STATE OF NORTH CAROLINA

CARTERET COUNTY

FILED
2024 JUN -5 P 1:34
CARTERET CO., C.S.C.
BY

GENERAL COURT OF JUSTICE

CIVIL SUPERIOR COURT

FILE NO. 24 CVS 00278

FRANCES SPENCER, MICKEY MARSH, JOHN MORROW, CHARLES MORROW, and JEFFREY G. GARNER,

Plantiffs

v.

ORDER ON MOTIONS AND JUDGMENT

CARTERET COUNTY BOARD OF EDUCATION,

Defendant

THIS CAUSE coming on to be heard and being heard before the undersigned Superior Court Judge at the May 20, 2024 civil session of Carteret County Superior Court on a Motion for Summary Judgment filed by Plaintiffs, Plaintiffs' demand for Attorney Fees, a Motion to Dismiss for lack of standing to sue and/or lack of a private right of action filed by Defendants and an alternative Motion to Transfer to a three judge panel on a constitutional challenge filed by Defendants as a defense in their Answer.

This Court held a hearing in open court on all the referenced motions, counsel for both parties were present and argued; the Court took the matters under advisement with consent of the parties and after hearing the arguments of counsel, reviewing the motions, case file and submissions of the parties, along with relevant authorities suggested by counsel, the Court makes the following rulings:

Defendant's First Defense and Motion to Dismiss for lack of standing is GRANTED as to Plaintiffs Marsh's Surf-n'-Sea, Inc., dba Marsh's Surf Shop, Atlantic Beach Surf Shop Inc., and Sanitary Fish Market & Restaurant, Inc., and DENIED in all other respects; the claims of the corporate Plaintiffs in the Complaint are hereby DISMISSED WITH PREJUDICE.

Defendant's Second Defense and Motion to Dismiss for Lack of a Private Right of Action is DENIED.

Defendant's Third Defense and Motion to Dismiss based on Constitutional Challenge and Transfer this matter to a three judge panel is DENIED.

By consent of the parties the Carteret County Board of Education is in fact the proper Defendant in this matter and the individual Defendants are not necessary parties, Defendants' Fourth Defense and Motion to Dismiss Individual Defendants is GRANTED; the individual Defendants named in the original Complaint are hereby DISMISSED from this action and Plaintiffs' claims against them individually are DISMISSED WITH PREJUDICE.

No material issue of fact exists, the parties' arguments to the Court were solely matters of law, and the remaining Plaintiffs are entitled to Judgment as a matter of law; therefore Plaintiffs' Motion for Summary Judgment is GRANTED; and the Court enters the following JUDGMENT:

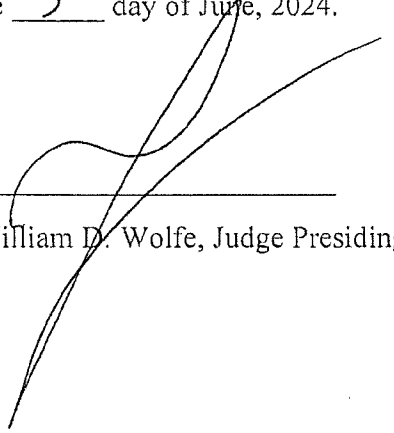
IT IS ORDERED, ADJUDGED AND DECREED that the proposed calendar for the 2024-25 school year adopted by Defendant and scheduled to begin Augst 13, 2024 is contrary to statute and is VOID; Defendant is ENJOINED from adopting or enforcing a school schedule for that school year that fails to comply with the requirements set forth in NCGS 115C-84.2(d).

Plaintiffs' claim for preliminary injunctive relief is rendered MOOT by the Court's Judgment and is thus DENIED.

The alleged basis for Plaintiffs' claims for attorney fees, and Defendant's position in opposition to same, were clear from the respective pleadings and the Court considered said claim carefully; Defendant shall bear the costs of this action exclusive of Plaintiffs' attorney fees; in its discretion the Court DENIES Plaintiffs' demand for Attorney Fees; each party shall bear their own attorney fees.

The Clerk shall send a copy of this Order and Judgment to counsel for both parties.

This the 5 day of June, 2024.



Hon. William D. Wolfe, Judge Presiding