

Landow ex rel. Landow v. Sch. Bd., 2001
U.S. Dist. LEXIS 7156
United States District Court for the Middle District of Florida, Orlando Division
March 27, 2001, Decided
Case No. 6:97-CIV-1463-ORL-22KRS
Reporter: 2001 U.S. Dist. LEXIS 7156 | 2001 WL 311311

RICHARD LANDOW, as next friend of KAYLA LANDOW, as representative of a class of similarly situated persons, Plaintiff, -vs- SCHOOL BOARD OF BREVARD COUNTY, Defendant.
Counsel: For RICHARD LANDOW, plaintiff: Mark E. Tietig, Lisa Kuhlman Tietig, Tietig & Tietig, Merritt Island, FL.
For SCHOOL BOARD OF BREVARD COUNTY, defendant: Michael H. Bowling, Michael M. Bell, Bell, Leeper & Roper, P.A., Orlando, FL.
Judges: ANNE C. CONWAY, UNITED STATES DISTRICT JUDGE.
Opinion by: ANNE C. CONWAY

Opinion

ORDER

This cause comes before the Court for consideration of the School Board of Brevard County's Motion for Extension of Deadlines Set Forth in the Court's Final Order and Preliminary [sic] Injunction (Doc. 183), filed March 19, 2001, and Plaintiff's Response thereto (Doc. 185), filed March 21, 2001. On March 23, 2001, in the absence of the undersigned judge and pursuant to her direction, Magistrate Judge Karla R. Spaulding temporarily relieved the School Board of one of the deadlines at issue, pending final ruling by the undersigned judge.

On March 7, 2001, the Court entered a Final Order and Permanent Injunction (Doc. 174) requiring the School Board to, inter alia, (1) begin demolishing the Riverview Elementary facility at Titusville High School not later than March 31, 2001, (2) promptly thereafter commence construction of a girls' softball field at Titusville High on the Riverview site, (3) begin construction of a girls' softball field at Astronaut High School not later than March 31, 2001, and (4) as to the fields at both high schools, ensure that construction is completed and the fields are ready for play by the first day of classes in the 2001-2002 school year.

The Court did not pull these deadlines out of thin air, it based them on the representations of counsel in the Stipulated Joint Plan (Doc. 173) the parties filed on March 5, 2001. In that regard, the Stipulated Joint Plan stated:

In the event the Court approves this plan, the demolition of Riverview Elementary School will start as early as March 2001 and the field should be ready for play by summer of 2001. It being the goal of the SCHOOL BOARD not merely to have the fields ready for use during the next school year's softball season, but complete so that the girls' softball teams can practice thereon prior to the opening of the season.

Doc. 173 at 2. Concerning the timetable for construction of the field at Astronaut High, the Stipulated Joint Plan stated: "The School Board intends to begin construction in March of 2001, so that the field can be available for play as early as summer 2001." Id. at 3. Consistent with these representations, the descriptions of the projects attached to the Stipulated Joint Plan contained the following statements: "The demolition on the Riverview Elementary School can start in March 2001 and the field [at Titusville High] could be ready for play by the summer of 2001" and "The area selected [at Astronaut High] is presently available so it is possible that work could begin in March 2001 and the field could be available for play by June 2001." Exhibits "A" and "B" to Doc. 173.

Now, the School Board says it cannot meet those deadlines. In that regard, the Motion for Extension states: "The undersigned has conferred with Ed Curry, the Assistant Superintendent in charge of facilities, and has been informed that it will be impossible to obtain bids and complete the demolition of the Riverview Annex by March 31, 2001." Doc. 183, P 1, at 2. Additionally, the motion states:

Likewise, the SCHOOL BOARD cannot guarantee that the softball fields can be completed by the start of school. As mentioned above, bidding for jobs is required by Florida law and other factors, such as weather, play a large part in completing projects such as this. Further, to require completion by the end of summer, the SCHOOL BOARD would be required to sod, as opposed to seed, the fields. This would result in an increase of approximately \$ 100,000 in costs over the some \$ 600,000 already allocated for construction.

Id., P 3, at 2. The School Board states that it

offered, in an effort to reassure the plaintiffs that it is acting in the best of faith, to guarantee that the girls' softball fields at Astronaut and Titusville High Schools would be ready for practice and play by December 1, 2001. This will allow some six weeks prior to the beginning of the season for the parties to resolve any disputes and to seek court intervention, if necessary. Nevertheless, counsel for the plaintiffs stated that such date was "too far out."

Id., P 7, at 3-4. Accordingly, the School Board asks the Court to "amend its order of March 7, 2001, to permit the SCHOOL BOARD to have through April 30, 2001, to complete the demolition of Riverview [5] Elementary School at Titusville High School and to have through January 15, 2002, as agreed by the parties in the Joint Plan, to complete the softball fields at Titusville and Astronaut High Schools." Id. at 4.

In response, Plaintiff states that he does not oppose extension of the deadline for demolishing the Riverview Annex, but notes that "no demolition is required to begin construction of the field at Astronaut High School." Doc. 185, P 1, at 1. Plaintiff also does not object to modification of the deadline for completing construction of both fields, except as it relates to installing grass on the fields. In that regard, Plaintiff states:

The School Board should carefully choose the proper grass seed; sow, irrigate, and fertilize the seed and grass properly and in a timely manner; and, if the grass is not grown, filled in, and playable by December 1, 2001, the School Board must be prepared to sod or otherwise render the field playable by January 15, 2002.

Id., P 2, at 2. Finally, Plaintiff states that he does "object to the wholesale extension of the Court's deadline for completion of the fields because the School Board has not provided sufficient reason [6] for any further extension of the deadlines[.]" Id., P 3, at 3. In that regard, Plaintiff offers the following observations:

Although it is true that Plaintiffs agreed to the absolute outside maximum deadline of January 15, 2002, in the stipulated plan, Plaintiffs think it better for everyone that the fields be completed and made playable as soon as possible. The School Board could begin work on the Astronaut field immediately and could use the time needed to demolish the Riverview annex to line up and schedule labor and materials for construction of the Titusville field. Also, the completion deadline for both fields should be as early as practicable to allow time for Plaintiffs to inspect the fields; and, in the event of non-compliance with this Court's Final Order, to have sufficient time to compel compliance with the Final Order prior to the beginning of softball practice.

Id.

In light of the foregoing, it appears that an extension of some of the deadlines in the Final Order and Permanent Injunction is warranted. However, these extensions would have been unnecessary had counsel been more accurate in articulating realistic deadlines in their Stipulated Joint Plan. The timetable they submitted led the Court to believe that demolition (Titusville) and construction (Astronaut) could begin by the end of March, and that the fields could be finished sometime in the summer of this year. Moreover, the January 15, 2002 deadline referenced in both the School Board's motion and the Plaintiff's response appears nowhere in the Joint Plan.

Based on the foregoing, it is ORDERED that School Board's Motion for Extension of Deadlines Set Forth in the Court's Final Order and Preliminary [sic] Injunction (Doc. 183), filed March 19, 2001, is GRANTED IN PART AND DENIED IN PART. The Motion is GRANTED insofar as it seeks an extension of time until April 30, 2001, to complete demolition of the Riverview Annex. The Motion is likewise GRANTED insofar as it seeks an extension of time to complete construction of the girls' softball fields at Titusville and Astronaut High Schools. The Motion is DENIED, however, insofar as it seeks an extension to January 15, 2002. Based on the School Board's offer to Plaintiff "to guarantee that the girls' softball fields at Astronaut and Titusville High Schools would be ready for practice and play by December 1, 2001," Doc. 183, P 7, at 2-3, it appears the School Board can finish constructing the fields substantially earlier than January 15, 2002. Accordingly, the deadline for completing construction of the two softball fields is extended to December 1, 2001.

DONE and ORDERED in Orlando, Florida this 27th day of March, 2001.

ANNE C. CONWAY

UNITED STATES DISTRICT JUDGE