IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

LILLIAN E. GRIFFIS, NELLIE WHEELER and AUDREY GRIFFIS,	*	
Plaintiffs/Appellants,	*	
V.	*	NO. M2003-00230 COA-R3-CV
	*	Davidson County Chancery Court No. 01-1282-II 6884
DAVIDSON COUNTY METROPOLITAN GOVERNMENT d/b/a/ DAVIDSON COUNTY BOARD OF EDUCATION,	*	
Defendant/Appellee.	*	

MEMORANDUM OF *AMICUS CURIAE*
TENNESSEE SCHOOL BOARDS ASSOCIATION
IN SUPPORT OF DEFENDANT/APPELLEE
DAVIDSON COUNTY BOARD OF EDUCATION

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ORAL ARGUMENT REQUESTED

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The Tennessee School Boards Association (TSBA) submits this brief in support of its *Motion for Leave to File an Amicus Curiae Brief in Support of Defendant/Appellee, Davidson County Board of Education.* TSBA respectfully asks this Court to reverse the June 8, 2004 ruling by the Tennessee Court of Appeals and reinstate the judgment of the Davidson County Chancery Court.

STATEMENT OF THE CASE

TSBA refers this Court to the Statement of the Case appearing at page 3 of Defendant/Appellee's brief to the Court of Appeals.

STATEMENT OF FACTS

TSBA refers this Court to the Statement of Facts contained at page 5 of the Defendant/Appellee's brief to the Court of Appeals.

INTEREST OF AMICUS

As explained in the Tennessee School Boards Association's *Motion For Leave to File an Amicus Curiae Brief in Support of Defendant/Appellee Metropolitan Davidson County Board of Education,* TSBA is a not-for-profit organization, created exclusively for charitable and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. TSBA is recognized in Tenn. Code Ann. § 49-2-2001 (2002) as the organization and representative agency of Tennessee's school board members and its membership is comprised of 135 county, city and special school district boards of education throughout the state. The purpose of TSBA as stated in Article II of the TSBA Constitution and Bylaws, is to work for the general advancement and improvement of public education in Tennessee.

The purpose and intent of TSBA's filing of this brief is to argue that the Court of Appeals erred in its decision to reverse the Chancery Court's grant of summary judgment. The Court held that language in a reversionary clause in a deed granting property to the school system should be interpreted so narrowly as to construe that since the property was no longer being used for classroom instruction that it automatically reverted under the language of the clause.

All of TSBA's 135 member school boards, along with county and city governments across the state, are potentially affected by this decision. The issue before this court concerns the application of a narrow interpretation of deed language that may ultimately put many property holdings of local governments at risk.

ARGUMENT AND CITATION OF AUTHORITY

INTRODUCTION

There is no dispute of material fact in this matter. All parties agree that the deed in question created a fee simple determinable with a possibility of reverter. The only issue for the Court to decide is whether the reversionary language of the deed was triggered when Metro ceased using the property for classroom instruction. Therefore, dispensing of the issue by manner of Motion for Summary Judgment is not only proper, but it is the preferred vehicle for disposing of purely legal issues. *See Byrd v. Hall*, 847 S.W.2d 208 (Tenn. 1993); *Bellamy v. Federal*

Express Corp., 749 S.W.2d 31 (Tenn. 1988). The trial court ruled in favor of Metro's Motion for Summary Judgment in this matter. The Court of Appeals, however, reversed that decision and granted Summary Judgment for the Plaintiffs.

The Court's decision was based on a very narrow interpretation of the deed's language, "school purposes" and "cause of education," and the grantor's intent. TSBA submits to this Court that any activity conducted by a local education agency, whether it be actual classroom instruction or some other ancillary activity that supports the school system is "school purposes."

I. REVERTERS ARE NOT FAVORED IN THE LAW

As stated above, there is no dispute that a possibility of reverter to the heirs is contained in the deed. However, reverters are not favored in the law. *McDonald v. Smith County Board of Education*, 675 S.W.2d 704 (Tenn. 1984). Further, a deed is to be construed most strongly against the grantor. *Phoenix Mut. Life Ins. Co. et al. v. Kingston Bank & Trust Co. et al*., 112 S.W. 2d 381 (Tenn. 1938). It is with these two legal premises in mind that the deed should be reviewed and phrases should be defined.

II. THE COURT OF APPEALS ERRED IN ITS NARROW CONSTRUCTION OF THE PHRASE "SCHOOL PURPOSES"

The relevant provision in the deed granting the property to the school system, reads as follows:

> *For and in consideration of the sum of one dollar ($1.00) and the interest I have for the education of the children of my neighborhood and community generally, provided however, the same is to be devoted exclusively to the* ***cause of education****, I Geo. W. Haley and wife, and when said property is* ***abandoned for school purposes*** *said land reverts to said Haley or his heirs or representatives…(emphasis added)*

Griffis v. Davidson County Metropolitan Government, 2004 WL 1268239, at *1 (Tenn.Ct.App.).

The Court of Appeals decision seems to be at odds with the legal principles set forth above. The Court applied a very narrow and limited definition of "school purposes" and "cause of education," construing the language of the deed to favor reversion. As will be explained below, the Court could just have easily construed the reversionary language to favor the continuation of the title in the grantee.

A. The History of Public Schools in Tennessee

In its decision, the Court of Appeals limits the term "education" to classroom instruction. The Opinion states that "Mr. Harley's intention in conveying this Property to Davidson County was served only by the property's use as a classroom facility." The Court infers Mr. Haley's intent from the phrases "for the education of the children of [his] neighborhood" and that the property should be "devoted exclusively to the cause of education." In reviewing the history of public education in Tennessee, we respectfully disagree.

Article XI, Section 12 of the Tennessee Constitution provides in part, "(t)he General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools." This Constitutional mandate is the basis for the existence of public education in Tennessee. The General Assembly

established a system of public education in 1925 through Public Chapter 115, currently codified as Tenn. Code Ann § 49-1-101 (2002). Tenn. Code Ann. § 49-1-102(a) (2002) provides "(T)he system of public education in Tennessee shall be governed in accordance with laws enacted by the general assembly and under policies, standards, and guidelines adopted by the state board of education…" The majority of the laws relevant to public education in Tennessee may be found in Title 49 of Tennessee Code Annotated. All of these laws, regardless of how obscure or mundane, exist solely for the purpose of fulfilling the mandate to provide an education to Tennessee's children.

Title 49 covers a range of subjects relating to education in Tennessee. Volume Nine (9) of Tennessee Code Annotated consists of fourteen chapters which include more than seven hundred (700) pages. Chapter Six (6) is approximately one hundred fourteen (114) pages in length and is devoted to Elementary and Secondary Education. A number of these sections deal specifically with classroom instruction, such as Tenn. Code Ann.§ 49-6-1001 *et seq*. (2002), Tenn. Code Ann. § 49-2-1201 *et seq*. (2002), and Tenn. Code Ann. § 49-6-1301 *et seq*. (2002). However, many more laws deal with some of the less glamourous aspects of running a school system. These include School flags, Tenn. Code Ann. § 49-6-2005 (2002), Power of boards to provide transportation, Tenn. Code Ann. § 49-6-2101 (2002); and Establishment of nutritional breakfast and lunch programs, Tenn. Code Ann. § 49-6-2302 (2002). TSBA argues that any activity conducted by a local education agency, whether it is actual classroom

instruction, or some other activity that either supports or is ancillary to providing that instruction constitutes "school purposes". TSBA submits that all the laws created by the General Assembly regarding education, exist for the sole purpose of carrying out the constitutional mandate of free public schools in Tennessee. But for that mandate, local boards of education and local education agencies would not exist. To hold that any activity that is legitimately conducted by a school system does not meet the definition of "school purposes" is counter-intuitive and lessens the importance of school activities that are crucial to providing to Tennessee children a free education as guaranteed by the Constitution.

B. "School Purposes" in Tennessee

For the purpose of reversionary clauses, little authority seems to exist in Tennessee common law regarding the definition of "school purposes". However, some concepts may be drawn from existing cases. In *Walker v. Shelby County School Bd*., 150 Tenn. 202, 263 S.W. 792 (1924), this Court was faced with the issue of whether the language of a deed created a reversion when the land ceased to be used for school purposes. When interpreting the language of a deed the court held "such conditions when relied on to work a forfeiture, must be created by express terms or clear implication and are construed strictly." The Court of Appeals reaffirmed this concept in *Powell v. Sumner County Board of Education*, 1990 WL 170446 at *1 (Tenn.Ct.App.).

In construing the language of this and other deeds, Courts are admonished to do so strictly and not "create" conditions not specifically provided for. The

language in the case at bar does not specifically require the grantee to continue to hold classes on the property in question, it merely requires that the property be "devoted to the cause of education" and that it would revert when "abandoned for school purposes." *Griffis* at *1. TSBA submits that the property in question has not been abandoned and is indeed devoted to the cause of education by and through its support of the school nutrition program. No circumstances exists which would act to trigger the reversionary clause contained in this deed.

C. "School Purposes" in Other Jurisdictions

Because of the lack of clear definition of school purposes in Tennessee law, TSBA has looked to other jurisdictions for guidance.

In *John G. Black Enterprises, Inc. v Centerville City School Board of Education, et al.*, 1995 WL 765978 at *1 (Ohio App. 2 Dist.), the following language was included in a deed granting property to the school system.

> It is hereby agreed and understood between the Grantor and the Grantee that if at any time the premises herein described shall cease to be used for school purposes, the same shall at once vest in said Grantor, its successors and assigns, forever.

"In trying to determine whether the property was used for school purposes the Court considered that at the time of the conveyance no improvements were located on this parcel. The Defendant has not erected any structures on the parcel nor made any improvements of the land. The Defendant has planted a few evergreen bushes in the cleared area along Paragon Road, however, in an effort to prevent that portion of the land from being used for an athletic field. Several

storage type structures have been erected on the east side of this parcel by persons other than the Defendant, but the Defendant has taken no action to cause their removal. In addition, some items of gardening/lawn care equipment are also located on the parcel near the eastern boundary. From time to time other debris has accumulated on various parts of this parcel, which on occasion has been removed by the Board.

The Board has regularly mowed the grass on the cleared area of the parcel bordering Paragon Road during the usual growing season. In approximately the early 1980's some elementary students in the Defendant's school system made an "ecological evaluation" of the site and made a number of recommendations for its use. No other use of the parcel has been made by the Defendant or any students in the school system. In 1975, the then Superintendent of the Defendant indicated that only a part of the parcel may be needed for a future school building and declared a willingness to transfer the wooded portion to the Washington Township Park District. Again in 1980, that same Superintendent stated that as of that time the Defendant did not perceive of a future use of the parcel for "school purposes." The current Superintendent testified, however, that the parcel would be needed for a future school building. The Court found that Black had not demonstrated abandonment and dismissed his complaint." *John G. Black Enterprises* at *2.

In the present case, the trial court found that the Davidson County Board of Education is using the property to store food service equipment and that the property is being maintained by the school system. Clearly the school system has

shown no intent to abandon the property and continues to use it for school purposes.

In *Sewell v. Dallas Independent School District*, 727 S.W.2d 586, 587 (Court of Appeals of Texas, Dallas 1987), the Court considered a 1954 deed which contained the following language:

> This conveyance is made and accepted subject to the following condition: The herein conveyed property shall be used for school purposes only, and in the event of the breachof [sic] this condition, title to the hereinafter described propertyshall [sic] revert to and vest in the grantor herein, his heirs and assigns.

"After the land was conveyed to it, the Rylie Independent School District (RISD) constructed an educational facility designated as "Rylie School" on the tract and conducted classes therein. In 1959, RISD was consolidated with the Dallas Independent School District (DISD). It is undisputed that DISD, at this point, became RISD's successor-in-interest to the tract of land in question. On July 23, 1974, Vincent Sewell executed a warranty deed giving Cameron Dee Sewell the reversionary interest in the tract of land described in the November 17, 1954 deed.

In 1982, as part of a judgment rendered against DISD in a desegregation suit, the United States District Court for the Northern District of Texas ordered that the students then attending Rylie School be transferred to two nearby schools. As a result of this order, Rylie School was closed.

After Rylie School was closed in 1982, DISD continued to utilize the land in question for a variety of school purposes, such as a storage facility for school

equipment and supplies, and as major support facility for DISD schools. Then, in November 1983, DISD leased a majority of the land in question to the City of Dallas." *Sewell* at 587.

The issue of the property being used for non-school purposes arose and the lawsuit filed only after the land was no longer used for storage and support and had been leased to the city. When the jury was charged they was asked to consider whether they found from a preponderance of the evidence that ***on or after November 9, 1983*** (emphasis added), the property involved in this case was not used for school purposes only? This charge presumes that the storage was a legitimate school purpose that if anything triggered the reversionary clause, it was the lease to the city. *Id* at 588.

In further discussion the Texas Court of Appeals stated "(w)e will address DISD and City's contention that since DISD at all times has used a portion of the property in question as "a storage facility for its school equipment and supplies and as a maintenance facility and as a major support facility for DISD schools" it has not abandoned the property and hence has not breached the "for school purposes only" language. Sewell admits that DISD has continuously used a portion of the property as a storage and maintenance facility and that such use constitutes a school purpose." *Id.* at 590

In the present case, there is no dispute that the school was used for storage purposes and further that the items stored were related to food services, a system wide function.

The Georgia Supreme Court has also considered this issue. In *A.W. Ingram v. W.D. Doss*, 217 Ga. 645, 124 S.E.2d 87, 88 (Supreme Court of Georgia 1962) the Court considered this deed language:

> To have and to hold the said bargained premises, together with all and singular the rights, members and appurtenances thereof to the same being, belonging or in anywise appertaining to the only proper use, benefit or behoof of said parties of the second part as Trustees of the Excellsior Consolidated School District and their successors in office forever and so long as the premises above described are used for school purposes by the Grantees and their successors herein named.

"During the summer of 1957 the school building was used for the storage of used desks and new furniture to be used in other school buildings. In the early part of 1957 the Tift County Board of Education had a new roof placed on the school building. Minor repairs were made on the buildings between that time and the Summer of 1960, when major repairs were made to place the school building in condition to be used for classroom purposes. *Ingram* at 646, 88.

It is the rule in this State that a clear showing must be made of abandonment of publicly owned property by public officials before giving effect to a reversionary clause". *Doss* at 647, 89.

In *Griffis*, clearly there was never an abandonment of the property and as previously stated, the language in the deed provides for the reversion only if the property is abandoned for school purposes.

CONCLUSION

For all of the foregoing reasons, the Tennessee School Boards Association respectfully urges this Court to reverse the judgment of the Court of Appeals and reinstate the judgment of the trial court.

Respectfully submitted this 27th day of August 2004.

TENNESSEE SCHOOL
BOARDS ASSOCIATION

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing motion has been served upon counsel for parties in interest herein:

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by mailing to said counsel to their offices VIA United States Mail, postage prepaid.

On this, _____ day of August 2004.

_____
Randall G. Bennett

APPENDIX

Unreported and Out of State Cases

A.W. Ingram v. W.D. Doss, 217 Ga. 645, 124 S.E.2d 87 (Supreme Court of Georgia 1962)

Griffis v. Davidson County Metropolitan Government, 2004 WL 1268239 (Tenn.Ct.App.)

John G. Black Enterprises, Inc. v Centerville City School Board of Education, et al., 1995 WL 765978 (Ohio App. 2 Dist.)

Powell v. Sumner County Board of Education, 1990 WL 170446 (Tenn.Ct.App.)

Sewell v. Dallas Independent School District, 727 S.W.2d 586 (Court of Appeals of Texas, Dallas 1987)