SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3863-18

S.H. and C.H., on behalf of their minor children, C.H., S.H., and S.H.,

Petitioners-Appellants,

v.

BOARD OF EDUCATION OF THE TOWNSHIP OF ALLOWAY, SALEM COUNTY,

Respondent-Respondent.

Submitted April 25, 2022 – Decided May 20, 2022

Before Judges Messano and Rose.

On appeal from the New Jersey Commissioner of Education, Docket No. 241-10/17.

S.H. and C.H., appellants pro se.

Parker McCay, PA, attorneys for respondent Board of Education of the Township of Alloway (William C. Morlok and Emily A. Schrank, of counsel and on the brief).

Matthew J. Platkin, Acting Attorney General, attorney for respondent Commissioner of Education (Sadia Ahsanuddin, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

S.H. and C.H., on behalf of their minor children, C.H., S.H., and S.H., appeal pro se from a March 26, 2019 final decision of the Commissioner of Education, adopting the initial decision of the administrative law judge (ALJ), which dismissed petitioners' residency claim and ordered tuition reimbursement. The Commissioner found petitioners' children were not domiciled in Alloway Township, Salem County from August 25, 2017 to October 2, 2018 and, as such, were ineligible for a free education in Alloway's public schools. The Commissioner directed petitioners pay $36,333.60 in tuition reimbursement to the Alloway Township Board of Education for that time frame. We affirm.

We summarize the pertinent facts from the record before the ALJ. S.H. and C.H. are parents of five children. At the time of the hearing before the ALJ, the children ranged in age from two to seventeen years old. The three children at issue in this appeal were entering eighth grade, third grade, and kindergarten.

During the two-day hearing in July 2018, petitioners were represented by counsel, who presented the testimony of the children's mother, C.H., and a long-time acquaintance of the family, Courtney Hitchner. The Board called three

witnesses: its superintendent, Kristin Schell; business administrator, Rebecca Joyce; and the superintendent's administrative assistant, Barbara Rishel. The parties also moved into evidence several documents and stipulated to certain facts.

It is undisputed that the family lived on Neil Court in Alloway for about ten years, sold their home on August 25, 2017, and moved into a home they had owned in Elmer Township since November 2016.[1] Petitioners stipulated "they ha[d] not resided in the District since August 25, 2017." According to C.H., the Elmer property was one of nineteen investment properties owned by petitioners, and the family's move to the Elmer home was temporary.

C.H. testified that shortly after they moved from their home on Neil Court, their purchase of another home in Alloway fell through. C.H. further stated petitioners purchased property on Alloway Aldine Road in Alloway on November 6, 2017, and North Greenwich Street in Alloway on February 9, 2018, but both properties required extensive repairs before moving in.[2] Petitioners paid taxes on their Alloway properties. They did not, however, provide

[1] C.H. testified that the home has an Elmer address, but the property is situated in the townships of Upper Pittsgrove and Piles Grove.

[2] Following the hearing before the ALJ, petitioners certified they moved from the Elmer property to the Greenwich property on October 2, 2018.

documentation to the Board supporting their contention that their move to the Elmer property was temporary.

Further, the Board was advised otherwise from several sources, prompting Schell to contact petitioners in an "informal" attempt to begin the transfer process. When Schell's efforts were rebuffed, she notified petitioners of the Board's intention to remove the children, and that a hearing was scheduled for September 26, 2017 at 6:30 p.m. Schell's September 8, 2017 correspondence advised: "If you wish to be heard on my application to remove your children from the District[,] you must attend the aforementioned meeting." Following receipt of the Board's initial determination of ineligibility, petitioners requested a residency hearing.

The residency hearing was conducted during the executive session of the Board's September 26, 2017 monthly meeting. Before the open meeting started, Schell reviewed the attendance sheet; neither C.H. nor S.H. had signed in. Around 6:38 p.m., the Board president announced the closed executive session was about to begin and that it pertained to a residency hearing and a staff grievance. The president refrained from providing details to ensure confidentiality. The Board and the teacher who was present for her grievance, then left the open meeting for the executive session. Thereafter, at the request

of the Board's attorney, Schell left the executive session to "double check" whether C.H. had arrived while they "were all in transit." After a "quick scan" of the room, Schell "looked at the sign-in sheet," but there was no indication of C.H.'s presence.

C.H. arrived late and sat in the back of the open-meeting room with Hitchner. C.H. neither signed the attendance sheet nor notified the Board of her presence. While the Board was in executive session, C.H. exchanged text messages with her husband, S.H., who was not present at the meeting. C.H. told S.H. the Board had gone into session "as soon as" she arrived and was still in session when she was texting him. C.H. further claimed Schell was aware of her presence because the superintendent had "eyeballed" her.

At the executive session, Schell presented documents prepared during the residency investigation, including photographs depicting petitioners leaving their home in Elmer on school days with the children and taking them to school in Alloway. At the conclusion of the hearing, the Board voted petitioners' children were not domiciled in Alloway. The Board also established a non-resident tuition rate of $10,900 per year per pupil or $60.56 per day. After the board meeting concluded, C.H. signed the attendance sheet, but did not notify the Board she was present when they were in executive session.

Petitioners' ensuing appeal to the Commissioner was transmitted to the Office of Administrative Law as a contested case. The ALJ denied petitioners' motion for a protective order, but ordered redaction of "personal identification information from documents they s[ought] to utilize in this matter." Following further briefing, the ALJ denied the Board's motion for summary disposition and, as stated, conducted a testimonial hearing.

On February 11, 2019, the ALJ issued a cogent written decision, thoroughly summarizing the testimony adduced at the hearing and detailing her factual findings based on the testimony she deemed credible. The ALJ found "the testimony presented by Schell, Joyce, and Rishel about their actions, taken in relation to this matter, and their observations of C.H.'s statements and actions were consistent and credible." Conversely, the ALJ found "C.H.'s version of the events lacked a ring of truth." The ALJ supported her credibility determinations with specific references to the testimony of each witness.

As one notable example, the ALJ found:

> C.H's "shock" that the residency hearing occurred without her participation was not believable. This allegation was undermined by her testimony and her text messages with her husband. C.H. heard the meeting's roll call, the award given by the [B]oard to a student and the public comment, during which a teacher praised that student. C.H. knew why she was attending the September 26, 2017 meeting. C.H. heard the

> [B]oard state why they were going into executive session. C.H. heard their decision when the[y] re-entered the meeting after executive session. In fact, Hitchner's testimony contradicted C.H.'s testimony. Hitchner, who was seated next to C.H., could hear the entire meeting. Hitchner denied that C.H. ever asked her about the [Board]'s decision, because C.H. could not hear the tuition number.

The ALJ also squarely addressed the issues raised in view of the governing legal principles. Citing N.J.S.A. 18A:38-1 and our decision in Somerville Bd. of Educ. v. Manville Bd. of Educ., 332 N.J. Super. 6 (App. Div. 2000), the ALJ concluded petitioners' children were not domiciled in Alloway and, as such, were not entitled to a free education in its school system. The ALJ explained "C.H.'s statements and actions showed a course of conduct designed and engaged . . . intentionally to keep her children enrolled in Alloway for its free education, when she knew they no longer resided in the district." The ALJ was unpersuaded petitioners' move to Elmer was temporary, finding their contentions "unsupported by any credible evidence." Instead, the ALJ determined the Elmer residence was petitioners' "true, fixed, and permanent home." Concluding the "children attended school within [Alloway]'s district during the 2017-2018 school year and from September 5, 2018 through October 2, 2018," the ALJ affirmed the Board's residency determination, and ordered petitioners to reimburse the Board $36,333.60 for tuition costs.

On February 26, 2019, petitioners filed exceptions to the ALJ's decision pursuant to N.J.A.C. 1:1-18.4. Petitioners generally challenged the ALJ's conclusions. Citing the ALJ's pretrial order, petitioners specifically claimed they acted in conformity with the judge's order to redact personal identification information from the documents they introduced in evidence and, as such, the ALJ improperly considered these redactions in her credibility findings. Petitioners also asserted the Board violated their right to due process by, for example, conducting the "appeal hearing ex[]parte." The Board filed a reply, countering petitioners' contentions.

In a March 26, 2019 final decision, the Commissioner rejected petitioners' exceptions and "concur[red] with the ALJ's finding that petitioners failed to sustain their burden of establishing that they were domiciled in Alloway Township during the 2017-18 school year until October 2, 2018." Similar to the ALJ, the Commissioner concluded the record was devoid of any evidence supporting petitioners' claim they resided in Alloway during the time frame at issue. According to the Commissioner: "The mere purchase of additional houses in the district or the payment of property taxes does not establish domiciliary intent."

Nor was the Commissioner persuaded by petitioners' constrained assertions concerning the ALJ's credibility findings. Citing N.J.S.A. 52:14B-10(c), the Commissioner "f[ound] no basis in the record to disturb the ALJ's credibility assessments." The Commissioner also rejected petitioners' due process argument, finding they "failed to exercise their rights and participate in the [B]oard hearing." The Commissioner agreed the Board was entitled to $36,333.60 in tuition reimbursement: $10,900 per child for the 2017-18 school year, and $60.56 per child for the twenty school days from September 5, 2018 through October 2, 2018. This appeal followed.

On appeal, petitioners contend the Commissioner's decision was arbitrary, capricious, and unreasonable. Maintaining they were domiciled in Alloway during the time frame at issue, petitioners reprise the same arguments raised before the Commissioner: the ALJ's credibility findings are erroneous because petitioners' redactions were made pursuant to the ALJ's order; procedural missteps in the Board's domicile hearing violated their right to due process; and the tuition reimbursement charge was speculative and unsupported. Although not raised as exceptions before the Commissioner, petitioners further assert the ALJ's decision was based, in large part, on hearsay contrary to N.JA.C. 1:1-15.5(b).

Our review of an agency determination is limited. Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018). Reviewing courts presume the validity of the "administrative agency's exercise of its statutorily delegated responsibilities." Lavezzi v. State, 219 N.J. 163, 171 (2014). "Wide discretion is afforded to administrative decisions because of an agency's specialized knowledge." In re Request to Modify Prison Sentences, 242 N.J. 357, 390 (2020). We will not overturn an agency decision merely because we would have come to a different conclusion. In re Stallworth, 208 N.J. 182, 194 (2011).

For these reasons, "the Commissioner's decision in this matter is entitled to affirmance so long as the determination is not arbitrary, capricious, or unreasonable, which includes examination into whether the decision lacks sufficient support in the record or involves an erroneous interpretation of law." Melnyk v. Bd. of Educ. of the Delsea Reg'l High Sch. Dist., 241 N.J. 31, 40 (2020). Thus, we are not bound by the "agency's interpretation of a statute or its determination of a strictly legal issue." Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 196 (2007).

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).

Accordingly, an agency head 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). However, "[a]n agency head reviewing an ALJ's credibility findings relating to a lay witness may not reject or modify these findings unless the agency head explains why the ALJ's findings are arbitrary or not supported by the record." S.D. v. Div. of Med. Assistance & Health Servs., 349 N.J. Super. 480, 485 (App. Div. 2002); see also N.J.S.A. 52:14B-10(c).

We briefly review the pertinent statutory and regulatory scheme. "Public schools shall be free to . . . persons . . . who [are] domiciled within the school district." N.J.S.A. 18A:38-1(a). However:

> If the . . . school district finds that the parent . . . of a child who is attending the schools of the district is not domiciled within the district . . . the superintendent . . . may apply to the board of education for the removal of the child. The parent . . . shall be entitled to a hearing before the board and if in the judgment of the board the parent . . . is not domiciled within the district . . ., the board may order the transfer or removal of the child from school. The parent or guardian may contest the board's decision before the [C]ommissioner within 21 days of the date of the decision and shall be entitled to an expedited hearing before the [C]ommissioner and shall have the burden of proof by a preponderance of the evidence that the child is eligible for a free education under the criteria listed in this subsection. The board of education shall, at the time of its decision, notify the parent or guardian in writing of his right to contest the decision within 21 days. No child shall be

> removed from school during the 21-day period in which the parent may contest the board's decision or during the pendency of the proceedings before the [C]ommissioner. If in the judgment of the [C]ommissioner the evidence does not support the claim of the parent or guardian, the [C]ommissioner 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.
>
> [N.J.S.A. 18A:38-1(b)(2).]

"Any person not resident in a school district, if eligible except for residence, may be admitted to the schools of the district with the consent of the board of education upon such terms, and with or without payment of tuition, as the board may prescribe." N.J.S.A. 18A:38-3(a).

The regulations further provide: "A student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district." N.J.A.C. 6A:22-3.1(a)(1). "'[T]he domicile of a person is the place where he has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning, and from which he has no present intention of moving.'" In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991) (quoting Kurilla v. Roth, 132 N.J.L. 213, 215 (1944)); see also Lipman v. Rutgers-State Univ. of N.J., 329 N.J. Super. 433, 444 (App. Div. 2000) (noting a domicile is legally defined

as a permanent home from which a person does not intend to move). A person may have multiple residences but can only have one domicile as a permanent home. See Somerville Bd. of Educ., 332 N.J. Super. at 12.

N.J.A.C. 6A:22-3.4(a) provides a non-exhaustive list of documents a school district may consider in determining "a student's eligibility for enrollment." It is "the totality of information and documentation offered by an applicant" that must inform the district's decision. N.J.A.C. 6A:22-3.4(c).

As stated, upon a determination that a student is not domiciled within a school district, the board of education "shall" seek tuition reimbursement. N.J.S.A. 18A:38-1(b)(2). The Commissioner's computation of tuition, "shall be . . . on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance and shall be collected in the manner in which orders of the Commissioner are enforced." Ibid.

We have considered the arguments raised on appeal in view of the record and applicable legal principles, and conclude they are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E). Pursuant to our "limited" standard of review, Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011), we affirm, as did the Commissioner, substantially for the reasons expressed in the ALJ's comprehensive written

decision, which "is supported by sufficient credible evidence on the record as a whole," R. 2:11-3(e)(1)(D). In doing so, we determine the Commissioner's decision was not arbitrary, capricious, or unreasonable. Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001). We add the following brief comments.

We reject petitioners' hearsay contentions. As petitioners concede, hearsay is admissible under N.J.A.C. 1:1-15.5 (permitting the admission of hearsay evidence in an administrative hearing, provided "some legally competent evidence . . . exist[s] to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness"); see also Ruroede v. Borough of Hasbrouck Heights, 214 N.J. 338, 359-60 (2013) ("The competent evidence standard applied to ultimate facts requires affirmance if the finding could reasonably be made."). We discern no basis to disturb the Commissioner's determination that the ALJ's credibility determinations were based "on a multitude of reasons" detailed in her initial decision. The record supports the ALJ's credibility and factual findings. See In re Taylor, 158 N.J. 644, 656 (1999).

Affirmed.