

DANIEL M. HERRIGAN

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

2012 OCT 12 AM 10:02

LYNN RICHARDSON, et al.

SUMMIT COUNTY
CLERK OF COURTS,
Plaintiffs,

v.

THE GIRL SCOUTS OF NORTH
EAST OHIO

Defendant.

CASE NO.: 2012 03 1636

JUDGE REINBOLD

JUDGMENT ENTRY

The Defendants filed their Motion for Summary judgment on June 20, 2012. The Plaintiff's filed their response on August 17, 2012. The Defendants replied on August 29, 2012. In addition to the discovery exchanged between the parties the court held three days of hearing on the Plaintiff's Request for Injunctive Relief. The hearing covered relevant information applicable to this Motion and the Response and the parties have cited to various parts of the testimony and exhibits admitted at the hearing. I have therefore considered the evidence admitted during the Injunction Hearing as well as those exhibits attached to the pleadings.

The Plaintiff's filed their Verified Complaint on March 19, 2012 and sought Declaratory Judgment for the following claims:

1. The Board is not authorized to proceed with efforts to sell the Girl Scout camps until a two-third (2/3) majority of the General Assembly votes to approve the contemplated sale of the Girl Scout camps.
2. (a) The General Assembly is entitled to select the number of Directors, between ten (10) and fifteen (15) who will serve on the Board.

(b) The Board does not have the power or authority to prevent the General Assembly from electing up to fifteen (15) Directors who will serve on the Board.

3. The Board did not have the power, right, or authority, to serve or act on behalf of GSNEO following the improper October 29, 2011 election, and all decisions of the Board following the October 29, 2011 election are void and of no legal effect.

A. Motions of October 29, 2011.

On October 29, 2011 the Chair of the GSNO called to order the special meeting as requested by a majority of the General Assembly. (Art. II, Sec.3). The business to be discussed centered on the presentation and discussion of two proposed Motions concerning the Board's authority to sell property held in the name of the GSNO.

The first Motion read:

Be it resolved that the present Membership Delegates request that the Board of Directors immediately cease and desist all activities in connection with the transfer of any real property held in the name of the Girl Scouts of North East Ohio, until such time as any such pending, anticipated or planned transfers may be approved by a vote of two-thirds (2/3) of the voting members of the General Assembly participating and voting at a meeting held pursuant to Article II, Section 34 of the Code.

Following the reading, the Chair opened the floor for debate. At the close of the debate the Chair called for a vote and, according to the minutes stated: "It is a general majority and requires a majority to adopt". I am of the opinion that the Chair misspoke or the minutes are inaccurate as I believe it should read "this is a general motion or resolution and requires a majority vote". Regardless, no objection was lodged and the Motion passed by a majority vote. (Art. II, Sec.5, Par. 3.)

The second Motion was then called and read:

Be it resolved, effective immediately, that Article IV, Section 2(A) of the Code of Regulations shall be amended to read as follows: "Powers: The Corporate business and affairs of the Council shall be governed under the direction of the board of Directors, except that the Board of Directors shall not transfer, by sale or otherwise, any real property held in the name of the Council, unless such transfer is explicitly approved by two-thirds (2/3) of

voting members of the General Assembly participating and voting at a meeting held pursuant to Article II, Section 3 of the Code of Regulations”.

Again, a discussion followed and at the conclusion the Chair stated: “this motion is an amendment to the Code of Regulations and requires a two-thirds affirmative vote”. (Art XIII) The Motion failed to garner the required two-thirds affirmative vote and did not pass.

I find the Cease and Desist Motion had no binding effect on the Board of Directors under any provision of the Code of Regulations. First, the plain meaning of the words in the first sentence clearly read as such, “Be it resolved that the present Membership Delegates request that the Board of Directors cease and desist all activities----- until such time as any such pending -----transfers may be approved by two-thirds of voting members at a meeting held pursuant to Art II, Sec. 3 of the Code.” Secondly, it had to be a request because to make it binding would have required an amendment to the Code. One cannot limit or expand the Powers of the Board by resolution. Art. II, Sec. 3 and Art. XIII must be read in conjunction with each other and I find Art. XIII to be controlling. It is evident that the proponents of both Motions were aware of the non-binding status of the Cease and Desist Motion because if it were binding there would be no need for the second.

I find under Count One of the Verified Complaint that the Board was authorized to proceed with efforts to sell the Girl Scout Camps as the Motion to Cease and Desist was not binding and did not limit the Board’s authority under Article VI, Section 10 of the Code of Regulations.

I GRANT Summary Judgment in favor of the Defendants under Count One.

B. The Election of the Board of Directors.

R.C.1702.27(A)(2)(a) provides the manner in which the number of Directors to be elected can be fixed or changed by the voting members. It states that the number of Directors can be fixed or changed by an affirmative vote of the members present at the meeting. The GSNO Code of Regulations provides that there shall be five officers of the Council and at least 10 but not more than fifteen Directors who shall be called Directors at Large. (Art. IV, Sec. 1(A))

Prior to October 29, 2011 the GSNO had established that there would be twelve Directors at Large. (There was testimony at the hearing as to the rational for this decision) In preparation for the October 29th annual meeting the Board of Development determined under Art. IV, Sec. 3(c) and (d) that there were five vacancies and according to the Code prepared a “slate of one candidate for each of the positions to be filled in the election” set for the 29th.

At the Annual Meeting the Chair accepted the Board of Development’s slate and then pursuant to Art. IV, Sec. 3 accepted nominations from the floor for the five open positions as previously determined by the Board of Directors.

The Plaintiff argues that the five floor nominees were not nominated to contest the Board of Development’s slate but rather to fill the additional seats claimed to be provided by the Code. They argue that the Boards five candidates brought the total number of Directors to twelve and therefore, there were at least five unfilled slots, not to be filled by the Board of Development’s slate, but by the ‘floor nominees’ as authorized by the Code. They interpret Art. IV, Sec 3 as authority to expand the number of Directors at Large to the fifteen provided by the Code of Regulations.

I disagree. Ohio Revised Code Section 1702.27(A)(2)(a) reads that the number of Directors may be fixed or changed at a meeting of the Voting Members by the affirmative vote of a majority of the voting members present. While it is true that this section of the Revised Code does not spell out the procedure to add to or subtract from the then existing number of Directors previously set by the non-profit one can presume it requires the affirmative vote of a majority of the voting members present at the meeting on a Motion to expand the number of Directors. Doing it by motion allows debate on the issue as whether there is a need to add to or subtract from the existing number; the effective date of the change; the impact on the existing organizational scheme of the non-profit and; the opportunity to set the terms for the new directors or set the expiration date for abolished position among many other considerations. There was no such Motion made just this ad hoc attempt to circumvent the requirement that to change the number of directors requires a meeting and a Motion calling for the change.

The alternative method proposed by the Plaintiff's invites surprise and chaos. Under their theory the number of Directors or Directors at Large could change at the whim of an individual or a group yearly or twice yearly. Those articles setting forth an orderly procedure for the annual meetings, credentialing, voting and terms of offices among others would be rendered meaningless.

I find the Plaintiff's argument that the 'floor nominating' procedure referenced under Art. II, Sec. 3 grants the General Assembly the authority to expand the existing number of Directors is not supported by any provision in the Ohio Revised Code, Code of Regulations, case law, evidence, prior history or persuasion of argument.

I find the General Assembly was not entitled to select the number of Directors, between ten and fifteen, who would have served on the Board (under these facts) but that the existing Board did have the statutory authority and Code authority to prevent the General Assembly from electing up to fifteen Directors who would have served on the Board as attempted at the October 29, 2011 Annual Meeting.

I GRANT Summary Judgment to the Defendants under Count Two of the Verified Complaint.

C. The Authority of the Board to Act on Behalf of the GSNO after October 29, 2011.

Having found in favor of the Defendants under Counts One and Two of the Verified Complaint I find The Board did have the power, right and authority to serve and act on behalf of the GSNEO following the October 29, 2011 election as said election fully complied with the Ohio Revised Code and the Code of Regulations as set forth in the relevant arguments.

I Grant Summary Judgment to the Defendants under Count Three of the Verified Complaint.

D. Contested Data.

In the Plaintiffs' response to the Motion for Summary Judgment they contest the process under which the GSNEO arrived at their decision to sell the various camps (create an impression of process) and their manufacturing of unreliable data justifying that decision. (false and misleading). They present this argument not to contest the decision that to sell the camps, (otherwise we debate the 'business judgment' rule they argue does not apply), but rather as a tactic used by the Board to defeat the amendment to Article IV, Section 2(A) of the Code of Regulations.

The plaintiffs argue “The problem is the creation of a faulty process, misleading and false statistics and outright misinformation which the GSNEO has employed to circumvent a change in the Code of Regulations which the Membership has attempted to, and come close to achieving, even in the face of false information....”

I fail to see the connection between this argument and whether or not the membership was in favor of a rule change requiring the sale of property by the Board to be agreed upon by two thirds of the Members. You either want to restrict or not restrict the Boards action in this area based on policy considerations independent of what the evidence is justifying the Board’s decision and then, if passed evaluate the credibility of the evidence they relied upon. The question is independent of evidence either you (the General Assembly) want to restrict the authority of the Board in this area or you do not. The October 29th vote on the Motion to Amend the Code requiring two-thirds vote was not a referendum on the evidence it was a referendum on a proposed policy change. I do not accept the Plaintiffs argument that the allegedly flawed evidence allegedly created by the Board was the reason for the defeat of the Motion. It is my opinion that it failed because two thirds of the voting membership did not want to restrict the authority of the Board of Directors in the sale of property as a matter of policy.

Whether I have interpreted the Plaintiffs claim accurately or not I reject their overall argument that the data relied upon by the Board of Directors was flawed, false or misleading. I further reject the assertion that the Board engaged in the conduct alleged by the Plaintiff’s in their response.

The Injunction Hearing generated a substantial and varied body of evidence detailing the history of the decision to sell the camps, the variety of experts that visually

inspected the camps, camp employees who worked the camps both reserving space and maintenance, the financial documents prepared and the interpretation of those documents by various financial experts and the interaction between the Board and the membership.

Because of the oral hearing I was able to judge the credibility of the Defense witnesses and to then view the documentation under this light. I will not recite the Plaintiffs argument point by point but will note:

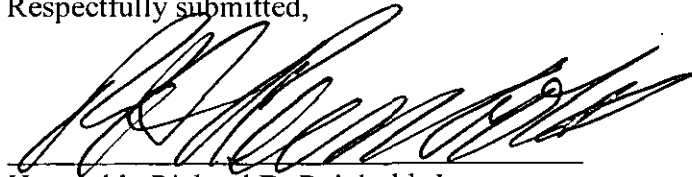
1. The Boards job is to manage the present and plan for the future. It was apparent when the various councils merged for financial and membership reasons that the issue of camp closing was going to have to be faced. Those in position of leadership in the GSNEO were seasoned veterans of GSNEO or other non-profits. The fact they may have had opinions about the viability of keeping all camps open prior to the initiating the Vision study is not surprising and is not conspiratorial.
2. The Board established sufficient membership groups and scheduled sufficient meetings between the Board and those groups to convey information and receive feedback from the members. The evidence better explains the delay in decimating the names and contact information from the spring of 2011 to the summer.
3. The experts, employees and volunteers who testified on behalf of the GSNO were qualified in their field, knowledgeable in their testimony and credible.
4. The documentation admitted in to evidence substantially supported the decision of the Board.
5. I find the affidavits submitted by the Plaintiffs while well intentioned, are not of evidentiary quality,

I find the argument set forth in the Plaintiffs' Response to The Motion for Summary Judgment not to be relevant to the legal issues presented. Further I find the allegations contained in that argument to be without an evidentiary basis and reject Plaintiffs' arguments as submitted in their response.

I Grant Summary Judgment in favor of the Defendants under this argument.

I reviewed the notes of the hearing on the Injunction; the exhibits attached to all pleading; the various affidavits and the case law cited by the parties in this decision.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard D. Reinbold, Jr.", written over a horizontal line.

Honorable Richard D. Reinbold, Jr.

A copy of this Order was served via e-mail on the 9th day of October, 2012. Hard copies can be obtained by individual counsel from the Clerk's office.