Opinion, Case No.23350 Cathe A. v. Doddridge County Board of Education, et al.

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 1996 Term

No. 23350

CATHE A., GUARDIAN OF C.E.A.,

AN INFANT UNDER THE AGE OF 18 YEARS,

Petitioner Below, Appellee

v.

DODDRIDGE COUNTY BOARD OF EDUCATION, RONALD K.NICHOLS, SUPERINTENDENT; AND WILLIAM J. CURRAN,MARTHA M. DEVERICKS, JAMES J. DUKATE, CLIFFORD L. WILLISAND MONZEL REX ZICKEFOOSE, INDIVIDUALLY AND ASA MEMBER OF THE DODDRIDGE COUNTY BOARD OF EDUCATION,

Respondents Below

DODDRIDGE COUNTY BOARD OF EDUCATION,

Appellant.

Appeal from the Circuit Court of Doddridge County

Honorable Joseph Troisi, Judge

Civil Action No. 95-P-17

AFFIRMED IN PART, REVERSED IN PART AND REMANDED

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JUSTICE STARCHER delivered the Opinion of the Court.

JUSTICE DAVIS concurs in part and dissents in part, and reserves the right to file a separate opinion.

CHIEF JUSTICE WORKMAN and JUSTICE MAYNARD concur in part and dissent in part, and reserve the right to file separate opinions.

SYLLABUS BY THE COURT

1. “The mandatory requirements of ‘a thorough and efficient system of free schools’ found in Article XII, Section 1 of the West Virginia Constitution, make education a fundamental, constitutional right in this State.” Syllabus Point 3, *Pauley v. Kelly*, 162 W. Va. 672, 255 S.E.2d 859 (1979).

2.“[I]f the State takes some action which denies or infringes upon a person’s fundamental right to an education, then strict scrutiny will apply and the State must prove that its action is necessary to serve some compelling State interest. Furthermore, any denial or infringement of the fundamental right to an education for a compelling State interest must be narrowly tailored.” *Phillip Leon M. v. Greenbrier County Board of Education*, ____ W.Va. ____, ____, 484 S.E.2d 909, 918 (1996) (McHugh, J., concurring, in part, and dissenting, in part) (citations omitted). *W.Va. Const.* art. XII, section 1.

3. Because the State has a compelling interest in providing a safe and secure environment to the school children of this State pursuant to *W.Va. Const.* art. XII, section 1, and because expulsion from school for as much as twelve months pursuant to the provisions of the Productive and Safe Schools Act, *W.Va. Code,* 18A-5-1a(g)[1995] is a reasonably necessary and narrowly tailored method to further that interest, the mandatory suspension period of the Act is not facially unconstitutional.

4. For a child who is not permitted to attend regular school pursuant to the provisions of the Productive and Safe Schools Act, *W.Va. Code,* 18A-5-1a(g) [1995], the extent and details of the State’s constitutional responsibility to provide other state-funded educational opportunities and services to the child must be determined on a case-by-case basis, based on the unique circumstances of the individual child. A primary consideration in making such a determination must be the protection of school children, teachers and other school personnel; another legitimate concern is the need to effectively deter other children from engaging in prohibited conduct. *W.Va. Const.* art. XII, section 1.

5. In extreme circumstances and under a strong showing of necessity in a particular case, strict scrutiny and narrow tailoring could permit the effective temporary denial of all state-funded educational opportunities and services to a child removed from regular school under the Productive and Safe Schools Act, *W.Va. Code,* 18A-5-1a(g) [1995], particularly when the safety of others is threatened by the dangerous actions of a child and where a child is unwilling or unable to utilize educational opportunities and services that are consistent with protecting the safety of others. *W.Va. Const.* art. XII, section 1.

6. To the extent that the opinion in *Phillip Leon M. v. Greenbrier County Board of Education*, ____ W.Va. ____, 484 S.E.2d 909 (1996) implies that in every case in which a student is expelled from school for one year for possessing a firearm or other deadly weapon on school property pursuant to the provisions of the Productive and Safe Schools Act, *W.Va. Code,* 18A-5-1a(g) [1995] the State must provide an alternative education, that opinion is hereby modified. *W.Va. Const.* art. XII, section 1.

7. Where the State is able to safely provide reasonable basic educational opportunities and services to a child who has been removed from regular school under the provisions of the Productive and Safe Schools Act, *W.Va. Code,* 18A-5-1a(g) [1995], there is no compelling state interest in a policy of providing the opportunities and services only if the child's parents are able and willing to reimburse the State for the cost. *W.Va. Const.* art. XII, section 1.

8. A policy to the effect that the State has no responsibility to provide any state-funded educational opportunities and services to any children who are expelled under the Productive and Safe Schools Act, *W.Va. Code,* 18A-5-1a(g) [1995] is constitutionally infirm, because the State has not shown that applying such a limitation to all such children under all circumstances is reasonably necessary and narrowly tailored to further the compelling state interest in safe and secure schools. *W.Va. Const.* art. XII, section 1.

Starcher, Justice:

The first issue which we address in this appeal by the Doddridge County Board of Education is whether the Productive and Safe Schools Act of 1995, which requires that children who bring dangerous weapons to school be removed from school for up to twelve months, violates the provisions of the *West Virginia Constitution* which make education a fundamental, constitutional right. Because the Act is narrowly tailored to serve a compelling state interest

in safe and secure schools, we hold that the Safe Schools Act is facially constitutional.

The second issue presented in this appeal arises out of the Doddridge County Board of Education's decision to condition its providing four hours per week of educational instruction to a child who had been removed from school under the Safe Schools Act upon the child's parents paying the Board for the cost of the instruction. We affirm the judgment of the circuit court which held that the Board's action violated the provisions of the *West Virginia Constitution* which make education a fundamental, constitutional right.

I.

Facts and Background

During the 1994-95 school year, C.E.A. attended Doddridge High School. Because of his disruptive conduct, he received discipline on nine occasions, ranging from warnings to suspension from school. On April 15, 1995, C.E.A. was found on school property with a heavy lock blade knife with a blade approximately three and one-half inches in length.

Although no discipline was administered for his possession of this formidable weapon, C.E.A. and his mother were warned that bringing the knife to school again would result in expulsion because the knife was considered a deadly weapon. Less than one month later, on May 9, 1995, while riding a school bus, C.E.A. was found with not one but two knives, both with blades three and one-half inches long.

Following C.E.A.'s immediate suspension, the Doddridge County Board of Education conducted a hearing on June 1, 1995. By a letter dated June 8, 1995, the Doddridge County Superintendent of Schools informed C.E.A. that as a result of the application of the Productive and Safe Schools Act, *W.Va. Code,* 18A-5-1a(g) [1995] ("the Safe Schools Act " or "the Act"), the Board of Education was expelling C.E.A. for a period of twelve consecutive months, ending May 8, 1996.

On October 10, 1995, C.E.A. (by his mother Cathe A.) filed a petition for writ of mandamus in the Circuit Court of Doddridge County seeking to compel the

Board of Education either to readmit C.E.A. to regular school classes or alternatively to provide him with other state-funded educational services.

On October 23, 1995, a hearing on C.E.A.'s petition was held before the circuit court. The Board of Education stipulated that the Board was willing and able to provide a home instruction teacher for C.E.A. for four hours a week, but only if C.E.A.'s parents would agree to reimburse the Board for the cost of the teacher's time (including travel) at $14.00 per hour. The Board agreed to provide books and materials at no cost. The estimated cost to the Board was $45.00 per week.

On November 1, 1995, the circuit court issued a written order making findings of fact and conclusions of law. The order stated in part:

> The Doddridge County Board of Education has the legal duty under Article 12, Section 1 of the West Virginia Constitution, and under the principles of equal protection entailed in Article 3 of the State's Constitution, to provide C.E.A., from public funds, educational services and resources appropriate to his age, needs and academic status as a regular education student under expulsion.

The circuit court's order further stated:

> A student's right to attend school facilities or to be present on school premises is not identical to a student's right to an education. . . . Forced ignorance, by failing for 12 months to provide a student with a publicly funded education,

> is not a rational or appropriate remedy for student misconduct regardless of the severity of such conduct. . . . [T]he principle of equal protection . . . which requires local school boards to provide appropriate education services, at public expense, to students expelled from school is more compelling than an interpretation which would inevitably generate profoundly disparate results among expelled students depending on the financial means of their families. . . . [E]ducational services and resources [for C.E.A.] may be formulated and structured, in part, on the nature and degree of the risk to others generated by . . . C.E.A.'s behavior. . . . [S]hould C.E.A. by his conduct, evidence a refusal to cooperate with and to accept the educational services which the local board is under a duty to provide, the Doddridge County Board of Education may terminate such services.

The circuit court concluded that the Board of Education's constitutional responsibility was not fulfilled either by merely providing C.E.A. with textbooks, or by providing educational services contingent upon reimbursement for their cost by C.E.A.'s family.

The circuit court also ruled that C.E.A.'s parents had to provide any necessary transportation for C.E.A. The court denied C.E.A.'s request for attorney fees.

After the circuit court issued its ruling, the Board stated that it would provide C.E.A. four hours per week of state-funded instruction at a school building,

after school hours. The Board reported this plan to the circuit court, which apparently found that the Board's plan was acceptable compliance with the court's directive. The Board then appealed the circuit court's order to this court. The appellee Cathe A. did not dispute the adequacy of the plan.

We granted the petition for appeal and heard argument on September 25, 1996. We subsequently ordered reargument and requested briefs from the Legislature, the State Board of Education and State Superintendent of Schools, and the Attorney General. After reargument on February 25, 1997, we issue this opinion.

II.

Discussion

A.

Mootness

Because the circuit court's order expired on May 8, 1996, with the end of C.E.A.'s expulsion, the issue of whether the circuit court's order was erroneous is technically moot. Our standard for choosing to review moot decisions is stated in Syllabus Point 1 of *Israel v. West Virginia Secondary Schools Activity Comm'n*, 182 W.Va. 454, 388 S.E.2d 480 (1989):

> Three factors to be considered in deciding whether to address technically moot issues are as follows: first, the court will determine whether sufficient collateral consequences will result from determination of the questions presented so as to justify relief; second, while technically moot in the immediate context, questions of great public interest may nevertheless be addressed for the future guidance of the bar and of the public; and third, issues which may be

> repeatedly presented to the trial court, yet escape review at the appellate level because of their fleeting and determinate nature, may appropriately be decided.

This case presents this Court with an opportunity to consider the constitutionality of the Safe Schools Act, both facially and as applied. Each of the three factors recited in *Israel* are extant, thereby permitting us to address the important issues presented, regardless of the mootness of the claims raised by the parties to this appeal.

B.

Standard of Review

A circuit court's granting of relief through the extraordinary writ of mandamus is reviewed by an appellate court *de novo*. *Staten v. Dean*, 195 W.Va. 57, 464 S.E.2d 576 (1995). Our appellate review of a circuit court's interpretation of the *West Virginia Constitution* is also *de novo*. *Randolph Co. Bd. of Educ. v. Adams*, 196 W.Va. 9, 467 S.E.2d 150 (1995).

C.

The Safe Schools Act -- Facial Constitutional Analysis

Syllabus Point 3 of *Pauley v. Kelly*, 162 W.Va. 672, 255 S.E.2d 859 (1979), states:

> The mandatory requirements of "a thorough and efficient system of free schools" found in Article XII, Section 1 of the West Virginia Constitution, make education a

> fundamental, constitutional right
> in this State.

Syllabus Point 6, *Randolph County Bd. of Educ. v. Adams*, 196 W.Va. 9, 14, 467 S.E.2d 150, 155 (1995); Syllabus Point 1, *State ex rel. Board of Education for County of Grant v. Manchin*, 179 W.Va. 235, 366 S.E.2d 743 (1988).

"[I]f the state takes some action which denies or infringes upon a person's fundamental right to an education, then strict scrutiny will apply and the State must prove that its action is necessary to serve some compelling State interest. Furthermore, any denial or infringement of the fundamental right to an education for a compelling State interest must be narrowly tailored." *Phillip Leon M. v. Greenbrier County Board of Education*, ____ W.Va. ____, ____, 484 S.E.2d 909, 918 (1996) (McHugh, J., concurring, in part, and dissenting, in part) (citations omitted). For example, in Syllabus Point 4 of *Pauley v. Kelly*, *supra* we determined that any discriminatory classification in the school financing system must serve a compelling state interest.

In *Phillip Leon M., supra*, we held that providing a safe and secure environment wherein our children can learn is implicit in the constitutional guarantee of a "thorough and efficient school system" under *W.Va. Const*. art XII sec. 1. Syllabus Point 4 of *Phillip Leon M.* states, in pertinent part:

> Implicit within the West Virginia constitutional guarantee of "a thorough and efficient system of free schools" is the need for a safe and secure school environment. Without a safe and secure environment, a school is unable to fulfill its basic purpose of providing an education.

Well before the passage of the Safe Schools Act, this Court recognized that a child may be constitutionally removed from the classroom environment when he or she engages in disruptive conduct. In *Keith D. v. Ball*, 177 W.Va. 93, 350 S.E.2d 720 (1986), four pupils were expelled for a period of one calendar year based on their conduct of falsely reporting over two dozen bomb threats. We held in *Keith D.* that the pupils were not entitled to reinstatement because the pupils' behavior involved substantial disorder and invasion of the rights of others. We stated:

> Conduct by a student, whether in class or out, whether it stems from the time, place, or type of behavior, which materially disrupts classwork or involves substantial disorder or invasion of the rights of others, is not constitutionally immunized. *See, e.g., Tinker v. Des Moines Indep. Community School Dist.*, 393 U.S. 503, 513, 89 S.Ct. 733, 740, 21 L.Ed.2d 731(1969) (First amendment); *see generally* Annot., 32 A.L.R.3d 864, 868 (1970). An individual does not have the right to exercise his fundamental constitutional rights at all times, under all circumstances, and by all methods.

177 W.Va. at 95, 350 S.E.2d at 722-23 (1986) (footnote omitted).

The United States Supreme Court has recognized that if forbidden conduct would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school, the discipline may be sustained. *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 509, 89 S.Ct. 733, ___, 21 L.Ed.2d 731, ___, (1968); *Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir. 1966). The same reasoning would apply to consideration of the Safe Schools Act.

The twelve-month expulsion period which the Safe Schools Act sets forth may seem to be a severe penalty. But the Legislature is entitled to believe that only such a penalty would serve as an effective deterrent to further the important goal of a strict weapons-free environment in our schools, and would remove those children who defied a “no weapons” policy from school for a substantial period of time.

If West Virginians cannot have a reasonable degree of confidence that the schools that their children, grandchildren, nieces, nephews, friends and neighbors attend and work in are safe and secure, the survival of the "thorough and efficient" public school system which our *Constitution* itself mandates is in question. Indeed, a school system that did not take rigorous steps to eliminate violence and weapons could find itself in serious liability problems if a child or teacher were injured by the presence of conditions that the school could have detected and prevented. We conclude that the Safe Schools Act's twelve-month expulsion period sends a strong message that we think the Legislature was entitled to believe *needs* to be sent to further a compelling state interest.

Because we conclude in Part II.D. of this opinion that in all but the most extreme cases a child who is on the receiving end of the Act's penalty will still have reasonable state-funded basic educational opportunities and services available, it is our judgment that the Safe Schools Act's requirement of removing children who commit certain offenses from a regular school setting for up to twelve months is narrowly tailored to serve a compelling state interest.

Because the State has a compelling interest in providing a safe and secure environment to the school children of this State pursuant to *W.Va. Const.* art. XII, section 1, and because expulsion from school for as much as twelve months pursuant to the provisions of the Productive and Safe Schools Act, *W.Va. Code,* 18A-5-1a(g)[1995] is a reasonably necessary and narrowly tailored method to further that interest, the mandatory suspension period of the Act is not facially unconstitutional

D.

The Safe Schools Act -- as Applied to C.E.A.

The question now arises, if a child may constitutionally be removed from a regular school setting for twelve months, what then? Is the child to be left alone by the State with no obligation to engage in any sort of educational enterprise? What will be done to maximize the likelihood that the child keeps current with academic basics so that he or she can return to regular school not irreparably behind his or her peers?

These are difficult questions. The practical answers to these questions and the dilemmas they present will require experience, expertise, and experimentation. It is not the business of this Court to make detailed policy or prescriptions. However, in reviewing the circuit court's decision in the case of C.E.A., we can address the question of implementing the Safe Schools Act in a fashion that fully complies with the State's *constitutional* responsibility to provide safe and secure educational opportunities and services to all of the children of our State. Conscious of our limited but constitutionally necessary role, we proceed.

We begin by reiterating the narrow issue which was actually decided by the circuit court. The circuit judge held that the Board's proposal to provide C.E.A. with *four hours a week* of state-funded instruction at a school building after regular school hours would satisfy the Board's constitutional obligation to provide basic educational opportunities and services to C.E.A. Moreover, C.E.A.'s parents had to provide transportation, and if C.E.A. did not take advantage of the Board's proposal, the Board's responsibility to C.E.A. was ended. The appellee Cathe A. has not challenged the circuit court's ruling as to the constitutional adequacy of the opportunities and services contained in the Board's proposal, so this Court need not and does not address that issue.

However, the Board contends that the circuit court was wrong in requiring the Board to provide *any* state-funded educational opportunity to C.E.A.

We emphasize that at no time has the Board contended that the *safety* of a home instruction or other after-school teacher for C.E.A. is or was an issue. The sole issue presented to the circuit judge was whether the Board could constitutionally make providing an instructional program for C.E.A. contingent upon the child's parents reimbursing the Board for the cost of the program.

The circuit court concluded that the ability or willingness of C.E.A.'s parents to reimburse the State for the cost of state-provided educational opportunities and services for a child who is removed from school pursuant to the Safe Schools Act was an impermissible factor in determining whether such a child is provided educational opportunities and services.

We do not discern that a compelling state interest is furthered in a narrowly tailored fashion by a policy of providing educational opportunities and services to children who are removed from school because of the Safe Schools Act only if their parents will reimburse the cost of the educational opportunity.

Where the State is able to safely provide reasonable basic educational opportunities and services to a child who has been removed from regular school under the provisions of the Productive and Safe Schools Act, *W.Va. Code,* 18A-5-1a(g) [1995] there is no compelling state interest in a policy of providing the opportunities and services only if the child's parents are able and willing to reimburse the state for the cost.

A child's constitutional, fundamental right to an education includes the right to be provided with educational opportunities and services (which may be restricted or limited by narrowly tailored restrictions necessary to achieve a compelling state interest) at public expense, without regard to the child or parents' ability or willingness to reimburse the state for the cost of the educational opportunities and services. We agree with the circuit judge that equal protection concerns undermine the constitutional legitimacy of the State's making such a distinction in providing educational opportunities and services.

The crafting of detailed procedures and standards for implementing the State's compelling interest in ensuring safe schools, while providing educational opportunities and services for all of our State's children as required by our *Constitution*, is a matter properly left to the legislative and executive processes. However, such procedures and standards must pass the strict scrutiny and narrow tailoring that is required by our constitutional provisions governing the right to education.

In applying the mandate of the Safe Schools Act, the State Superintendent of Schools issued a memorandum on May 24, 1995, articulating a policy that a child who is removed from the classroom setting pursuant to the Safe Schools Act is not entitled to any form of state-funded instruction during the pendency of their expulsion. (The memorandum also stated that local educational agencies may in their discretion provide state-funded educational opportunities and services to these children.)

We are not unmindful of the enormous demands upon our State's educational system. We admire and praise the thousands of dedicated teachers, administrators, and service personnel who meet those demands with energy and creativity every day. Recognizing that our decision today will do nothing to reduce those demands, we must nevertheless conclude that the broad and sweeping policy set forth in the memorandum promulgated by the State Superintendent of Schools is incompatible with the place of education as a fundamental, constitutional right in this State.

A policy to the effect that the State has *no* responsibility to provide *any* state-funded educational opportunities and services to *any* children who are expelled under the Productive and Safe Schools Act, *W.Va. Code,* 18A-5-1a(g) [1995] is constitutionally infirm because the State has not shown that applying such a limitation to *all* such children under *all* circumstances is reasonably necessary and narrowly tailored to further the compelling state interest in safe and secure schools.

For the foregoing reasons, the circuit court's judgment that under the facts presented by this case, the provision of basic educational opportunities and services to a child expelled pursuant to the Safe Schools Act could constitutionally not be made dependent upon the parent's ability or willingness to reimburse the State is affirmed.

For a child who is not permitted to attend normal school pursuant to the provisions of the Safe Schools Act, the extent and details of the State's constitutional responsibility to provide other state-funded educational opportunities and services to the child must be determined on a case-by-case basis, based on the unique circumstances of the individual child. A primary consideration in making such a determination must be the protection of students, teachers and other school personnel; another legitimate concern is the need to effectively deter other students from engaging in prohibited conduct.

We recognize that in extreme circumstances and under a strong showing of necessity in a particular case, strict scrutiny and narrow tailoring could permit the effective temporary denial of all State-funded educational opportunities and services to a child removed from regular school under the Productive and Safe Schools Act, *W.Va. Code,* 18A-5-1a(g) [1995], particularly when the safety of others is threatened by the dangerous actions of a child, and where the child is unwilling or unable to utilize educational opportunities and services that are consistent with protecting the safety of others. *See Phillip Leon M. v. Greenbrier County Board of Education*, ____ W.Va. ____, ____, 484 S.E.2d 909, 919 (1996) (McHugh, J., concurring, in part, and dissenting, in part).

Thus, to the extent that the opinion in *Phillip Leon M.* implies that "in *every case* in which a student is expelled from school for one year for possessing a firearm or other deadly weapon on school property, the State must provide an alternative education[,]" *Phillip Leon M.,* ___ W.Va. at ___, 484 S.E.2d at 919, (McHugh, J., concurring, in part, and dissenting in part), that opinion is hereby modified.

We recognize that there may "be a point when a student's actions are so egregious, that in order to protect teachers and other school personnel [and, we add, other students], the State may determine that there is a compelling state interest not to provide an alternative to that particular expelled student." *Phillip Leon M.,* ___ W.Va. at ___, 484 S.E.2d at 919, (McHugh, J., concurring, in part, and dissenting, in part). However, the facts in the instant case and common sense suggest that in all but the most extreme cases the State will be able to provide reasonable state-funded educational opportunities and services to children who have been removed from the classroom by the provisions of the Safe Schools Act in a safe and reasonable fashion. Under such circumstances, providing educational opportunities and services to such children is constitutionally mandated.

E.

Attorneys' Fees

The circuit court denied C.E.A.'s request for attorneys fees and he appeals that determination. We review the denial of a request for attorneys fees in a mandamus action under a clearly erroneous standard.

We set out the standard for circuit courts to follow when determining whether to award attorneys' fees in a mandamus action in Syllabus Points 10 and 11 of *W. Va. Educ. Ass'n. v. Consolidated Pub. Retirement Bd.*, 194 W.Va. 501, 460 S.E.2d 747 (1995):

> Where a public official has deliberately and knowingly refused to exercise a clear, legal duty a presumption exists in favor of an award of attorneys' fees and expenses unless extraordinary circumstances indicate an award would be inappropriate, then attorneys' fees and expenses would be allowed. *State of West Virginia ex rel. West Virginia Highlands Conservancy, Inc. v. West Virginia Division of*

Environmental Protection, 193 W.Va. 650, 654, 458 S.E.2d 88, 92 (1995).

Where a public official has failed to exercise a clear, legal duty, although the failure was not the result of a decision to knowingly disregard a legal command, there is no presumption in favor of an award of attorneys' fees with the following factors to be considered in whether or not to award attorneys' fees and expenses and in what amount: (a) the relative clarity by which the legal duty was established; (b) whether the ruling promoted the general public interest or merely protected the private interest of the petitioner for a small group of individuals; and (c) whether the petitioner has adequate financial resources such that it could afford to protect its own interests in court and as between the government and the petitioner. *State of West Virginia ex rel. West Virginia Highlands Conservancy, Inc. v. West Virginia Division of Environmental Protection*, 193 W.Va. 650, 654, 458 S.E.2d 88, 92 (1995).

The circuit court determined that the conduct of the Board of Education, while failing to comply with a constitutional mandate, was in good faith and supported by and pursuant to advice and guidance rendered from the State Superintendent. Therefore the court denied Cathe A.'s request for attorneys'

fees. However, the record does not show that the circuit court considered the elements set out under *WVEA*, and particularly Syllabus Point 11. Therefore, we reverse the circuit court's ruling on this issue and remand for reconsideration of the attorneys' fees issue by the circuit court.

For the above stated reasons, the decision of the Circuit Court of Doddridge County is affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

Affirmed in part;

reversed in part;

and remanded.