RAY WEBSTER and MATTHEW DUNNE, by and through his parents and next best friends, PHILIP and HELEN DUNNE, Plaintiffs, v. NEW LENOX SCHOOL DISTRICT NO. 122 and ALEX M. MARTINO, and as Superintendent of New Lenox School District No. 122, Defendants

No. 88 C 2328

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

May 25, 1989, Decided

OPINION: MEMORANDUM OPINION AND ORDER

GEORGE M. MAROVICH, UNITED STATES DISTRICT JUDGE

This is an action for injunction and declaration of relief pursuant to 42 U.S. C. 2202 for the deprivation of rights of censorship contrary to the First and Fourteenth Amendments of the United States Constitution. Additionally, state constitutional claims are asserted as a result of the incident complained of therein.

1983 and 28 U.S.C. §§ 2201- The defendants move to dismiss Plaintiffs' Amended Complaint for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12 (b)(6) or in the alternative Rule 56(b). For the reasons stated below, defendants' motion to dismiss is granted and Plaintiffs' Amended Complaint is dismissed with prejudice pursuant to Rule 12(b)(6).

Discussion

In deciding a motion to dismiss, the court must accept as true all well-pled material facts and make all reasonable inferences from these facts in the light most favorable to the

plaintiff. Grant v. City of Chicago, 594 F. Supp. 1441 (N. D. Ill. 1984). But it is black-letter law that on a Rule 12(b)(6) motion a court may take into account "the allegations in the complaint…and exhibits attached to the complaint …" Griswold v. E. F. Hutton & Co., Inc., 622 F, Supp. 1397, 1402 (N.D. Ill. 1985) (citing 5 Wright & Miller, Federal Practice and Procedure: Civil § 1357, at 593 (1969)).

Three exhibits were attached to the complaint. Exhibit C is a letter dated October 13, 1987 from Alex M. Martino, Superintendent of New Lenox School District No. 122, to Mr. Webster. The letter, in relevant part, says the following:

With respect to the three examples set forth in your letter, you are not to teach creationist science as the federal courts have held that this is religious advocacy (example 2). You may discuss the historical relationship between the church and state, but only in a purely objective manner without advocacy of a Christian viewpoint and only if such discussion is an appropriate part of the standard curriculum (examples 1 and 3).

This letter of October 13, 1987 is key to the court's decision since it is relief from the proscriptions contained therein that plaintiffs seek relief. It is within the context of that letter that Webster's claims of deprivation of rights should be examined. The other factual allegations in the amended complaint are, in essence, historical facts that led to the October 13, 1987 letter.

Raymond Webster is a teacher for New Lenox and as such has certain responsibilities to teach within the framework of curriculum outlined by the District. See Palmer v. Board of Education, 603 F.2d 1271 (7th Cir. 1979). Webster's right as a teacher to present certain material within his social studies curriculum is not absolute. Id.

In general, states and local school boards have wide latitude in the operation of public schools, including the setting of curriculum. Bethel School Dist. v. Fraser, 478 U.S. 675 (1986). Nonetheless, states and local school boards must operate within the boundaries of

the first amendment and federal law interpreting both the first amendment and the Constitution as a whole. Board of Education v. Pico, 457 U.S. 853, 864 (1982).

The establishment clause prohibits enactment of any law "respecting an establishment of religion." U.S. Const, amend. I. Thus, the State of Illinois cannot enact a statute which would violate the establishment clause and New Lenox cannot enact a curriculum which would inject religion into the public school setting.

Where statutes are concerned, a three-prong test has been applied to determine whether legislation violates the establishment clause. Lemon v. Kurtzman, 403 US. 602, 612-613 (1971). Clearly, the present case does not involve any statute which can be tested under the three-prong Lemon test, but the Supreme Court struck down a Louisiana statute requiring the teaching of creation science in any curriculum where the theory of evolution was taught. Edwards v. Aguillard, 482 U.S. 578 (1987). In Edwards, the Court noted that the theory of creation science includes a belief in the existence of a supernatural creator. This, the Court felt, led that statute to clearly embody a religious belief. As such, the requirement that creation science be taught violated the establishment clause and was unconstitutional.

If a teacher in a public school uses religion and teaches religious beliefs or espouses theories clearly based on religious underpinnings, the principals of the separation of church and state are violated as clearly as if a statute ordered the teacher to teach religious theories such as the statutes in Edwards did. The school district has the responsibility of ensuring that the Establishment Clause is not violated. See Sprott v. County of Kent, 621 F.Supp. 594 (W.D. Mich. 1985) aff'd, 810 F.2d 203 (6th Cir. 1986), cert. denied 480 U.S. 934 (1987). Therefore, New Lenox has the responsibility of monitoring the content of its teachers' curricula to ensure that the establishment clause is not violated.

Although Webster denies any improper religious teaching, the question before this court is whether Webster has a first amendment right to teach creation science. As previously

discussed, the term "creation science" presupposes the existence of a creator and is impermissible religious advocacy that would violate the first amendment. Webster has not been prohibited from teaching any nonevolutionary theories or from teaching anything regarding the historical relationship between church and state. Martino's letter of October 13, 1987 makes it clear that the religious advocacy of Webster's teaching is prohibited and nothing else. Since no other constraints were placed on Webster's teaching, he has no basis for his complaint and it must fail.

Plaintiff Dunne's claims, if not moot, are without merit. Dunne has not been denied the right to hear about or discuss any information or theory including information as to creation science. He is merely limited to receiving information as to creation science to those locations and settings where dissemination does not violate the first amendment. Dunne's desires to obtain this information in schools are outweighed by defendants' compelling interest in avoiding establishment clause violations and in protecting the first amendment rights of other students. Wisconsin v. Yoder, 406 U.S. 205 (1972). Dunne simply fails to state a claim for the violation of any first amendment or other rights and thus his claim must also fail.

Conclusion

The relevant issue here is what Webster was prohibited from teaching. He was prohibited from teaching creation science. The U.S. Supreme Court has found that creation science is a religiously based theory and that the teaching of this theory in a public school violates the first amendment. Prohibiting this teaching is thus constitutionally valid.

Since plaintiff Webster has no right to teach creation science and plaintiff Dunne has no right to receive information regarding creation science in his public school room, both plaintiffs' actions must fail.

Plaintiffs' Amended Complaint is dismissed with prejudice pursuant to Federal Rules of Civil Procedure 12(b) (6).

DATED: May 25, 1989