.A.H.'s behavioral issues.

The Commissioner is not persuaded by either argument. Petitioner's speculative claim of bias is unsupported by any evidence,⁴ and there is nothing in the record that would warrant a challenge to the ALJ's credibility determination that Davis' testimony was more reliable than the testimony of C.A.H. The ALJ expressly found that "C.A.H.'s testimony did appear to be rehearsed and guarded." (Initial Decision, at 8) Also, as the ALJ pointed out, C.A.H.'s description of the interior and alleged sleeping arrangements in 109 Dunleigh Court significantly contradicted C.A.S.'s description. Such a discrepancy in the depiction of their alleged abode casts doubt on the veracity of the testimony of both witnesses.

Finally, petitioner excepts to the Initial Decision based upon the district's alleged failure to prove that Dr. Celeste Curley, Director of Pupil Services, asked Linda Pickens – the owner of 109 Dunleigh Court – for an affidavit of residency for the 2008-2009 school year. However, the ALJ stated that Curley testified under oath that she did ask Pickens for such an affidavit, and no rebuttal by Pickens was offered at the hearing. Petitioner's submission – after the closing of the record in this matter – of an affidavit by Pickens stating that she "was never asked by the Board of Education to provide a new affidavit for [her] cousin and her children" cannot be considered by the Commissioner. Pursuant to *N.J.A.C. 1:1-18.4(c)*, "[e]vidence not presented at the hearing shall not be submitted as part of an exception"

⁴ Similarly, petitioner's claim that Dr. Celeste Curley, Director of Pupil Services, was biased against C.A.H. has no evidentiary support.

Petitioner's residency appeal is dismissed and respondent is awarded tuition in the amount of \$13,159.72, based upon the certification of Business Administrator Robert Colavita.

(Respondent's Exhibit R-6)

IT IS SO ORDERED.⁵

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 29, 2008

Date of Mailing: December 30, 2008

⁵ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.