

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CHRISTOPHER P. BARNETT, by his)
next friend and father, DONALD)
BARNETT; KEVIN D. BLACK, by his)
next friend and mother, DANA)
BLACK; and GARY A. MOSES, by)
his next friend and mother,)
MISTY PLATT,)

Plaintiffs,)

v.)

No. 07-2055 M1/V

TIPTON COUNTY BOARD OF)
EDUCATION; TIM FITE,)
individually and in his)
official capacity as Director)
of Schools for the Tipton)
County Board of Education; and)
GRANT SHIPLEY, individually and)
in his official capacity as)
principal of Brighton High)
School,)

Defendants.)

ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Before the Court is Plaintiffs' motion for preliminary injunction, filed February 5, 2007. Defendants responded in opposition on February 7, 2007. A hearing on the motion was held on February 8, 2007. For the reasons stated below, Plaintiffs' motion is DENIED.

I. BACKGROUND

This case arises out of Plaintiffs' creation of a fake personal profile on the MySpace website on or about October 23, 2006. The profile purported to be that of Brighton High School Coach and Assistant Principal Earl LeFlore ("LeFlore"). (Compl. ¶ 12.) Plaintiffs are, or were at the time of the posting of the MySpace profile, three students enrolled at Brighton High School -- Christopher P. Barnett ("Barnett"), Kevin D. Black ("Black"), and Gary A. Moses ("Moses"). (Id. ¶ 1-3, 8.) Brighton High School is a public school operated by Defendant Tipton County Board of Education. (Id. ¶ 9.) According to Plaintiffs, the profile was created at the home of one of the Plaintiffs and not on school property. (Id. ¶ 13.) It appears, however, that Moses and Barnett conceived of the idea to create the profile at school during a lunch break. (Defs.' Resp. to Pls.' Request for Prelim. Inj. ("Defs.' Resp."), Feb. 7, 2007, Doc. 6-1, at 7.) There is also evidence that the profile was accessed at some point from a computer that Barnett may have been using during class. (Id. at 8-9.)

Once word spread of the profile, many Brighton High School students accessed the profile and several posted comments to the page. Some of the comments posted to the LeFlore profile, as well as to the profiles of certain Brighton High School students, suggested that LeFlore had engaged in inappropriate behavior with

female students at the high school. (Compl. ¶ 14.) Shortly after those postings, the page was deleted by its creator on October 26, 2006. (Id. ¶ 15.) Although the profile was deleted shortly after it was posted, it had received enough attention such that students were discussing the profile in school, during class. For example, according to teacher Janet Brasch, her class was interrupted because students wanted to ask her about what they believed were actual comments or statements made by LeFlore. (Defs.' Resp., Doc. 6-1, at 5.)

After learning of the MySpace profile, Brighton High School officials launched an investigation into the matter, apparently believing that the profile truly belonged to LeFlore. (Id. at 4.) School officials also contacted and met with the parents of female students to whom LeFlore had supposedly made inappropriate comments. (Id. at 5.) It was quickly discovered that Plaintiffs were the parties responsible for creating the profile. Plaintiffs were questioned by school officials, and after admitting to creating or having taken part in creating the profile, each received some type of limited suspension, including in-school suspension. (Id. at 7-9.)

Soon after, Barnett gained the school's attention once again when he posted a "Wanted" poster on his personal MySpace profile. The online image bore the photograph and name of a student who was suspected to have exposed Barnett as a creator of the fake

LeFlore profile. (Defs.' Resp., Doc. 6-1, at 10.) The page asked the question "Have You Seen Him?" and explained that the "suspect seems to be a tattler tale and is the cause for all of the trouble I am in." (Ex. Website Profile, Feb. 7, 2007, Doc. 6-12.) In response to the posting, school officials requested the assistance of Tipton County Board of Education's Technology Coordinator, who proceeded to spend a full work day investigating the matter. (Defs.' Resp., Doc. 6-1, at 10.) Also, Barnett apparently confronted the suspected "tattler tale," and, according to Barnett, "pushed into" the other student. (Id. at 10-11.) There is also evidence that the school continued to "buzz" with talk of the fake LeFlore profile and students were asking that school officials "take teaching time to answer questions about the website and Mr. LeFlore." (Id. at 12.)

Shortly thereafter, a disciplinary hearing was conducted in order to determine what measures to take with respect to Barnett and Black. As a result of the hearing, Barnett was assigned to Tipton County's Alternative Learning Center ("ALC"). (Compl. ¶ 25.) According to testimony during the February 8, 2007 hearing, Barnett will be allowed to return to Brighton High School in the fall of 2007. Black was placed on "zero tolerance" probation--meaning that any further infraction could result in Black being placed at the ALC as well. (Id. ¶ 26.) Moses, a Special Education student who attends school under an Individualized

Education Plan ("IEP"), did not incur further disciplinary action at the conclusion of an IEP meeting held in the matter. (Compl. ¶ 27.) Also, although Barnett was assigned to the ALC, his parents appear to have enrolled him in a private school, the Faith Heritage Baptist Church and Academy. (Defs.' Resp., Doc. 6-1, at 14.)

Plaintiffs now claim that the disciplinary actions against Plaintiffs were "done in retaliation for the minor Plaintiffs exercising their constitutional right to free speech." (Compl. ¶ 30.) Also, according to Plaintiffs, the ALC is not an "appropriate educational placement" for Barnett. (Id. ¶ 28.) In the part of the Complaint that relates to the instant motion for preliminary injunction, Plaintiffs allege that "Defendants, individually and collectively, deprived the minor Plaintiffs of their rights, privileges, and immunities, secured by the laws of the United States, pursuant to 42 U.S.C. § 1983, and the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution." (Id. ¶ 34.)

II. ANALYSIS

An injunction is an equitable remedy granted by the Court only when the grounds for such relief are clear. Detroit Newspaper Publishers Ass'n v. Detroit Typographical Union No. 18, Int'l Typographical Union, 471 F.2d 872, 876 (6th Cir. 1972). "The purpose of a preliminary injunction is merely to preserve

the relative positions of the parties until a trial on the merits can be held." Univ. of Texas v. Camenisch, 451 U.S. 390, 395 (1981). A preliminary injunction is "an extraordinary remedy which should be granted only if the movant carries his or her burden of proving that the circumstances clearly demand it." Overstreet v. Lexington-Fayette Urban County Gov't, 305 F.3d 566, 573 (6th Cir. 2002). When deciding whether to grant preliminary injunctive relief, courts must consider the following factors: (1) the likelihood of the movant's success on the merits; (2) the irreparable harm to the movant that could result if the injunction is not issued; (3) the impact on the public interest; and (4) the possibility of substantial harm to others. Basicomputer Corp. v. Scott, 973 F.2d 507, 511 (6th Cir. 1992). "[T]he four factors are not prerequisites to be met, but rather must be balanced as part of a decision to grant or deny injunctive relief." Performance Unlimited, Inc. v. Questar Publishers, Inc., 52 F.3d 1373, 1381 (6th Cir. 1995)(citing In re DeLorean Motor Co., 755 F.2d 1223, 1229 (6th Cir. 1985)). The Court will consider each factor in turn.

According to Plaintiffs, the Court should issue a preliminary injunction in this matter instructing that (1) Barnett be allowed to immediately return to Brighton High School, (2) the "zero tolerance" probationary status of Black be lifted, and (3) Defendants be prohibited from taking any further action

against Plaintiffs in retaliation for filing the instant action. (Pls.' Mem. of Law in Supp. of Prelim. Inj ("Pls.' Mem."), Feb. 5, 2007, Doc. 4, 1-2.)

As revealed in Defendants' opposition to the motion and in testimony during the hearing held on February 8, 2007, Black's probationary status has already expired. (Defs.' Resp., Doc. 6-1, at 28.) Also, Plaintiff has not provided the Court with any evidence that Defendants have or would retaliate against Plaintiffs because of the filing of this lawsuit. Thus, the only issue that requires further discussion is whether a preliminary injunction should be issued allowing Barnett to immediately return to Brighton High School. Also, although Plaintiffs include other grounds for recovery in their Complaint, the motion for preliminary injunction appears to be based solely on the First Amendment claim.

A. Likelihood of Success on the Merits

According to Plaintiffs, the first factor a Court must consider when determining whether to grant a preliminary injunction--likelihood of success on the merits--favors the Plaintiffs because their First Amendment right to free speech was violated. Plaintiffs focus on the facts that the action of creating the profile "did not occur on school property, did not utilize school resources, and did not occur during school hours." (Pls.' Mem., Doc. 4, at 3.)

Plaintiffs have not, however, put forward evidence sufficient to suggest a likelihood of prevailing on the merits. While students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," the right of students to speak freely in the public school setting must be balanced with the need to maintain a safe, orderly, and effective educational environment. See Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 509 (1969)(finding that a school may regulate a student's speech if it would substantially disrupt the operation of the school).

In balancing these interests, the Court finds persuasive the analysis and conclusion in Layshock v. Hermitage Sch. Dist., 412 F.Supp. 2d 502 (W.D. Pa. 2006). In the case, the plaintiff, a high school student, was suspended for creating a fake MySpace profile of the high school principal. Id. at 505. The profile was created on his grandmother's computer during non-school hours. Id. The school was "abuzz about the profile[]," and as a result, students had to be interviewed, and time was spend investigating the matter and dealing with the various disruptions that resulted. Id. at 508. In addition to a suspension, plaintiff was placed in an alternative school for the remainder of the school year. Id. at 505. The alternative school appeared to the court "to be fairly onerous" and "typically reserved for students with behavior and attendance problems who are unable to

function in a regular classroom." Layshock, 412 F.Supp. 2d at 505. The court also found that the plaintiff, a student who had received several academic awards and honors, "appears to be out of place in the program." Id.

In denying the issuance of a temporary restraining order enjoining continued punishment of plaintiff, the court found that four factors--"(1) a likelihood of success on the merits; (2) that [the moving party] will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief"--required for such an issuance were not sufficiently demonstrated. Id. at 506(citing Kos Pharms., Inc. v. Andrx Corp., 369 F.3d 700 (3d Cir. 2004)). In analyzing the likelihood of success on the merits, the court determined that even though the case began with "purely out-of-school conduct which carried over into the school setting," it would analyze plaintiff's conduct in accordance with the rule in Tinker. Id. at 507. And "assum[ing] arguendo that [the plaintiff's] initial creation of the parody was conduct protected by the First Amendment," the court, nevertheless, found that because the posting of the profile "substantially disrupted school operations and interfered with the rights of others" and plaintiff appeared to be violating school rules, the plaintiff had not shown the court a "reasonable probability of success on

the merits of the case." Layshock, 412 F.Supp. 2d at 508.

The Court finds Layshock to be directly on point. As in Layshock, in the instant case, the school seems to have been abuzz with discussion of the MySpace postings. Multiple students were interviewed, and school officials spent a substantial amount of time investigating and handling disruptions that resulted from the postings. In the instant case, it also seems that Barnett continued to cause disruptions within the school by posting on his profile a so-called "Wanted" poster of a student suspected to have exposed him as a creator of LeFlore's MySpace profile, and also by physically pushing the same student in what appears to have been an act of retaliation. As a result, it appears that Plaintiffs' speech may have "substantially disrupted school operations" such that their speech was appropriately regulated. Thus, Plaintiffs have not shown the Court that a success on the merits is likely with respect to their First Amendment claim.

B. Irreparable Harm to Plaintiffs

In support of the second factor, Plaintiffs claim that "[e]very day, every hour, that a student misses learning activities at a public school deprives the student of an education." (Pls.' Mem., Doc. 4, at 5.) Again, the only Plaintiff who remains impacted by the Defendants' disciplinary actions is Barnett.

The Court is again persuaded by the analysis in Layshock.

In finding no demonstration of irreparable harm, the court depended on the fact that it was unable to find a reasonable probability of success on the merits, and that "while [plaintiff's] placement in the [alternative school] is not academically ideal, the Court is unable to find it so onerous that the harm to [plaintiff] will truly be irreparable." Layshock, 412 F.Supp. 2d at 508. Similarly, the Court finds that placement of Barnett in the ALC until next fall does not constitute irreparable harm. Furthermore, Plaintiffs have not shown--neither in their brief, nor during the February 8, 2007 hearing--that Barnett would suffer irreparable harm by leaving the private school he is currently attending and attending the ALC for the balance of the school year.

C. Impact on Public Interest

According to Plaintiffs, the public interest factor weighs in its favor because "[t]he public has a great interest in ensuring free, appropriate education for children." (Pls.' Mem., Doc. 4, at 5.) However, for the reasons previously indicated, the Court finds that, under the circumstances of the instant case, "the public interest is best served by allowing Defendants to administer their high school and discipline their students as they determine." Layshock, 412 F.Supp. 2d at 509.

D. Possibility of Substantial Harm to Others

The final factor to consider when weighing the appropriateness of preliminary injunctive relief is the possibility of substantial harm to others. The Court finds that this factor also weighs against the imposition of a preliminary injunction. Plaintiffs state that they "cannot imagine any scenario where granting the requested injunctive relief will cause substantial harm to Defendants or anyone else." (Pls.' Mem., Doc. 4, at 5.) However, the Court finds that granting of relief at this stage may cause substantial harm to the school system and the authority of school officials to maintain order, especially if students begin to believe that future substantially disruptive behavior will go unpunished. Furthermore, as explained in Layshock, "the Court is not empowered to second-guess the appropriateness of Defendants' actions absent some underlying violation of [plaintiffs'] legal rights." Layshock, 412 F.Supp. 2d at 509.

III. CONCLUSION

Plaintiffs have thus failed to demonstrate that the extraordinary remedy of preliminary injunctive relief is warranted in this case. Accordingly, Plaintiffs' motion for preliminary injunctive relief is DENIED.

So ORDERED this 13th day of February, 2007.

/s/ Jon P. McCalla
JON P. McCALLA
UNITED STATES DISTRICT JUDGE