United States Court of Appeals

for the

Third Circuit

Case No. 17-2886

G.S., a minor, by his parents, J.S. and E.S.

– v. –

ROSE TREE MEDIA SCHOOL DISTRICT (E.D. Pa. No. 2-16-cv-04782)

ROSE TREE MEDIA SCHOOL DISTRICT

– v. –

E.S. and J.S., Parents and Natural Guardians of G.S., a Minor
(E.D. Pa. No. 2-16-cv-04849)

Rose Tree Media School District,

Appellant.

ON APPEAL FROM AN ORDER ENTERED UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIEF ON BEHALF OF APPELLANT

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United States Court of Appeals for the Third Circuit

Corporate Disclosure Statement and Statement of Financial Interest

No. 17-2886

G.S., et al

v.

ROSE TREE MEDIA SCHOOL DISTRICT

Instructions

Pursuant to Rule 26.1, Federal Rules of Appellate Procedure any nongovernmental corporate party to a proceeding before this Court must file a statement identifying all of its parent corporations and listing any publicly held company that owns 10% or more of the party's stock.

Third Circuit LAR 26.1(b) requires that every party to an appeal must identify on the Corporate Disclosure Statement required by Rule 26.1, Federal Rules of Appellate Procedure, every publicly owned corporation not a party to the appeal, if any, that has a financial interest in the outcome of the litigation and the nature of that interest. This information need be provided only if a party has something to report under that section of the LAR.

In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate shall provide a list identifying: 1) the debtor if not named in the caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is an active participant in the bankruptcy proceedings. If the debtor or the bankruptcy estate is not a party to the proceedings before this Court, the appellant must file this list. LAR 26.1(c).

The purpose of collecting the information in the Corporate Disclosure and Financial Interest Statements is to provide the judges with information about any conflicts of interest which would prevent them from hearing the case.

The completed Corporate Disclosure Statement and Statement of Financial Interest Form must, if required, must be filed upon the filing of a motion, response, petition or answer in this Court, or upon the filing of the party's principal brief, whichever occurs first. A copy of the statement must also be included in the party's principal brief before the table of contents regardless of whether the statement has previously been filed. Rule 26.1(b) and (c), Federal Rules of Appellate Procedure.

If additional space is needed, please attach a new page.

Pursuant to Rule 26.1 and Third Circuit LAR 26.1, ROSE TREE MEDIA SCHOOL DISTRICT makes the following disclosure: (Name of Party)

1) For non-governmental corporate parties please list all parent corporations: NOT APPLICABLE

2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock:

NOT APPLICABLE

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has as a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests:

None

4) In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is active participant in the bankruptcy proceeding. If the debtor or trustee is not participating in the appeal, this information must be provided by appellant.

Not applicable

Katherine H. Meehan
(Signature of Counsel or Party)

Dated: 10/2/17

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STATEMENT OF JURISDICTION

This Court of Appeals has jurisdiction over all final orders of the District Courts within its jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES PRESENTED

I. WHETHER THE APPELLEES ARE BOUND BY THE PROVISIONS OF THEIR COUNSELED AND BARGAINED FOR CONTRACT AND APPELLANT IS NOT REQUIRED TO PROVIDE FOR G.S.'S EDUCATION AFTER THE 2015-2016 SCHOOL YEAR WHERE STUDENT DOES NOT RESIDE WITHIN THE SCHOOL DISTRICT

II. WHETHER THE APPELLEES ARE NO LONGER HOMELESS UNDER THE MCKINNEY-VENTO ACT WHERE THEY HAVE LIVED IN A FIXED, REGULAR AND ADEQUATE HOME FOR APPROXIMATELY THREE YEARS

A. Appellees' Family of Five Has Continuously Resided Under the Same Living Arrangements For More Than Three Years and Can Do So Indefinitely

B. Doubling Up With Others is Not Homelessness Where the Arrangement is Fixed, Adequate and Regular

C. The LEA is Only Required to Keep a Homeless Student in the School of Origin Until Homelessness Ceases, if it is in the Best Interest of the Child

STATEMENT OF RELATED CASES

Appellant initiated a state court action which was removed to this court under file number 16-cv-4849, which was consolidated with Appellees' original case file number 16-cv-4782 by the District Court on February 27, 2017.

STATEMENT OF THE CASE

During the 2014-2015 school year, following a serious disciplinary incident, a dispute arose between the parties as to the appropriate educational placement for G.S. Through negotiations with counsel representing both parties, in the Spring of 2015 the parties reached an agreement that G.S. would attend Cardinal O'Hara High School during the 2015-2016 school year, and the Appellant would pay the cost of tuition, books, uniforms, lunches and transportation.

The Appellant became aware in the Fall of 2014 that the Appellees had moved out of the District and directly into an established home with relatives within another school district, yet failed to notify the Appellant of their move. When the Appellant approached Appellees about their move, it appeared the Appellees might be temporarily homeless, therefore, the Appellant treated them as such. However, as more and more time went on and the Appellees remained in the same living arrangement, the Appellant believed and therefore asserted that the Appellees had established a fixed and adequate residence in the other school district. The parties with their counsel drafted and negotiated several versions of the Settlement Agreement. At that time, because the family appeared to be settled in a new home, a provision was included in the settlement agreement which indicated that following the 2015-2016 school year, the Appellant would have no further obligation for G.S.'s education unless the Appellees moved back into the

School District. The Appellees signed the final version on August 20, 2015. Appellant fulfilled its obligations to fund G.S.'s education elsewhere. However, in the Spring of 2016 and continuing into the Summer, the Appellees pressed Appellant for placement by the Appellant within the District's schools in 2016-2017, even though they had remained at the fixed address in the other District for nearly 2 years. Through discovery, it was learned that the Appellees moved directly from the District to the other address, are living with close relatives, and can remain at that address for as long as they wish. The Appellees have not made any significant efforts to obtain or locate other housing either within the District or anywhere else. Accordingly, the Appellees have established a fixed, adequate and regular residence and are no longer homeless as a matter of law.

STANDARD OF REVIEW

The Third Circuit exercises plenary review over a district court's order granting summary judgment. Bieregu v. Reno, 59 F.3d 1445, 1449 (3d Cir.1995); United States v. Koreh, 59 F.3d 431, 438 (3d Cir.1995).

SUMMARY OF THE ARGUMENT

Appellant and Appellees bargained for, and entered into a settlement agreement for the education of G.S. There is no dispute that both parties were represented by counsel and actively involved their counsel. It is not disputed that Appellees reviewed the final agreement with their counsel and signed the agreement indicating their consent. It is not disputed that the Appellant met its obligations under the settlement agreement and expended a full year of tuition, plus uniforms, books and school lunches, as well as attorney's fees. Finally, it is further undisputed that Appellees knew and understood the terms of the settlement agreement, as is evidenced by their deposition testimony, their enforcement of the agreement by repeated contacts with the Appellant to pay tuition and to pay for the lunches, as well as their knowledge of the March 1st date by which they could establish residency within the District in order to continue services for G.S. Accordingly, Appellees should be held to their Agreement under which the Appellant has already performed.

The evidence discovered in this matter is undisputed. The Appellees have resided, together, at the same address outside of the District for over three years, have places to sleep, all of the comforts of a home, and are under no financial obligation or threat to leave. Accordingly, the family is no longer homeless under the definitions, intent and meaning of the McKinney-Vento Act.

ARGUMENT

The Third Circuit exercises plenary review over a district court's order granting summary judgment. Bieregu v. Reno, 59 F.3d 1445, 1449 (3d Cir.1995); United States v. Koreh, 59 F.3d 431, 438 (3d Cir.1995). Summary judgment may be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). When considering a motion for summary judgment, the court must view all evidence in favor of the non-moving party. Bixler v. Central Pennsylvania Teamsters Health & Welfare Fund, 12 F.3d 1292, 1297 (3d Cir.1993). Accordingly, all doubts must be resolved in favor of the non-moving party. Meyer v. Riegel Prods. Corp., 720 F.2d 303, 307 (3d Cir.1983). To successfully challenge a motion for summary judgment, the non-moving party must be able to produce evidence that "could be the basis for a jury finding in that party's favor." Kline v. First Western Government Sec., 24 F.3d 480, 485 (3d Cir.1994). Reitz v. County of Bucks, 125 F.3d 139 (3d Cir. 1997).

In the present matter, the parties do not dispute the material facts related to the Settlement Agreement between the parties, or the living arrangements of G.S.'s family. Therefore, the matter was ripe for summary judgment. The lower court reviewed the matter and succinctly concluded that summary judgment should be

granted in favor of the Appellees. Appellant does not concur with this conclusion because it undermines the certainty and enforceability of its contract with Appellees that it relied upon, and also because the totality of the facts discovered show that the Appellees have established a fixed, adequate and regular home, and therefore, cannot be homeless under the McKinney-Vento Act.

I. THE APPELLEES ARE BOUND BY THE PROVISIONS OF THEIR COUNSELED AND BARGAINED FOR CONTRACT AND APPELLANT IS NOT REQUIRED TO PROVIDE FOR G.S.'S EDUCATION AFTER THE 2015-2016 SCHOOL YEAR WHERE STUDENT DOES NOT RESIDE WITHIN THE SCHOOL DISTRICT

Appellees knowingly entered into a binding settlement agreement with Appellant while represented by counsel, received adequate consideration, and therefore should be held to the terms of the Agreement. Appellees agreed that District would have no further obligation for G.S.'s education after the 2015-2016 school year, and received substantial consideration for all of the promises made in the form of tuition to a private school for one year, uniforms, transportation, and even lunches. The Appellees accepted the consideration paid by the Appellant in its performance of the Settlement Agreement; Appellees clearly knew the terms of the Agreement while accepting Appellant's performance. After collecting the consideration and allowing Appellant to perform its obligations, Appellees breached the clear terms of the Agreement and attempted to force G.S. back into

Appellant's schools for the 2016-2017 school year even though they continued to reside outside of the school district, thereby resulting in this litigation.

Settlement agreements are contracts to which basic contract principles are applied, unless precluded by law. Harris v. Dept. of Veterans Affairs, 142 F.3d 1463 (3d Cir. 1998). For a settlement agreement to be enforceable and binding, there must be mutual assent between the parties. Stewart v. Professional Computer Centers, Inc., 148 F.3d 937, 939 (8th Cir. 1998). Mutual assent simply implies that the parties agreed to the contract, and does not include a requirement that the parties understand the legal consequences of their actions. Govia v. Burnett, 2003 WL 21104925 (Terr. V.I. 2003), citing, E. Allan Farnsworth, Contracts § 3.6 (2d ed. 1990). Under Pennsylvania law, "contracting parties are normally bound by their agreements, without regard to whether the terms thereof were read and fully understood and irrespective of whether the agreements embodied reasonable or good bargains." Simeone v. Simeone, 581 A.2d 162, 165 (Pa.1990); see also Standard Venetian Blind Co. v. American Empire Ins. Co., 469 A.2d 563, 566 (Pa.1983) (stating that failure to read the contract does not warrant avoidance or nullification of its provisions). Where a contract is entered into willingly and voluntarily and with the guidance and advice of counsel, it is binding on the parties, and one party cannot unilaterally modify the terms of the agreement because they later consider the terms disadvantageous or unsatisfactory. Govia, 45

V.I. 235, 245 (2003). Under Pennsylvania law, when the language of a contract is clear and unambiguous, there is no need for interpretation, and any rights and obligations expressly set forth in the contractual language must be recognized and enforced. Spigelmire v. School Dist. of Borough of N. Braddock, 43 A.2d 229 (Pa.1945); General Fin. Co. v. Pennsylvania Threshermen & Farmers' Mut. Cas. Ins. Co., 35 A.2d 409 (Pa.1944); see also Hutchison v. Sunbeam Coal Corp., 519 A.2d 385 (Pa.1986) ("The law will not imply a different contract than that which the parties have expressly adopted.").

Public policy favors the enforcement of lawful settlement agreements. Farris v. J.C. Penney, 176 F.3d 706, 711 (3d Cir. 1999). Settlements are encouraged to promote the resolution of disputes and reduce the plethora of litigation in courts. D.R. by his parents and guardians M.R. and B.R. v. East Brunswick Board of Education, 109 F. 3d 896, 901 (3d Cir. 1997). To void settlement agreements when they become unpalatable would work a significant deterrence contrary to the federal policy of encouraging settlement agreements. Id. It cannot be overstated how important the enforcement of valid, counseled settlement agreements are to school districts such as Appellant. Such agreements are not entered into lightly or frivolously and often require districts to expend significant taxpayer funds to satisfy the dispute. Accordingly, districts act in great

reliance on the settlement agreements and desire to do so as part of their fiduciary and trust duties to the public good.

As is not unusual in the area of education law, occasionally schools and parents of the minor students encounter disagreements between them as to the education of the student. In cases where the parties have entered in to settlement agreements to resolve their differences, especially when doing so under advice of counsel, those agreements are usually upheld by the courts. This court has historically upheld such agreements. See, Ballard v. Philadelphia Sch. Dist., 273 Fed. Appx. 184 (3d Cir. 2008); and D.R., supra.

In Ballard, a dispute arose between the parent and district regarding the amount of time the student would spend in a Life Skills (LSS) class per day – parent desired more time in a regular education classroom, and the district felt more time in the LSS class was appropriate. Parent sought due process, and was granted the less restrictive option; district appealed, and the Appeals Panel reversed the ALJ and ordered that the student be placed in the full-time LSS class. Parent appealed to the U.S. District court. On the morning of trial, Parent and her counsel agreed to settle all issues with the district and signed a settlement agreement. Parent was represented by counsel during all proceedings in the District court, including the execution of the settlement agreement. Two months after signing the agreement, parent moved (pro se) to vacate the settlement

agreement, claiming she had signed the agreement under duress. Parent claimed her attorney pressured her into signing the agreement, and that she had received one document two weeks before settlement and another document the night before the settlement; in short, she had changed her mind. The district court rejected parent's claim where parent was represented by counsel and admitted she signed the agreement. The court indicated that there is no good cause to vacate the agreement simply because the party had changed her mind after entering into an otherwise valid agreement. Parent appealed, and the Third Circuit affirmed, reasoning that not only was parent unable to show any duress, but also that settlement agreements are encouraged by public policy, and should be upheld even if they later become distasteful to the party. The court further noted that parent was counseled with regard to the agreement, and there was no evidence of any ill conduct by the school district. Therefore, the district court's decision was affirmed.

In D.R., supra, this court reversed the district court's decision where the district court set aside a settlement agreement and entered summary judgment in favor of the parents. In that case, parents and district had reached a settlement agreement with regard to the educational placement of the parent's severely disabled child. In particular, parent's desired residential placement, while the district felt residential placement was not appropriate. Parents unilaterally placed

student at the Benedictine School. Parents and district later agreed to mediation and entered in to an agreement whereby the district would pay for Benedictine School at an annual rate of $27, 500 from January 1, 1992 through the summer, and 90% of any increase over the 1991-1992 rate, but would then be released from any further costs associated with the placement. It quickly became apparent that D.R.'s needs exceeded the Benedictine School's abilities, and the School increased its annual tuition to $62,487 for the 1992-1993 school year, plus services of two aides each at a cost of $16,640. The district revised to pay for the personal aides, asserting the provisions of the settlement agreement that released it from costs of related services. The parents sought an ALJ hearing, arguing that the aides were necessary. District moved for dismissal, asserting the terms of the parties' settlement agreement; the ALJ agreed. Parents appealed to the U.S. District Court for the District of New Jersey, which upheld the settlement agreement, but remanded the matter to the ALJ for a determination of whether the student's personal circumstances had changed. Again, there was a ruling in favor of the district, and again the parents appealed to the District Court. This time, the Court concluded that the student's circumstances had changed, and the aides had become educationally necessary, therefore, the Court set aside the clear terms of the settlement agreement, and ruled in favor of the parents. The district appealed. In examining the facts, the Third Circuit noted that the lower court erred in finding

that student's circumstances had changed, noting that the only change that occurred was the change in the bill send by the Benedictine School, which increased because the School could not handle programming for D.R. In recognizing the importance of settlement agreements, the learned court opined:

> [a] party enters a settlement agreement, at least in part, to avoid unpredictable costs of litigation in favor of agreeing to known costs. Government entities have additional interests in settling disputes in order to increase the predictability of costs for budgetary purposes. **We are concerned that a decision that would allow parents to void settlement agreements when they become unpalatable would work a significant deterrence contrary to the federal policy of encouraging settlement agreements**. *See, McDermott, Inc. v. AmClyde*, 511 U.S. 202, 213-15, 114 S. Ct. 1461, 1468, 128 L.Ed.2d 148 (1994) ("Public policy wisely encourages settlement."). **Settlement agreements are encouraged as a matter of public policy because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by courts**. In this case, public policy plainly favors upholding the settlement agreement entered between D.R.'s parents and the Board.

D.R. at 901 (emphasis added).

In the present matter, as in the two preceding precedential cases, the parties bargained for, and entered into a settlement agreement for the education of G.S. (A. 138-143). In the present matter, the parents entered into a binding agreement that was fully counseled, and for which they received valuable consideration. Parents agreed that District would have no further obligation to educate G.S. after the 2015-2016 school year, unless parents could establish residency within the District. Parents promised, among other things, that they would not claim

homeless status after the 2015-2016. Nevertheless, towards the end of the 2015-2016 school year and into the summer of 2016, parents (through counsel) pressed District to re-enroll G.S., claiming homelessness. Parents actions are in direct breach of the material portions of the contract.

It is not disputed that Appellees reviewed the final agreement with their counsel and signed the agreement indicating their consent. It is not disputed that the Appellant met its obligations under the settlement agreement and expended a full year of tuition, plus uniforms, books and school lunches, as well as attorney's fees. Finally, it is further undisputed that Appellees knew and understood the terms of the settlement agreement, as is evidenced by their deposition testimony, their enforcement of the agreement by repeated contacts with the Appellant to pay tuition and to pay for the lunches, as well as their knowledge of the March 1st date by which they could establish residency within the school district in order to continue services for G.S.

Opposing counsel has made a broad and unsupported argument that parents cannot waive their children's rights under the law. In support of this position, counsel offers case law addressing various causes of action that are distinguishable from the present circumstances, and are completely inapplicable to the matter at bar. Specifically, in Pennsylvania, "personal injury to a minor gives rise to **two separate and distinct causes of action**, one for the parents' claim for medical

expenses and loss of the minor's services during minority, the other the minor's claim for pain and suffering and for the losses after minority." Hathi v. Krewstown Park Apartments, 561 A.2d 1261, 1262 (Pa.Super.Ct.1989) (emphasis added).

Likewise, parties to a **divorce action** "may bargain between themselves and structure their agreement as best serves their interests, ... They have no power, however, to bargain away the rights of their children, ... Their right to bargain for themselves is their own business. They cannot in that process set a standard that will leave their children short. Their bargain may be eminently fair, give all that the children might require and be enforceable because it is fair. When it gives less than required or less than can be given to provide for the best interest of the children, it falls under the jurisdiction of the court's wide and necessary powers to provide for that best interest.... [The parties bargain] is at best advisory to the court and swings on the tides of the necessity that the children be provided." Knorr v. Knorr, 588 A.2d 503, 505 (Pa. 1991).

While it is true that in each of the foregoing circumstances that parents were not able to waive their children's rights, it was so because the matters involved distinctly different causes of action. In those types of actions, the children have independent rights of action apart from, and potentially in conflict with, the actions of the parents. In the present matter, the settlement agreement and waivers

contained therein concern the child's rights, only, and not any actions or causes of actions of the parents.

As an aside, it must be stated that in Pennsylvania parents bear the responsibility – under threat of prosecution, to ensure that their minor children comply with the compulsory school laws of Pennsylvania. In Pennsylvania, parents and guardians of child(ren) age 17 and under are required to send such child(ren) to a day school in which the subjects and activities prescribed by the standards of the State Board of Education are taught in the English language. 24 P.S. § 13-1327. Therefore, Parent's duties in the present matter are to ensure the education of their child, and not to enforce their own rights.

Appellees have argued that their agreement that they will not claim homeless status after the 2015-2016 school year is invalid because it purports to waive future rights of G.S. Appellees assert this provision is invalid. Appellant argues that this position is a distraction which "does not place this concept in the proper context and ignores [Pennsylvania precedent] that a release covers only those matters which may be fairly said to have been within the contemplation of the parties when the release was given." Bowman v. Sunoco, 65 A.3d 901 (Pa. 2013), citing, Restifo v. McDonald, 230 A.2d 199, 201 (Pa. 1967). The Bowman Court also stated that waivers which release liability for actions not accrued at the time of the release are generally only invalid if they involve future actions entirely different

than ones contemplated by the parties at the time of the release." Id. at 909. Clearly, in this matter, the issue of homelessness was contemplated by the parties. Not only does the Agreement itself reference the waiver of a homelessness claim, but it also includes the provision that if Parents can establish residency within the District by March 1st, District will perform its special education obligations concerning G.S. Clearly, G.S.'s homeless status was contemplated at the time the Agreement was made. Therefore, the waiver is valid.

The lower court seized on Appellees' argument and determined that the waiver of education after the 2015-2016 school year was unenforceable for lack of consideration. However, the court failed to consider the undisputed evidence of record which showed that the Appellees asserted their claims of homelessness prior to August 31, 2016, and therefore violated the agreement for which they had received admittedly sufficient consideration. (A. 3). In particular, Dr. DiMarino-Linnen detailed in her testimony the Appellees' efforts to return G.S. to the schools of the district, even though the family was residing in another district, contrary to Pennsylvania law. Specifically, Appellees contacted the District on a few occasions in the Spring and mid-Summer of 2016 seeking entry of the children in the schools. (A. 296). In response to Appellees' insistence that G.S. be enrolled, the Appellant denied entry according to the terms of the agreement, as well as

Pennsylvania law. (A. 291-292). Appellees' actions show a clear determination to breach the parties' agreement, thereby leading to the within litigation.

Finally, Appellant asks that the Court consider the fundamental fairness of this matter. As discussed, the parties were each represented by counsel and reached a bargained for solution to their disagreement. Appellant has relied upon the terms of that agreement. In reliance on the terms of that agreement, and trusting that Appellees would not violate the terms, the Appellant agreed to meet financial obligations and an educational placement choice of Appellees. Appellant did so in order to avoid lengthy litigation and to be able to establish a sum certain concerning this matter. Appellees entered into the agreement, with the advice of their counsel to do so, and accepted all of the benefits of the bargain. After Appellees received all of the benefits, and the Agreement was no longer palatable to them, they undertook to breach the Agreement. Appellees not only breached the agreement by claiming homelessness and insisting that G.S. be enrolled in district schools, they also breached by revealing the existence and terms of the Agreement to Mr. Shane Burroughs, an agent of the Pennsylvania Department of Education, in order to gain a proclamation of homeless status by the state. Appellant believes and therefore avers that Appellees and counsel manipulated the information provided to Mr. Burroughs in order to reach the result they desired, while Appellant (abiding by the confidentiality terms of the Agreement) was forced to

keep silent and was not able to reveal to Mr. Burroughs all of the facts of which it was aware concerning the Parents living situation. Appellees and their counsel further breached the agreement by violating the Covenant Not to Sue contained within the Agreement and quickly filed suit in this Court with the sole aim of having G.S. placed in the Appellant's schools. The resulting litigation and uncertainty experienced by Appellant in this matter makes it hesitant to enter into such agreements in the future, and gives pause to the question of whether such litigation should ever be settled outside of court. This is the unfortunate reality, and a natural conclusion that is contrary to public policy favoring settlements.

II. THE APPELLEES ARE NO LONGER HOMELESS UNDER THE MCKINNEY-VENTO ACT WHERE THEY HAVE LIVED IN A FIXED, REGULAR AND ADEQUATE HOME FOR APPROXIMATELY THREE YEARS

A. Appellees' Family of Five Has Continuously Resided Under the Same Living Arrangements For More Than Three Years and Can Do So Indefinitely

The evidence is undisputed that the family has resided, together, at the same address outside of the school district for over three years, have a place to sleep, all of the comforts of a home, and are under no financial constraints or threat of eviction. Accordingly, the family is no longer homeless under the intent and meaning of the McKinney-Vento Act. The evidence in this matter shows that Appellees live in a fixed, adequate and regular home and therefore are not

homeless within the meaning of McKinney-Vento; they have resided in the same home for over three years, are not in any danger of eviction, and have adequate living arrangements that meet their needs. The McKinney-Vento Act ("the Act") was established to enable students in temporary homeless situations to continue their educations. 42 U.S.C. § 11431, et seq. The Act generally defines "homeless", "homeless individual", and "homeless person" as any of the following:

> (1) **an individual or family who lacks a fixed, regular, and adequate nighttime residence**;
>
> (2) an individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
>
> (3) an individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including hotels and motels paid for by Federal, State or local government programs for low-income individuals or by charitable organizations, congregate shelters, and transitional housing);
>
> (4) An individual who resided in a shelter or place not meant for human habitation and who is exiting an institution where he/she temporarily resided;
>
> **(5) An individual or family who –**
>
> (A) **will imminently lose their housing**, including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State , or local government programs for low-

income individuals or by charitable organizations, as evidenced by –

(i) a court order resulting from an eviction action that notifies the individual or family that they must leave within 14 days;

(ii) the individual or family having a primary nighttime residence that is a room in a hotel or motel and where they lack the resources necessary to reside there for more than 14 days; or

(iii) credible evidence indicating that the owner or renter of the housing will not allow the individual or family to stay for more than 14 days, and any oral statement from an individual or family seeking homeless assistance that is found to be credible shall be considered credible e4vicence for purposes of this clause;

(B) has no subsequent residence identified; and

(C) lacks the resources or support networks needed to obtain other permanent housing; and

(6) unaccompanied youth and homeless families with children and youth defined as homeless under other Federal statutes who –

a. (A) have experienced a long period without living independently in permanent housing,
b. (B) have experienced persistent instability as measured by frequent moves over such period, and
c. (C) can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or multiple barriers to employment.

42 U.S.C. § 11302(a) (emphasis added). The full text of the definitions section is important to consider in order to glean the scope of the Legislature's intent regarding what homelessness looks like. From a full reading of these definitions, it is clear the law is intended to alleviate the hardships that come from dire, disruptive, uncertain and unstable conditions of homelessness. The examples of homelessness provided in the definitions illustrate situations that are temporary, short-term, and unstable and which do not include a house or settled home. It should be noted that there is a temporal element to section 302(a)(5) that suggests a highly temporary living situation that will end within a two week period of time. 42 U.S.C. § 11302(a)(5). The chance of the housing arrangement coming to an end is not speculative, but is, in fact, imminent either because of a third party's will or lack of resources. When the facts learned in the instant matter are held up to the definitions contained in the Act, the Appellees' living situation pales in comparison and it is evident that the Appellees do not fit into any of the definitions set forth in the Act.

Of the situations described in the Section 302 definitions provided above, the only ones that come close to describing the Appellees situation are subsections (1) and (5) (highlighted above), and include families who lack a fixed, adequate and regular nighttime residence, and families who will imminently lose their housing. Taking the latter definition first, it is clear from the record that the

Appellees are not in any danger of losing their current housing. The Appellees are not in imminent danger of losing their housing. The Appellees have lived in the maternal grandmother's home for over three years. They are economizing and benefitting from grandmother's largess, in that they make no financial contribution. (A. 234, 273, 279). They are under no threat of eviction, as the grandmother testified that she would **never put them out**, and **they can stay as long as they wish**. (A. 273-274, 276, 278). Thus, the Appellees "multiple occupants" of the Chester Upland School District, and are properly enrolled there. In addition, a review of the record shows that doubling up has been a common practice for the Appellees; they lived doubled up with various family members since before they moved to the Rose Tree Media School District. (A. 231-233). They lived with paternal grandmother and her husband for several years, and at the same time, father's sister and her boyfriend joined that household for a few months. (A. 231-233). Appellees resided at 1241 Harshaw Road prior to the present time, and resided with the same people at that time that they are residing with, now. (A. 231-233). Appellees never considered themselves homeless on those prior occasions, only now that they are involved in a dispute with the Appellant do they consider themselves homeless. The District did believe that the family's initial instability in November of 2014 brought them within the definition of homeless. However, since more than three years have passed, and the Appellees

continue to live in the same home with no fear of being ejected, the Appellant is convinced they are no longer homeless within the meaning and intent of the Act.

Turning back to the first definition, the statute does not define "fixed, adequate and regular," however, the court can look to dictionary definitions of these words to gain clarity as to the intent of Congress in including them in the statute. "Fixed" is defined as: (1) fastened, attached, or placed so as to be firm and not readily movable; firmly implanted; stationary; rigid. (2) rendered stable or permanent, as color. (3) set or intent upon something; steadily directed: *a fixed stare*. "Fixed". Dictionary.com Online Dictionary. 2018. http://www.dictionary.com/browse/fixed?s=t (2 Jan. 2018) (italics in original).

"Adequate" is defined as: (1) as much or as good as necessary for some requirement or purpose; fully sufficient, suitable, or fit (often followed by *to* or *for*): *This care is adequate to our needs. Adequate food for fifty people.* (2) barely sufficient or suitable: *Being adequate is not good enough.* (3) *Law.* Reasonably sufficient for staring legal action: *adequate grounds.* "Adequate". Dictionary.com Online Dictionary. 2018. http://www.dictionary.com/browse/adequate?s=t (2 Jan. 2018) (italics in original).

"Regular" is defined as: (1) usual; normal; customary: *to put something in its regular place.* (2) evenly or uniformly arranged; symmetrical: *regular teeth.* (3) characterized by fixed principle, uniform procedure; etc.: *regular income*.

"Regular". Dictionary.com Online Dictionary. 2018. http://www.dictionary.com/browse/regular?s=t (italics in original). Taken together, the definitions of these terms demonstrate the intent that "fixed, adequate and regular" means a set place that the family returns to on a regular basis. The accommodations described include those that are "barely sufficient or suitable." In other words, the law does not require each child/family member to have his or her own room, or a place to store his or her own belongings before they are no longer homeless under the Act; it does not even require that each member have a standard twin or king sized bed with sheets and pillows. Rather, to contrast the clear identifiers of homelessness: instability, temporary housing, for example in tents, hotels and cars, and frequent moves – the Legislature envisioned a steady, on-going, home where the student and/or family remained.

Conversely, individuals and families are no longer homeless when they have established a fixed and adequate place of residency. Once school age students and their families have established a fixed and adequate place of residency, they must register in the school district in which they are residing with their family. 24 P.S. § 13-1302. Under the Pennsylvania Public School Code of 1949, a student is entitled to a free public education in the school district of residence. 24 P.S. § 13-1301. A child is deemed to be a resident of the school district in which his/her parent or guardian resides. 24 P.S. § 13-1302. In the present matter, Appellees have a fixed,

adequate and regular residence within the Chester Upland School District; accordingly, all of Appellees' school aged children should be attending schools in that district.

B. Doubling Up With Others is Not Homelessness Where the Arrangement is Fixed, Adequate and Regular

The Act specifically defines "homeless children and youths" as individuals lacking a fixed, regular and adequate nighttime residence (within the meeting of section 11302(a)(1)) to include:

> (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reasons; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
>
> (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, substandard housing, bus or train stations, or similar settings;
>
> (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
>
> (iv) migratory children (as such terms is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

42 U.S.C. § 11434a(2)(B). By the very language of the statute, it is evident that the section is an expansion of 42 U.S.C. § 11434a(2)(A) which reads in its entirety: "The term 'homeless children and youths' – (A) means individuals who lack a fixed, regular and adequate nighttime residence (within the meaning of section 11302(a)(1)); and . . ." (emphasis added). Section (B) immediately ensues and consists of the list set forth, above. Reading these paragraphs together, use of the word "and" is significant as it presents the definition in the conjunctive. In other words, the legislature contemplated a definition encompassing the general definition set forth in section 302(a)(1) (lacking fixed, adequate and regular nighttime residence), and also expanding the definition to include the "doubling up" language of 11434a(B)(i) (i.e., sharing the housing of other persons). Thus, a proper analysis of the circumstances should include a determination of whether the individual has a fixed, adequate and regular residence at night and also, where children or youth are concerned, if they are doubled up with another family. It does not automatically follow that doubling up is indicative of a homeless situation. It is possible that a family can be doubled up with another person and yet still have a fixed, adequate and regular nighttime residence, in which case, they would not be homeless. Appellant believes that such is the case in the instant matter.

Multiple occupancy is a common practice in school districts; families often live with relatives or others within the district and gain residency within the district in which they reside. Without analysis of the facts and circumstances of this matter, the lower court struck on the language of section 11434a(2)(B) which includes the circumstance of temporarily living doubled up with others. The lower court settled on the phrase "children and youths who are sharing the housing of other persons due to loss of housing" as the sole factor in determining homeless status without considering the undisputed facts. (A. 4-5). The court did not look at the totality of the circumstances of the family as disclosed through the discovery obtained by the parties. The facts discovered in this matter were not closely analyzed by the court below. The simple fact of shared housing was the sole and determining factor. Appellant asserts that that factor alone should not be determinative without considering the surrounding circumstances. The mere fact that G.S. and family are sharing housing with relatives does not, in and of itself, make them homeless.

The evidence reveals that the Appellees have lived doubled up with other family members for most of G.S.'s life. (A. 231-233). The family previously lived in a house in Media with G.S.'s paternal grandparents, an aunt and the aunt's boyfriend. (A. 231-233). In prior times, the family lived with G.S.'s maternal grandmother in the home where they currently reside. (A. 231-233). The

Appellees testified that they lived at 1241 Harshaw Road previously for extended periods of time, and never considered themselves homeless at those times. (A. 226, 231-233). When the Appellees lived at Harshaw Road on previous occasions, the same extended family members resided in the house with them, and again, they considered the housing fixed and adequate. (A. 231-233). Thus, Appellant believes that Appellees choose to remain in their current living situation in order to keep their children in the Rose Tree Media School District schools, to avoid Chester Upland schools, and because it is financially advantageous for them to masquerade as homeless.

The facts show that G.S. and his intact family of five (mother, father, G.S. and two siblings) moved into the home of his maternal grandmother in November of 2014, and have remained there ever since that time. In that time period, the family has occupied a portion of the grandmother's home as their own, has established sleeping arrangements, and has maintained belongings there. (A. 250). G.S. has also established a bedroom area of privacy for himself in the basement of the house. (A. 250). His bedroom area includes a bed, desk, computer, and storage space. (A. 250). This same basement area was occupied by the family during a prior period of time during which they resided with the maternal grandmother. (A. 226, 231-233). During that prior period, they did not consider themselves homeless. (A. 226). Appellees have implied that the basement area is

not fixed adequate or regular because it is not an ideal living area in that some ceiling tiles are missing, there was flooding in the basement in the past, there is an unfinished wall, and the grandmother has to walk through to do the laundry. However, the law does not require residence in a perfect middle class single family home with separate bedrooms before it can be said that homelessness has ceased.

The actions and/or inactions of Appellees with regard to finding other housing also suggests that Appellees are satisfied with their current housing as adequate. It is undisputed that Appellees have not made significant efforts to move from 1241 Harshaw Road in the three years they have resided there. E.S. testified she is doing nothing currently to find housing, has not spoken to realtors or checked for apartments; she has not made any efforts since 2014 to find other housing. (A. 237-238, 240). Despite her awareness that there is Section 8 housing in Media (within the school district), E.S. has not applied for it nor placed her family on the waiting list. (A. 237-238, 240). J.S. testified he has looked on Craig's List, at signs in town and around the area while driving, and has spoken with two realtor friends, but has done nothing else. (A. 220). J.S. has only focused on finding housing in Media because he "prefers" Media and does not want his children to attend Chester Upland Schools. (A. 226). Both Parents have registered to vote at 1241 Harshaw Road, as their permanent address. (A. 223-224, 242). Both Parents have driver's licenses that list 1241 Harshaw Road as their permanent

address. (A. 223-224, 242). Furthermore, while J.S. suffered job loss in 2014, he regained employment within two weeks and has been working steadily ever since for full payment under the table. (A. 218). Finally, while length of occupancy is not the only factor to be considered, the extended time that Appellees have been settled at the Harshaw Road house is a significant indicator that the home is adequate for them.

C. The LEA is Only Required to Keep a Homeless Student in the School of Origin Until Homelessness Ceases, if it is in the Best Interest of the Child

Appellees are permanently housed in their current residence due to their failure or refusal to move or make any attempts to find alternate housing, therefore, Appellant's status as the school of origin ended at the end of the 2014-2015 school year. Under the Act, Local Educational Agency is required, ". . . according to the child's or youth's best interest – (i) continue the child's or youth's education in the school of origin for the duration of homelessness – (I) in any case in which a family becomes homeless . . . during an academic year; and (II) for the remainder of the academic year, if the child or youth becomes permanently housed during an academic year . . ." 42 U.S.C. § 11432(g)(3)(A). It is presumed that the best interest of the student is to remain in the school of origin unless doing so is contrary to the request of the parent or youth. 42 U.S.C. § 11432(g)(3)(B).

However, other factors may be considered when determining best interest, including the health and safety of the student. Id.

In the present matter, the Appellees became homeless in November of 2014 during the 2014-2015 academic year. They moved directly from their home within the District to the home of G.S.'s maternal grandmother, where they continue to reside. The Appellant considered the Appellees to be homeless initially, but as their situation became rooted in a home outside of the District with close relatives, it became apparent that Appellees had established a permanent residence. Accordingly, the District's educational obligations to Appellees ceased under the Act at the end of the 2014-2015 academic year, absent intervening circumstances. However, during that academic year, it is undisputed that G.S. was the source of a serious discipline matter in which the lives of certain named students were threatened. The incident required the removal of G.S., at least temporarily, from the regular school setting for the safety and security of the school, staff and students. All of the students threatened and their parents were aware of G.S.'s involvement. Accordingly, it was not in G.S.'s best interest to return to the Middle School under the circumstances then present. While the parties determined the proper educational setting for G.S. during February and March of 2015, G.S. was removed from his school. At Appellees' request, G.S. was referred to Cardinal O'Hara High School, and attended that school for the 2015-2016 academic year,

under the parties' Settlement Agreement. Under the circumstances and facts of this matter, the Appellant was not obligated to maintain G.S. in the school of origin.

In conclusion, the Appellant chose to litigate this matter to uphold the validity of its settlement agreement with the Appellees. The Appellant had entered into an Agreement that resolved a dispute between the parties, and fully relied on the adequacy of that Agreement. The Appellant met its obligations contained within the Agreement trusting that the Appellees would likewise keep their obligations. Unfortunately, the Appellees did not honor their Agreement and have sought to place the parties right back into the dispute that previously existed between the parties. The District paid out over $14,000 in good faith and in reliance on the terms of the settlement agreement between the parties.

Under the Public School Code, G.S. is not a resident of the District and therefore is not entitled to a free education within the District, but rather, is a resident of the Chester Upland School District. If Appellees object to the Chester Upland School District, they are able to move back into the Rose Tree Media School District to become legally entitled to enroll their children in the District. Instead, the Appellees have chosen to remain living outside of the District, not making any significant attempts to gain housing within the District in three years. The District contains low income housing opportunities, but Appellees have not

even tried to obtain such housing. Appellant believes the reason is clear: Appellees have free permanent housing now in a home in which they are comfortable and familiar, and consequently have chosen to remain in the Chester Upland School District.

CONCLUSION

It is undisputed that the parties hereto, with the assistance of legal counsel, entered into a negotiated settlement agreement. The terms of the agreement are clear, and the record shows that the Appellees knew and understood the basic terms. However, they have changed their minds about their bargain after receiving all of the benefits thereunder. Nevertheless the agreement continues to be a valid and enforceable agreement to which they should be held. Accordingly, the Appellant requests judgment in its favor.

Although the Appellees initially experienced a brief period of homelessness in November of 2014, they have remained in a stable, consistent, fixed, and adequate living situation for over three years. Father quickly regained employment and is paid under the table. Appellees have been continuously residing in the same home, and are under no threat of eviction or loss of housing. Maternal grandmother has welcomed the Appellees into her home and testified that she would never ask them to leave. Appellees have not made any consistent efforts to

locate alternative housing. All of the undisputed facts show that the Appellees are no longer homeless, therefore, for school purposes they should be considered residents of the Chester Upland School District.

Dated: January 8, 2018

Respectfully Submitted,

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COMBINED CERTIFICATES OF ADMISSION AND COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(a) AND LOCAL RULE 31.1

Pursuant to Third Circuit L.A.R. 28.3(d), I hereby certify that I am an attorney admitted to practice in the United States Court of Appeals for the Third Circuit.

This brief complies with the type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because this brief contains 7,961 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii) of the Federal Rules of Appellate Procedure.

This brief complies with the typeface requirements of Rule 32(a)(5) of the Federal Rules of Appellate Procedure and the type style requirements of Rule 32(a)(6) of the Federal Rules of Appellate Procedure because this brief has been prepared in a proportionally spaced typeface using the 2010 version of Microsoft Word in 14 point Times New Roman font.

This brief complies with the electronic filing requirements of Local Rule 31.1(c) because the text of this electronic brief is identical to the text of the paper copies, and the Vipre Virus Protection, version 3.1 has been run on the file containing the electronic version of this brief and no viruses have been detected.

Dated: January 8, 2018

/s/ Katherine H. Meehan
Katherine H. Meehan
RAFFAELE PUPPIO

CERTIFICATE OF FILING AND SERVICE

I, Maryna Sapyelkina, hereby certify pursuant to Fed. R. App. P. 25(d) that, on January 8, 2018 the foregoing Brief on Behalf of Appellant was filed through the CM/ECF system and served electronically on parties in the case.

/s/ Maryna Sapyelkina
Maryna Sapyelkina