IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

CYNTHIA MILLER and KEVIN MILLER,
On behalf of their minor child, TERIK MILLER,

PLAINTIFFS,

CASE NO. 2014-CA-001741

v.

Division "J"

ESCAMBIA COUNTY SCHOOL BOARD, et al.

DEFENDANTS.

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ORDER DENYING PETITION FOR TEMPORARY EMERGENCY INJUNCTION

Terik Miller, a 17-year old High School student, has been ruled ineligible to play football the remainder of this 2014 season. He seeks a temporary emergency injunction that will allow him to complete his senior season at Escambia High School ("EHS"). The matter began to surface in March, 2014, when a track coach of another high school alleged that the football coach at EHS was committing recruiting violations. An investigation by the Escambia County School District ("ECSD") ensued.

In addition to the alleged recruiting violations, it is further alleged that petitioner, Terik Miller ("T. Miller") violated Escambia County School District ("ECSD") and Florida High School Athletic Association ("FHSAA") rules in the manner by which he transferred from Washington High School ("WHS") to EHS. The FHSAA ruled T. Miller ineligible for football this season. If the decision of the FHSAA is upheld, T. Miller may be deprived of the opportunity for college football scholarships and other emoluments he would deserve as a result

of his athletic talents. Petitioners claim that T. Miller was deprived of his rights to due process. Further, Petitioners maintain that T. Miller will be forever defamed if the FHSAA decision is allowed to stand.

The ECSD investigated the allegations and presented their findings to the FHSAA. By self-reporting, the ECSD avoided more severe fines and penalties. The FHSAA is the state governing body created by the Florida Legislature. The FHSAA, in reliance upon the investigation by the ECSD, decided that T. Miller, the son of the petitioners, Reverend and Mrs. Miller, is ineligible to play football for the remainder of the current season. The Millers seek a temporary emergency injunction that would allow T. Miller to play.

Some questions are not before the Court. Any impression that the Court is addressing these issues would be erroneous. The court is not deciding whether the EHS coach violated any recruiting prohibitions. Resolution of this question is simply not necessary to resolving the claims of the Millers. Moreover, the court is not deciding whether T. Miller is being punished for the alleged improprieties of the coach in violation of Fla. Stat. section 1006.20(2)(i) (2012). The penalty imposed on T. Miller was stated to be based upon his alleged violation of ECSD and FHSAA rules, not on whether he was or was not improperly recruited to EHS.[1] Neither of these issues need be reached, and the Court will not address them any further.

The first issue that must be addressed is whether the Millers have failed to exhaust their administrative remedies as claimed in the Motion to Dismiss by the FHSAA. Florida High School Athletic Association v. Melbourne Central Catholic High School, 867 So. 2d 1281 (Fla.

[1] According to the September 12, 2014 letter from the FHSAA, Exhibit 1G, finding of fact number 6, the basis for T. Miller's ineligibility are "Receiving an impermissible benefit" and "Falsifying information to gain athletic eligibility, which includes school registration documents." The Millers dispute these findings. Exhibit 1 E, Affidavit of Cynthia Miller.

5th DCA 2004). The FHSAA is a non-profit corporation governed by Section 1006.20, Fla. Stat. "The organization is not to be a state agency as defined in s. 120.52, Fla. Stat." Id. In the Melbourne case, the Circuit Court entered a temporary injunction (the relief sought here) prohibiting the FHSAA from enforcing its decision that a student was ineligible to participate in inter-scholastic sports. Like T. Miller, the student in the Melbourne case was being considered for college football scholarships. The student in Melbourne transferred to another school in his junior year. While attending a football summer camp, the student met a coach who was also going to be a coach at the school from which the student originally transferred. The student transferred back to the original school. The FHSAA ruled the student was ineligible for a year. The student filed an appeal, following the FHSAA appeals process. This appeal was denied. Rather than appealing to the Board of the FHSAA as provided in the FHSAA rules, the student then filed suit seeking an injunction. The student's petition for an injunction was granted, and the circuit court enjoined the FHSAA from enforcing its ruling that the student was ineligible. FHSAA appealed.

The Fifth District Court of Appeals recognized that an injunction is an "extraordinary and drastic" remedy. Melbourne, 867 So. 2d at 1285. "Generally, a party seeking a temporary injunction must establish (1) a likelihood of irreparable harm[2] and the unavailability of an adequate remedy at law; (2) a substantial likelihood of success on the merits[3]; (3) that the

[2] Precedent holds that neither the possibility of a scholarship nor a student's wish to participate in interscholastic sports are sufficient grounds to establish an irreparable injury. Seminole County School Board v. Downey, 59 So. 3d 1156, 1160-61 (Fla. 5th DCA 2011). The only other claim asserted by the Millers is an injury to T. Miller's reputation. The Court takes no position on this claim. But, see, Lee v. Florida High School Activities Association, 291 So. 2d 636 (Fla. 3d DCA 1974) (which is distinguishable as it was decided before the FHSAA had promulgated and implemented procedural rules for appeals).

[3] One of the claims of the Millers is that T. Miller was denied due process because ECSD and FHSAA did not strictly follow their own rules, procedures and guidelines. However, as long as the rules were substantially followed, there

threatened injury to the petitioner outweighs any possible harm to the respondent; and (4) that the granting of a temporary injunction will not harm the public interest." Id., p. 1286. If there is an administrative remedy, appeals through that remedy must be exhausted before a petitioner will be allowed to bring his claim to court. "A reviewing court may not entertain a suit when the complaining party has not exhausted available administrative remedies." Id. The Court of Appeals reversed the ruling of the Circuit Court, finding that the possibility of an athletic scholarship is not a protectable property interest, and the opportunity to participate in a high school sport, standing alone, is not a constitutional right, either. Id., at 1288-89.

There are narrow exceptions to the exhaustion requirement. Id., at 1289. "Only under exceptional circumstances will a court intervene without the aggrieved party having exhausted the organization's remedies." Id., at 1288. "Such circumstances may be found to exist where the proceedings are not conducted in accordance with the rules, but contrary to law, or where a resort to the internal remedies would be meaningless or would subject the complainant to unreasonable delay or hardship." Id.[4]

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are no due process rights of a high school student. LPM v. School Board of Seminole County, 753 So. 2d 130 (Fla. 5th DCA, 2000).

[4] "It is well settled that a party must exhaust all administrative statutory remedies before seeking judicial redress for grievances. *Odham v. Foremost Dairies, Inc.*, 128 So.2d 586, 593 (Fla.1961). However, "[a] concomitant part of the doctrine of exhaustion of administrative remedies, or primary jurisdiction, is that a party will not be required to take vain and useless steps in the expenditure of the administrative remedy in order to perfect the right to seek judicial redress." *Chatlos v. Overstreet,* 124 So.2d 1, 3 (Fla.1960). *See Bruce v. City of Deerfield Beach,* 423 So.2d 404 (Fla. 4th DCA 1982); *City of Miami Beach v. Jonathon Corp.*, 238 So.2d 516 (Fla. 3d DCA 1970); *Cook v. Di Domenico,* 135 So.2d 245 (Fla. 3d DCA 1961). "City of Miami v. Miranda, 725 So. 2d 1270 (Fla. 3d DCA 1999) (Shevin, dissenting). "One is not required to pursue administrative remedies where such remedies would be of no avail. **City of Holly Hill v. State ex rel. Gem Enterprises, Inc., 132 So.2d 29 (Fla.App.1st 1961).**" Southern Bell Telephone and telegraph Company v. Mobile America Corporation, 291 So. 2d 199 (Fla. 1974); 42 Am.Jur., Public Administrative Law Sec. 200. 1 Fla.Jur., Administrative Law Sec. 176.

The Circuit Court in Melbourne had ruled that exhausting administrative remedies would be futile, as the football season would be over by the time the process was completed. At the hearing in this case, counsel for the FHSAA stated that if the Millers appeal, that appeal would be heard by a district committee on October 7, 2014. And, if that appeal is unsuccessful, the Millers have another opportunity for appeal to the FHSAA Board of Directors in November. The problem is, under this scenario, if the Millers are ultimately successful through the appeals process, it would be an empty victory, as the senior football season for T. Miller will, effectively, be over.

Thus, adhering to the administrative remedies by the Millers would appear to be futile. However, the parties have overlooked Fla. Stat. 1006.20(7)(f) which provides: "The FHSAA shall expedite the appeals process on determinations of ineligibility so that disposition of the appeal can be made before the end of the applicable sport season, if possible." In light of this provision of the statute, the decision this Court is compelled to make is to deny the injunction, and direct the Millers back to the FHSAA.

The Millers argue that this investigation has been proceeding since March, and that the long delay is what has created the dire necessity of judicial intervention. The problem with this argument is that it is the ECSD that did the investigation, and not the FHSAA. Under the statute cited, above, the FHSAA is compelled to give expedited consideration to the Miller's complaints. How fast the FHSAA decides to act, and whether that is adequate, remains to be seen. Certainly, if the FHSAA makes no attempt to expedite consideration of the Millers' appeal, there would be grounds to bypass the administrative process. However, until the Millers

perfect their appeal and the FHSAA announces its timetable, the Court is not able to determine whether the Millers are entitled to injunctive relief.

Assuming, without deciding, the FHSAA adheres to the schedule announced in Court, and assuming this Court then finds that proceeding before the FSHAA is futile, the question would remain whether they are entitled to an injunction. These are questions of law based upon undisputed facts. Clearly, there are many areas of dispute. However, these disputes need not be resolved as a pre requisite to deciding the present matters before the court.

If the court is incorrect and the Millers may pursue their grievance in court, the next question would be whether they can meet the stringent requirements for an injunction against the respondents. Melbourne, 867 So. 2d at 1286. Among other elements, the Millers must establish both a redressable injury and that they have a substantial likelihood of success of proving entitlement to the remedy sought.

The Millers raise three arguments as to how they have been injured. First, they claim T. Miller is being punished for the coach's alleged misdeeds, and that this violates Florida law. If, however, there is an independent basis for the FHSAA decision, then this argument becomes irrelevant.[5]

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[5] Counsel for the Millers argues that there was no recruiting violation because the EHS coach did not "pressure, urge, or entice" T. Miller to transfer to EHS. There is no question that the Millers met and spoke with the EHS coach and that they came away from these discussions with a desire to transfer to EHS. Giving "urge" its common meaning, it is quite possible that T. Miller was "urged" to transfer to EHS. Still, the Court's decision, today, is limited to the allegations in paragraph 6 of FHSAA Exhibit 1G. See, also, May 28, 2014 "Results of Interview with Donte Sheppard", Exhibit 11 to ECSD Investigation, bates stamped page 000050 (the EHS coach "provided personal training to [T. Miller]for several years. He also spoke with [T. Miller's] parents about EHS after the fall [2013] football season and prior to his transfer to EHS, as they were unhappy about the Washington High School football program and was going to leave and transfer to EHS.")

Next, they argue that T. Miller is being deprived of his right to play football. The case law holds that there is no such right. Id.

Finally, the Millers claim that T. Miller is being maligned unfairly, as he has been denied due process to defend the accusations that he has violated some rule or regulation. If this is so, it is independent of the claimed right to play football. Their argument, however, proves too much. Since T. Miller does not have a constitutional right to play football, the delays of the administrative remedy become irrelevant and thus any claims of factual error can be addressed in the administrative proceeding. Assuming, arguendo, that the ECSD investigation was flawed, the legal question is (1) whether T. Miller has an administrative remedy and (2) whether that administrative remedy is adequate. This remains to be seen.

Focus should be on sportsmanship. It is unfortunate that our society today puts so much pressure on young men and women. The mega-dollars at stake for a high school athlete looking toward a college scholarship and a professional career blind us to the original purpose of high school and collegiate athletics. Teamwork. Comradery. Sportsmanship. Honor. Personal achievemnent. Fairness. Teaching young men and women how to be good citizens through the crucible of competition that always ends in a handshake. While these concepts may seem outmoded in the popular press, they remain worthy goals, nonetheless. Another concept is respect for the judicial (as well as the administrative) process. The Court refers back to a recent commercial where a high school basketball game is on the line and a player touches a ball before it goes out of bounds. The official calls the ball out on the other team. The young man who last touched the ball tells his coach the referee was in error. The coach encourages the young man to tell the referee, regardless of the impact it will have on the ultimate winning or losing of the game. This is how it should be. The outcome of a lawsuit should be the same. It is unfortunate

that there must be a winner and a loser. However, regardless of who prevails, the Court would hope that all parties shake hands and recognize that it is the law we are applying here, and justice that we seek.

ORDERED AND ADJUDGED that the Petition for Temporary Emergency Injunction is hereby DENIED.

DONE AND ORDERED in Pensacola, Escambia County, Florida this 18th day of SEPTEMBER, 2014.

ROSS GOODMAN, CIRCUIT JUDGE

Copies to:

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