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DISTRICT II

December 11, 2019

To:

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You are hereby notified that the Court has entered the following opinion and order:

2019AP172

Isabella A. v. Arrowhead Union High School District
(L.C. #2018CV790)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Isabella A., by her parents David A. and Kiersten A. (collectively, Isabella), appeals an order granting Arrowhead Union High School District's motion to dismiss her certiorari complaint. Based upon our review of the briefs and the record, we conclude at conference that

this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).¹ We affirm the order.

Isabella, a student at Arrowhead Union High School, played junior varsity (JV) soccer as a freshman and was informed she would be moved to the varsity team as a sophomore. In her sophomore year, she hosted a party; some of the attendees brought and consumed alcoholic beverages. Isabella was unaware alcohol would be provided and consumed none herself. The school learned about the party, determined that by hosting it Isabella violated the school's Parent/Athlete & Co-Curricular Code of Conduct (Athletic Code), suspended her for four matches, and returned her to the JV squad.

Per Athletic Code protocol, Isabella appealed her suspension. She asserted that the school administration (collectively, Arrowhead) did not follow its own procedures and vacillated as to the reasons for which she was suspended. Her appeal failed. She then filed suit against Arrowhead in the circuit court, alleging due process and equal protection violations pursuant to 42 U.S.C. § 1983 and seeking a common law writ of certiorari to review the school's decision to uphold her suspension. Arrowhead removed the case to federal district court. That court dismissed the constitutional claims and remanded her certiorari claim to the circuit court.

Arrowhead moved to dismiss the certiorari claim on the pleadings, arguing that Isabella failed to allege substantial harm and that the court should dismiss the complaint on public policy grounds. The court agreed with Arrowhead and dismissed the certiorari claim. Isabella appeals.

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

The merits of Arrowhead’s disciplinary procedure and decision to suspend Isabella are not before us. We are reviewing only the circuit court’s dismissal of the certiorari petition. “The writ of certiorari is not one of right, but is granted in the sound discretion of the court.” *State ex rel. Hippler v. City of Baraboo*, 47 Wis. 2d 603, 609, 178 N.W.2d 1 (1970) (citation omitted). Before a court will grant a writ of certiorari, it must appear that some error was committed, that the error has caused substantial harm, and that the petitioner is not guilty of laches. *Id.* The only issue here is whether Isabella has alleged “substantial harm.”

Arrowhead argues that Isabella’s harm was but a four-game suspension. Isabella contends the harm from her suspension and loss of a year on the varsity team is far-reaching and substantial: reputational damage; ineligibility for Arrowhead’s Booster Club’s college scholarships; and possible jeopardy of other scholarship opportunities.² She argues that a circuit court must consider potential “collateral consequences” in assessing whether the error has caused substantial harm. *See State ex rel. Luedtke v. Bertrand*, 220 Wis. 2d 574, 583, 583 N.W.2d 858 (Ct. App. 1998).

There, Luedtke was a prisoner seeking to challenge a seven days’ loss of recreational privileges imposed in a prison disciplinary proceeding. *Id.* at 579. This court observed that beyond the specific penalty imposed, “a prison disciplinary decision may have collateral consequences relating to security classification, program assignment, later disciplinary proceedings, and the possible extension of the inmate’s mandatory release date,” some of which

² None of those collateral matters were pled. The sole collateral consequence of record is the possibility of progressive discipline in the event Isabella further violates the Athletic Code. A second violation requires suspension of sixty percent of games; a third results in a permanent ban from participating in Arrowhead athletics and co-curricular activities.

“may rise to a constitutional dimension,” and that “a significant harm unquestionably occurs when ‘constitutional harm’ results.” *Id.* at 582-83 & n.3.

Here, the parties and the circuit court discussed at length whether *Luedtke* means that “significant harm” must have a constitutional dimension. The court did not conclude that it necessarily does but, while it recognized that Isabella’s loss of scholarship eligibility is important to her, it said participation in athletics did not rise to the level of “significant harm.” The court also concluded that Arrowhead must prevail on the public policy argument that the court system should not be involved in reviewing school district decisions about how it implements its disciplinary process. The issuance of a writ may be “refused on the ground of public inconvenience.” *Hippler*, 47 Wis. 2d at 610.

Denying the writ due to Isabella’s failure to establish substantial harm and for public policy considerations was within the court’s discretion. It therefore did not have to reach the merits of her complaint.

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals