

MONTGOMERY SOCCER, INC.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-14

OPINION

INTRODUCTION

Montgomery County Soccer, Inc. (MSI) filed a “conditional appeal” challenging the decision of the Montgomery County Board of Education (local board) awarding “preferred use” of several of the school system’s artificial turf fields to Bethesda Soccer Club, Bethesda Lacrosse Association, the Potomac Soccer Association and Churchill HS Booster Club. The local board filed a Motion for Summary Affirmance. The Appellant opposed that motion. The local board filed a Reply.

FACTUAL BACKGROUND

For the purposes of this Opinion, the merits of the underlying dispute will not be addressed. Rather, the issue here is whether this appeal should be stayed, dismissed, or proceed on the merits. The facts relevant to that issue are set forth below.

MSI filed a complaint in Montgomery County Circuit Court challenging the decision of the local board to award “preferred use” of some of its fields to groups other than MSI. Thereafter, on July 2, 2014, MSI filed the instant appeal challenging the validity of the same local board decision that it challenged in its complaint to the Circuit Court.

While the parties were briefing the merits of this appeal, the local board filed a Motion to Dismiss the complaint MSI filed in circuit court. The local board asserted that MSI must exhaust its administrative remedies through its State Board appeal before it could seek relief from the court.

On November 18, 2014, the circuit court held a hearing on the motion to dismiss, considering whether MSI was required by law to exhaust its administrative remedies before pursuing judicial relief. The court ruled from the bench that “there is not a mandated administrative process to the State Board.” (T. 45, attached to February 17, 2015 Letter of Bresler to Board). Thus, the court ruled that MSI’s case would proceed on the merits through the judicial process.

We then requested that MSI advise this Board whether it was withdrawing its appeal. Previously, MSI had explained to this Board that its appeal was a “conditional appeal” filed to “insure that the appeal would be deemed to have been timely filed *if* the lawsuit results in a

determination that an appeal to this Board is required.” (emphasis added) (letter of October 24, 2014). Thus, in a letter of February 2, 2015, MSI declined to withdraw its appeal because the circuit court’s ruling was not a final judicial determination and, therefore, “...it cannot be said that the lawsuit will not result in judicial determination than an appeal to this Board is not required.” MSI requested that its appeal be stayed until 60 days following the conclusion of the court case. The local board strongly opposes that request for a stay and argues instead that the case be dismissed or proceed on the merits.

STANDARD OF REVIEW

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.05E. Consideration of its jurisdiction is within this Board’s independent judgment.

LEGAL ANALYSIS

We are guided in our analysis by one of the central tenets of the legal process - - the conservation of judicial (and quasi-judicial) resources. Instituting a parallel and simultaneous proceeding here while the circuit court also hears this case would be contrary to that tenet. Therefore, in our view, proceeding on the merits of this appeal is not an appropriate option. Thus, we must decide whether to stay this case or dismiss it.

In deciding whether to stay or dismiss, we consider several jurisdictional principles. The first is concurrent jurisdiction. When concurrent jurisdiction exists, “the plaintiff at his or her option may pursue the judicial remedy without necessity of invoking and exhausting the administrative remedy.” *Zappone v. Liberty Life Insurance Co.*, 349 Md. 45, 61 (1998). Because the plaintiff has the “option to pursue either remedy,” the local board demands that MSI “make an election to which forum its dispute will be heard.” (Bresler Letter of 2/17/2015 at 4).

MSI, however, has not made an election in great part because it is not 100 percent sure that the circuit court was correct that concurrent jurisdiction exists. Specifically, as this case proceeds, especially on appeal, a court could rule that the State Board’s jurisdiction over this matter is primary and, thus, MSI should have exhausted its appeal here before seeking relief in the courts.

Thus, we have considered the concept of primary jurisdiction and its applicability here. As the Court of Appeals explained the concept of primary jurisdiction:

“...the administrative remedy may be primary but not exclusive. In this situation, a claimant must invoke and exhaust the administrative remedy, and seek judicial review of an adverse administrative decision before a court can properly adjudicate the merits of the alternative judicial remedy. *See e.g., McCullough c. Wittner*, 314 Md. 602, 613, 552 A.2d 881, 886 (1989) (“Under circumstances like these, where a plaintiff has both an administrative remedy and an independent judicial action, and the administrative agency’s

jurisdiction is deemed primary, it is appropriate for the trial court to retain, for a reasonable period of time, jurisdiction over the independent judicial action pending invocation and exhaustion of the administrative procedures”); *Md.-Nat’l Cap. P. & P. Comm’n v. Crawford*, 307 Md. 1, 18, 511 A.2d 1079, 1088 (1986) (“Once the administrative procedures are exhausted, the trial court may proceed [with both the independent judicial action and the administrative review action]; the plaintiff whose case is meritorious may be entitled to whatever relief is available under either the independent judicial action or the administrative/judicial review remedy”)

Id. at 60-61.

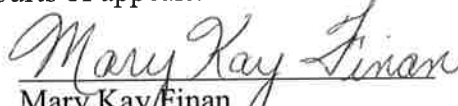
We note that the Court stated that when an administrative agency has primary jurisdiction over a case, it is appropriate for a court to retain jurisdiction over the case pending exhaustion of the administrative remedy. *Id.* at 61; *see also Bd. of Ed. for Dorchester Co. v. Hubbard*, 305 Md. 774, 792 (1966).

Thus, we consider whether that same rule should apply in reverse such that the State Board would retain jurisdiction over this appeal until the court case is over. The local board asserts that to do so would allow MSI to “have its cake and eat it too.” They argue that case law holds that a court case should not go forward if administrative proceedings are pending. But, that rule applies, apparently, when there is a court decision that the administrative agency has primary jurisdiction. Here the court has decided that there is full concurrent jurisdiction and that the case will proceed in that forum. Despite the “have its cake and eat it” objection, we see no compelling reason why the State Board would not retain jurisdiction over this appeal until the court case is resolved.

Therefore, this case is stayed until 60 days following the conclusion of the court case, including any appeal to the courts of appeals. If the courts decide that jurisdiction is fully concurrent, MSI’s appeal will be dismissed. If the courts decide that the State Board has primary jurisdiction over this matter, we will decide then if this appeal will proceed on the merits.


CONCLUSION

For the reasons stated, this appeal is stayed until 60 days following the conclusion of the court case, including any appeal to the Maryland courts of appeals.

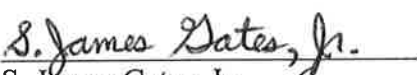

Mary Kay Finan
President


James H. DeGraffonreidt, Jr.

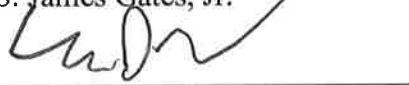

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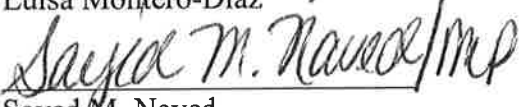
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May 19, 2015