

Virginia:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

KIMBERLY JOHNSON JONES,)
)
 Petitioner)
)
 v.)
)
 SCHOOL BOARD OF THE)
 CITY OF RICHMOND,)
)
 Respondent.)
 _____)

Case No. CL13-3951

OPINION AND ORDER

This matter is before the Court on Respondent’s Demurrer and Plea in Bar, upon which the parties appeared for hearing on November 14, 2013. The Court, having considered the evidence at the hearing and memoranda of counsel, **DENIED** Respondent’s motions regarding attorney signature certification, standing as an aggrieved party, and time bar under the statute of limitations. The Court, however, took under advisement the general Demurrer as to whether Petitioner alleged facts upon which relief can be granted, and advised counsel that an Order would follow representing the Court’s rulings, including that on the general Demurrer.

Having reviewed the evidence presented, the Court makes the following findings:

I. Signature Defect

Respondent first asserts that the Petition should be dismissed for failure of counsel to sign the Petition originally filed with the Court on September 3, 2013. Respondent relies on Va. Code Ann. § 8.01-271.1, which states that “every pleading, written motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name.” Va. Code Ann. § 8.01-271.1 (West). “The signature of an attorney or party constitutes a certificate by him that (i) he has read the pleading, motion, or other paper, (ii) to the

Page 2 of 5

best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” *Id.* Respondent also relies on *Shipe v. Hunter*, 280 Va. 480, 699 S.E.2d 519 (2010), for the proposition that the failure to sign the pleading is fatal. Petitioner argues that failure to sign the Petition was a “simple clerical error” and that Respondent misapplies *Shipe*.

The Court disagrees with Respondent’s position and finds that it is inappropriate to hold that the failure to sign the pleading is fatal to Petitioner’s case. The reasons are twofold: (1) the circumstances particular to this filing and (2) none of the protections enumerated in the Code of Virginia or articulated in *Shipe* are implicated here. Counsel for Petitioner avers that the omission was no more than a clerical error. In fact, the Court notes that the signature line and the name of counsel are both present in the original petition. Further, and unlike any of the facts in any cases cited by Respondent, counsel signed the notice certification page appended to the original Petition. The Court is of the belief that this notice certification further buttresses Petitioner’s assertion that it was a clerical omission.

As for the *Shipe* factors, the Court notes that counsel for Petitioner is not an out-of-state attorney who cannot be held accountable for the allegations asserted in the Petition. Further, Counsel has subsequently asserted in a pleading that “(i) he has read the pleading; (ii) that to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law, and (iii) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” Pet’r’s Opp’n to Resp’t’s Dem. 8. Further, the original Petition is detailed and

Page 3 of 5

appends over one hundred pages of exhibits. Therefore, the Court will not dismiss the Petition for omission of counsel's signature.

II. Plea in Bar

In its Plea in Bar, Respondent asserts that Petitioner is not an "aggrieved" party under Va. Code Ann. § 22.1-87 governing review of actions taken by school boards. "Any parent, custodian, or legal guardian of a pupil attending the public schools in a school division who is aggrieved by an action of the school board may, within thirty days after such action, petition the circuit court . . ." Va. Code Ann. § 22.1-87 (West). The School Board voted on June 3, 2013, to close the school that Petitioner's daughter attended. The School Board voted on August 5, 2013 to modify attendance zones for other schools in the district. Respondent asserts that Petitioner was not "aggrieved" by the August 5 vote and was only affected by the June 3 vote in which her daughter's school was closed. Therefore, Respondent argues that Petitioner's action, filed on September 3, 2013, does not fall within the thirty-day statutory requirement to maintain an action under § 22.1-87.

The Court disagrees with Respondent's highly restrictive interpretation of who constitutes an "aggrieved" party and the standing requirements to maintain a suit under this section. Petitioner alleges that the Board, over the course a number of months, with several votes, and for a single purpose, took measures all related to the realignment of attendance zones for schools in the City of Richmond. The Court finds that the School Board took actions over a series of dates throughout summer 2013 that culminated with the vote on August 5. Consequently, the Court finds that Petitioner was aggrieved under the meaning of the statute by the August 5 vote and also timely filed the Petition within thirty days of that vote. Therefore, Respondent's Plea in Bar is **DENIED**.

III. Demurrer

Respondent asserts in its Demurrer that no actions complained of by Petitioner constitute arbitrary or capricious conduct or an abuse of discretion such that a cause of action cannot be sustained under Va. Code Ann. § 22.1-87. The relevant portion of the Code states: "The action of the school board shall be sustained unless the school board exceeded its authority, acted arbitrarily or capriciously, or abused its discretion." Va. Code Ann. § 22.1-87 (West).

"The purpose of a demurrer is to determine whether a complaint states a cause of action upon which relief may be granted." *Sales v. Kecoughtan Hous. Co., Ltd.*, 279 Va. 475, 479, 690 S.E.2d 91, 93 (2010). "A demurrer admits the truth of all properly pleaded material facts." *Lodge v. Trustees of Randolph-Macon Woman's Coll.*, 276 Va. 1, 5, 661 S.E.2d 801, 803 (2008). "All reasonable factual inferences fairly and justly drawn from the facts alleged must be considered in aid of the pleading. However, a demurrer does not admit the correctness of the pleader's conclusions of law." *Fox v. Custis*, 236 Va. 69, 372 S.E.2d 373, 374 (1988). "In reviewing the sufficiency of a motion for judgment on demurrer, the trial court is required to consider as true all material facts that are properly pleaded, facts which are impliedly alleged, and facts which may be fairly and justly inferred from the facts alleged." *Luckett v. Jennings*, 246 Va. 303, 307, 435 S.E.2d 400, 402 (1993). A demurrer will be sustained when the pleading it challenges lacks "sufficient definiteness to enable the court to find the existence of a legal basis for its judgment." *Mark Five Const., Inc. ex rel. Am. Econ. Ins. Co. v. Castle Contractors*, 274 Va. 283, 287-88, 645 S.E.2d 475, 477 (2007) (quoting *Hubbard v. Dresser, Inc.*, 271 Va. 117, 122, 624 S.E.2d 1, 4 (2006)).

Essentially, Respondent's argument is that Petitioner can, at best, only argue a potential Freedom of Information Act (FOIA) violation. The relief for such a violation, Respondent

Page 5 of 5

argues, is a FOIA sanction and not a judicial review of the action taken by the Board. Respondent also argues that the allegations in the Petition do not constitute arbitrary and capricious conduct undertaken by the Board. The Court disagrees with Respondent's position that there is not a legal basis for judgment from the facts asserted in the Petition. Petitioner not only alleges that the Board has run afoul of public body meeting strictures, but argues (and details the bases for these allegations) that certain conduct by some members of the Board contravenes certain public policies in order to effect unlawful purposes, and that this behavior is arbitrary and capricious. The allegations are sufficient to survive a demurrer. Therefore, Respondent's Demurrer is **OVERRULED**.

IV. Conclusion

Upon mature consideration of the record in the above-styled case, the Court **DENIES** Respondent's Plea in Bar and **OVERRULES** Respondent's Demurrer. As Petitioner's Motion for Leave of Court to Amend Petition for Review of School Board Zoning Decision was not noticed for hearing for November 14, 2013, the Court makes no ruling on that Motion at this time.

Pursuant to Rule 1:13 of the Supreme Court of Virginia, the Court dispenses with the parties' endorsement of this Order.

The Clerk is directed to forward a copy of this Order to the parties.

IT IS SO ORDERED.

Enter:

12/13/13



Richard D. Taylor, Jr., Judge