

ORIGINAL

IN THE SUPREME COURT OF OHIO

**RICHARD CORDRAY,
OHIO ATTORNEY GENERAL, et al.,**

Plaintiffs-Appellants,

v.

**THE INTERNATIONAL PREPARATORY,
SCHOOL, et al.,**

Defendants-Appellees.

CASE NO.: 2009-1418

**On Appeal from the
Cuyahoga County Court of Appeals
Eighth Appellate District**

**Court of Appeals Case
No. 91912**

**MEMORANDUM IN OPPOSITION TO JURISDICTION OF APPELLEES, ESTATE OF
DA'UD ABDUL MALIK SHABAZZ AND HASINA SHABAZZ**

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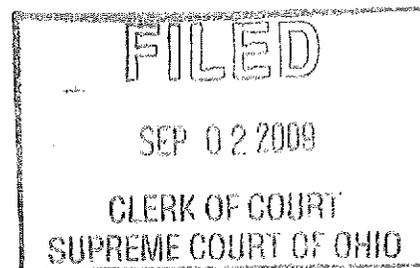
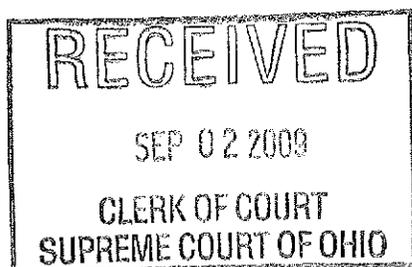


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STATEMENT OPPOSING JURISDICTION

This appeal raises no issue of public or great general interest and does not warrant review by the Supreme Court of Ohio. As an initial matter, Appellants, Richard Cordray, Ohio Attorney General and Ohio Department of Education, set forth no basis as to why the Court should accept jurisdiction over the Estate of Da'ud Abdul Malik Shabazz. Appellants have set forth no proposition of law upon which liability may attach to the Estate of Mr. Shabazz. This is noteworthy as it demonstrates that Appellants have conceded that the legal theories which they previously put forth in regard to Mr. Shabazz and his wife were without merit.

With respect to Hasina Shabazz, the proposition of law cited by Appellants is not relevant to the instant matter and is not properly before this Court. Specifically, Appellants assert that treasurers of community schools are public officials that are strictly liable for all public money received or collected by them during their time in office.

Contrary to Appellants' assertions, the record is clear that Hasina Shabazz was not the treasurer of the community school. Rather, Ms. Shabazz and her late husband, Mr. Shabazz, were board trustees of The International Preparatory School (hereinafter "TIPS"), a private non-profit corporation, which operated a community school. All actions that they took in connection with TIPS was in their capacity as board trustees and in good faith. These facts have never been in dispute. Unfortunately, Appellants have chosen to misrepresent to the Court that Ms. Shabazz was treasurer of the community school. This misrepresentation was made despite the fact that Appellants' motion for summary judgment did not assert that Ms. Shabazz was the treasurer of the community school or that the Shabazzs were public officials. It was the position of Appellants at the trial court that private individuals, such as the Shabazzs, could be liable for the

overpayment of public funds. It is also necessary to note another misrepresentation by Appellants. The Eighth Appellate District Court of Appeals (hereinafter the “Court of Appeals”) did not hold the community school treasurers are not public officials. Instead, the Court correctly recognized that Ms. Shabazz was merely the treasurer of the board of trustees, and that she did not occupy the position of treasurer of the community school. In light of the foregoing, it is clear that the proposition of law pertaining to the potential liability of treasurers of community schools is not pertinent to the matter at hand.

It is also worth noting that even assuming *arguendo* that Ms. Shabazz was a public official, liability could not attach to Ms. Shabazz pursuant to R.C. 9.39. The record in this matter is devoid of any evidence that the alleged overpayment of funds were received or collected by Ms. Shabazz as required in R.C. 9.39. In fact, the Court of Appeals found that there was no evidence that the Shabazzs were responsible for the community school receiving public funds which it was deemed ineligible by the Ohio Department of Education. Accordingly, Appellants attempts to impose liability per R.C. 9.39 is misplaced and has not been shown to have any relevance to the instant matter. This serves as yet another reason as to why this Court must decline exercising jurisdiction over this matter.

I. STATEMENT OF THE CASE AND FACTS

TIPS is a privately run non-profit corporation organized in April 2004, pursuant to the laws of the State of Ohio. (See, Defendants' Cross-Motion for Summary Judgment and Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment (hereinafter the "Cross-Motion") at 1). The board of trustees¹ consisted of six (6) trustees. Id. The board of trustees developed and set policy for the community school. Id. The board members received no compensation for their services. Id. School administrators managed the day-to-day operations of the community school. Id. School administrators included positions such as a chief executive officer, principal, vice principal, human resource director, financial administrator, and treasurer. Id. The community school also hired employees whose duties included the monitoring of student enrollment, and the preparation and submission of monthly attendance reports. (See, Defendants' Reply Brief at 5-6).

Mr. and Mrs. Shabazz (hereinafter collectively the "Shabazzs"), were board members. (See, Cross-Motion at 1). All actions that they took in connection with TIPS and/or the community school were in their capacity as board members and in good faith. Id.

The community school ceased operations on or about October 18, 2005. (See, Verified Amended Complaint at Paragraph 7). Appellants commenced this legal action on or about October 20, 2005.

On or about January 30, 2007, the Auditor of the State of Ohio issued a report of a regular audit of TIPS for the period of July 1, 2004, through October 18, 2005 (hereinafter the

¹ R.C. § 1702.55(K) defines "directors" as persons vested with the authority to conduct the affairs of the corporation irrespective of the name, such as trustees, by which they are designated.

“Audit”). (See, Plaintiffs’ Motion for Summary Judgment). The Audit makes the following factual ascertainings in support of its finding for recovery against TIPS and the Shabazzs:

- TIPS permanently closed and ceased its operations as a community school in October 2005;
- The Ohio Department of Education (hereinafter the “Department of Education”) calculated that the amount overpaid to TIPS for the year ended June 30, 2005, was Three Hundred Sixty-One Thousand Four Hundred Forty-Six Dollars (\$361,446.00);
- The Department of Education calculated that the amount overpaid to TIPS for the year ended June 30, 2006, was One Million Forty-Six Thousand Five Hundred Thirty-Seven Dollars (\$1,046,537.00);
- Thus, between July 1, 2004, and October 18, 2005, TIPS was overfunded by the Department of Education in the amount of One Million Four Hundred Seven Thousand Nine Hundred Eighty-Three Dollars (\$1,407,983.00) which was deposited into TIPS’ account; and
- TIPS was not eligible for the foregoing funds. Thus, these funds were due the Department of Education and should have been returned. *Id.*

The Audit contains finding for recovery against TIPS and the Shabazzs in the amount of One Million Four Hundred Seven Thousand Nine Hundred Eighty-Three Dollars (\$1,407,983.00). *Id.*

After the Audit, the Appellants amended their Complaint to add the Shabazzs as party-defendants. (See, Verified Amended Complaint). Appellants and the Shabazzs both moved for summary judgment. At the trial court, Appellants took the position in part that private individuals could be liable for overpayment of public funds. (See, Plaintiffs’ Supplemental Memorandum Regarding Summary Judgment). Appellants did not assert that the Shabazzs were public officials. *Id.* The Shabazzs took the position that board members could not be personally liable for a corporation’s obligations such as the alleged overpayment of public funds. (See,

Cross-Motion). The trial court found in favor of the Plaintiffs. An appeal was perfected to the Court of Appeals.² The Court of Appeals sustained Appellees' appeal to the extent that the trial court erred by granting summary judgment against the Shabazzs. Cordray v. International Preparatory School, 91912 (Ohio App. 8th Dist. May 21, 2009). Specifically, it was held that the Audit did not contain specific factual allegations that the Shabazzs were responsible for the community school receiving public funds, which it was deemed ineligible by the Ohio Department of Education. *Id.* Appellees filed a notice of appeal.³

II. LAW AND ARGUMENT

Response to Proposition of Law:

R.C. § 1702.55 shields Hasina Shabazz from personal liability for funds allegedly overpaid to the community school.

Community schools are state funded, but each community school is run by a private corporation. Ohio Congress of Parents v. State Bd. of Edn., 111 Ohio St.3d 568, 569, (2006). In fact, Ohio law mandates that community schools be established as non-profit corporations under Chapter 1702 of the Ohio Revised Code. R.C. 3314.03 (A)(1).

Directors and officers of a corporation generally are not liable for a corporation's obligations. Soter v. Soter, No. 20403 (Montgomery App. April 1, 2005) citing Falkiewicz v. Blackburn, 155 Ohio App.3d 562, 565 (2003). Furthermore, R.C. § 1702.55(A) provides that

² It was only at the proceedings before the Court of Appeals that the Appellants radically changed their theory of liability and asserted that the Shabazzs were public officials. It is worth noting, Appellants initially asserted that the Shabazzs were public officials per R.C. 2921.01(A). However the Court of Appeals noted that this section is explicitly limited as the term is used in sections 2921.01 to 2921.45 which concerns criminal offenses against justice and public administration in general. Thus, Appellants' reliance on this section was misplaced, and it was found not to be relevant to the proceedings. This section also would not have been relevant on factual grounds.

³ Appellants now raise yet another theory of liability in regard to Ms. Shabazz before this Court.

directors of a corporation shall have no personal liability for any obligations of the corporation. It provides in pertinent part:

The members, the directors, and the officers of a corporation shall not be personally liable for any obligation of the corporation.

In Bishop v. Oakstone Academy, 477 F. Supp.2d 876, 889 (S.D. Ohio 2007), the United States District Court held that the board of directors and each director of a non-profit corporation that operated a school which received public funding could not be personally liable for actions taken through the corporation.

The instant matter is analogous to Bishop in that Appellants are attempting to impose personal liability on a board member of a non-profit corporation that operated a school which received public funding. The only factual basis for recovery contained in the Audit is that there was an overpayment of funds to the community school. It is undisputed that the Shabazzs were board members of a non-profit corporation. In fact, all actions that they took in connection with TIPS was in their capacity as board members of TIPS and in good faith. Accordingly, the Shabazzs cannot be held personally liable for certain funds that were allegedly overpaid to the community school.⁴ It should also be noted that the Appellees have set forth no factual basis as to why the Shabazzs are personally liable for the obligations of the community school. Specifically, they have put forth no evidence that the Shabazzs have engaged in any wrongdoing that resulted in the overpayment of funds. As noted earlier, the Shabazzs were not the individuals whose duties included monitoring enrollment and preparing monthly attendance reports to the Department of

⁴ The Shabazzs disagree with the findings contained in the audit conducted of TIPS by the State of Ohio Auditor. Nevertheless, the Shabazzs did not address these findings as the community school was represented by other legal counsel.

Education. Furthermore, Appellants' legal theory regarding potential liability of community school treasurers is contrary to the undisputed facts in this matter and has no relevance.

A. Hasina Shabazz is not a public official.

Ms. Shabazz was not a public official. Appellant's reliance on R.C. 117.01(E) is misplaced. It provides in pertinent part:

“Public official” means any officer, employee . . . of a public office.

In the instant matter, Appellants' argument that Ms. Shabazz is a public official is predicated upon her being a community school treasurer. As noted earlier, this factual assertion is inaccurate. Ms. Shabazz did not hold this position. She was a trustee of the board of a non-profit corporation and all actions that she took were in this capacity. This being the case, Ms. Shabazz cannot be deemed a public official per R.C. 117.01.

B. R.C. 9.39 has no application to Hasina Shabazz.

Ms. Shabazz cannot be held liable pursuant to R.C. 9.39. It provides in pertinent part:

All public officials are liable for all public money received or collected by them . . .

As noted previously, Ms. Shabazz is not a public official. Thus, R.C. 9.39 is not applicable to the instant matter. Furthermore, even assuming arguendo that Ms. Shabazz was a public official, there is no evidence that Ms. Shabazz received or collected any of the monies that were allegedly paid to the community school.

CONCLUSION

This matter does not raise any issues of public or great general interest. In fact, this appeal is predicated on a proposition of law which is not relevant to the proceedings. Accordingly, this Court should decline to exercise jurisdiction over this matter.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Opposition to Jurisdiction of Appellees, Estate of Da'ud Abdul Malik Shabazz and Hasina Shabazz was mailed by regular U.S. mail on this 1st day of September 2009, to:

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