IN THE COURT OF COMMON PLEAS
GENERAL DIVISION
BUTLER COUNTY, OHIO

ERIN GABBARD, et al

Plaintiff,

vs.

MADISON LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, et al

Defendants.

Case No. CV 2018 09 2028

Judge Charles L. Pater

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, AND DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

(Final Appealable Order)

This matter is before the court on Defendants', Madison Local School Board of Education and others', (the Board's), motion for summary judgment, and Plaintiffs' Erin Gabbard and others', (Plaintiffs') motion for summary judgment. These competing motions address the only remaining issue in the case, count one of the complaint.

For the reasons set forth hereafter, the Board's motion is granted and Plaintiffs' motion is denied.

PROCEDURAL POSTURE

Gabbard and a coalition of other parents filed a two count complaint challenging the Board's April 24, 2018 decision to arm district employees, in response to a February, 2016 school shooting incident at Madison High School. Count two has been addressed already. In count one Plaintiffs seek a permanent injunction barring the board from implementing its decision to arm employees, unless those armed persons complete the same training as required by peace officers under Ohio law. The parties generally agree that there are no material

issues of fact. Plaintiffs propose, however, that if the court's interpretation of law is contrary to their view of it, then a factual question for resolution is whether or not armed school staff are "security personnel."

Plaintiffs suggest that the sole legal issue is whether or not armed school staff are governed by the requirements of R.C.§109.78(D), which reads, in part: "[N]o public or private educational institution. . .shall employ a person as a special police officer, security guard, or ***other position in which such person goes armed while on duty***, who has not received a certificate of having satisfactorily completed an approved basic peace officer training program. . . ," Emphasis added. Their position is that the personnel authorized by the Board to carry firearms are employed by the Board precisely in such other positions in which they go armed while on duty. Plaintiffs' back-up legal position is that if the armed personnel are deemed not to have such "other positions," then they should be classified as security guards. This, of course, would result in the same training requirement for the armed personnel — the basic peace officer training.

Further, they argue, that any other code section [such as R.C. §2923.122(D)(1)(a)] granting, or seeming to grant a school board permission to authorize personnel to carry firearms on school property, does not abrogate the training requirements of R.C.§109.78(D).

The Board, curiously, does not challenge Plaintiffs' reading of R.C.§109.78(D). Its position is that the General Assembly specifically carved out an exception to the firearms training requirement in the peace officer statue, R.C.§109.78(D), when it later enacted R.C. §2923.122(D)(1)(a). The general thrust of this code section is that no one may convey into, or possess in a school

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safety zone a deadly weapon. This prohibition, however, is subject to exceptions. The exception carved out in (D)(1)(a) is "any other person who has written authorization from the board of education or governing body of a school to convey deadly weapons. . .into a school safety zone or to possess a deadly weapon. . .in a school safety zone and who conveys or possesses the deadly weapon. . .in accordance with that authorization." This exception, the Board contends, encompasses the armed personnel at issue here.

DECISION

Under Civ.R. 56(C), a trial court may grant a motion for summary judgment when there is no genuine issue of material fact, the moving party is entitled to judgment as a matter of law, and it appears that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made. See, *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327. The burden of demonstrating that there is no genuine issue of material fact is on the moving party. *Re v. Kessinger*, (2008), Ohio App. 12th, 2008-Ohio-167, ¶17, citing *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64. To prevail on a motion for summary judgment, the moving party must be able to point to evidentiary materials that show there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. *Re v. Kessinger*, supra, citing *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. The court views the facts in a light most favorable to the nonmoving party. See, *Wilkerson v. O'Shea*, 2009, Ohio App. 12th, 2009-Ohio-6550, ¶11. However, in response to a properly supported motion for summary judgment, the nonmoving party must set forth specific facts which demonstrate

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that there is a genuine issue of material fact for trial, and may not rest on mere allegations or denials in the pleading. *Chase Manhattan Mtge. Corp. v. Urquhart*, (2005), Ohio App. 12th, 2005-Ohio-4627, ¶12; *Phoenix Presentations*, (1996), Ohio App. 12th, 116 Ohio App.3d 500, 506, citing *Dresher v. Burt*, supra; Civ.R. 56(E).

Regarding the Board's policy of allowing some of its employees to carry firearms, there is a seeming contradiction between R.C. §109.78(D) and R.C. §2923.122(D)(1)(a). The questions to be resolved are whether the apparent conflict is reconcilable; if reconcilable, how; and if not, which statute takes precedence.

R.C. §1.51 states that "[i]f a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail." *State v. Conyers*, 87 Ohio St.3d 246, 719 N.E.2d 535, 1999-Ohio-43, (1999).

Looking at the first two questions together, the court holds that the two statutes do not contradict each other and any apparent conflict is reconcilable. The question then is how to reconcile them? Plaintiff's approach to the reconciliation is to posit that the statute permitting school boards to authorize certain of its employees to carry firearms does not abrogate the training requirement set forth in the other statute. This view is unpersuasive.

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The more reasonable way to read the two statutes together, giving full effect to each, is to keep in mind the context of R.C. §109.78(D). The descriptive heading for this code section is "Certification of special police, security guards, or ***other persons otherwise privately employed in a police capacity***." Emphasis added.

Division (D) of the statute prohibits educational institutions from employing certain types of persons unless they have basic peace officer training. One of the categories under the prohibition is a "position in which such person goes armed while on duty . . . ."

Plaintiffs' reading of this part of the statute results in the conclusion that the Board's armed personnel fit within this category. They maintain that these people have positions in which they go armed while on duty, and thus are prohibited from carrying firearms unless they have the basic peace officer training.

The plaintiffs' proposed reading of the statute is untenable based upon the context of the statute. The phrase at issue, "a position in which such person goes armed while on duty," in context, must refer to "persons otherwise privately employed in a police capacity." These are employees whose position is such that by its very nature it mandates the person holding it to go armed while on duty. Clearly teachers, administrators, administrative assistants, and custodians, along with most, if not all, other school employees are not employed by educational institutions in such capacity, unlike someone such as a school resource officer who is. Therefore, the school employees authorized by the Board to carry firearms on school premises are not under the training requirements as set forth in R.C. §109.18(D).

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Even if the above reading of R.C. §109.18(D) were incorrect and there were an irreconcilable conflict between that statute and §2923.122(D)(1)(a), Defendants would still prevail.

"After an irreconcilable conflict is determined to exist, the next inquiry is whether the provisions at issue are general or specific. See *State v. Chippendale* (1990), 52 Ohio St.3d 118, 120, 556 N.E.2d 1134, 1136. If one of the conflicting statutes is a general provision and the other is a special provision, then R.C. 1.51 applies and the special provision prevails." *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120, 122, 18 OBR 151, 152, 480 N.E.2d 412, 414; see, also, *Lake Cty. Natl. Bank of Painesville v. Kosydar* (1973), 36 Ohio St.2d 189, 191, 65 O.O.2d 404, 406, 305 N.E.2d 799, 801. Quoted in *State v. Conyers*, 87 Ohio St.3d 246, 719 N.E.2d 535, 1999-Ohio-43, (1999).

If the two statutes at issue were deemed to be irreconcilable, R.C. §2923.122(D)(1)(a) would be deemed a special statute and R.C. §109.78(D) a general statute. As such, the special statute takes precedence over the general one. Additionally, the court notes R.C. §2923.122(D)(1)(a) is the later enacted law.

In response to Plaintiffs' back-up legal theory, the court holds that nothing in the record supports the proposition that the Board's armed personnel are security guards.

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In the present matter, Plaintiffs have failed to point to evidentiary materials showing a genuine issue as to any material fact, even when the court views the facts in a light most favorable to them. In response, however, Defendants are entitled to judgment as a matter of law.

IT IS THEREFORE ORDERED, AJUDGED AND DECREED, that the Board's motion for summary judgment on count one is granted. Plaintiffs' motion for summary judgment is denied. This is a final, appealable order.

SO ORDERED.

ENTER,

Charles L. Pater, Judge

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