

FILED
Court of Appeals
Division II
State of Washington
8/21/2018 2:22 PM

NO. 50637-8-II

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

CHIMACUM SCHOOL DISTRICT,

Respondent,

v.

D.P.,

Appellant.

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

The Honorable Keith Harper, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

EVEN IF TECHNICALLY MOOT, THIS CASE INVOLVES ISSUES OF CONTINUING AND SUBSTANTIAL PUBLIC INTEREST WARRANTING THIS COURT'S DEFINITIVE GUIDANCE.

Chimacum School District (the District) contends this case is moot because the trial court dismissed the truancy order on June 27, 2017 once D.P.'s 2016-17 school year ended. Br. of Resp't, 3. The District filed the dismissal order along with its response brief. Br. of Resp't, 1.

A case is moot if the court can no longer provide effective relief. State v. Hunley, 175 Wn.2d 901, 907, 287 P.3d 584 (2012). As the District acknowledges, however, courts may "retain and decide" a technically moot appeal "if it involves matters of continuing and substantial public interest." Id.; Br. of Resp't, 3-4. In making this determination, courts consider three factors: (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination for the future guidance of public officers, and (3) the likelihood of future recurrence of the question. Hunley, 175 Wn.2d at 907.

Courts reach the merits of truancy appeals even though they are often technically moot by the time they are considered. See, e.g., In re J.L., 140 Wn. App. 438, 443, 166 P.3d 776 (2007) (deciding moot issue of whether truant student can constitutionally be incarcerated); In re M.B., 101 Wn.

App. 425, 432-33, 3 P.3d 780 (2000) (deciding moot issue of whether contempt sanctions against children who violate truancy orders violate due process). In Bellevue School District v. E.S., 171 Wn.2d 695, 698, 257 P.3d 570 (2011), for instance, the Washington Supreme Court considered whether due process requires appointment of counsel to represent a child at an initial truancy hearing. The court noted the case appeared to be moot because the truancy petition had been dismissed. Id. at 698 n.1. The court nevertheless reached the merits, explaining “the question of whether or not a child has the right to counsel at an initial truancy hearing is an issue of significant public interest affecting many parties and will likely be raised in the future.” Id.

As in E.S., all three considerations weigh in favor of review even if D.P.’s case is technically moot. First, chapter 28A.225 RCW addresses compulsory attendance at public schools in Washington State. The aim of the statute is, in part, to reduce student absenteeism at the State’s public schools. See Laws of 2016, ch. 205, § 1. This case involves interpretation of several provisions of chapter 28A.225 RCW—plainly issues of a public nature and statewide importance. See Laws of 2016, ch. 205, § 1 (recognizing “all children and youth in Washington state are entitled to a basic education and to an equal opportunity to learn”). The first consideration therefore weighs in favor of review.

The second and third factors involve overlapping considerations. The District contends the issues presented in this case are not likely to recur and therefore further guidance is unnecessary. The District points out that, “[i]n April of 2017, the WARNS assessment requirement was a new statutory feature,” citing Laws of 2016, ch. 205, §§ 1, 4, 6. Br. of Resp’t, 4-5. The District claims “it is debatable whether a WARNS assessment was required in this case at the time.” Br. of Resp’t, 6.

Specifically, the District argues the WARNS assessment was relevant and applicable only to the community truancy board, which would not be established until fall of 2017. Br. of Resp’t, 4-5. As such, the District contends, “it is unlikely further court intervention is required” because community truancy boards are now “required in no uncertain terms.” Br. of Resp’t, 5. But the District’s arguments actually demonstrate the need for this Court’s guidance. A look at the revised statutory scheme is necessary.

The legislature overhauled the truancy statute, chapter RCW 28A.225 RCW, in 2016. Laws of 2016, ch. 205, § 1. For the first time, the legislature required public schools to take “data-informed steps” to reduce the student’s absences, including application of the WARNS assessment. Laws of 2016, ch. 205, § 4; RCW 28A.225.020(1)(c)(i). The legislature likewise added use of the WARNS assessment as a basis to avoid a truancy hearing, if it “would substantially reduce the child’s unexcused absences.”

Laws of 2016, ch. 205, § 8; RCW 28A.225.035(7)(a). These amendments took effect on June 9, 2016, before the beginning of D.P.'s 2016-17 school year, at issue here.¹ Laws of 2016, ch. 205; CP 1-11.

Application of the WARNS assessment is to be done “by a school district’s designee under RCW 28A.225.026.” RCW 28A.225.020(1)(c)(i). RCW 28A.225.026(1) mandates that juveniles courts, together with the respective school district, establish a community truancy board “[b]y the beginning of the 2017-18 school year.” The purpose of the board is a “coordinated and collaborative approach to address truancy.” *Id.* Under RCW 28A.225.026(4), schools districts must designate “a person or persons to coordinate school district efforts to address excessive absenteeism and truancy.” This is, presumably, the designee referenced in RCW 28A.225.020(1)(c)(i).

Juvenile courts previously had discretion to establish community truancy boards. Laws of 2016, ch. 205, §§ 1, 5. The legislature explained its decision to make the boards mandatory:

[S]uccess . . . has been had by school districts and county juvenile courts around the state that have worked in tandem with one another to establish truancy boards capable of prevention and intervention and that regularly stay truancy petitions in order to first allow these boards to identify barriers to school attendance, cooperatively solve problems,

¹ The legislature amended chapter 28A.225 RCW again in 2017. Laws of 2017, ch. 291. No significant changes were made to the provisions at issue in this case.

and connect students and their families with needed community-based services.

Laws of 2016, ch. 205, § 1.

Consistent with this, the legislature has also mandated an initial stay of truancy petitions “in order to allow for appropriate intervention and prevention before using a court order to enforce attendance laws.” Id. At the time of the initial stay, the child and parent must be referred to the community truancy board. RCW 28A.225.035(4)(a). The board must then “provide to the court a description of the intervention and prevention efforts to be employed to substantially reduce the child’s unexcused absences, along with a timeline for completion.” Id. If no community truancy board is yet in place, “the juvenile court shall schedule a hearing at which the court shall consider the petition.” RCW 28A.225.035(4)(b).

Reading these statutes and amendments together, it appears D.P.’s 2016-17 school year was a “limbo” period for the WARNS assessment and community truancy board. The amendments took effect in June of 2016, before the start of D.P.’s school year. They expressly required a WARNS assessment between the student’s second and fifth unexcused absence. There is no dispute this did not occur in D.P.’s case. Br. of Resp’t, 13. But the WARNS assessment is to be applied by the community truancy board, which did not need to be created until the 2017-18 school year. It appears

the District did not yet have a board in place: Kurt Munnich testified “when the Truancy Boards will be in place next fall,” the WARNS assessment “would inform the board about what a target behavior could be, to help out.” RP 22.

This Court’s guidance is nevertheless important. There do not appear to be any reported cases interpreting the 2016 amendments. The WARNS assessment is a critical piece of the data-informed steps public schools are now required to take to reduce students’ unexcused absences. It will potentially avoid court intervention—one of the stated purposes of the 2016 amendments. Laws of 2016, ch. 205, § 1. As demonstrated in D.P.’s case, there is confusion as to the application of the WARNS assessment and its use in truancy proceedings. This Court’s interpretation of the amendments would clarify for juvenile courts and school districts when the WARNS assessment should be conducted and how it should be used.

Moreover, a WARNS assessment was actually conducted in this case, albeit on the same afternoon as the truancy hearing. RP 21. The trial court excluded the assessment as not relevant to its truancy determination. RP 24-25. On appeal, D.P. challenged this as error under the 2016 amendments, which plainly make the WARNS assessment relevant. Br. of Appellant, 1-2, 23-30.

To reiterate, RCW 28A.225.035(4)(a) requires an initial stay of a truancy petition so the community truancy board may develop an intervention program. The juvenile court must hold a truancy hearing when a board has not yet been established. RCW 28A.225.035(4)(b). RCW 28A.225.035(7)(a) specifies, however, “[n]otwithstanding the provisions in subsection (4)(a) of this section, a hearing shall not be required if other actions by the court would substantially reduce the child’s unexcused absences,” including use of the WARNS assessment to identify the individual student’s specific needs. (Emphasis added.) Use of the word “notwithstanding” means *despite* any initial referral to the community truancy board. WEBSTER’S THIRD NEW INT’L DICTIONARY 1208 (1993) (defining “notwithstanding” as “without prevention or obstruction from or by” and “in spite of”). Thus, the WARNS assessment was plainly relevant at the truancy hearing because it could have negated the need for a hearing and potentially the need for court intervention.

The now-mandatory community truancy boards are required to apply and use the WARNS assessment to attempt to reduce a student’s unexcused absences. But the statute also makes clear that use of the WARNS assessment at a truancy hearing is not dependent on the existence of a community truancy board. Where a WARNS assessment is actually performed, like here, the trial court can and should consider it.

A definitive decision from this Court interpreting RCW 28A.225.035(7)(a) would therefore provide future guidance to schools filing truancy petitions and juvenile courts considering them. Given how recently the legislature amended the truancy statute, it is likely these issues will recur. If every truancy appeal is dismissed as moot at the end of the student's school year, then these issues will continue to evade appellate review.

Finally, D.P. argued in his opening brief that the District failed to meet its statutory requirement to schedule a parent/school conference at a reasonably convenient time for all the parties. Br. of Appellant, 1-2, 14-18. Even before the 2016 amendments, schools were required to schedule such conferences "at a time reasonably convenient for all persons." RCW 28A.225.020(1)(b). No reported or unreported case has analyzed this provision of the truancy statute. Given that the goal of chapter 28A.225 RCW is to reduce student absences without the need for court intervention, this Court's guidance as to what qualifies as a "time reasonably convenient for all parties" is likewise necessary.

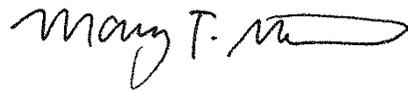
B. CONCLUSION

D.P. respectfully requests that, even if technically moot, this Court consider his case in order to provide future guidance to school districts and juvenile courts in truancy proceedings.

DATED this 21st day of August, 2018.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Mary T. Swift", with a horizontal line extending to the right from the end of the signature.

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August 21, 2018 - 2:22 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50637-8
Appellate Court Case Title: Chimacum School District, Respondent v Dawson Paden, Appellant
Superior Court Case Number: 16-7-00039-5

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