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Court of Appeals  
Division II  
State of Washington  
4/23/2018 8:00 AM

NO. 50380-8-II

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

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In re the Truancy of:

K.H.

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**BRIEF OF RESPONDENT  
CHIMACUM SCHOOL DISTRICT**

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MICHAEL E. HAAS  
Jefferson County Prosecuting Attorney  
Attorney for Respondent  
P.O. Box 1220  
Port Townsend, WA 98368  
(360) 385-9180

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**I. COUNTERSTATEMENT OF THE ISSUES**

- A. The underlying case has been dismissed thus this case is moot and need not be resolved by the Court of Appeals.**
- B. The Chimacum School District did not properly serve K.H., however, K.H.'s counsel failed to properly object to whether the Court obtained *in personam* jurisdiction over K.H.**
- C. The Trial Court properly determined court intervention over K.H. was necessary pursuant to Washington State's Truancy Statutes, RCW 28A.225 *et seq.***

**II. STATEMENT OF THE CASE**

Appellant's statement of the case is accurate and is incorporated by reference. The CSD merely adds a Statement of Additional Authorities per RAP 10.8 below and included as Attachment A.

**III. ARGUMENT**

- A. The underlying case has been dismissed thus this case is moot and need not be resolved by the Court of Appeals**

Appellant correctly notes this matter was dismissed by the Trial Court at the end of the 2017 school year. Appellant's Brief, p. 6. As such, this issue is moot.

From the larger policy perspective, whether this Court needs to fully address the issues raised by Appellant, the CSD responds as follows:

First, it is hoped that the 2016 and 2017 amendments to RCW, 28A.225.025, Community Truancy Boards ("CTB"), will significantly reduce the need for traditional truancy court. This statute envisions a much more active CTB

than has previously been the case. Once fully implemented there is little reason to think there will be much of an ongoing need for traditional truancy court.

Second, to the extent implementation of CTB is not as fruitful as hoped or that certain more difficult truancy cases continue to present themselves to the Truancy Court, Jefferson County has taken steps to, as a matter of policy, to insure that students such as K.H. are personally served with the Petition and Notice of Hearing. Attachment A, Statement of Additional Authorities per RAP 10.8, Policy 5.1.B.4 & 5. This policy provides:

Upon receiving truancy stay petitions/truancy petitions, Juvenile Services administrative staff will perform the following tasks:

4. Staff will file the petition and prepare necessary documentation for service to the youth and parent named in the petition and deliver to the Civil Unity of the Jefferson County Sheriff's Department.

5. *Youth and parent are personally served with copies of the Petition and Notice of Hearing.* [Italics added]

**B. The Chimacum School District did not properly serve K.H., however, K.H.'s counsel failed to properly object to whether the Court obtained *in personam* jurisdiction over K.H.**

The CSD admits K.H. was not properly served with the Petition and Notice of Hearing in this matter. However, K.H. did physically appear for court as acknowledged by Appellant and trial counsel for K.H. failed to properly object to the Court's assertion of *in personam* jurisdiction over K.H. Appellant's Brief, p. 8; RP 17.

Truancy actions are civil matters. RCW 28A.225.030(1).

“CR 4(d)(5) now provides: “A voluntary appearance of a defendant does not preclude his right to challenge lack of jurisdiction over his person ... pursuant to Rule 12(b).” *DiBernardo- Wallace v. Gullo*, 4 Wn. App. 362, 364, 661 P.2d 991 (1983).

Appellant’s trial counsel did raise the issue of whether proper service occurred though in an odd way or at an odd time. The objection to adequate service/lack of *in personam* jurisdiction did not actually occur until the closing arguments of Appellant’s Trial Counsel following the brief contested fact finding hearing. RP 13 – 14.

This does not appear to be in compliance with CR 12(h)(1) which provides:

A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process *is waived* (A) *if omitted from a motion* in the circumstances described in section (g), or (B) *if it is neither made by motion under this rule nor included in a responsive pleading* or an amendment thereof permitted by rule 15(a) to be made as a matter of course. [Italics added].

“Any defect in service of process is waived if the party does not raise the issue by motion or answer as required by CR 12(h)(1).” *NW Administrators, Inc. v. Roundy*, 42 Wn. App. 771, 776, 713 P.3d 1127 (1986). K.H. did not do this, and thus he has waived any objection to the Trial Court’s determination it had jurisdiction over the person of K.H.

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**C. The Trial Court properly determined court intervention over K.H. was necessary pursuant to Washington State's Truancy Statutes, RCW 28A.225 et seq.**

RCW 28A.225.035 provides in pertinent part:

(1) A petition for a civil action under RCW 28A.225.030 or 28A.225.015 shall consist of a written notification to the court alleging that:

(a) The child has unexcused absences as described in RCW 28A.225.030(1) during the current school year;

(b) Actions taken by the school district have not been successful in substantially reducing the child's absences from school; and

(c) Court intervention and supervision are necessary to assist the school district or parent to reduce the child's absences from school.

It is undisputed K.H. missed enough school to force the CSD to raise a truancy flag for the CSD. Appellant's Brief, p. 10; RCW 28A.225.030. Specifically the school principal for K.H.'s school testified K.H. had 15 unexcused absences prior to March 6, 2017. RP 5.

The CSD also sent attendance letter to K.H.'s guardian on December 5, 2016, January 9, 2017, and February 14, 2017, in hopes of reducing or eliminating K.H.s attendance issues. CP 1. One of these letters requested K.H.'s guardian schedule an appointment to discuss attendance with the principle. *Id.* Unfortunately any response was inadequate to resolve the problem.

Based on those factors, there was enough evidence for the Trial Court to determine that court intervention was necessary and that K.H. was a truant.

IV. CONCLUSION

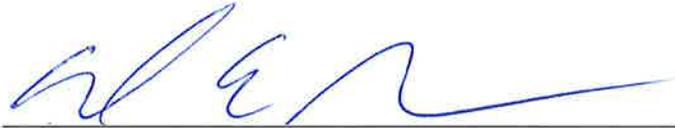
A. This case is moot and further action is not required by this Court other than to affirm the Trial Court's decisions in this matter.

B. Trial Counsel failed to file a CR 12(h)(1) motion challenging *in personam* jurisdiction over K.H. and thus waived the issue.

C. The substantial number of unexcused absences (15) combined with the CSD's unsuccessful efforts to work with K.H.'s guardian, justified court intervention and the truancy finding.

For the foregoing reasons, the Chimacum School District respectfully requests the Trial Court's decisions and orders in this matter be affirmed.

Respectfully submitted this 21<sup>st</sup> day of April, 2018.



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MICHAEL E. HAAS, WSBA #17663  
Jefferson County Prosecuting Attorney  
Attorney for Respondent

**PROOF OF SERVICE**

I, Michael Haas, declare that on this date:

I filed the Chimacum School District's BRIEF OF RESPONDENT electronically with the Court of Appeals, Division II, through the Court's online filing system. I delivered an electronic version of the brief, using the Court's filing portal, to:

Catherine Glinski, WSBA #20260  
glinskilaw@wavecable.com

I declare under penalty of perjury of the laws of the State of Washington that the foregoing information is true and correct. Dated this 21<sup>st</sup> day of April, 2018, and signed at Port Townsend, Washington.

  
Michael Haas #17663

# **Attachment A**

**(Additional Authority per RAP 10.8)**

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- A Guardian ad Litem Role and Responsibilities – Exhibit 1**
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- 9.4 Referral and Participation – Other Interventions/Services**

## **Policy 5. Truancy Services**

Policies regarding Truancy services apply to all staff members of the Juvenile and Family Court Services Department, including professional and administrative employees.

### **5.1 Administrative Functions**

#### **A. School District Responsibilities**

Parents of children between the ages of six and eighteen must comply with the truancy laws outlined in RCW 28A.225. A Memorandum of Understanding between the school district and the juvenile court sets forth the responsibilities of school districts and the court in relation to local truancy processes. A representative from each school within each district is responsible for carrying out the district's responsibilities under the truancy statutes.

#### **B. Juvenile Services Responsibilities**

Upon receiving truancy stay petitions/truancy petitions, Juvenile Services administrative staff will perform the following tasks:

1. Administrative staff will perform a JIS search to confirm that the youth is not the subject of a truancy petition in any other county.
2. Administrative staff will prepare a Notice of Hearing and forward the stay petition/petition to the Becca Counselor.
3. The Becca Counselor will screen the petition, sign the Notice of Hearing, and return the petition to administrative staff.
4. Staff will file the petition and prepare necessary documentation for service to the youth and parent named in the petition and deliver to the Civil Unit of the Jefferson County Sheriff's Department.
5. Youth and parent are personally served with copies of the Petition and Notice of Hearing.
6. Administrative Staff will prepare a file and forward it to the Becca Counselor.

### **5.2 Community Truancy Boards (CTB's)**

#### **A. Scheduling**

Community Truancy Boards (CTB's) will be scheduled pursuant to an agreement between the school districts and the juvenile court and in a location agreeable to all parties.

#### **B. Training**

Training necessary for voluntary CTB members will be held pursuant to an agreement between the school districts and the juvenile court.

C. Role of Becca Counselor and CTB's

The Becca Counselor will be present at CTB's and be the court's representative to those meetings. The performance of an assessment as set forth in current statute, will be completed based upon an agreement between the individual school and the juvenile court. The Becca Counselor will assist the school in follow-up contact for monitoring purposes and assist in referrals to services as identified by the CTB.

**5.3 Unsuccessful CTB Intervention/Necessary Return to Court**

A. Order Lifting Stay

If it becomes necessary to lift the stay and schedule the matter for a fact finding hearing, the Becca Counselor will work with a representative from the prosecutor's office and the school to prepare appropriate documentation. The Amended Petition, Order Lifting Stay and Notice of Hearing will be personally served upon the youth and parent named in the Amended Petition.

B. Becca Counselor and Post-CTB Monitoring

The Becca Counselor will appear in court for any and all hearings scheduled for matters returned to court following unsuccessful participation with CTB Agreements. Becca Counselor will monitor court orders and work with the school and prosecutor's office in the case of the necessity for any court action pursuant to a contempt of the court's truancy order.

**JEFFERSON COUNTY PROSECUTING ATTORNEY**

**April 21, 2018 - 7:29 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 50380-8  
**Appellate Court Case Title:** In re the Truancy of K.A.H.  
**Superior Court Case Number:** 17-7-00002-4

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