STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0033

Tiffini Flynn Forslund, et al.,
Appellants,

vs.

State of Minnesota, et al.,
Respondents,

St. Paul Public Schools, et al., Defendants.

Filed September 5, 2017
Affirmed
Smith Tracy M., Judge

Ramsey County District Court
File No. 62-CV-16-2161

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Jess Anna Glover, Christina L. Ogata, Cedrick R. Frazier, Education Minnesota, St. Paul, Minnesota; and Roger Aronson, Minneapolis, Minnesota (for amici curiae Education Minnesota and Minnesota Association of Secondary School Principals)

Considered and decided by Smith, Tracy M., Presiding Judge; Cleary, Chief Judge; and Toussaint, Judge.*

U N P U B L I S H E D O P I N I O N

SMITH, TRACY M., Judge

Under Minnesota law, tenured teachers in public schools are entitled to certain procedural protections before they may be discharged. *See* Minn. Stat. §§ 122A.40, .41 (2016) (the teacher-tenure statutes). Appellants Tiffini Flynn Forslund, Justina Person, Bonnie Dominguez, and Roxanne Draughn argue that the teacher-tenure statutes unconstitutionally burden their children's right to an adequate education by protecting the jobs of ineffective teachers in violation of the Education Clause and Equal Protection Clause of the Minnesota Constitution. The district court dismissed appellants' claims under Minn. R. Civ. P. 12.02.

Appellants argue on appeal that the district court erred in concluding that (1) appellants do not have standing; (2) appellants' claims are nonjusticiable under the

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

political-question doctrine; (3) appellants failed to state a claim under the Education Clause; and (4) appellants failed to state a claim under the Equal Protection Clause. Appellants also argue that the district court erred because it did not allow them to amend their complaint before dismissing their claims. Because we conclude that appellants' Education Clause claim and Equal Protection Clause claim raise nonjusticiable political questions under a recent Minnesota Court of Appeals decision, and because appellants failed to properly file a motion for leave to amend their complaint, we affirm. We do not address the remainder of appellants' arguments.

FACTS

Minnesota's teacher-tenure statutes provide public-school teachers who have successfully completed a three-year probationary period with procedural protections when a school district seeks to terminate their employment. Before termination, the school board must provide the tenured teacher with notice, stating the grounds for the proposed termination. Minn. Stat. §§ 122A.40, subd. 7(a), .41, subd. 7. The school board may terminate a teacher's employment for a number of reasons, including "inefficiency in teaching." Minn. Stat. §§ 122A.40, subd. 9, .41, subd. 6. After receiving notice of the proposed termination, tenured teachers have a right to a hearing before the school board or an arbitrator. Minn. Stat. §§ 122A.40, subd. 7(a), .41, subd. 7. At this hearing, the teacher may be represented by counsel, examine witnesses, and present arguments. Minn. Stat. §§ 122A.40, subd. 14, .41, subd. 8. If the school board decides to terminate the teacher's employment, it must issue a written decision explaining the grounds on which it based its decision. Minn. Stat. §§ 122A.40, subd. 16, .41, subd. 10.

Appellants, the parents of children enrolled in Minnesota schools, allege that these "time-consuming and expensive hurdles" make it "all but impossible" to dismiss ineffective teachers. In particular, appellants assert that the teacher-tenure statutes "(1) prematurely confer near permanent employment on Minnesota teachers [and] (2) effectively prevent the removal of chronically ineffective teachers from their classrooms and, instead, result in the shuffling of ineffective teachers from higher-performing schools to already lower-performing schools."

Appellants seek a judgment declaring that the teacher-tenure statutes violate the Minnesota Constitution and a permanent injunction enjoining the enforcement of the statutes. For purposes of this appeal,[1] appellants argue that the teacher-tenure statutes violate the Minnesota Constitution in two ways. First, appellants argue that the teacher-tenure statutes violate the Education Clause because students are deprived of a "uniform and thorough education" when they are taught by ineffective teachers. Second, appellants argue that the teacher-tenure statutes violate the Equal Protection Clause by creating an "arbitrary distinction between schools that provide their students with the constitutionally required uniform and thorough education, and schools in which students are more likely to be taught by ineffective teachers."

Respondents moved to dismiss appellants' claims under Minn. R. Civ. P. 12.02. The district court granted respondents' motion, concluding that (1) appellants lack standing, (2) appellants' claims present nonjusticiable political questions, and

[1] Appellants have abandoned a claim that the statutes violate students' rights under the Minnesota Constitution's Due Process Clause. *See* Minn. Const. art. I, § 7.

(3) appellants failed to state claims under the Education Clause or the Equal Protection Clause.

This appeal follows.

D E C I S I O N

I. Appellants' claims present nonjusticiable political questions.

Appellants argue that the district court erred in concluding that their claims present nonjusticiable political questions. In particular, appellants argue that our recent decision in *Cruz-Guzman v. State*, 892 N.W.2d 533 (Minn. App. 2017), *review granted* (Minn. Apr. 26, 2017), is distinguishable and that the Minnesota Supreme Court created a standard to evaluate whether a government action interferes with the right to an adequate education in *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993). Justiciability is a question of law that we review de novo. *See McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011).

Appellants' claims are based on the Education Clause and the Equal Protection Clause of the Minnesota Constitution. The Education Clause of the Minnesota Constitution states, "The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools." Minn. Const. art. XIII, § 1. The Equal Protection Clause of the Minnesota Constitution states, "No member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." Minn. Const. art. I, § 2. The Equal Protection Clause "mandate[s] that all similarly situated individuals shall be treated alike." *Scott v. Minneapolis Police Relief Ass'n*, 615 N.W.2d 66, 74 (Minn. 2000). A statute may violate

the Equal Protection Clause if it involves a suspect classification or impermissibly limits a fundamental right. *Granville v. Minneapolis Pub. Schs., Special Dist. No. 1*, 668 N.W.2d 227, 230 (Minn. App. 2003), *review denied* (Minn. Nov. 18, 2003). Education is a fundamental right created by the Education Clause. *Skeen*, 505 N.W.2d at 313.

Courts lack subject-matter jurisdiction to hear claims arising out of political questions that are best resolved by the other branches of government. *See McConaughy v. Sec'y of State*, 106 Minn. 392, 415, 119 N.W. 408, 417 (1909). As explained by the U.S. Supreme Court, a political question involves (1) a textually demonstrable constitutional commitment of the issue to a particular political department, (2) a lack of judicially discoverable and manageable standards for resolving it, (3) the impossibility of deciding the question without making an initial policy determination of a kind clearly for nonjudicial discretion, (4) the impossibility of a court's undertaking independent resolution without expressing a lack of the respect due to other branches of government, (5) an unusual need for unquestioning adherence to a political decision already made, or (6) the potential for confusion from multiple conflicting decisions by various departments on one question. *Baker v. Carr*, 369 U.S. 186, 217, 82 S. Ct. 691, 710 (1962). Constitutional questions are not immune from the political-question doctrine. *See id.* (applying the political-question doctrine to an issue concerning the Fourteenth Amendment of the U.S. Constitution); *Cruz-Guzman*, 892 N.W.2d at 535, 538-40 (applying the political-question doctrine to an issue concerning the Education Clause and Equal Protection Clause).

Recently, and after the district court's decision in this case, we held in *Cruz-Guzman* that claims based on a purported right to an education of a certain quality under the

Education Clause present nonjusticiable political questions. 892 N.W.2d at 534. The plaintiffs in *Cruz-Guzman* alleged that Minnesota public schools are racially and socioeconomically segregated and that this segregation results in achievement gaps, in violation of their children's right to an "adequate" education under the Education Clause and the Equal Protection Clause. *Id.* at 535. On appeal from the district court's decision on a motion to dismiss, this court concluded that the plaintiffs' claims implicated three characteristics of a nonjusticiable political question. *Id.* at 536. First, to the extent that the Education Clause mandates the provision of a certain quality of education, it textually commits that duty and the establishment of the appropriate qualitative standard to the legislature. *Id.* at 539. Second, to resolve the plaintiffs' claims, the court would have to create an applicable standard, which is an initial policy determination for the legislature. *Id.* at 539-40. Finally, the court could not discover a manageable standard for resolving the plaintiffs' inadequate-education claims. *Id.* at 540.

We adhere to the analysis of *Cruz-Guzman* in concluding that appellants' Education Clause and Equal Protection Clause claims present nonjusticiable political questions. Appellants' Education Clause claim is founded on their asserted right, under that clause, to an adequate education, which, they assert, is impaired by ineffective teaching caused by the procedural protections for teachers in the teacher-tenure statutes. As in *Cruz-Guzman*, even assuming that the Education Clause includes an adequacy requirement based on a qualitative standard, appellants' claim would still require us to define the qualitative standard. *Id.* at 538. Specifically, we would need to decide whether that qualitative standard includes effective teaching and what effective teaching means, in terms of

defining both what an effective teacher is and what level or prevalence of ineffectiveness in teaching represents an inadequate education under the Constitution. In other words, what quality of teaching is constitutionally required? Appellants have not identified a constitutional standard that answers this question. Appellants concede that a number of ineffective teachers will remain in the education system even if the teacher-tenure statutes are held unconstitutional. Appellants do not identify what percentage of ineffective teachers would demonstrate an unconstitutional burden on children's right to an adequate education. As in *Cruz-Guzman*, because resolution of appellants' claims "requires the establishment of a qualitative educational standard, which is a task for the legislature and not the judiciary," appellant's Education Clause claim presents a nonjusticiable political question. *Id.* at 541.

Appellants' Equal Protection Clause claim raises the same political question. Appellants argue that the teacher-tenure statutes result in the assignment of an ineffective teacher to some students and not to others, and thus limit their children's fundamental right to an adequate education.[2] *See Granville*, 668 N.W.2d at 230. Again, we would need to determine the constitutionally required quality of teaching in order to determine whether the teacher-tenure statutes result in an unconstitutional limitation on the fundamental right to education. As *Cruz-Guzman* concluded, equal protection claims based on a purported

[2] Appellants argued before the district court that the teacher-tenure statutes resulted in a disparate impact on students of different racial and socioeconomic backgrounds. Appellants have abandoned these arguments on appeal.

right to an education of a certain quality are nonjusticiable. *Cruz-Guzman*, 892 N.W.2d at 541.

Appellants argue that *Cruz-Guzman* is distinguishable for three reasons. First, appellants observe that the plaintiffs in *Cruz-Guzman* challenged the constitutionality of policies and sought not just the prohibition of continued discrimination but also an affirmative injunction to provide an adequate education, whereas appellants seek the invalidation of state statutes they argue impair their children's right to an adequate education. We do not see a legally significant distinction. In both cases, the judicial action sought depends on a determination that students have the right to a certain quality of education, and *Cruz-Guzman* holds that such a determination is a nonjusticiable political question.

Second, appellants argue that, while the plaintiffs in *Cruz-Guzman* sought to establish new standards, appellants in this case seek to apply an existing standard identified in *Skeen*. 505 N.W.2d at 299. The plaintiffs in *Skeen* challenged the state's education-finance system under the Education Clause and the Equal Protection Clause. *Id.* at 301. The Minnesota Supreme Court upheld the state's education-finance system as constitutional because the system provides an "adequate level of education which meets all standards." *Id.* at 315. As *Cruz-Guzman* concluded, however, *Skeen* did not require the Minnesota Supreme Court to consider whether claims based on an adequate education are justiciable and did not create a standard for assessing the adequacy of education. *Cruz-Guzman*, 892 N.W.2d at 541. Unlike the plaintiffs in *Cruz-Guzman* and appellants in this case, the plaintiffs in *Skeen* conceded that they received an adequate education. *Skeen*, 505

N.W.2d. at 315. While *Skeen* described the education-finance system as providing an "adequate level of education which meets all state standards," *Skee*n did not "identify the relevant state standards and did not suggest that those standards emanated from the Education Clause." *Cruz-Guzman*, 892 N.W.2d at 541 (quoting *Skeen*, 505 N.W.2d at 315). "Most importantly, the supreme court did not consider or discuss whether it would be appropriate for the judiciary to establish qualitative educational standards." *Id.* We adhere to *Cruz-Guzman*'s conclusion that *Skeen* did not decide whether claims based on a right to an education of a certain quality are justiciable.

Finally, with or without *Skeen*, appellants argue that, unlike in *Cruz-Guzman*, here we can examine "state standards"—statutes and administrative rules on teacher effectiveness—to develop the necessary constitutional standard. In *Cruz-Guzman*, we rejected the plaintiffs' argument that the constitutional standard for assessing the issue in their case could be based on data about standardized test scores and graduation rates. *Id.* at 538. Similarly, appellants cite two possible sources for state standards that supposedly provide the measure of an "effective teacher." Appellants first cite the teacher-tenure statutes. While the teacher-tenure statutes specify that school districts may terminate teachers for "inefficiency in teaching," the teacher-tenure statutes do not define "inefficiency in teaching" or set standards for identifying ineffective teachers. Minn. Stat. §§ 122A.40, subd. 9, .41, subd. 6. Second, appellants cite the rule for "Standards of Effective Practice for Teachers." Minn. R. 8710.2000 (2015). This rule contains 10 standards made up of a total of 125 subparts used for determining whether to grant teacher licensure to an individual candidate. *Id.* Even if this 125-part test provided a judicially

"manageable" constitutional standard for determining whether an individual teacher is effective, *see Baker*, 369 U.S. at 217, 82 S. Ct. at 710, it does not establish an overall effectiveness-in-teaching standard required for an adequate education. Thus, even if statutes and administrative rules could be relied upon to define a standard of constitutionally required effectiveness in teaching, they do not do so here.

In sum, appellants' claims under the Education Clause and Equal Protection Clause present nonjusticiable political questions because they are based on a right to an education of a certain quality. *Cruz-Guzman*, 892 N.W.2d at 534.

II. The district court did not abuse its discretion by dismissing appellants' claims without affording them an opportunity to amend their complaint.

Appellants argue that the district court abused its discretion because it did not afford appellants the opportunity to amend their complaint. The district court has broad discretion in deciding whether to allow an amendment to the complaint, and its decision will not be reversed absent an abuse of discretion. *St. James Capital Corp. v. Pallet Recycling Assocs. of N. Am., Inc.*, 589 N.W.2d 511, 516 (Minn. App. 1999).

In their memorandum opposing respondents' motion to dismiss, appellants requested to amend their complaint if the district court dismissed their claims. Appellants never filed a motion to amend. In *St. James Capital Corp.*, the appellants did not formally move for leave to amend but instead requested to do so in their memorandum opposing respondents' motion to dismiss. *Id.* This court affirmed the district court's denial of the appellants' request, ruling that the appellants did not properly bring a motion for leave to amend before the district court. *Id.* Similarly, here, no motion for leave to amend was

properly brought before the district court and, therefore, the matter was not properly argued to and was not considered by the district court. Because appellants did not properly bring a motion for leave to amend, the district court did not abuse its discretion when it did not address appellants' request to amend. *Id.*

Affirmed.