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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5566-15T4

T.L., on behalf of minor child, A.B.,

Petitioner-Appellant,

v.

BOARD OF EDUCATION OF THE TOWNSHIP
OF UNION, UNION COUNTY,

Respondent-Respondent.

Submitted December 12, 2017 – Decided December 27, 2017

Before Judges Yannotti and Carroll.

On appeal from the Commissioner of Education,
Docket No. 38-2/15.

Manes & Weinberg, attorneys for appellant (Amy
Jane Agnew and Beth C. Manes, on the briefs).

Sciarrillo, Cornell, Merlino, McKeever &
Osborne, LLC, attorneys for respondent Board
of Education of the Township of Union (Paul
E. Griggs, of counsel and on the brief;
Kathleen A. Nestor, on the brief).

Christopher S. Porrino, Attorney General,
attorney for respondent New Jersey
Commissioner of Education (Nicole T.
Castiglione, Deputy Attorney General, on the
statement in lieu of brief).

PER CURIAM

In a July 13, 2016 final agency decision, the Commissioner of Education (Commissioner) adopted the initial decision of the administrative law judge (ALJ) finding that petitioner T.L. was not domiciled in Union Township during the 2014-2015 and 2015-2016 school years. Consequently, T.L.'s¹ minor child, A.B., was not entitled to a free public education in Union Township, and T.L. was ordered to reimburse the Township Board of Education (Board) for the cost of A.B.'s education for that period. In this appeal, T.L. contends the Commissioner's final administrative decision was arbitrary and capricious and that the ALJ's factual determinations and legal conclusions, which were adopted by the Commissioner, were not supported by substantial credible evidence in the record. Having considered the record in light of T.L.'s arguments, we affirm.

T.L. is A.B.'s mother and primary caretaker. It is undisputed T.L. owns a home on L. Avenue in Hillside (the Hillside residence). She purports to use the Hillside residence for "investment" purposes, although concededly she has never rented it. Instead, T.L. asserts her out-of-state relatives stay there when they visit New Jersey. T.L. maintains that, since A.B.'s birth, T.L. and

¹ We use initials for the parties and others, as well as for the street names, to protect the confidentiality of the minor child.

A.B. have resided at T.L.'s mother's house on M. Place in Union Township (the Union residence).

In October 2014, A.B.'s first grade teacher implemented a social studies lesson "requir[ing] students to memorize their home address in case of an emergency" Thereafter, the teacher "show[ed] them their house on Google Earth." However, when shown the Google Earth image of the Union residence, A.B. stated "that's not my house, that's my [grandmother's] house." A.B. further claimed "that's not where I live" and described her home as "past Popeyes [and] through a tunnel" The teacher recognized this description as consistent with a Popeye's restaurant located on L. Avenue in Hillside. At some point, A.B. told the teacher "she cannot talk about her house, but was supposed to say [her grandmother's] house is her house"

As instructed, the teacher reported the potential residency issue, and the Board commenced an investigation. An investigator, Thomas Sheridan, conducted surveillance on the Hillside residence and observed T.L. leave there and drive A.B. to school in Union Township on numerous dates between December 8 and December 19, 2014. A second investigator, Anthony Martino, conducted surveillance on the Union residence and reported A.B. never exited that home during the same period.

By letter dated December 31, 2014, the Board advised T.L. that A.B. was "not properly domiciled in the school district." Consequently, A.B. was "not entitled to a free public education in [Union Township]."

T.L. requested a hearing before the Board's Residency Committee, pursuant to N.J.S.A. 18A:38-1. The Residency Committee held a hearing on February 10, 2015, at which T.L. presented her driver's license, car registration, credit union statement, Macy's store credit card, medical bills, voter registration, and postage from her pharmacy, all bearing the Union Township address. Following the hearing, the Residency Committee sent Martino to verify whether A.B. had a room inside the Union residence. Martino reported:

When I arrived[,] . . . Mother, [T.L.], let me in, and took me upstairs, and showed me a room, with a bed, and a few dolls on the bed. I didn't look in [the] closet, and didn't see [the] student in [the] room or in [the] house As I was leaving, [T.L.] had her coat on while I was at [the] house, and a grey auto was double[-]parked, in front of the house with the motor running.

Sheridan inspected the Hillside residence the following morning. He noted: "I went into [the] house with [T.L.] and her mother, [and] upstairs to the two bedrooms. One bedroom had a lot of bags on [the] floor. Before I could ask her about them, [T.L.] said [']okay you saw what you came for now it's time to leave.[']"

The Residency Committee deemed the results of the two home inspections "inconclusive." On February 20, 2015, the Board advised T.L, "[W]e cannot establish your actual residency in the Township of Union. Therefore, your child is not eligible to remain at [her present] [s]chool, and will be issued a transfer card on . . . February 23, 2015." T.L. appealed to the Commissioner, who subsequently transferred the matter to the Office of Administrative Law (OAL) as a contested case.

An ALJ conducted a hearing on December 7, 2015. T.L. testified, and called her mother, K.L., and her next-door neighbor in Hillside, M.K., as witnesses. The Board presented the testimony of A.B.'s teacher and the two residency investigators, Sheridan and Martino.

T.L. testified she is employed as a respiratory therapist at a Newark hospital and works twelve-and-a-half hour shifts, from 7:00 a.m. to 7:30 p.m., three to four times per week. She maintained she was working on December 9, 10, 16, and 17, 2014, when Sheridan allegedly observed her leaving the Hillside residence with A.B. between 8:30 a.m. and 9:00 a.m. She presented her employee timecard² that showed she clocked into work at 6:51

² During the hearing, there was a dispute over whether T.L.'s timecard was properly authenticated. While T.L. testified the timecard reflected a true and accurate copy of the hours she

a.m., 7:04 a.m., 7:13 a.m., and 7:12 a.m. on December 9, 10, 16, and 17, respectively. T.L. thus contended Sheridan's investigation report was inaccurate.

T.L. also testified she does not drive a silver Hyundai, as reported by Sheridan. Rather, she drives a green Hyundai SUV, and asserted Sheridan could not have reliably identified her car without recording her license plate number. T.L. further testified that "right next door to [my Hillside residence] . . . there is a young [female] child that is a year or two difference from my child[,]" suggesting Sheridan mistook another female child for A.B. T.L. also presented her driver's license, car registration, paystubs, Macy's credit-card statement, and hospital bills, all containing the Union address.

On cross-examination, the Board's attorney questioned T.L. on the fact she did not produce her tax returns, car loan statement, cell phone bill, Wells Fargo bank statement, or American Express credit card statement. Counsel also confronted T.L. with documentation from the Division of Consumer Affairs showing her State-issued respiratory care license reflected a Hillside address. Although T.L. contended she paid bills with respect to

worked, it did not reference the Newark hospital. The ALJ admitted the document over the Board's objection, opting to "give it the weight it's worth."

her mother's Union residence, she produced no documentation, instead stating she paid in cash. T.L. was also questioned extensively regarding utility bills she paid on her Hillside residence.

The testimony of K.L. and M.K. at the OAL hearing is summarized accurately in the ALJ's initial decision, as follows:

[K.L.], T.L.'s mother, testified that [T.L.] and [A.B.] have lived with her in Union for many years. She stated that [A.B.] leaves there for school every day, and that they share the upkeep of the home and share costs for food and oil. There are no checks written between them. She indicated that [A.B.] has never lived anywhere else.

M.K. testified she lives . . . in Hillside, next door to [T.L.]. She indicated that she sees T.L. occasionally, but not every day, perhaps once or twice a month. She testified that she watches the house and sees the lights on, but at night only the porch lights are on. M.K. testified that T.L. does not live there.

M.K. added, "I'm retired . . . everyday I'm home [and] there's no one in that house at night"

A.B.'s first grade teacher testified that, once A.B. was shown the image of the Union residence, she insisted it was her grandmother's home and she did not live there. Sheridan and Martino testified in detail about the results of their surveillance. Sheridan also noted that, at the hearing before the Residency Committee, T.L. did not deny she was at the Hillside

property on the days he observed her. Rather, T.L. indicated she was there to host a family member.

The ALJ rendered her initial decision on April 15, 2016. After summarizing the testimony, she found that:

Surveillance conducted over several days at . . . M. Place in Union Township revealed that neither T.L. [n]or A.B. resided there. The surveillance and the testimony demonstrated that the child was transported from [the Hillside residence] to school in Union Township. The school attendance records amply supported the credible testimony of the residency investigators.

The ALJ elaborated:

From the evidence submitted, it is clear that A.B. has been domiciled in Hillside while attending school in Union Township. A.B. admitted to her teacher that she does not live at the Union address. [The Board's] investigator observed T.L. and A.B. leaving the Hillside address and driving to [A.B.'s] [s]chool on five separate school days in December 2014. No documentation was offered to support T.L.'s claim that she shares expenses with her mother at the Union Township address. The evidence includes numerous bills from Elizabethtown Gas, PSE&G, and NJ American Water reflecting usage charges for the Hillside property that are entirely inconsistent with T.L.'s claim that no one resides there. T.L. failed to demonstrate, by a preponderance of the credible evidence, that A.B. is entitled to a free public education in Union Township. To the contrary, the Board has proven that she is not . . . domiciled there.

. . . .

A.B. was domiciled in Hillside during the days she attended school in Union. She was observed leaving the Hillside address early in the morning, over the course of several days during an investigation conducted in December 2014, and being driven to Union Township to attend school.

The Commissioner issued his final agency decision on July 13, 2016. He adopted the ALJ's decision that T.L. "failed to sustain her burden of establishing that she was a domiciliary of Union Township." He further found "no basis in the record — which include[d] more than thirty exhibits and a transcript of the hearing — to reject either the ALJ's recitations of testimony or her determinations of witness credibility." As a result, the Commissioner adopted the ALJ's finding that A.B. was not entitled to a free public education in Union Township during the 2014-2015 and 2015-2016 school years. As a result, T.L. was directed to reimburse the Board for tuition costs incurred during that time period. This appeal followed.

On appeal, T.L. contends the Commissioner's decision was arbitrary, capricious, and unreasonable, and not supported in the record. She focuses primarily on her disagreements with the ALJ's credibility and factual findings.

"[T]he Commissioner of Education has primary jurisdiction to hear and determine all controversies arising under the school laws." Bower v. Bd. of Educ. of E. Orange, 149 N.J. 416, 420

(1997). As a result, his "statutory interpretation is entitled to considerable weight, where not inconsistent with the statute and in harmony with the statutory purpose." Kletzkin v. Bd. of Educ. of Spotswood, 136 N.J. 275, 278 (1994). We will ordinarily uphold the Commissioner's determination unless it is "'arbitrary, capricious, or unreasonable or is not supported by substantial credible evidence in the record as a whole.'" G.D.M. v. Bd. of Educ. of the Ramapo Indian Hills Reg'l High Sch. Dist., 427 N.J. Super. 246, 259 (App. Div. 2012) (quoting Dennerly v. Bd. of Educ. of Passaic Cty. Reg'l High Sch. Dist. # 1, 131 N.J. 626, 641 (1993)).

When reviewing a final agency action under the arbitrary, capricious, and unreasonable standard, we must examine whether the agency's decision conforms with relevant law; whether the decision is supported by substantial credible evidence in the record; and whether in applying the law to the facts, the administrative agency clearly erred in reaching its conclusion. In re Stallworth, 208 N.J. 182, 194 (2011).

Regarding an administrative agency's factual findings and credibility determinations,

[t]he governing standard is, of course, whether the findings made could reasonably have been reached on sufficient credible evidence present in the record, considering the proofs as a whole, with due regard to the

opportunity of the one who heard the witnesses to judge of their credibility. Close v. Kordulak Bros., 44 N.J. 589, 598-99 (1965). If the factual findings are supported by competent evidence, they will be upheld. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); Clover Hill Swimming Club v. Goldsboro, 47 N.J. 25, 36 (1966); Szumski v. Dale Boat Yards, Inc., 48 N.J. 401, 410 (1967). It is not ordinarily our function to weigh the evidence, to determine the credibility of witnesses, to draw inferences and conclusions from the evidence, and to resolve conflicts therein. Mead Johnson and Co. v. South Plainfield, 95 N.J. Super. 455, 466 (App. Div. 1967).

[In re Grossman, 127 N.J. Super. 13, 22-23 (App. Div. 1974).]

Factual findings "are binding on appeal when supported by adequate, substantial, credible evidence," with deference being particularly appropriate "when the evidence is largely testimonial and involves questions of credibility." Cesare v. Cesare, 154 N.J. 394, 412 (1998) (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)).

An agency head is not bound by the factual findings and legal conclusions of an ALJ unless otherwise provided by statute. N.J.A.C. 1:1-18.1(d). He or she reviews the ALJ's decision "de novo . . . based on the record" before the ALJ. In re Parlow, 192 N.J. Super. 247, 248 (App. Div. 1983). Nevertheless, an agency head may only reject an ALJ's credibility findings if he or she "determine[s] from a review of the record that the findings are

arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record." N.J.S.A. 52:14B-10(c). In this case, following his review of the record, the Commissioner adopted the ALJ's findings of fact, including her credibility findings, as well as her conclusions of law.

N.J.S.A. 18A:38-1(b)(1) provides that "[p]ublic schools shall be free to . . . persons over five and under [twenty] years of age" who are "domiciled within the school district" or are "kept in the home of another person domiciled within the school district and supported by such other person gratis as if he were such other person's own child" When a school district "finds that the parent or guardian of a child who is attending the schools of the district is not domiciled within the district and the child is not kept in the home of another person domiciled in the district[,]" pursuant to N.J.S.A. 18A-38-1(b)(1), the superintendent or administrator "may apply to [the Board] for the removal of the child." N.J.S.A. 18A:38-1(b)(2). In such circumstances, the parent or guardian is "entitled to a hearing before [the Board]" Ibid.

If the Board decides, after a hearing, that a child is not domiciled within the district, a parent or guardian may "contest [the Board's] decision before the [C]ommissioner . . . and shall

be entitled to an expedited hearing before the [C]ommissioner" Ibid. In such proceeding, the parent or guardian has "the burden of proof by a preponderance of the evidence that the child is eligible for a free education" Ibid. If the parent or guardian fails to satisfy his or her burden, the Commissioner "shall assess the parent or guardian tuition for the student prorated to the time of the student's ineligible attendance in the schools of the district." Ibid.

It is well established that "[a] child's domicile is normally that of his or her parents." Somerville Bd. of Educ. v. Manville Bd. of Educ., 332 N.J. Super. 6, 12 (App. Div. 2000). "'Domicile' is defined as 'the place where [a person] has his [or her] true, fixed, permanent home and principal establishment, and to which whenever he [or she] is absent, he [or she] has an intention of returning.'" D.L. v. Bd. of Educ. of Princeton Reg'l Sch. Dist., 366 N.J. Super. 269, 273 (App. Div. 2004) (citation omitted).

Having reviewed T.L.'s appellate arguments in light of the record before us and the applicable law, we find no basis to disturb the Commissioner's determination that T.L. and A.B. were not domiciled in Union Township during the period in question. We do not reweigh the evidence based on those appellate arguments and make our own factual determinations de novo, as T.L. would have us do. As we have explained, our duty is to ensure that the

factual findings made by the administrative agency are reasonably grounded in the record.

It is true that T.L. presented the ALJ with various proofs that she maintained a Union domicile. Notwithstanding that evidence, there is sufficient credible evidence in the record to support the conclusion she was domiciled in Hillside. The Commissioner adopted the ALJ's decision and found the ALJ's factual findings were amply supported by the record, which included: (1) surveillance conducted over a two-week period, during which the Board's investigator observed T.L. leave the Hillside residence and drive A.B. to school in Union Township on numerous occasions; (2) surveillance during the same period in which another investigator observed that neither T.L. nor A.B. left the Union residence in the morning; (3) testimony from A.B.'s teacher as to A.B.'s comments that she did not live at the Union residence; (4) no evidence to support T.L.'s testimony that she assists with paying utilities at the Union residence; (5) utility bills for the Hillside home that the ALJ found inconsistent with her claim that no one lived there; and (6) T.L.'s failure to produce her tax returns to show proof of domicile. That evidence, or absence of evidence, provides a sufficient basis for the Commissioner's decision.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION