IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DARNELL RHEA,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D11-3049

THE DISTRICT BOARD OF TRUSTEES OF SANTA FE COLLEGE, FLORIDA,

Appellee.

_____/

Opinion filed July 19, 2012.

An appeal from the Circuit Court for Alachua County.
Victor L. Hulslander, Judge.

Darnell Rhea, pro se, Appellant.

Lisa J. Augspurger and Maria Dawson Torsney, of Bush & Augspurger, P.A., Orlando, for Appellee.

RAY, J.

Darnell Rhea appeals an order dismissing his second amended complaint, with prejudice, in his lawsuit against the District Board of Trustees of Santa Fe College, Florida (the College). The pleading comprised a petition for writ of mandamus relating to a violation of Florida's public records laws (Count One) and

a petition for declaratory judgment relating to a violation of a college rule (Count Two). In dismissing Count One, the trial court premised its ruling on a finding that a student's e-mail to the College complaining about an instructor's performance in the classroom is an education record in its unredacted form, *i.e.*, with the name of the student author revealed, and thus is protected from disclosure by Florida and federal law. We conclude that the applicable statutes and related case law demonstrate the unredacted e-mail is not an education record, because it is not directly related to a student. Instead, it is directly related to an instructor and only tangentially related to a student. Therefore, we reverse that part of the order dismissing Count One and remand for further proceedings. We affirm the trial court's determination that Rhea failed to state a cause of action for declaratory relief in Count Two, as there is no justiciable issue regarding the existence of any right Rhea may have had under the college rule in dispute.

I. Pleadings and Procedural History

The second amended complaint alleged two claims. Count One, titled "Petition for Writ of Mandamus Violation of the Public Records Act," alleged that from August to December 2009, Rhea was an adjunct associate professor under the supervision of Appellee's Chairman of the Academic Foundations Department (the Chair) at Santa Fe College, a state college created and operated under chapter 1001, Florida Statutes. Adjunct instructors are given contracts on a semester-by-

semester basis, depending on the College's needs. On September 28, 2009, Rhea asked the Chair for a complete copy of a certain e-mail received in the normal course of the Chair's employment with the College. Rhea had received only a copy of the e-mail with the name of the student author redacted. The Chair refused to comply with Rhea's repeated requests to disclose the author's name, on the ground that the student's identity is protected from disclosure under the Family Educational Rights & Privacy Act (FERPA), 20 U.S.C. § 1232g (2009). The student gave no written consent to disclosure of his or her name. Count One alleged the e-mail, including the student's name, is a public record, and by refusing to disclose the complete public record to Rhea, the College violated the law.

The e-mail in question complains of Rhea's classroom behavior, his humiliating remarks to students, and his unorthodox teaching methodologies. He denied all of the negative e-mail allegations. Rhea alleged, however, that he was effectively prevented from defending himself by demonstrating that the unnamed student was not in a position to comment fairly and accurately on Rhea's teaching methods and classroom conduct. Rhea asserted that neither the Florida Statutes nor FERPA protects from disclosure the name of a student who writes an e-mail, like the one in question, containing information that does not directly relate to a student. He argued that pursuant to FERPA, a student's complaint about the teaching methods and classroom behavior of a public, postsecondary school

employee who is not a student at the school relates only tangentially, not directly, to the student. It is, instead, solely a teacher record and thus is not protected from disclosure under FERPA.

Count One alleged further that as a result of the Chair's unlawful refusal to give Rhea the complete, unredacted e-mail, the College did not rehire Rhea, and he suffered damages. Count One requested a jury trial, damages, and attorney's fees and costs. This count also asserted Rhea's right to a writ of mandamus requiring the College to give him the complete record of all complaints from any student that Rhea's supervisors at the College have received.

Count Two is titled "Petition for Declaratory Judgment Violation of Agency Rules." Rhea alleged that while the College is authorized to make rules that have the force of law, it has a corresponding duty to abide by its own rules. He sought a declaration of his rights under the College's rule 7.36 of the "Student Complaint Procedure: Students and Administration," which sets out procedures for students who wish to register a complaint against any employee of the College. The second count alleged that Rhea had a right under rule 7.36 to discuss any complaint from a student and to seek resolution of the complaint, before Rhea's supervisor heard of or saw the student's concern or complaint. The pleading asserted that the College had violated rule 7.36 and its duty to follow its own rules, as a result of which Rhea was not rehired and suffered personal harm. In addition to the request for

declaratory relief, Count Two requested a jury trial, damages, and attorney's fees and costs.

The College moved to dismiss both counts of the second amended complaint with prejudice and moved to strike Rhea's claims for attorney's fees and damages. After a hearing on the College's motions to dismiss and to strike, the trial court concluded, on Count One, that state and federal law do not require the College to provide Rhea with an unredacted copy of the e-mail. According to the court, the College is bound by state and federal law proscribing the College's disclosure of an unredacted copy containing the student author's name. On Count Two, the court found no justiciable issue as to the existence of any right Rhea may have under rule 7.36, nor did the court find a bona-fide, actual, and present need for a declaration. Because the second amended complaint represented Rhea's third attempt to file a legally sufficient claim, and it was deemed inadequate, the trial court ruled it would exercise its discretion to dismiss the latest pleading with prejudice. Boca Burger, Inc. v. Forum, 912 So. 2d 561, 567 (Fla. 2005). In light of the dismissal with prejudice, the court ruled the motions to strike were moot. This appeal followed.

II. Analysis

The standard of review for an order dismissing a complaint for failure to state a cause of action is de novo. Hernandez v. Tallahassee Med. Ctr., Inc., 896

So. 2d 839, 841 (Fla. 1st DCA 2005). A motion to dismiss raises a question of law as to whether the facts alleged in the complaint are sufficient to state a cause of action. Meyers v. City of Jacksonville, 754 So. 2d 198, 202 (Fla. 1st DCA 2000). In considering the legal sufficiency of Rhea's second amended complaint, the trial court's view is limited to the four corners of the complaint, in which the factual allegations are to be deemed true. Connolly v. Sebeco, Inc., 89 So. 2d 482, 484 (Fla. 1956). In doing so, the trial court must resolve all reasonable conclusions or inferences in favor of Rhea, as the non-moving party. Weaver v. Leon Cnty. Classroom Teachers Ass'n, 680 So. 2d 478, 481 (Fla. 1st DCA 1996). It is well established that dismissal of a complaint with prejudice is a very severe sanction, to be invoked only when the pleader has failed to state a cause of action and it is conclusively shown the complaint cannot be amended in such a way as to state a cause. Meyers, 754 So. 2d at 202.

A. Count One: "Petition for Writ of Mandamus Violation of the Public Records Act"

To be entitled to a writ of mandamus, Rhea must establish that "he has a clear legal right to the performance of a clear legal duty by a public officer and that he has no other legal remedies available to him." Hatten v. State, 561 So. 2d 562, 563 (Fla. 1990); see Plymel v. Moore, 770 So. 2d 242, 246 (Fla. 1st DCA 2000). Mandamus has been described as "a remedy to command performance of a

ministerial act that the person deprived has a right to demand, or a remedy where public officials or agencies may be coerced to perform ministerial duties that they have a clear legal duty to perform." Town of Manalapan v. Rechler, 674 So. 2d 789, 790 (Fla. 4th DCA 1996). For purposes of mandamus relief, a duty or act is ministerial when no room exists for the exercise of discretion and the law directs the required performance. Shea v. Cochran, 680 So. 2d 628, 629 (Fla. 4th DCA 1996). Applied to the instant case, the law of mandamus required the trial court to determine whether Rhea has a clear legal right to the unredacted copy of the e-mail and whether the College has a legal duty to provide it to him.

The order dismissing Count One of the second amended complaint with prejudice was based solely on the trial court's conclusion that the e-mail is, indeed, an education record protected from disclosure by federal and Florida statutes. Where purely legal issues of whether a document is a public record and subject to disclosure are involved, we have de novo review. State v. City of Clearwater, 863 So. 2d 149, 151 (Fla. 2003); Media Gen. Convergence, Inc. v. Chief Judge of the Thirteenth Judicial Circuit, 840 So. 2d 1008, 1013 (Fla. 2003).

A citizen's access to public records is a fundamental constitutional right in Florida. Article I, section 24(a), of the Florida Constitution (the "Sunshine Amendment"), grants:

> [e]very person . . . the right to inspect or copy any public record made or received in connection with the official business of any public

> body, officer, or employee of the state, or persons acting on their behalf.

This "self-executing" right to open records is enforced through the Public Records Law, chapter 119 of the Florida Statutes. It is the duty of each agency[1] to provide access to such records. § 119.01(1), Fla. Stat. (2009). Consistent with the state's policy of openness and transparency in government, public records are broadly defined as:

> all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

§ 119.011(12). The Florida Supreme Court has construed this definition to encompass all materials made or received by an agency, in connection with official business, which are used to "perpetuate, communicate or formalize knowledge of

[1] Appellee, which is part of the state system of community colleges established and governed by chapter 1001, Part III, Florida Statutes (2009), is a state agency. § 119.011(2), Fla. Stat. (2009) (defining agency as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law . . . and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency"); see also Wood v. Marston, 442 So. 2d 934, 938 (Fla. 1983); Silver Express Co. v. Dist. Bd. of Lower Tribunal Trs. of Miami-Dade Cmty. Coll., 691 So. 2d 1099 (Fla. 3d DCA 1997) (concluding that committee appointed by community college's purchasing director to consider proposals to provide flight training services was subject to Florida Sunshine Law); Palm Beach Cmty. Coll. Found., Inc. v. WFTV, Inc., 611 So. 2d 588, 589 (Fla. 4th DCA 1993) (stating that the appellant, as a direct financial support organization of a state community college, was an agency under "public records" law).

some type." Shevin v. Byron, Harless, Schaffer, Reid & Assocs., 379 So. 2d 633, 640 (Fla. 1980). The physical format of the record is irrelevant; electronic communications, such as e-mail, are covered just like communications on paper. See § 119.01(2)(a), Fla. Stat. (2009) ("[a]utomation of public records must not erode the right of access to those records"); Nat'l Collegiate Athletic Ass'n v. Associated Press, 18 So. 3d 1201, 1207 (Fla. 1st DCA 2009) (observing that "public records law is not limited to paper documents but that it applies, as well, to documents that exist only in digital form"). Because the e-mail at issue is a communication that was sent to, and received by, the College in connection with the transaction of its official business, it is a public record subject to disclosure in the absence of a statutory exemption.

The Florida Legislature may provide by general law for the exemption from disclosure of certain public records, provided that such law "state[s] with specificity the public necessity justifying the exemption" and is "no broader than necessary to accomplish the stated purpose of the law." Art. I, § 24(c), Fla. Const. Given the public policy favoring disclosure of public records, the Public Records Law "is to be construed liberally in favor of openness, and all exemptions from disclosure are to be construed narrowly and limited to their designated purpose." Lightbourne v. McCollum, 969 So. 2d 326, 332-33 (Fla. 2007) (quoting City of

Riviera Beach v. Barfield, 642 So. 2d 1135, 1136 (Fla. 4th DCA 1994)); see Times Publ'g Co. v. City of Clearwater, 830 So. 2d 844, 847 (Fla. 2d DCA 2002).

The College argued in the trial court, and the judge agreed, that the unredacted e-mail is protected from disclosure because it qualifies as an "education record" under sections 1006.52(1) and 1002.225(1), Florida Statutes (2009), and FERPA, 20 U.S.C. § 1232g(a)(4)(A). A student's "education records" are confidential and exempt from the disclosure provisions in Florida's Public Records Law and the Sunshine Amendment. § 1006.52(1), Fla. Stat. (2009). "A public postsecondary educational institution may not release a student's education records without the written consent of the student to any individual . . . , except in accordance with and as permitted by the FERPA." § 1006.52(2), Fla. Stat. (2009). The Legislature has adopted FERPA's definition of "education records" in determining whether records are confidential and exempt. § 1002.225(1), Fla. Stat. (2009). Thus, it was incumbent upon the trial court to look to the federal statute to determine whether the student e-mail at issue meets the definition of an "education record."

FERPA protects "education records" (and personally identifiable information contained therein) from improper disclosure.[2] Such records generally

[2] FERPA, commonly known as the "Buckley Amendment," does not prohibit disclosure of education records. Rather, it provides for the withholding of federal funds from educational institutions that have a policy or practice of permitting the

include "those records, files, documents, and other materials which . . . (i) contain information *directly related to a student* and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. § 1232g(a)(4)(A)(i)-(ii) (emphasis added). "Education records" do not include,

> in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose.

20 U.S.C. § 1232g(a)(4)(B)(iii).

Defending against Count One, the College argued that the unredacted e-mail, which the College received and maintained, contains information directly relating to the student as well as student identifying information; therefore, as a protected "education record," it cannot be released to Rhea in its complete form under section 1232g(a)(4)(A)(i)-(ii) and the related Florida statutes without subjecting the College to sanctions. The College acknowledged that once it redacted the student identification information, the e-mail lost its purported status as an "education record" under FERPA and, accordingly, was properly disclosed to

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release of such records. 20 U.S.C. § 1232g(b)(1). It is not intended to establish a school-student privilege similar to a doctor-patient or attorney-client privilege. Rios v. Read, 73 F.R.D. 589, 598 (D.C.N.Y. 1977).

Rhea.[3] Contrary to Rhea's position, the College denied that the e-mail is excluded from "education records" under section 1232g(a)(4)(B)(iii).

Courts analyzing the protection afforded to "education records" by FERPA distinguish between records that contain information "directly related to a student" and those that are only peripherally or tangentially related to a student. The former are "education records" by definition; the latter are not. The seminal case of Ellis v. Cleveland Municipal School District, 309 F. Supp. 2d 1019, 1022 (N.D. Ohio 2004), illustrates this distinction.

The issue in Ellis was whether FERPA covered incident reports related to altercations between substitute teachers and students; student and employee witness statements related to these incidents; and information related to subsequent discipline, if any, imposed on the teachers. Id. at 1021. The court held that the requested materials did not implicate FERPA because they did not contain information "directly related to a student." Id. at 1022-23. The court explained:

[3] The College relies on our decision in National Collegiate Athletic Association, 18 So. 3d at 1211, for the general proposition that FERPA does not prohibit disclosure of records that do not reveal personally identifiable information. Significantly, in NCAA, we expressly declined to reach the issue now before us in this case, stating:

> We emphasize that our decision is limited to the disclosure of the redacted versions of the transcript and response. Like the trial court, we have reviewed only the redacted versions of these documents. We are therefore not in a position to decide whether the plaintiffs or other members of the public are entitled to examine the unredacted versions.

Id.

> While it is clear that Congress made no content-based judgments with regard to its education records definition, it is equally clear that Congress did not intend FERPA to cover records directly related to teachers and only tangentially related to students. . . .
>
> In her document requests, plaintiff seeks records involving allegations of physical altercations engaged in by substitute teachers as well as student and employee witness statements related to those altercations. . . . Such records do not implicate FERPA because they do not contain information "directly related to a student." *While these records clearly involve students as alleged victims and witnesses, the records themselves are directly related to the activities and behaviors of the teachers themselves and are therefore not governed by FERPA.*

Id. (internal citations and quotation marks omitted) (emphasis added). Simply stated, "FERPA applies to the disclosure of student records, not teacher records." Id. at 1022. The Ellis court contrasted a disciplinary record concerning a student's misconduct and distinguished United States v. Miami University, 294 F.3d 797, 803, 812 (6th Cir. 2002), which affirmed an injunction prohibiting the release of student disciplinary records in the custody of the University Disciplinary Board. These records were education records directly related to a student, were maintained by the University, and thus were protected by FERPA.

The district court in Wallace v. Cranbrook Educational Community, No. 05-73446, 2006 WL 2796135, at *1 (E.D. Mich. Sept. 27, 2006), drew a similar distinction in its review of a magistrate judge's order compelling discovery. Cranbrook, relying primarily on students' anonymous statements alleging inappropriate employee behavior, terminated Wallace's employment as a school

maintenance person and equipment mover. Id. After Wallace filed a complaint alleging improper termination, Cranbrook provided him with copies of the students' statements, with their names and addresses redacted. Id. Wallace moved to compel disclosure of the students' identities. Id. Cranbrook objected to the disclosure order, citing FERPA and other confidentiality and privacy concerns. Id. Citing to Ellis, the court concluded that the student statements did not "directly relate to students" and were therefore not "education records" under FERPA. Id. at *4. The court also noted that the statements were not "education records" for the additional reason that they related to Wallace in his capacity as an employee and thus qualified as an exception pursuant to 20 U.S.C. § 1232g(a)(4)(B)(iii). Because the records were not "education records," the court concluded there was "no reason to redact the statements as they are not protected from disclosure by FERPA." Id. at *6. Accordingly, the district court affirmed the disclosure order. Id. at *5-6, *8.

From Ellis and its progeny, we conclude that the e-mail before us is not an "education record" because it does not contain information directly related to a student. The e-mail focuses primarily on instructor Rhea's alleged teaching methods and inappropriate conduct and statements in the classroom, and only incidentally relates to the student author or to any other students in the classroom. The fundamental character of the e-mail relates directly to the instructor; the fact

that it was authored by a student does not convert it into an "education record." FERPA was not intended to protect from disclosure such records primarily questioning an instructor's teaching methods or criticizing the teacher's classroom demeanor and comments.[4]

Because the College has failed to meet its burden of demonstrating the existence of a valid statutory exemption, the e-mail is a public record subject to disclosure in its unredacted form. Backed by well-established federal precedent, to which the Florida Legislature has deferred, Rhea demonstrated he has a clear legal right to the performance of a clear legal duty by the College to disclose the e-mail unredacted. Accordingly, we reverse the order as to Count One and remand for

[4] See Briggs v. Bd. of Trs. Columbus State Cmty. Coll., No. 2:08-CV-644, 2009 WL 2047899, at *5 (S.D. Ohio July 8, 2009) (concluding that student complaints about a professor did not directly relate to students and thus were not "education records"); Ellis, 309 F. Supp. 2d at 1023 n.2 (contrasting an educator's disciplinary records or documents alleging faculty misconduct, which generally are not protected under FERPA, with protected student disciplinary records); Baker v. Mitchell-Waters, 826 N.E.2d 894, 899 (Ohio Ct. App. 2005) (holding FERPA does not protect from discovery student complaints alleging abuse by teachers because the documents "directly relate to the activities and behaviors of the teachers" and "do not contain information directly relating to students"); Hampton Bays Union Free Sch. Dist. v. Pub. Emp't Relations Bd., 878 N.Y.S.2d 485, 488-89 (N.Y. App. Div. 2009) (affirming a ruling that documentation relating to a probationary teacher's early termination based on misconduct was subject to disclosure and was not an education record protected from release under FERPA).

further proceedings in accordance with the interpretation of FERPA set forth in Ellis and other comparable decisions.[5]

B. Count Two: "Petition for Declaratory Relief Violation of Agency Rules"

Rhea's second count sought declaratory relief. Circuit courts have jurisdiction "to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed." § 86.011, Fla. Stat. (2009). As the party seeking a declaration of rights, Rhea has the burden to demonstrate entitlement. Groover v. Adiv Holding Co., 202 So. 2d 103, 104 (Fla. 3d DCA 1967).

To be entitled to a declaratory judgment, Rhea must demonstrate that (1) a good-faith dispute exists between the parties; (2) he presently has a justiciable question concerning the existence or non-existence of a right or status, or some fact on which such right or status may depend; (3) he is in doubt regarding his right or status under the College's rule 7.36; and (4) a bona-fide, actual, present, and practical need for the declaration exists. May v. Holley, 59 So. 2d 636, 639 (Fla. 1952); State Farm Mut. Auto. Ins. Co. v. Wallace, 209 So. 2d 719, 721 (Fla. 2d

[5] Because the trial court's dismissal order addressed only Rhea's request for disclosure of "the e-mail in question" and the court did not rule on the broader request for disclosure of any other student complaints made about Rhea, we confine our discussion to the redacted student e-mail addressed in the trial court. Miller v. Miller, 709 So. 2d 644, 645 (Fla. 2d DCA 1998).

DCA 1968). The sufficiency of Rhea's allegations depends not on whether the pleading demonstrates he will succeed in getting a declaration of rights under his assertions, but on whether the law even entitles him to a declaration of rights. Rosenhouse v. 1950 Spring Term Grand Jury, 56 So. 2d 445, 448 (Fla. 1952).

Rhea sought a declaration of his rights under the College's rule 7.36. For students who want to register a complaint against any employee of the College, the rule's procedures require the student, first, to "[s]tate the complaint to the College employee involved and attempt to resolve the problem." Only if the problem remains unresolved is the student to proceed to the next step, contacting the College employee's immediate supervisor or a counselor for assistance. The rule also dictates the procedure the administration is required to take upon receipt of a complaint or concern.

Defending against Count Two, the College argued that the student's e-mail did not rise to the level of a complaint and never triggered the mandatory procedures in rule 7.36. Specifically, the College characterized the e-mail as an informal student comment or concern, rather than a filed, formal complaint.

We need not determine what right Rhea may have had to a declaration under rule 7.36 when he discovered the student author of the e-mail had proceeded directly to the administration without attempting first to resolve the issues with Rhea. A petition for declaratory relief must show "some useful purpose will be

served" by the relief sought. Kendrick v. Everheart, 390 So. 2d 53, 59 (Fla. 1980). Because declaratory relief generally is not appropriate where the alleged controversy is moot, Ashe v. City of Boca Raton, 133 So. 2d 122, 124 (Fla. 2d DCA 1961), a trial court must ensure that the controversy between the parties is "definite and concrete." Green Party of Alaska v. State, Div. of Elections, 147 P.3d 732-33 (Alaska 2006). Rhea is no longer an employee of the College, and the student author of the e-mail is no longer a student at the College. The trial court correctly ruled Rhea failed to make a prima facie showing that any present, justiciable question exists regarding his rights and a good-faith, actual, present, and practical need for a declaration exists. Given Rhea's failure to state a cause of action in Count Two, the trial court properly dismissed the count with prejudice.

Accordingly, we REVERSE and REMAND for further proceedings concerning Count One and affirm the dismissal of Count Two with prejudice.

LEWIS and ROBERTS, JJ., CONCUR.