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 Vacated in Part by *McNeal v. Tate County School Dist.*, 5th Cir.(Miss.),
 September 17, 1971

1970 WL 118111

Only the Westlaw citation is currently available.
 United States District Court,
 N.D. Mississippi, Delta Division.

Kelly MCNEAL, et al, Plaintiffs

v.

TATE COUNTY SCHOOL DISTRICT, et al,
 Defendants

No. EC7029-S.

|
 Aug. 19, 1970.

MEMORANDUM OPINION

SMITH, J.

*1 This action presents a very vexatious problem in a school desegregation case, and one difficult of determination.

Plaintiffs filed the complaint in this action on April 27, 1970, seeking an order of the court requiring the Tate County School District (School District) to abandon its dual system of schools and convert to a unitary system, within which no person is to be effectively excluded from any school because of race or color. *Alexander v. Holmes*, 1969, 396 U.S. 19, 90 S.Ct. 29, 24 L.Ed.2d 19. Jurisdiction is predicated on 42 U.S.C. §§ 1981 and 1983, and 28 U.S.C. § 1343.

Originally the defendants were the School District, Superintendent of Education and the members of the Board of Education of said county. Plaintiffs charged in the complaint, inter alia, that defendants sold and conveyed one of its school attendance centers to the Tate Educational Foundation, Inc. (Foundation) at a price far below its market value in order to encourage, foster and assist the Foundation in establishing and operating a private school so as to avoid the impact of the desegregation of the schools of the School District. Plaintiffs sought to recover the property for the district, contending that the transaction violated the rights of

plaintiffs and others similarly situated under both the Federal and State Constitutions.

The plaintiffs did not sue the Foundation or Harold Webster Steward (Steward) to whom the School District sold and conveyed the property, and, who, thereafter transferred the property to the Foundation.

The court permitted plaintiffs to amend the complaint so as to make Steward and the Foundation parties defendant to the action.

The action came on for hearing before the court at Clarksdale, Mississippi, on Wednesday, August 12, 1970, on the issue of the validity of the sale of the property and the right of plaintiffs to require the School District to recover the property for the benefit of the district. After hearing the evidence the case is now before the court for decision.

The court adopts the findings of fact and conclusions of law which follow as the holding of the court on the issues under consideration.

FINDINGS OF FACT

1. The School District encompasses all of Tate County, except that portion of the county situated within the Senatobia Municipal Separate School District.
2. The Thyatira School property, which is the subject of this controversy, consists of a seven-classroom school building with auditorium, constructed in 1941, duplex residence, formerly used as a teachers home, shop building and gymnasium. These structures are situated on a six acre tract of land.
3. The School District was reconstituted under state law in 1956 or 1957. At that time the state law required the operation of a dual system of schools. In the reconstitution of the district the Thyatira School was reduced from a school serving grades 1-12 to one serving grades 1-6. The school building has a capacity of 250-300 students and its auditorium will seat approximately 200 students. The school served grades 1-6 through the scholastic year 1963-64 when it was reduced to a school serving grades 1-4. Since the 1964-65 school year the school has served only students attending grades 1-4, and only two of the seven classrooms in the building have been utilized. During this period of time two teachers have been assigned to the school. In only one year, during

this period of time, has the number of students exceeded fifty. In the school year 1965–66 the number of students in attendance were fifty-one. For the school year 1969–70 there were thirty-five students in attendance, of which sixteen were white and nine were black students.

*2 4. The School District has expended only a very meager amount of its funds to maintain and keep in good repair the school building, shop, gymnasium, and teachers home. As the result of improper maintenance since the 1963–64 school year all of the structures on the site have reached a dilapidated and run-down condition. To bring the structures into any reasonable state of good repair would require a large expenditure of funds for capital and extensive improvements.

5. The defendant School District in 1965 or 1966 adopted the “Freedom-of-Choice” plan for the operation of the schools within the district. This plan failed to remove the dual system of schools and did not convert the schools of the district into a unitary system. In late August or early September 1969 members of the Board of the School District, and the Superintendent of Education, were made aware of the fact that the “Freedom-of-Choice” plan would not meet the guidelines of the Office of Education, Department of Health, Education and Welfare (HEW), and that the district must convert to a unitary system in order to receive government funds.

6. In the operation of the Thyatira School during the 1969–70 school year and previous years, since 1963–64, the School Board expended a much larger sum for the education of each student, than in other schools operated by the district, where the student bodies were larger. In July 1969, the School District was given notice that the per-pupil expenditures at its several schools would have a bearing on the district’s right to continue to receive Title I funds.

7. The members of the Board of the School District and the Superintendent of the schools recognized that the continuation of the school was not economically or educationally feasible. The same situation as existed at the Thyatira School also existed at two other attendance centers of the district. The Arkabutla Attendance Center had only fifty-four students and the West Tate Attendance Center only seventy-eight students for the scholastic year 1969–70. At its regular meeting on November 3, 1969, the School Board adopted a resolution directing that the school attendance centers at Arkabutla, Thyatira and West Tate be closed, as of the end of the 1969–70 school year, and declaring its intention to treat each of the attendance centers as surplus property.

8. The School Board, at its regular meeting on December

10, 1969, adopted a resolution declaring that the Thyatira School property was not needed in the operation of the schools of the district, and directing the Secretary of the Board to advertise for bids for the sale of the property. Pursuant to the resolution, notice was given of the sale of the Thyatira School property for the time and in the manner as required by applicable Mississippi statutes.¹

9. Realizing the impact of full and complete integration of the schools of the district and the adoption by the School Board of the unitary system of schools for the district, defendant Steward and approximately eighty other citizens of the county established a fund amounting to approximately \$8,000.00 to be used in the establishment of a private school in the Thyatira community, and the acquisition of property for that purpose. Steward was delegated by the group as its agent to bid on the Thyatira School property. Steward submitted a bid to the School Board, at its January 1970 meeting. The bid submitted, in all respects, met with the requirements of law. The Steward bid was for the sum of \$4001.00. The School Board received no other bids, and Steward’s bid was accepted and the property conveyed to him by quitclaim deed on January 7, 1970. The School District retained possession of the property until June 1, 1970. Thereafter, on January 26, 1970, Steward conveyed the property to the Foundation, a domestic non-profit Mississippi corporation which had been organized and chartered in the interim. The Foundation did not pay Steward any money for the deed, as the consideration for the property paid by Steward to the School District came from the above mentioned fund.

*3 10. After the delivery of the deed to the Foundation, and in early February 1970 the School Board permitted the Foundation to enter the property and begin repairs to the structures situated thereon. The Foundation expended approximately \$20,000.00 for materials and labor going into the repair of the buildings and an unestimated amount of free labor has been donated by interested parties.

11. The School Board and its Superintendent, at all times pertinent hereto, were aware of the fact that a movement was on foot in the county by many of its white citizens to start private schools, in order to avoid the impact of the integration of the public schools of the district.

12. There was no pre-arrangement or prior understanding between the Foundation, any of its members, or Steward with members of the School Board or its Superintendent that the Thyatira School property would be declared surplus property, and its sale ordered, so as to enable the Foundation or group of citizens interested therein to obtain the property at an inadequate price to be utilized as a private school by the Foundation or others interested in

establishing such a school.

13. The Thyatira School is situated in a rural neighborhood of the county, and is not suitable for commercial use. The six acre tract upon which the school buildings are situated, is located on a public road, but the evidence does not reflect what portion or portions of the tract can be used for residential purposes. The buildings, with the exception of the teachers home, are not suitable for any use, except for school purposes. The condition of the teachers home was such at the time of the sale, that it did not add any value to that of the land upon which it is situated. The school building, shop and gymnasium were in such ill repair, that they added little value, if any, to the value of the land comprising the school site. Such structures did not add any value to the land, except to a purchaser intending to use the property in the operation of a school. In the latter instance the purchaser would realize some value from the improvements because such could be renovated and repaired and used in the operation of the school. Considering the totality of the circumstances as shown by the evidence, the court holds that plaintiffs have not shown by a preponderance of the evidence that the School Board sold the Thyatira School property for such a grossly inadequate price that the sale amounted to a donation of property of the district, directly or indirectly, to Steward, or the Foundation.

14. The Foundation has opened its school to members of all races. The faculty and staff selected to operate the school are all members of the white race, as are all members and directors of the Foundation. All students accepted by the school are white students. No black student has applied for entrance. The financial requirements for attendance of students is such as to prevent the enrollment of most of the black children of the county.

CONCLUSIONS OF LAW

*4 1. The court has jurisdiction of the parties and of the subject matter. The court has the power and duty to enter such judgment as equity requires. *Porter v. Warner Holding Co.*, 1946, 328 U.S. 395, 398, 66 S.Ct. 1086, 90 L.Ed. 1332, 1336-7; *Alexander v. Hillman*, 1935, 296 U.S. 222, 242, 56 S.Ct. 204, 80 L.Ed. 192, 201.

2. The Thyatira School has outlived its usefulness as a school and is not needed in the operation of the schools of the district. In such a situation the School Board is authorized by law to abandon the property and sell the same, as surplus property. Section 6328-41, Mississippi

Code, 1942, Annotated, Recompiled.

3. The sale of the Thyatira School property by the School Board was consummated in every respect as required by the statutes of the State of Mississippi. The sale was advertised by the Board for the time and in the manner required by law. Section 6328-42, 6328-43, Mississippi Code 1942, Annotated, Recompiled.

4. The School Board cannot legally donate property, directly or indirectly, to private corporations or individuals for any private purpose. Art. 4 § 9 Constitution of the State of Mississippi of 1890; *Koonce v. Board of Supervisors of Grenada County* (Miss.) 202 Miss. 473, 32 So.2d 264, 265.

5. The School Board is required by law to act in good faith, and cannot sell or convey surplus property for a grossly inadequate consideration. *State v. Adams* (Miss.) 1939, 185 Miss. 606, 188 So. 551, 553.

6. The defendant Steward and his vendee, Tate Educational Foundation, Inc., for whom he acted as agent, are not innocent purchasers for value of the Thyatira School property, if the price paid for the property is so grossly inadequate as to virtually amount to a donation. *State v. Dear* (Miss.) 212 Miss. 620, 55 So.2d 370, 374.

7. The presumption exists that the members of the School Board discharged their duty in regard to the abandonment and sale of the Thyatira School property in accordance with law, exercising honest judgment in that regard. This presumption will be given effect in the absence of clear evidence to the contrary. *Hawkins v. Town of Shaw, Mississippi*, 303 F.Supp. 1162; *M.T. Reed Construction Co. v. Jackson Municipal Airport*, 227 So.2d 466.

8. The burden rests upon one who seeks to set aside a public sale to show that the price is so grossly inadequate as to indicate fraud or lack of good faith on the part of one making the sale. This rule prevails in cases of foreclosure sales under mortgages or deeds of trust. *Smith v. General Investments, Inc.* (Miss.) 1963, 246 Miss. 765, 150 So.2d 862.

SUMMARY

The issue presented to the court must be decided on the basis of the facts shown by the record in this case. Every action in this field of the law must rest on its own bottom, and seldom are there two cases on all fours with each other. For that reason the decision of the court as

hereinafter set forth must be and is expressly limited to the issues presented by the record herein.

The evidence is clear that the Thyatira School has not been needed in the operation of schools in the School District since the reconstitution of the district more than fifteen years ago. When the school was reduced from a school serving grades 1–12, to a school serving grades 1–6, its demise became apparent, and when reduced to a school serving grades 1–4, the demise became a reality, but the burial was delayed more than five years, to the detriment of the School District, economically and educationally.

*5 It is, therefore, the opinion of the court that the School Board was fully warranted in abandoning the school and classifying the property as surplus. That such action might have been triggered by the realization that the dual system of schools, which had continued under the “Freedom-of-Choice” plan, must be discarded in favor of a unitary system to be accomplished by the pairing of schools or grades is of no moment. The fact remains, that, regardless of this, sound judgment on the part of the Board, required the discontinuance of a school at Thyatira.

Having reached the proper decision to close the Thyatira School, it necessarily follows that the Board was under the legal duty to declare the property to be surplus property, and provide for its sale according to law.

The Board’s duty was to obtain the best price possible for the property. The public was invited to bid on the property, and the invitation was extended with the publicity and in the manner required by law. The Board was obligated to accept the bid offered by defendant Steward for the property, unless the price offered was so grossly inadequate that the acceptance thereof amounted to a donation of private property for private use.

In the court’s opinion, although the prospective purchaser intended to devote the property to use as a school or educational center, the amount bid for the property was adequate and sufficient in law to sustain the sale.

The property was purchased by a group who intended to establish and operate a private school, utilizing the property for such purpose. If there had existed a competitive market for the property for school usage, the bidding would have been more spirited and the property would probably have brought a substantially larger price. However, such a competitive market did not exist, and the court does not feel that cancellation of the sale will benefit the School District. Should the property be recovered for the district, having no use therefor, the Board would be burdened with the property until some

disposition of the same could be made. The court cannot say with assurance that a resale of the property would be beneficial to the district.

The Foundation and the citizens of the county, interested therein, have the legal right to operate a private school, if they choose to do so. The court knows of no law that prevents such an enterprise, or which makes it illegal. It may be that the private school will draw a substantial number of pupils from the district schools, but this fact alone will not justify the court in setting aside the sale of the property to Steward, who made the purchase for the Foundation long before the institution of the action sub judice. In this connection the court must take note of the fact that the Foundation has invested substantial funds in the repair of the property since its acquisition. A large part of the expenditures occurred before the defendant Steward and the Foundation were added as parties defendant to the action.

*6 It must be called to the attention of the parties that this action does not involve a sale of school property by a school board, after an integration action has been filed, nor does it involve an action where a school board has abandoned and sold school property based primarily upon a finding that the integration of the schools of the district will result in reduced attendance to the extent that the property will not be needed in the operation of the schools. Such situations must be dealt with in each individual case. Suffice to say such a situation does not exist in this action.

The court notes that the Arkabutla School property has been sold by the district, but no issue as to the validity of that sale is before the court. If such an issue should arise, the issue must be considered by the court on its own merits.

The court also notes that West Tate Attendance Center has been closed by the Board. In the exercise of the equity powers vested in the court in the action sub judice the court finds that the defendant Board should be enjoined from disposing of said property, or any other real property of the district, or personal property having a reasonable value of \$500.00 or over, without the prior consent of the court.

An order will be entered herein dismissing on its merits plaintiffs demand that the Thyatira School property be recovered for the district, and discharging from the action defendants Steward and the Foundation.

An order will also be entered enjoining the defendant School Board from abandoning and disposing of any of its property, to the extent hereinbefore noted, without

prior consent of the court.

ORDER

Pursuant to the opinion this day released herein, it is

ORDERED:

1. That plaintiffs' demand that the court rescind the sale of the Thyatira School property by the defendant School Board to defendant Steward, and recover the same for the benefit of defendant School District from defendant Tate Educational Foundation, Inc., shall be and the same hereby is denied, and dismissed on the merits;
2. That the defendants Steward and Tate Educational Foundation, Inc., shall be and they hereby are dismissed as parties defendant to this action;
3. That the costs relative to the issue above noted is taxed against plaintiffs;
4. That a copy of this order shall be served by United States Mail on counsel for all parties, which service shall constitute notice to all parties to the action.

ORDER

Pursuant to the opinion this day released herein, it is

ORDERED:

1. That the court's order rendered herein on August 4,

Footnotes

1 Sections 6328-41, 6328-42, and 6328-43, Mississippi Code 1942, Annotated, Recompiled.

1970, shall be and the same hereby is amended as follows:

By adding under that portion of said order dealing with and describing the plan for school operation by defendant School District, Section III thereof, entitled "School Construction and Site Selection", an additional paragraph as follows:

The School District and the members of the Board of Trustees thereof, shall not sell or otherwise dispose of the West Tate Attendance Center, or any other real property owned by the district, or any or the district's personal property having a reasonable value of \$500.00 or over, without the prior consent of the court, and, then, only upon the presentation of facts justifying that such be done.

*7 2. That except as changed by this order the court's former order of August 4, 1970 shall be and remains in full force and effect; and

3. That a copy of this order shall be served by United States Mail upon counsel for all of the parties herein except counsel for defendants Steward and Tate Educational Foundation, Inc.; upon accomplishment of which all such defendants shall be deemed to have received notice of the entry hereof.

All Citations

Not Reported in F.Supp., 1970 WL 118111