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NO. 50380-8-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

In re the Truancy of:

KH,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR JEFFERSON COUNTY

The Honorable Keith Harper, Judge

BRIEF OF APPELLANT

CATHERINE E. GLINSKI
Attorney for Appellant

Glinski Law Firm PLLC
P.O. Box 761
Manchester, WA 98353
(360) 876-2736

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A. ASSIGNMENTS OF ERROR

1. The court erred in finding that “The student parent(s)/guardian(s) were served with the Petition Regarding Truancy and the order setting this hearing.” CP 9.

2. The court lacked jurisdiction over appellant, and the order of truancy is therefore void.

3. The State failed to establish the allegations necessary for court intervention and supervision.

Issues pertaining to assignments of error

1. Where the issues raised on appeal involve continuing issues of substantial public interest, should this Court address them even though the truancy order has been dismissed?

2. Where there is no evidence that appellant was served with the truancy petition, does the lack of personal jurisdiction render the truancy order void?

3. The evidence showed that appellant’s attendance had significantly improved as a result of actions by the school before the fact finding hearing. Where the State failed to show that court intervention and supervision were necessary to address appellant’s attendance issues, must the order of truancy be vacated?

B. STATEMENT OF THE CASE

On March 6, 2017, the Chimacum School District filed a petition alleging violation of RCW 28A.225.010, asking for an order of court intervention to abate truancy. The petition alleged appellant KH, an 11-year-old student at Chimacum Middle School, had unexcused absences contradictory to state law/and or district policy. CP 1. The petition identified KH's grandmother, Cindy Robins, as his legal guardian. CP 1-2.

The petition alleged that attendance letters had been sent to Robins on December 5, 2016, January 9, 2017, and February 14, 2017. The only steps taken by the district to reduce absences were these attendance letters, one of which asked the parent or guardian to call to schedule an appointment to discuss attendance. The petition alleged that no phone call was received or appointment scheduled. CP 2. The petition alleged that the actions taken by the district have not been successful in substantially reducing the child's absences, and court intervention and supervision are necessary to assist the school district. CP 2. KH's attendance records and the attendance letters were attached to the petition as exhibits. CP 3-8.

A truancy hearing was scheduled for March 23, 2017, and the school district filed a declaration of mailing stating that a copy of the notice of hearing was mailed to KH and Robins. There was no declaration

that KH or Robins were served with the truancy petition, however. Supp. CP (Sub. No. 3, Declaration of Mailing, filed 3/7/17).

Counsel was appointed for KH at the hearing on March 23, 2017, and the fact finding was set over until April 13, 2017. Supp. CP (Sub. No. 4, Order Appointing Attorney, filed 3/23/17); Supp. CP (Sub. No. 5, Minutes 3/23/17). Appointed counsel filed a Notice of Appearance and Demand for Discovery, requesting, among other items, any records relating to service of the truancy petition on the student and parent. Supp. CP (Sub. No. 6, filed 3/23/17).

At the fact finding hearing, David Carthum, the principal at Chimacum Middle School, testified that KH had 15 unexcused absences prior to the truancy petition being filed. Letters were sent to KH's guardian about his attendance periodically, and Carthum discussed the absences with KH. RP 4-5. Between the time the absences were noted and the fact finding hearing, KH's guardian had called to excuse some of the absences, but there were still 7.6 unexcused absences. RP 6.

Carthum also testified that he had talked with KH about a personality conflict he had with his fourth period teacher. He noted that KH was moved from that class to choir after the truancy petition was filed, and his attendance had improved since that change was made. RP 7.

Cindy Robins testified that she met with Carthum in March and talked to him about KH's issues, including the problems he was having with his fourth period teacher. RP 8-9. After her meeting with Carthum, KH was moved out of that class and his attendance had gotten much better. RP 10.

The State argued that despite the fact that KH was doing better since the change in his schedule, he had a sufficient number of absences for the court to find him truant, and he should be under the court's jurisdiction. RP 11. KH's counsel acknowledged that KH had missed more than ten days as required under the truancy statute. RP 12. He argued, however, that court intervention and supervision were not necessary, because attendance was no longer an issue once KH's schedule was changed. RP 13.

Counsel also argued that nothing in the record shows that KH was personally served with the petition and notices to bring him to court, and the declaration of mailing did not indicate documents were sent by certified mail. Counsel noted that there was no response to his request for proof of service in the notice of appearance and demand for discovery. Thus, there was an issue as to whether the court has personal jurisdiction over KH. RP 13-14.

The court declined to dismiss the proceedings for jurisdictional or procedural issues. It reasoned that although there was no proof of service, it was clear that KH found out about the proceedings since he showed up for both scheduled hearings. RP 17.

The court then said it was concerned that three attendance letters were sent, with one asking the parent to schedule an appointment to discuss attendance, and there was no follow through. Although it acknowledged that KH was doing better, the court felt compelled to make a finding of truancy, because there was no response to the letters. RP 17-18.

Robins interjected that she responded to the last letter by talking to Carthum while she was at the school. RP 18. Carthum agreed that Robins was at the school frequently, and they talked all the time, although their meetings were typically not scheduled. He acknowledged that they talked about KH's attendance during those conversations. RP 20.

The court responded that it needed to honor the statute. There was a period of time when efforts were being made that Robins did not respond to. Even though the situation was being addressed, it would sign an order of truancy. RP 20.

In the truancy order, the court entered the following findings:

1.1 The student parent(s)/guardian(s) were served with the Petition Regarding Truancy and the order setting this hearing.

1.2 The student has failed to attend school as required in 28A.225.005.

1.5 The petitioning school district has informed the student's parent(s)/guardian(s) to analyze the causes of absences and has taken steps to eliminate or reduce the child's absences pursuant to RCW 28A.225.020.

CP 9. The court assumed jurisdiction over KH's truancy until written order or his 18th birthday and ordered him to attend school on a regular basis. CP 10.

An order on truancy review was entered May 11, 2017, continuing the previous truancy order. CP 11. On June 27, 2017, an order dismissing the truancy was entered, based on the fact that the school year had ended. CP 17.

KH filed this timely appeal. CP 12-14.

C. ARGUMENT

1. THIS COURT SHOULD ADDRESS THE ISSUES RAISED ON APPEAL EVEN THOUGH THE ORDER OF TRUANCY HAS BEEN DISMISSED.

The court below dismissed the order of truancy at the end of the school year, and therefore the only relief this Court can grant is to declare the order void so that it cannot be considered if any future juvenile proceedings are initiated. The question of what service of process is

required to confer personal jurisdiction in truancy proceedings is a significant issue of public importance which will likely be raised in the future, however. The issue of when court intervention is required is similarly an issue of continuing substantial public interest. This Court should therefore decide the issues presented in KH's appeal even if technically moot. *See Bellevue Sch. Dist. v. E.S.*, 171 Wn.2d 695, 699, 257 P.3d 570 (2011); *In re J.L.*, 140 Wn. App. 438, 443, 166 P.3d 776 (2007).

2. THE COURT LACKED PERSONAL JURISDICTION OVER KH BECAUSE HE WAS NOT SERVED WITH THE TRUANCY PETITION.

A school district filing a truancy petition under RCW 28A.225.030 is required to serve the petition on the student and/or guardian. Service by certified mail is permitted, but if such service is unsuccessful, personal service is required. RCW 28A.225.030(5). Proper service is a prerequisite to the court obtaining personal jurisdiction over the party. *In re Estate of Kordon*, 157 Wn.2d 206, 210, 137 P.3d 16 (2006); *Harvey v. Obermeit*, 163 Wn. App. 311, 318, 261 P.3d 671 (2011). When a court lacks personal jurisdiction over a party, an order entered against that party is void. *Rodriguez v. James-Jackson*, 127 Wn. App. 139, 143, 111 P.3d 271 (2005).

In this case, the school district filed a declaration of mailing indicating that a copy of the notice of hearing was mailed to KH and his grandmother. This declaration does not indicate that the notice was sent by certified mail, nor does it indicate that a copy of the truancy petition was served. When counsel was appointed for KH, he requested any records relating to service of the truancy petition on KH, but no such records were provided. Counsel raised the defense of lack of personal jurisdiction at the fact finding hearing, arguing that nothing in the record shows that KH was served with the truancy petition, and the court therefore lacked jurisdiction to enter a truancy order. RP 13-14.

The State responded that since KH had appeared on the initial hearing date and at the fact finding hearing, he clearly had notice. RP 14. The court agreed, declining to dismiss on the basis of jurisdiction. Although it acknowledged there was no proof of service, it took KH's presence at both hearings as proof that he found out about them somehow. RP 17. The court then entered a finding that KH was served with the truancy petition as well as the order setting the hearing. CP 9.

There is no evidence to support the court's finding that KH was served with the truancy petition, and the finding is clearly erroneous. The fact that KH showed up at the two scheduled hearings showed that he and his grandmother knew of the hearings, and in fact, the declaration of

mailing indicates that notice of the fact finding hearing was mailed to them. There is nothing in the record to establish that KH was served with the petition, however, despite counsel's request for such proof of service.

Lack of jurisdiction is a question of law this Court reviews *de novo*. *Kordon*, 157 Wn.2d at 209. Service of process is basic to jurisdiction. *Rodriguez*, 127 Wn. App. at 143. Because there is no proof KH was served with the truancy petition, the court below lacked personal jurisdiction, and this Court should hold that the order of truancy entered by the court is void.

3. THE STATE FAILED TO PROVE THE ALLEGATIONS NECESSARY FOR COURT INTERVENTION AND SUPERVISION.

If a child fails to attend school without valid justification, the school district is required to inform the child's parent of the absences, schedule a conference with the parent and child to analyze the causes of the absences, and take data-informed steps to eliminate or reduce the absences. RCW 28A.225.020(1). If the child is in middle school or high school, steps by the district must include application of the Washington assessment of the risks and needs of students or other assessment. RCW 28A.225.020(1)(c)(i). Where appropriate, the steps must include interventions such as adjusting the child's school program or course

assignment, to eliminate or ameliorate the cause for the school absences. RCW 28A.225.020(1)(c)(iv).

If actions taken by a school district under RCW 28A.225.020 are not successful in substantially reducing the child's absences from school, the district must file a truancy petition. RCW 28A.225.030(1). The petition must include a list of all interventions that have been attempted. *Id.* The petition must allege that the child has unexcused absences, the actions taken by the school district have not been successful in substantially reducing the absences, and court intervention and supervision are necessary to reduce absences. RCW 28A.225.035(1). Only if these allegations are established by a preponderance of the evidence at a fact finding hearing may the court enter an order of truancy assuming jurisdiction to intervene. RCW 28A.225.035(12).

There was no dispute in this case that KH had a sufficient number of unexcused absences to prompt action by the school. The school sent letters to his guardian informing her of the absences and asking her to schedule a conference to discuss them. The guardian did not call to schedule a conference, and there is no indication in the record that the school took any other steps to address the absences prior to filing the petition. CP 1-8.

KH's grandmother did discuss the absences with the principal, however, and after the petition was filed action was taken to address the cause of KH's absences. RP 7, 8-10. He was moved from a class in which he had a personality conflict with the teacher to another class. As a result of this action, by the time of the fact finding hearing KH's attendance had improved significantly. *Id.* Because the attendance issue was already resolved without court intervention or supervision, the evidence does not support a finding that court intervention and supervision were necessary, as required for a truancy order.

While the court acknowledged that KH's attendance had improved, it said it was concerned by the guardian's failure to respond to the principal's letters about KH's attendance. RP 17-18. When both the principal and Robins explained that they had actually talked about KH's attendance in response to the last letter, the court said it felt a truancy order was required because there was a period of time where efforts were being made to which Robins did not respond. RP 18, 20.

The court misapplied the truancy statute. The statute does not permit the court to enter an order assuming jurisdiction unless the school district establishes that court intervention and supervision are necessary to reduce the child's school absences. RCW 28A.225.035(1), (12). The evidence here showed that the action taken by the school, changing KH's

schedule, had been successful in reducing his absences. Thus the court did not need to enter a truancy order to address KH's school attendance.

The State failed to prove the allegations necessary for court intervention and supervision, and the truancy order must be vacated.

D. CONCLUSION

For the reasons addressed above, the truancy order is void and must be vacated.

DATED February 9, 2018.

Respectfully submitted,



CATHERINE E. GLINSKI
WSBA No. 20260
Attorney for Appellant

Certification of Service by Mail

Today I caused to be mailed copies of the Brief of Appellant and Supplemental Designation of Clerk's Papers in *State v. Kayden Haltom*, Cause No. 50380-8-II as follows:

Kayden Haltom
80 Noble Lane
Port Orchard, WA 98339

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Catherine E. Glinski
Done in Manchester, WA
February 9, 2018

GLINSKI LAW FIRM PLLC

February 09, 2018 - 1:56 PM

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