

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BRANDON FAGNANO,	:	DOCKET NO. 11-00,908
Plaintiff,	:	
	:	CIVIL ACTION
vs.	:	
	:	
LOYALSOCK TOWNSHIP SCHOOL DISTRICT,	:	SUMMARY JUDGMENT
Defendant.	:	MOTIONS

OPINION AND ORDER

Before this Court are cross-motions for summary judgment. After oral argument held on Wednesday, March 13, 2013, the Court finds that there are issues of fact to be litigated at trial. Therefore, both motions are DENIED. In addition, any motion to dismiss the matter on the basis of mootness is DENIED as well.

I. Summary Judgment

Summary judgment may be granted at the close of the relevant proceedings if there is no genuine issue of material fact or if an adverse party has failed to produce evidence of facts essential to the cause of action or defense. Pa. R.C.P. 1035.2; *Keystone Freight Corp. v. Stricker*, 31 A.3d 967, 971 (Pa. Super. Ct. 2011). An adverse party must identify either factual issues to be addressed at trial or evidence in the record establishing facts essential to its cause of action or defense, and it cannot solely rely on the allegations or denials in its pleadings. Pa. R.C.P. 1035.3(a); *Keystone*, 31 A.3d at 971. “Failure of a non-moving party to adduce sufficient evidence on an issue essential to its case and on which it bears the burden of proof... establishes the entitlement of the moving party to judgment as a matter of law.” *Keystone*, 31 A.3d at 971 (citing *Young v. Dep’t of Transportation*, 744 A.2d 1276, 1277 (Pa. 2000)).

In this instance, Plaintiff argues that Defendant has not adduced sufficient evidence to uphold Loyalsock Policy 227.1 under a constitutionality challenge; Plaintiff cites to Article I,

Section 8 of the Pennsylvania Constitution and *Theodore v. Delaware Valley Sch. Dist.*, 836 A.2d 76 (Pa. 2003), to support his claims. Also, Plaintiff argues that Defendant has produced insufficient evidence to support its case because, in the ten (10) months in which Defendant could produce discovery in this matter after this Court's preliminary injunction hearing, Defendant produced only one expert report. Pl. Bf., 8. Alternatively, Defendant argues that it has met its pre-trial burden for production of evidence. In support of Defendant's argument, Defendant cites to the Loyalsock Township High School Drug and Alcohol Incident Data, the 2009 Pennsylvania Youth Survey (PAYS) Report, and the Statistical Review of Loyalsock Township School District Drug and Alcohol Incidences, prepared by defense expert Dr. Alan J. Salzberg. The Court finds Defendant has met his pre-trial evidentiary burden and has created issues of fact for trial.

In this instance, both parties generally agree upon the data itself that Defendant used to support Policy 227.1. However, the main issue for trial is the interpretation and application of this data to the standards set forth by our Supreme Court in *Theodore*. The Court believes that genuine issues of fact exist as to whether there is sufficient proof that a drug problem exists in the Loyalsock School District, individualized proof that the targeted students are part of the alleged problem, and reasonable proof that Policy 227.1 addresses the alleged problem. *See Theodore*, 836 A.2d at 96. The Court believes that expert testimony will be necessary to explain to the Court the statistical data so that the Court can decide if this data supports the three *Theodore* prongs. Also, Dr. Salzberg's report raises issues as to the statistical interpretation found in Dr. Charles A. Parekh's report and relied upon by Plaintiff and the Court for the purposes of the preliminary injunction. Therefore, the Court finds that there are multiple disputed issues of fact that requires this matter to be tried before a fact finder.

II. Mootness

Although not raised in Defendant's motion for summary judgment, in Defendant's reply brief, Defendant addressed the issue of mootness. In particular, Defendant asserts that Plaintiff no longer has standing to litigate the instant claim. Supporting this stance, Defendant argues that Plaintiff is no longer a minor enrolled within the District, and, therefore, is no longer aggrieved by Policy 227.1.¹ *See Empire Coal Mining and Dev., Inc. v. Dep't of Env'tl. Res.*, 632 A.2d 987, 899 (Pa. Cmwlth. Ct. 1993), *appeal denied*, 629 A.2d 1384 (Pa. 1993). However, Plaintiff argues that an exception to the mootness doctrine applies in this scenario and that the case may go forward. In particular, Plaintiff cites to the exception that allows cases that are capable of repetition yet evade review to be litigated, despite their mootness. *See In Re Appeal of JAD*, 782 A.2d 1069, 1071 (Pa. Cmwlth. Ct. 2001).

The Court agrees with Defendant that this matter is technically moot; however, the Court also agrees with Plaintiff that an exception to the mootness doctrine applies in this matter, allowing the case to proceed to trial. *See id.* Particularly, the Court finds that this matter falls within the purview of the exception that allows moot cases that evade review yet are capable of repetition to be tried; it is the Court's duty to bring these matters to a final disposition. As discussed with counsel during oral argument, if this matter was laid to rest on the ground of mootness, any student (or parent on behalf of student) could file suit identical to that of Plaintiff against Defendant at any time. Thus, in order for judicial efficiency and a just resolution to occur, the Court finds that the above-mentioned mootness exception applies.

This matter shall proceed to trial during the Court's April 2013 Trial Term. The dates that this Court discussed with counsel will be considered by the Court in scheduling but will not

¹ In fact, Plaintiff is a freshman student enrolled in the Honors College of the Pennsylvania State University.

necessarily be controlling. The parties will be notified by the Court Administrator as to dates certain for trial.

BY THE COURT,

Date

Richard A. Gray, J.

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