

FILED
COURT OF APPEALS
DIVISION II

2013 MAR 21 PM 3:53

STATE OF WASHINGTON

BY
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No. 44196-9-II

THE COURT OF APPEALS

DIVISION II OF THE STATE OF WASHINGTON

KENNETH ANDERSON

Appellant/Petitioner,

And

RANA BLAES, aka RANA ANDERSON

Respondent

ON APPEAL FROM PIERCE COUNTY SUPERIOR COURT

(Hon. James Orlando)

RESPONDENT'S RESPONSE BRIEF

RANA BLAES

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TACOMA, WA 98445

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I. ASSIGNMENT OF ERROR

Did the trial court err in not terminating child support for Erial Anderson under the September 24, 2009 Order of Child Support.

II. ISSUES

A. Was Erial Anderson enrolled in school on November 10, 2011, the date of her 18th birthday?

B. If Erial Anderson was not enrolled in school on November 10, 2011, did her child support under the September 24, 2009 Order of Child Support terminate on November 10, 2011 by operation of law and the September 24, 2009 Order of Child Support?

C. If Erial Anderson's Child Support terminated on November 10, 2011, is Mr. Anderson entitled to equitable relief from his overpayments of child support for Erial since November 2011?

III. STATEMENT OF THE CASE

Mr. Anderson and Ms. Blaes' marriage was dissolved on June 28, 2002 and along with the Decree, a Parenting Plan was entered which awarded the primary residential care of the parties' then three (3) minor children to Ms. Blaes. (CP 117) Paragraph 4.2 of this Plan gave Ms. Blaes sole decision making with regards to the children's education. (CP 117) At the time of the entry of the Parenting Plan, Ken Anderson was on

active duty with the U.S. Army and was shortly thereafter assigned overseas. (CP 53, 117)

On September 24, 2009 an Order of Child Support was entered that modified the parties' June 28, 2002 Order of Child Support. (CP 52; 32-34) This order was a result of a modification petition brought by the Pierce County Prosecuting Attorney's office. (CP 52)

At the time that this order was entered, Mr. Anderson was still in the U.S. Army stationed in New York. (CP 52) He represented himself during this proceeding, as did Ms. Blaes. (CP 65) The September 24, 2009 Order of Child Support ordered Mr. Anderson to pay \$571.50 per month for the support of his daughter, Erial Anderson, who at the time was 15 and \$571.50 per month for the support of his son, Isaac Anderson, who was 14 at the time. (CP 52) The support order was prepared by Ms. Kilpatrick of the Prosecutor's office and paragraph 3.13 Termination of Support, provided that:

“Support shall be paid: Until the child(ren) reach(es) the age of 18 or as long as the child(ren) remain(s) enrolled in high school, whichever occurs last, except as otherwise provided below in paragraph 3.14.”

(Paragraph 3.14 provided “Not addressed at this hearing.”) (CP 36)

When this order was entered, Mr. Anderson had not had any contact with Ms. Blaes or his children for approximately seven years and he had had no contact with Ms. Blaes during the 2009 modification proceeding, except to receive her financial information. (CP 53)

Mr. Anderson dutifully paid his support under the September 25, 2009 order. However, unbeknownst to Mr. Anderson, his daughter Erial's schooling had been in a state of chaos. According to Erial's Tacoma School District records, Erial had been the subject of BECCA proceedings in 2005, 2006, 2007, 2008, 2009 and 2010. (CP 8-13; 54)

In 2009, Erial failed every class that she attended, except for one where she received a D. (CP 3; 54)

In 2010, Erial failed every class that she attended. (CP 3; 54)

In February 2, 2010, Erial dropped out of Lincoln High School. (CP 3; 54) She did not return to school until September 10, 2010, when she apparently entered and left Oakland High School (an alternative high school) the same day. (CP 3; 54) Erial then entered Lincoln High School on September 20, 2010, but again left school after only one (1) month on October 20, 2010. (CP 3; 54.) At the time Erial left Lincoln High School, she was 16 years old, one month shy of her 17th birthday (DOB 11/10/93), but had only reached the 9th grade level. (CP 3) She left with a GPA of

0.00, having not met any of the State requirements for reading, writing, High School and Beyond Plan and Culminating Project. (CP 3; 54)

Erial remained out of school for the remainder of the 2010/2011 school year. (CP 3; 55)

At the start of the 2011/2012 school year in September 2011, Erial did not enroll in school. (CP 3; 54-55)

Because Erial's 18th birthday was now approaching (11/10/11), the DCS case worker assigned to Ken's case, Mr. McGillis, mailed to Ms. Blaes DCS's form letter on September 27, 2011, requesting confirmation that Erial was enrolled in school so that support for her under the September 25, 2009 order would not be terminated by DCS when Erial turned 18. (CP 54; 31)

Ms. Blaes received this DCS letter. (Verbatim Transcript, page 6, line 9)

On November 16, 2011 Erial was enrolled in and began attending class at Oakland High School.¹ This attendance/enrollment is both confirmed by Erial's school records (CP 3) and a March 21, 2012 letter from Micah Banton, Erial's counselor at Oakland High School that was

¹ According to the school, given Erial's current schedule, she will not be eligible to graduate from high school until June 2015 when she will be 21½ years old. (CP 55) It is somewhat instructive to note that pursuant to WAC 388-14A-3810(2), child support under an administrative support order terminates at age 19 even if the child is still in high school.

provided to Mr. Anderson in Ms. Blaes' discovery answers. (CP 73) Ms. Blaes has never refuted that November 16, 2011 is the date Erial began her class attendance at Oakland High School.

On May 24, 2012 Mr. Anderson filed an Amended Petition for Modification of Child Support (CP 74-78) and a Motion to Modify Order of Child Support and/or Terminate Child Support (CP 50-51) which in part requested that his obligation of support for Erial Anderson be terminated as of December 2011, with a credit for his overpayment of child support since Mr. Anderson had continued to honor the September 25, 2009 order. In support of this motion, he filed his May 24, 2012 declaration (CP 52-77), Erial's school records (CP 1-13) and a copy of the Tacoma School District Policy Manual which incorporated the State's definition of an enrolled student found at WAC 391-121-106. (CP 79-83)

Ms. Blaes, acting pro se, did not file any declarations in response to Mr. Anderson's May 24, 2012 motion.

The initial hearing on Mr. Anderson's motion was heard by a Court Commissioner on June 26, 2012.

Instead of terminating Mr. Anderson's obligation of child support for Erial, the Commissioner entered an Order of Child Support on June 26, 2012 which suspended Erial's support effective with July 2012, but which also ordered a review hearing. (CP 84-98)

After the June 26, 2012 hearing, additional records for Erial from the Tacoma School District were filed with the Superior Court on September 10, 2012. (CP 14-29)

The Commissioner's review hearing was heard on September 18, 2012. Ms. Blaes, again acting pro se, appeared at this hearing. She filed no legal memorandum or any declaration. The Commissioner entered an order on September 18, 2012 which resumed Mr. Anderson's obligation to support his now almost 19 year old daughter effective with the month of September 2012. (CP 113-114)

On September 28, 2012 Mr. Anderson filed his Motion of Revision which requested that continued support for Erial be denied and that her support be terminated. (CP 115-116) Ms. Blaes did not file any pleadings in response to this motion.

The trial court heard Mr. Anderson's motion on October 12, 2012. As reflected in the verbatim transcript of this hearing, before even hearing argument, the trial court focused its attention on whether or not Erial was still dependent and therefore in need of support. (Verbatim Transcript, page 2, lines 22-24) After hearing argument the trial court opined that Erial was still enrolled in school (which is true), that some children suffer the effects of a dissolution more than others and that they have school issues and that to expect Erial to be a fully functioning adult at age 18 is

unrealistic. (Verbatim Transcript, page 7, lines 23-25; page 8, lines 1-3) With those observations, the trial court denied Mr. Anderson's motion to revise and entered an Order of Child Support that ordered Mr. Anderson to pay \$349.39 in child support for Erial Anderson effective with the month of September 2012. (CP 140-156)

On November 13, 2012 Mr. Anderson timely filed his Notice of Appeal to the Court of Appeals seeking a reversal of the trial court's October 12, 2012 Order of Child Support as it relates to Erial Anderson. (CP 157-178)

IV. ARGUMENT

A. Erial Anderson was not enrolled in school on her 18th birthday, November 10, 2011.

Oakland High School is in the Tacoma Public School District. The Tacoma Public School District has its own Policy Manual which in part has a section (Policy No. 3120) that specifically addresses student enrollment. (CP 79-83) This Policy Manual refers to and adopts the Washington Administration Code definition on an enrolled student which is found at WAC 392-121-106.

For Erial Anderson to have been considered an enrolled student on the date of her 18th birthday, November 10, 2011, she would have had to

have met all five (5) conditions set out in WAC 392-121-106 (CP 132).

Pursuant to WAC 392-121-106, an “enrolled student” is a person who:

(1) is eligible to enroll in the school district’s education programs because he or she:

(a) Resides in the school district with or without an address (RCW 28A.225.010, 28A.225.160 and 28A.225.215);

(b) Resides on a United States reservation, national park, national forest, or Indian reservation contiguous to the school district (RCW 28.225.170);

(c) Resides in a school district not offering the grade for which they are eligible to enroll such as a nonhigh district (RCW 28A.225.210);

(d) Has been released from the school district he or she resides in and has been accepted by the school district claiming enrollment (RCW 28A.225.225 and 28A.225.230);

(e) Will be attending the school district as part of an interdistrict cooperative program (RCW 28A.225.250); or

(f) Will be attending school in a school district in another state per a reciprocity agreement pursuant to RCW 28A.225.260.

(2) After the close of the prior school year has presented himself or herself, or has been presented, to the school district’s appropriate official to be entered on the school district’s rolls for the purpose of attending school in grades kindergarten through twelve;

(3) Is under twenty-one years of age at the beginning of the school year;

(4) Actually participated on a school day during the first four school days of the current school term (semester or quarter), or on a school day during the current school year

On or prior to the date being counted, in a course of study offered by the school district as defined in WAC 392-121-107; and

(5) Does not qualify for any of the enrollment exclusions Set forth in WAC 392-121-108

On November 10, 2011, Erial Anderson had in fact met all the conditions as defined in WAC 392-121-106. As set forth in WAC 392-121-107 the Definition for Course of Study states Instruction - Teaching/ learning experiences conducted by school district staff as directed by the administration and the board of directors of the school district, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences that are planned and scheduled by the district for the purpose of discussing students' educational needs or progress, and exclusive of time for meals.

Erial was enrolled on November 2, 2011 at Oakland High School (please see ex. A) Oakland High School is an Alternative School so their enrollment process does not follow other school's as Far as enrollment to attendance. Once enrolled at Oakland there is an

Orientation, and then a start date for classes which are all decided by the School and the District. So if Erial's enrollment is not considered Effective on November 2, 2011, then surely on November 9, 2011 it has to.

On November 9, 2011 Erial Anderson did attend an Orientation, which took place at Oakland High School. Students were instructed on school policies and procedures as well as class schedules conducted by school district staff as directed by the administration and the board of directors of the school district. Under condition (4) Erial had to participate on a school day during the first four days of the current term (semester or quarter) or on a school day during the current school year on or prior to the date being counted. The date to be counted was November 10, 2011 Erial's 18th birthday. To satisfy condition (5) for any of the exclusions Erial needed only resume attendance which she did by attending Orientation.

B. Erial Anderson's child support terminated on November 10, 2011.

The question of whether Erial Anderson's child support terminated

on November 10, 2011 is governed by both statute and the wording of paragraph 3.13 of the September 2009 Order of Child Support. In this case Erial had to be enrolled in high school, at the time of her 18th birthday which she was and still is.

C. Support Overpayments.

As seen in both sections (A) and (B) above Mr. Anderson is not entitled to overpayments because Erial was in fact enrolled in high school on her 18th birthday November 10, 2011.

V. CONCLUSION

Under the clear wording of paragraph 3.13 of the September 24, 2009 Order of Child Support, in order for Mr. Anderson to be obligated to continue to pay for Erial after her 18th birthday, Erial had to be an enrolled student at Oakland High School or any other public or private school on November 10, 2011. Erial did in fact meet this requirement.

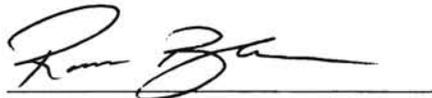
Granted Erial was not a model student, and her situation is not typical of most when involving an order of child support. Erial's education is important to me and I have and will continue to push Erial toward her education. For Mr. Anderson to imply otherwise is very offensive. Mr. Anderson by his own doing has had no contact with his children since the marriage was dissolved. Apparently Mr. Anderson thinks Erial's schooling is not important enough to continue to help with child support while Erial is getting an education. Erial and I researched many avenues for her to get back in school one of which (see ex. B) was online schooling thru IQ Academy. Unfortunately Mrs. Arrigotti informed us Erial would not graduate before she was 21. Oakland appeared to be Erial's best option.

It is submitted that the facts and law are undisputable. Pursuant to Tacoma Public School's definition of an enrolled student, Erial did enroll in Oakland High School on November 9, 2011 based on the technicality of enrollment she had to take part in some type of instruction/teaching by school district staff as directed by administration and the board of directors of the school district.

It is true Erial's attendance at Oakland High School is free. It is a public school and in fact Erial continues to attend. Terminating Mr. Andersons support obligation only validates his lack of responsibility to Erial.

Dated this 20th day of March, 2013

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read "Rana L. Blaes", written over a horizontal line.

RANA L BLAES
Respondent

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DIVISION II

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STATE OF WASHINGTON

BY C
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IN THE COURT OF APPEALS
IN THE STATE OF WASHINGTON, DIVISION TWO

KENNETH ANDERSON,

APPELLANT

vs.

RANA BLAES, fka Rana Anderson

RESPONDENT.

No. 44196-9-II

DECLARATION
OF SERVICE

I Declare, At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the state of Washington, over the age of eighteen (18) years, not a party to the above entitled action, and competent to be a witness herein.

On 3-21-2013 (date), I served the following documents in the manner noted:

Respondents Response Brief

To: Morton Mcgoldrick, P.S
820 "A" Street, Suite 600
Tacoma, WA. 98402

U.S. Mail
 Hand Delivered

DATED this 21st day of March, 2013 at Tacoma, Washington

Eyla Anderson
Eyla M Anderson

CERTIFICATE OF SERVICE