

IN THE JUSTICE COURT OF MOSS POINT, JACKSON COUNTY, MISSISSIPPI

MARK PRIMO MILLER

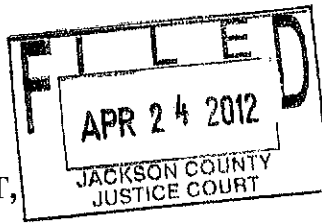
PLAINTIFF

VERSUS

Book 212, Page 1121

PASCAGOULA SCHOOL DISTRICT,

DEFENDANT



MOTION TO DISMISS

COMES NOW the Defendant, Pascagoula School District ("District"), by and through its counsel of record, and pursuant to M.R.C.P. 12(b)(6), moves that the Plaintiff's claim against it be dismissed for lack of standing, lack of jurisdiction over the subject matter, insufficiency of process based on failure to comply with the statutory notice requirements of the Mississippi Torts Claims Act, insufficiency of service of process, and failure to state a claim upon which relief can be granted. As grounds for this motion, Defendant would show the following:

1. The Plaintiff's action is premised on the District's confiscation of a cell phone in the possession of the Plaintiff's son (a student in the Pascagoula School District), while on school grounds and during school hours. The District's policy regarding possession of cell phones by students while on school grounds and during school hours is clearly laid out in the District's student handbook as follows:

**POSSESSION AND/OR USE OF COMMUNICATION DEVICES
(CELL PHONES, PAGERS, ETC.) IN SCHOOL (JGFBB)**

Students shall not possess a communication device (cell phone, pager, ipod, psp, etc.) while on school property or while attending a school-sponsored activity during regular school days/hours, including time on campus prior to convening and after dismissal. Communication devices (cell phone, pager, ipod, psp, etc.) are also prohibited during school detention and Saturday detention. Communication devices (cell phone, pager, ipod, psp, etc.) may be allowed at extra-curricular activities outside of those times described in the preceding paragraph. Areas of use may be designated by the building principal or his/her designee. Phones are available at all schools for student use for emergency needs. **Communication devices (cell phones, pagers, Ipods, psp's, etc.) will be**

confiscated. At the conclusion of the school year, the parent/guardian may recover the communication device (cell phone, ipod, pager, psp, etc.) upon submitting a written request to the principal.

Pascagoula School District Student Handbook, page 18 (emphasis in original). At the beginning of the 2011-2012 school year, the Plaintiff signed a copy of the student handbook, thereby acknowledging notice of the District's cell phone policy. As such, the Plaintiff has waived his right to challenge the District policy and does not have standing to bring this claim.

2. In addition, the Plaintiff initially challenged the District's cell phone policy through the appropriate District procedures; however, the Pascagoula School District School Board ("School Board") has not voted to depart from the policy. The Mississippi Code does not provide a mechanism or procedure by which an aggrieved party should appeal the decision of a school board or school board of trustees. "[W]here there is no statutory scheme for appeal from a decision of a state board or agency ... the chancery court has jurisdiction for judicial review of the board or agency decision." Prisock v. Perkins, 735 So. 2d 440, 443 (Miss. 1999). Because a specific statutory scheme for appeal of a cell phone does not exist, the chancery court would be the only court to possibly have exclusive jurisdiction to hear the Plaintiff's claim and the Court should dismiss for lack of subject matter jurisdiction. Moreover, Plaintiff has failed to appeal to the appropriate court in a timely fashion.

Justice court judges do not have jurisdiction to issue injunctions. See § 9-11-9 (defining the limited jurisdiction of justice courts as including "all actions for the recovery of debts or damages or personal property"); Miss. Const. art. VI, § 159 (granting chancery courts jurisdiction over matters in equity); Mississippi Comm'n on Judicial Performance v. Dodds, 680 So. 2d 180 (Miss. 1996) (acknowledging lack of authority (except in very limited instances of domestic abuse) for justice

court to issue injunctions). In the current action, the Plaintiff requests this Court to enjoin the Defendant from enforcing its cell phone policy. Because this Court lacks jurisdiction to enjoin the Defendant, the Court should dismiss for lack of subject matter jurisdiction.

3. Pursuant to the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq., any claim against a political subdivision of the State of Mississippi must comply with special notice requirements. The statute requires that a claimant give the chief executive officer of a political subdivision 90 days notice of the claimant's intent to file a civil action or proceeding against the political subdivision. § 11-46-11. A school district qualifies as a political subdivision within the meaning of the Act, see § 11-46-1; however, the Plaintiff did not give the Defendant the required notice of his intent to file. Because the Plaintiff failed to comply with the special statutory notice proceedings of the Mississippi Tort Claims Act, the claim against the Defendant should be dismissed.

4. In addition, Miss. Code Ann. § 13-3-5 and Rule 2.04 of the Uniform Rules of Procedure for the Justice Court require personal service of summons. Because the summons issued by the Justice Court was not personally served by the constable on either the superintendent of the Pascagoula School District or the president of the Pascagoula School Board, the Defendant did not receive proper notice of the claims against it. Accordingly, the claim against the Defendant should be dismissed for insufficiency of service of process.

5. The Plaintiff's claims against the Defendant should be dismissed for failure to state a claim upon which relief can be granted. In Tinker v. Des Moines, the United States Supreme Court held that (1) school boards have broad discretion to adopt school policies; and (2) absent a clear abuse of discretion, courts have no power to interfere with a school board's exercise of that discretion. 393

U.S. 503, 507 (1969). Miss. Code Ann. § 37-7-301 authorizes a school board to “prescribe and enforce rules and regulations not inconsistent with law or with the regulations of the State Board of Education for their own government and for the government of the schools[.]” The authority to enact such policies extends to policies governing the use of cell phones by students in the district. See 2009 WL 572451 (Miss. A.G.). A policy governing the use of cell phones may require or permit temporary confiscation of cell phones for violation of school policy. Id. Moreover, other jurisdictions that have addressed the issue have held that the fact that a cell phone belongs to a parent rather than the student is of no significant legal consequence where the parent is on notice of the school policy. Lane v. Farley, 2006 U.S. Dist. LEXIS 13033, 5 (M.D.Tenn. 2006) (unpublished). Because the District acted within its broad discretion and authority to confiscate and withhold the cell phone, the Plaintiff has not stated a claim upon which relief can be granted and his motion should be dismissed.

Finally, the Plaintiff’s claim against the Defendant should be dismissed because the Defendant and its employees are immune from liability. The Mississippi Tort Claims Act provides, “[a] governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim...[a]rising out of a legislative or judicial action or inaction, or administrative action or inaction of a legislative or judicial nature[.]” § 11-46-9(a). As mentioned above, the District is a governmental entity within the meaning of the Mississippi Tort Claims Act. Further, the District’s determination that the Plaintiff was not entitled to return of the cell phone before the end of the school year was judicial in nature. See Jones v. Greene Co. Bd. of Education, 968 So.2d 506, 508 (Miss. Ct. App. 2007) (“[A] judicial act determines what the law is or what rights the parties possess.”). As such, the Defendant is immune from liability for its judicial

determination. Accordingly, the Plaintiff's claim for liability against the Defendant should be dismissed for failure to state a claim upon which a claim can be granted.

WHEREFORE, PREMISES CONSIDERED, the Defendant, Pascagoula School District, moves to be dismissed from this case with all costs assessed to the Plaintiff. This Defendant prays for such other and further relief as the Court deems appropriate.

Respectfully submitted,

PASCAGOULA SCHOOL DISTRICT

BY: 
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CERTIFICATE OF SERVICE

I, A. Kelly Sessoms, do hereby certify that I have this day hand delivered a true and correct copy of the above and foregoing Motion to Dismiss to Mr. Mark P. Miller.

THIS the 24 day of April, 2012.


A. KELLY SESSOMS