

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

IN RE: APPOINTMENT OF A RECEIVER
FOR THE SCHOOL DISTRICT OF THE
CITY OF YORK

No. 2014-SU-004190-49

CIVIL ACTION - LAW

APPEARANCES:

Clyde W. Vedder, Esquire
For the Petitioner Carolyn C. Dumaresq, Ed. D., the Acting
Secretary of Education of the Commonwealth

Marc G. Tarlow, Esquire
Michael E. Rowan, Esquire
For the Respondent School District of the City of York

Thomas W. Scott, Esquire
For the Interveners York City Education Association and
York City Education Support Professionals Association

**OPINION IN SUPPORT OF ORDER GRANTING PETITION FOR
APPOINTMENT OF RECEIVER**

FINDINGS OF FACT

1. The Secretary of Education of the Commonwealth of Pennsylvania, Ronald J. Tomalis (Secretary), issued a declaration on December 12, 2012 that the School District of the City of York (District) is in Financial Recovery Status pursuant to Pennsylvania School Code (School Code), 24 P.S. §6-621-A.
2. The action by the Secretary made the District subject to the provisions of Moderate Financial Recovery in the School Code as set forth in 24P.S. §6-621-A.
3. The Secretary's declaration is based upon the District receiving an advance in its basic education subsidy and the District having an average daily membership greater than 7,500.
4. On December 12, 2012, the Secretary appointed David G. Meckley (Meckley) to serve as the Chief Recovery Officer (CRO) for the District pursuant to the School Code. The appointment of Meckley as CRO was effective immediately.
5. The District did not challenge the Secretary's declaration of Financial Recovery Status.

6. The School Code requires the CRO develop, implement, and administer a Financial Recovery Plan (Recovery Plan) for the District. The CRO is required to develop, and implement the Recovery Plan within 90 days from the date of appointment by the Secretary.
7. At the request of the CRO, the Secretary granted an extension of time for the Completion of the Recovery Plan until April 17, 2013 and, again at the request of the CRO, granted a second extension until May 15, 2013.
8. A Community Education Counsel (CEC) was established as an Advisory Committee to provide recommendations to the CRO for the development of the Recovery Plan as required by the School Code.
9. The CRO developed a Recovery Plan as required by School Code §641-A and provided copies of the Recovery Plan as required by the School Code.
10. The Recovery Plan was submitted to the District, with copies to each member of the School Board, the District Superintendent, the District Solicitor, and the members of the Advisory Committee on May 15, 2013.
11. The District's Board of School Directors (Board) voted unanimously to approve and adopt the Recovery Plan on June 10, 2013.
12. On June 21, 2013 the then acting Secretary of Education for the Commonwealth of Pennsylvania approved the Recovery Plan.

13. The Board for the District unanimously approved an amendment to the Recovery Plan on July 17, 2013.
14. The amendment was approved by the then Secretary on July 18, 2013.
15. The Recovery Plan required each school building in the District to develop a Performance Improvement Plan that was acceptable to the CEC and be consistent with the Recovery Plan. The Recovery Plan provided that a school building that did not develop and implement a plan consistent with the Recovery Plan by November 30, 2013 would be subject to the operation by an external education provider. The CEC voted 17 to 3 not to approve any of the building Performance Improvement Plans submitted to the CEC at its November 13, 2013 meeting because the CEC determined they were not consistent with the Recovery Plan.
16. The Board and the CRO began collective bargaining with York City Education Association, (YCEA). The CRO requested that the Board and YCEA enter into a collective bargaining agreement (CBA) that was consistent with the financial stability provisions of the Recovery Plan.
17. Although the CEC and the Board approved the process for selecting external education providers, the CRO at the request of the Board prepared a proposal for an alternative option for the District to operate 5 buildings and an external education provider operate 3 buildings. The

performance of the District buildings and the external provider buildings would be compared over 4 years and beginning in the 5th year the District would move forward with one model for all buildings based upon performance.

18. On October 15, 2014 the Board voted to reject the alternative option concept.
19. On November 10, 2014 the CRO directed the Board to begin the process of converting the District to charter schools.
20. On November 19, 2014, the Board approved a CBA with YCEA that was not consistent with the financial stability provisions of the Recovery Plan.
21. The CRO directed the Board to adopt a conceptional contract for an external education provider for all of the District's buildings. The Board tabled the motion.
22. On December 1, 2014 Carolyn C. Dumaresq, Ed. D. the acting Secretary of Education of the Commonwealth of Pennsylvania (acting Secretary) petitioned this Court for the appointment of a receiver for the School District of the City of York. The Petition of the acting Secretary requested that the Court conduct a hearing, declare the District to be in receivership, and appoint Meckley as the Receiver for the District.

23. Meckley acknowledged at the hearing that modifications would be required to the agreement for a charter operator. Meckley acknowledged that there were issues raised by the Board that would have to be addressed in the agreement.
24. The testimony of Meckley was credible. His testimony on the issues of the financial aspects of the District and the reasonableness of the plan in restoring the District to financial stability was precise, clear, direct and convincing.
25. The District's Business Manager, Richard Snodgrass (Snodgrass), testified that the Recovery Plan would save the District approximately four (4) million dollars.
26. Meckley satisfies the requirements for an individual to be appointed as a Receiver as set forth in §671-A(c)1 of the School Code. Meckley possesses at least five (5) years' experience in the areas of budget financial management. 24P.S. §671-A(c)1(i).
27. On December 12, 2012 the Secretary appointed Meckley as CRO for the District and he currently serves in this capacity. Meckley qualifies for the position of Receiver for the District pursuant to §671-A(c)(2) of the School Code.

28. Meckley does not currently hold and has agreed not to seek or hold a position as an employee or as an elected or appointed official of the District during the term of receivership, nor for a period of two (2) years after receivership has ended.
29. Meckley has agreed not to seek or hold an elected office in a political subdivision within the District during the term of the receivership or for a period of two (2) years after the receivership has ended.
30. Meckley has not engaged in any conduct prohibited by the State Adverse Interest Act, 71 P.S. §776.1 et seq., or the Public Official Employees Ethics Act, 65 PA.C.S. Chapter 11 (relating to ethics standards and financial disclosure).

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties in the subject matter of this Petition.
2. The District is in Financial Recovery Status.
3. The School Code provides that the Court shall grant the request for appointment of Receiver unless the Court finds by clear and convincing

evidence that the Petition is arbitrary, capricious, or wholly irrelevant to restoring the District's financial stability.

4. The Petition for the Appointment of Meckley as Receiver for the District is not arbitrary, capricious nor wholly irrelevant to restoring the District's financial stability.
5. The plan addresses the restoration of the District to financial stability.
6. Neither the details, the appropriateness, nor the legality of the Recovery Plan are matters before the Court for determination as part of the hearing on the Petition for Appointment of a Receiver.
7. The Petition of the acting Secretary should be granted and David G. Meckley should be appointed as Receiver for the District and implement the Recovery Plan submitted to the District on May 15, 2013, and approved by the District on June 10, 2013, as amended on July 17, 2013.

Discussion

The issue before the Court is whether or not the application by the Secretary for the appointment of a receiver is arbitrary, capricious and wholly irrelevant to restoring the district to financial stability. The issue is not what action the Receiver would take if appointed by the Court. The Receiver would not be

bound by any proposal discussed or testified about at the hearing. While that may have some bearing on the Court's determination as to whether or not the Petition was arbitrary and capricious or wholly irrelevant to restoring the District to financial stability, it is not for the Court to determine whether or not it is the best plan or even a good plan for the District. That is a determination to be made by the Receiver.

The Secretary may issue a declaration that a school district is in "financial recovery status" when the district has an average daily membership greater than 7,500 students and receives an advance of its basic education subsidy. 24 P.S. § 6-621-A. The Secretary's declaration of financial recovery status may be appealed under 2 Pa.C.S. (relating to administrative law and procedures). 24 P.S. § 6-621-A(c). After the Secretary declares a school district in financial recovery status, the Secretary must appoint a CRO within five days. 24 P.S. § 6-631-A(a). The CRO serves at the pleasure of the Secretary. *Id.* Additionally, within ten days of the declaration the school's board of directors must establish an advisory committee to meet and consult with the CRO in carrying out the CRO's duties. 24 P.S. § 6-654-A.

After the CRO is appointed, the Board has a duty to comply with the directives issued by the CRO. 24 P.S. § 6-653-A(b)(1). The Board cannot act if those actions are (1) inconsistent with the financial recovery plan; (2) not

specifically identified in the financial recovery plan; or (3) not directed by the CRO as necessary to implement the financial recovery plan. 24 P.S. § 6-653-A(b)(1)(i)-(iii). If the Board fails to comply with the CRO's directives or takes action prohibited as stated in (1)-(3) above, the School Code provides that the school district shall be subject to the appointment of a receiver. §6-653-A(b)(2).

The School Code requires the Secretary to file a petition to appoint a receiver in the court of common pleas in the county where the school district is located upon the occurrence of any of the [above] conditions, including:

- (i) A failure by the board of school directors to approve a financial recovery plan under section 652-A(c) or 663-A(c);
- (ii) A failure by the board of school directors to comply with directives issued by the chief recovery officer under section 653-A(a)(2) or 664-A(a)(2) . . .

24 P.S. §6-671-A(a)(1)(i)-(ii). The matter before the court is the interpretation of an application of the statute passed by the Pennsylvania Legislature:

- (1) Not later than ten days following the hearing conducted under subsection (f), the court shall issue an order granting or denying the receivership. The court shall grant the receivership unless the court finds by clear and convincing evidence that the petition for the appointment of a receiver is arbitrary, capricious or wholly irrelevant to restoring the school district to financial stability.

24 P.S. §6-671-A(g). Since the statute requires that "[t]he court *shall grant* the receivership unless the court finds by *clear and convincing evidence* that the petition for the appointment of a receiver is *arbitrary, capricious, or wholly*

irrelevant to restoring the school district to financial stability" the decision by the court in this case is relatively easy from a legal standpoint.¹ (emphasis added)

The Pennsylvania Legislature has determined that a court of common pleas in the Commonwealth must grant the receivership, unless the opposing party can establish by clear and convincing evidence that the Petition is arbitrary, capricious or wholly irrelevant to restoring financial stability to the school district. The burden of proof set by the Legislature reveals that the Court must use a higher standard than is usually applied to civil cases. The typical burden of proof in a civil case is a preponderance of the evidence. A preponderance of the evidence "means a fact is more likely true than not." Pennsylvania Civil Jury Instructions §5.00. On the other hand, the burden of proof is at its highest in a criminal case. The Commonwealth must establish a defendant's guilt beyond a reasonable doubt.

The language in the School Code calls for a clear and convincing burden of proof. The clear and convincing standard is significantly higher than a mere preponderance of the evidence but a lesser burden than the criminal beyond a reasonable doubt standard. In order to establish clear and convincing evidence, a moving party must show that "the evidence is so clear, direct, and substantial

¹ As I have stated on a number of occasions this is not, as no decision by a judge can be in any matter before the court, an emotional decision or one based upon an individual judge's personal beliefs or desires. The decision must be based upon the law of the Commonwealth as the Legislature has determined it to be by the statute and nothing else.

that you are convinced, without hesitation, that a fact is true.” Pennsylvania Civil Jury Instructions § 5.10. This standard usually applies when “[t]he interests at stake . . . are deemed to be more substantial than mere loss of money” and when “particularly important” interests are at stake.” *Addington v. Texas*, 441 U.S. 418, 422-24 (1979).

The Pennsylvania Supreme Court has defined clear and convincing evidence as “testimony that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitation, of the truth of the precise facts in issue.” *In re R.I.S.*, 614 Pa. 275, 284 (2011). Clear and convincing evidence requires “that the witnesses must be found to be credible; that the facts to which they testify are distinctly remembered and the details thereof narrated exactly and in due order; . . . It is not necessary that the evidence be uncontradicted provided it carries a clear conviction to the mind or carries a clear conviction of its truth.” *In re Novosielski*, 605 Pa. 508, 537 (2010). Because a preponderance of the evidence is the typical standard in a civil case, the clear and convincing standard is reserved for the most serious civil cases. The clear and convincing standard has been applied in a variety of civil

proceedings, which has included civil commitment, termination of parental rights, and to prove common-law marriage.²

In the context of the Petition to Appoint a Receiver, the School Code mandates that the non-moving party (i.e. the District and YCEA) show by clear and convincing evidence that the petition is arbitrary, capricious, or wholly irrelevant to restoring the school district to financial stability. The terms arbitrary, capricious, and wholly irrelevant are not statutorily defined within the School Code so we will briefly address their meaning.

Arbitrary is defined as “founded on prejudice or preference rather than on reason or fact.” BLACK’S LAW DICTIONARY (9th ed. 2009). Arbitrary has also been defined as “not planned or chosen for a particular reason,” “not based on reason or evidence” and “done without concern for what is

² Pennsylvania Civil Jury Instructions § 5.10 (Subcommittee Note): civil commitment, *In re J.M.*, 726 A.2d 1041 (Pa. 1999); termination of parental rights, *In re Adoption of Charles E.D.M. II*, 708 A.2d 88 (Pa. 1998); to prove common-law marriage, *Staudenmayer v. Staudenmayer*, 714 A.2d 1016 (Pa. 1998); to overcome the presumption that a child conceived during marriage is child of marriage, *Brinkley v. King*, 701 A.2d 176 (Pa. 1997); in judicial disciplinary matters, *In re Pekarski*, 639 A.2d 759 (Pa. 1994); to prove fraud, *Phillips v. Commonwealth, Workmen's Compensation Appeal Board*, 545 A.2d 869 (Pa. 1988); in a will contest to prove undue influence, *Estate of Reichel*, 400 A.2d 1268 (Pa. 1979); to modify a written contract by proof of fraud, accident, or mistake, *Snyder Bros., Inc. v. Peoples Natural Gas Co.*, 676 A.2d 1226 (Pa.Super. 1996); to prove bad faith by an insurer pursuant to 42 P.S. § 8371, *MGA Insurance Co. v. Bakos*, 699 A.2d 751 (Pa.Super. 1997); to prove intent in a fraudulent conveyance, pursuant to 12 P.S. § 5104, *In re Foxcroft Square Co.*, 184 B.R. 671 (Bankr. E.D. Pa. 1995); to overcome the presumption that a disinterested director is not acting in good faith pursuant to 15 P.S. § 1715; and to prove fraudulent transfer made by debtor in bankruptcy, pursuant to 39 P.S. § 357.

fair or right.” Merriam Webster Dictionary, <http://www.merriam-webster.com/dictionary/arbitrary> (see also *Thunberg v. Strause*, 545 Pa. 607, 615 (1996) explaining that arbitrary conduct “is based on random or convenient selection or choice rather than on reason or nature.”) Capricious is defined as being “characterized by or guided by unpredictable or impulsive behavior.” BLACK’S LAW DICTIONARY (9th ed. 2009). Capricious is also defined as “not logical or reasonable” and based on an idea or desire that is not possible to predict. Merriam Webster Dictionary, <http://www.merriam-webster.com/dictionary/capricious>. Wholly means not partially but “completely or fully” and irrelevant is “having no substantial relation to the action, and will not affect the court’s decision.” BLACK’S LAW DICTIONARY (9th ed. 2009). With the foregoing information in mind, we turn to the instant Petition.

The Court finds that the Petition to Appoint Meckley as Receiver of the District is not arbitrary, capricious, or wholly irrelevant to restoring the District’s financial stability. On December 12, 2012, Meckley was appointed to serve as the CRO for the District. Meckley, in collaboration with the District, the advisory committee, and others developed the Recovery Plan in compliance with the requirements in 24 P.S. §6-641-A. The Board and the Secretary approved the Recovery Plan and a subsequent amendment to it. The Recovery Plan provided

for an “internal transformational model” which required, *inter alia*, “salary and benefit concessions from District employees, changes to the educational delivery method utilized in the District, and the achievement of defined performance goals.” See Petitioner’s Findings of Fact and Conclusions of Law ¶ 13. If the conditions and objectives in the internal transformational plan were not achieved in the timeframe set forth in the Recovery Plan, the Recovery Plan provided for one or more schools in the District to be operated by an external education provider. *Id* at ¶ 15.

The Recovery Plan also authorized the Board to empower the CEC to review and approve individual building Performance Improvement Plans. The Recovery Plan provided that each school’s advisory counsel was charged with developing and implementing improvement plans that were building-specific. The plans would be submitted to the CEC for review and approval. The Recovery Plan outlined that any school that failed to either develop an approved improvement plan or could not produce evidence of implementing an improved plan by November 30, 2013 would be subject to operation by an external education operator as early as the 2014-15 school year. *Id* at ¶ 28. By November 30, 2013, the CEC had not approved any building improvement plans. Therefore, the internal transformational model was not being executed in accordance with the Recovery Plan.

One of the key components of the Recovery Plan was for the Board to enter into a CBA with the YCEA that was consistent with the financial provisions within the Recovery Plan. The Recovery Plan detailed required salary and benefit concessions that were required in order to comport with the Recovery Plan's financial goals. In October 2013, a draft CBA in compliance with the Recovery Plan was submitted to the YCEA, which was rejected. In June 2014, a second draft CBA was submitted to the YCEA with moderate salary and benefit concessions, and again it was rejected. A fact-finder's report was issued on October 27, 2014, and approved by the Board, but the YCEA also rejected that report. Accordingly, the internal transformational model lacked the necessary CBA to properly implement the Recovery Plan. On November 19, 2014, and unbeknownst to Meckley, the Board and YCEA entered into a CBA. The District's Business Manager, Snodgrass later reviewed the CBA and determined that it was not consistent with the financial goals of the Recovery Plan as there would be a four (4) million dollar budget deficient per year with reference to instructional costs.

Due to the standstill in the implementation of the internal transformational model, Meckley provided the Board with the "York Recovery Plan" which provided for an alternative option of partial District school conversion. The alternative option concept provided that the District would operate five schools

and an external education provider would operation three District schools. This alternative plan was to operate for a period of four years to see which education provider had greater success. However, at the October 15, 2014 monthly school meeting, the Board rejected this alternative option.

In a memorandum dated November 10, 2014, the CRO directed the Board to approve a resolution that would cause all buildings in the District to be operated by an external education provider, effective July 1, 2015. After a process of bidding and vetting, Meckley selected Charter Schools USA as the external education provider. Included in the November 10, 2014 memo, Meckley attached a copy of the unfinished charter agreement and directed the Board to approve it. The charter name on the agreement was blank and the Board was left with many questions regarding the implementation of that agreement. Therefore, based on what the Board found to be inadequate information, the charter agreement was not approved.

During the two-day hearing for the acting Secretary's Petition, there was no testimony that the plan would not restore the District to financial stability or that it was irrelevant to that goal. The District and YCEA provided testimony that the recovery plan's projected numbers may be erroneous, and that the District would actually have a surplus at the end of the June 2015 fiscal year. Snodgrass testified that the analysis of the District and YCEA assertions were wrong. The

District and YCEA also provided testimony that the plan may be deficient in several respects, as it required further exploration of substantial issues like staffing requirements and further planning for special needs students.

Alternatively, Meckley testified that the Recovery Plan was related to the financial stability of the District and reasonable in light of the District's finances and projected enrollment. Snodgrass testified that if the Recovery Plan was properly implemented, it would save the District approximately four (4) million dollars. Snodgrass also testified that the District and YCEA entered into a CBA that was inconsistent with the Recovery Plan as it would produce a budget deficit. Meckley testified that he worked with the Board, the advisory committee, and others to develop and implement the Recovery Plan as required by the School Code. When the Board questioned the implementation of the internal transformational model, Meckley attempted a compromise by directing a partial District conversion to an external education provider.

Meckley was a credible witness and the record reflects that Meckley's actions were not arbitrary or capricious and related to the financial stability of the District. The record does not support denying the Petition under the heightened burden of clear and convincing evidence. Therefore, we find the Petition to appoint Meckley as receiver is not arbitrary, capricious or wholly irrelevant to the District's financial stability.

There was considerable disagreement between the parties whether it was a good plan, however the School Code does not permit the Court to inquire into these issues. By statute, the Court is not charged with determining whether the plan was reasonable or if it would in-fact restore financial stability to the District. The Court does not have the authority to consider whether the Petition is in the best interest of the District and the citizens of York County. The Legislature did not draft the statute intending to interject the Court into the Recovery Plan and scrutinize its details. The statute also does not provide that the Recovery Plan must secure the District's financial stability; the Recovery Plan just must be relevant in some way.

In order to deny the Petition, the statute requires that the Recovery Plan must be wholly irrelevant, not just irrelevant. Meckley and Snodgrass testified that the recovery plan was reasonable and can reasonably be considered to restore financial stability to the District. Although the District and YCEA questioned the mathematical validity and pointed to deficient information in the recovery plan, the Legislature has not permitted the Court to engage into this type of analysis. The Court can only determine whether granting the Petition and appointing Meckley as Receiver is arbitrary, capricious, or wholly irrelevant to restoring the District's financial stability. As described in the findings of fact,

Meckley qualifies for the position as Receiver for the District pursuant to §671-A(c) of the School Code. Accordingly, we will grant the Secretary's Petition.

CONCLUSION

In conclusion, the Court will **GRANT** the Petition for Appointment of Receiver filed on December 1, 2014. An Order consistent with this Opinion will be entered.

BY THE COURT,

Stephen P. Linebaugh, President Judge
19th Judicial District of Pennsylvania

Dated: December 26, 2014