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Court of Appeals
Division II
State of Washington
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NO. 51327-7-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

CHIMACUM SCHOOL DISTRICT,

Respondent,

v.

R.L.P.,

Appellant.

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

APPELLANT'S OPENING BRIEF

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1. *School districts must prove by a preponderance of the evidence a child has the necessary number of unexcused absences, and that actions taken by the district to address the absences have been unsuccessful, before a court may grant a truancy petition.* 6

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A. INTRODUCTION

As a 10-year-old fifth grader, living with his mother and battling homelessness, R.L.P. attended Chimacum Elementary School. After the school documented several unexcused absences, the Chimacum School District filed a truancy petition. The petition wrongly alleged R.L.P. had the requisite number of unexcused absences to support a truancy finding, and did not claim the district had taken any data-informed steps to reduce or eliminate R.L.P.'s absences.

During the fact-finding hearing, the district presented no additional evidence R.L.P. had accrued the necessary number of unexcused absences, and failed to present evidence the district took any data-informed steps as required by statute. The juvenile court found R.L.P. truant. Because the district did not satisfy its burden to prove R.L.P. was truant, this court must reverse the juvenile court's truancy finding.

B. ASSIGNMENTS OF ERROR

1. The juvenile court erred by finding R.L.P. had failed to attend school in compliance with RCW 28A.225.005.

2. The juvenile court erred by finding the school district had taken steps to eliminate or reduce R.L.P.'s absences pursuant to RCW 28A.225.020.

C. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. A court may only grant a truancy petition if the school district proves by a preponderance of the evidence a child as accrued seven unexcused absences in a school month, or 10 unexcused absences in a school year. Here, the district's petition included R.L.P.'s attendance records, which only reflect nine total unexcused absences, with no month containing more than three unexcused absences. The district did not present additional evidence establishing the requisite number of unexcused absences. Is reversal of the truancy finding required where the juvenile court found R.L.P. failed to attend school pursuant to RCW 28A.225.005, despite the district's failure to meet its burden to prove the requisite unexcused absences?

2. School districts must prove by a preponderance of the evidence that steps taken by the district have been unsuccessful at keeping a child in school. Specifically, districts must take "data-informed steps" aimed at reducing or eliminating a child's unexcused absences. Here, the district presented no evidence it ever took any data-informed steps to reduce or eliminate R.L.P.'s unexcused absences. Did the trial court err in finding the district had taken steps to eliminate or reduce R.L.P.'s absences, requiring reversal?

D. STATEMENT OF THE CASE

R.L.P., 10-years-old at the time of the truancy proceedings, was a fifth-grade boy at Chimacum Elementary School. RP 4; CP 1-4. He lived with his mother, Candee Paden, although the family struggled with homelessness beginning in September 2016. RP 5, 13.

On November 2, 2016, the school sent a letter to Ms. Paden documenting R.L.P.'s absences and requesting she set up an appointment with Mark Barga, the principal. CP 5. On November 15, 2016, the school conducted a conference with Ms. Paden and R.L.P. CP 2. At the conference, the school and Ms. Paden discussed "that [R.L.P.] doesn't like to get up and come to school and, you know, that we were going to try different things to encourage him at school, and [Ms. Paden] was going to try to encourage home, as well." RP 6. They also discussed the "possibilities of [R.L.P.] coming earlier with [his older brother]," but the record reflects no additional details of what the parties discussed or what agreement, if any, they reached regarding steps to address R.L.P.'s absences. CP 7-8.

More than four months later, on March 10, 2017, the Chimacum School District ("the district") filed a truancy petition against R.L.P. and his mother. CP 1-2. The petition alleged R.L.P. had the requisite number of unexcused absences, the school district had taken unsuccessful steps to

reduce or eliminate R.L.P.'s absences, and court intervention and supervision were necessary to assist the school district. *Id.* The petition included R.L.P.'s attendance records, which indicate at total of "21.00 DAYS UNEXCUSED" even though only nine absences are marked unexcused in the school's records. CP 3-4.

At the fact-finding hearing on the petition, the district presented evidence through Mr. Barga. RP 4. Mr. Barga did not identify which dates R.L.P. had missed school unexcused. He claimed R.L.P. had nine or more absences in October 2016, but did not specify whether those were excused or unexcused. RP 5. Referencing the district's original petition, Mr. Barga testified R.L.P. had accrued 22 days of unexcused absences, even though the records attached to the petition only show nine absences categorized as unexcused. RP 10; CP 3-4. According to Mr. Barga, after "look[ing] at the numbers," R.L.P. had accrued 28 total unexcused absences by the time of the fact-finding. RP 10. However, he did not clarify how that number was calculated or on which dates the absences fell. The district did not offer any additional or updated attendance records in evidence.

Mr. Barga identified the November 2 letter and the November 15 conference as the steps the school district took to eliminate or reduce R.L.P.'s unexcused absences. RP 5-6. The school also allowed R.L.P. to rest in the office during his school breaks. RP 6-7. When asked what data-

informed steps the school took to reduce or eliminate unexcused absences, Mr. Barga responded, “What do you mean by that?” RP 14. After defense counsel clarified what data-informed steps were, Mr. Barga answered only by saying the school was “tracking the absences.” RP 14-5. The district offered no other evidence of any data-informed steps it took to address R.L.P.’s absences.

Following the fact-finding hearing, the juvenile court found R.L.P. truant and granted the petition. RP 27; CP 7-8. In its findings, the juvenile court specifically found R.L.P. had failed to attend school as required by RCW 28A.225.005, and it found the school district had taken steps to eliminate or reduce R.L.P.’s absences in accordance with RCW 28A.225.020. CP 7.

E. ARGUMENT

Reversal is required because the school district failed to prove by a preponderance of the evidence R.L.P. had accrued the requisite number of unexcused absences, or that actions taken by the district had been unsuccessful at reducing or eliminating the unexcused absences.

1. School districts must prove by a preponderance of the evidence a child has the necessary number of unexcused absences, and that actions taken by the district to address the absences have been unsuccessful, before a court may grant a truancy petition.

Children between the ages of eight and 18 are required to public school unless otherwise exempted.[1] RCW 28A.225.010. If a child accrues unexcused absences, the school's duties are governed by RCW 28A.225.020. After one unexcused absence, the school must notify the child's parent in writing or by phone. RCW 28A.225.020(1)(a). After three such absences, the school must conduct a conference with the child and parent to address the causes of the absences. RCW 28A.225.020(1)(b). Between the second and the fifth unexcused absences, the school must "take data-informed steps to eliminate or reduce the child's absences. RCW 28A.225.020(1)(c). These steps must include:

> where appropriate, providing an available approved best practice or research-based intervention, or both, consistent with the WARNS profile or other assessment, if an assessment was applied, adjusting

[1] RCW 28A.225.010(1)(a)-(f) lists the available exemptions, none of which are applicable here.

> the child's school program or school or course assignment, providing more individualized or remedial instruction, providing appropriate vocational courses or work experience, referring the child to a community truancy board, requiring the child to attend an alternative school or program, or assisting the parent or child to obtain supplementary services that might eliminate or ameliorate the cause or causes for the absence from school.

RCW 28A.225.020(1)(c)(iv).

If actions taken by the school district are not successful in reducing the number of unexcused absences, then the school district shall file a truancy petition if the child has seven unexcused absences in one month, or 10 unexcused absences in one school year. RCW 28A.225.030(1). The petition must include a list of the interventions which have been attempted as set forth in RCW 28A.225.020, the history of approved best practices intervention or research-based intervention previously provided to the child by the child's current school district, and a copy of the most recent truancy information document provided to the parent, pursuant to RCW 28A.225.005. *Id*.

If the school district files a truancy petition, the petition must allege: (1) the student has the requisite number of absences, (2) the actions taken by the school district have not been successful in substantially reducing the number of absences, and (3) court intervention and supervision are necessary to assist in reducing the absences. RCW

28A.225.035(1)(a)-(c). A hearing on the petition shall not be required if other actions by the court would substantially reduce the child's unexcused absences. RCW 28A.225.035(7)(a). These actions include referring the child to an "existing community truancy board, use of the Washington Assessment of Risks and Needs of Students (WARNS) or other assessment tools to identify the specific needs of individual children, the provision of community-based services, and the provision of evidence-based treatments that have been found to be effective in supporting at-risk youth and their families." *Id*.

If the court does hold a hearing on the truancy petition, it may only grant the petition if it finds the district has proved the allegations in the petition by a preponderance of the evidence. RCW 28A.225.035(12).

2. The school district failed to prove by a preponderance of the evidence that R.L.P. had accrued the requisite number of unexcused absences to support a truancy finding.

Here, the school district's petition generically alleged R.L.P. had accrued the requisite number of unexcused absences to support a truancy finding:

> II. UNEXCUSED ABSENCES
>
> The above named child is required to attend school under the laws of the State of Washington and has had seven or more unexcused absences in the current school month, 10 unexcused absences in the current school year or has failed to comply with a more restrictive district attendance policy.

CP 1. To prove this allegation, the district included with its petition a copy of R.L.P.'s attendance records. CP 3-4. However, these records indicate R.L.P. never accrued seven unexcused absences in any school month, nor did he accrue 10 or more unexcused absences in the current school year. *Id*. In fact, R.L.P. had a total of nine unexcused absences at the time the district filed the petition. *Id*.

The attendance records reflect a total of "21.00 DAYS UNEXCUSED," but the court record does not clarify how the school calculated this number when its attendance records only indicate nine separate dates with such absences. CP 3-4. More confusing still, Mr. Barga stated, inconsistent with the school's own petition, that R.L.P. had accrued 22 unexcused absences by the time the petition was filed, and after "look[ing] at the numbers," R.L.P. had 28 unexcused absences at the time of the hearing. RP 10. Again, the district offered no evidence as to how Mr. Barga calculated that number, nor did it identify which days in particular R.L.P. missed school without an excuse. The district offered no additional or updated attendance records in evidence. RP 4-11.

RCW 28A.225.030 is clear: school districts must file truancy petitions only if a child has seven unexcused absences within a school month or 10 such absences within a school year. Optionally, a district may file a petition after five unexcused absences in a month. *Id*. These

circumstances were not present here. By the school's own records, R.L.P. had only nine unexcused absences over the course of the school year. The district failed to meet its burden of proving the requisite unexcused absences by a preponderance of the evidence, and the juvenile court erred by finding R.L.P. had failed to attend school. CP 7.

3. The school district failed to prove by a preponderance of the evidence that actions taken by the district were unsuccessful in reducing R.L.P.'s absences because the district did not take such actions.

Before the juvenile court may grant a truancy petition, the district must prove it has taken unsuccessful actions to reduce a child's unexcused absences. RCW 28A.225.035(1)(b), (12). Although RCW 28A.225.035 itself does not specify what actions a school district must take before filing a truancy petition, RCW 28A.225.020 enumerates the school's duties upon a child's absences. Between the second and the fifth unexcused absences, the school must "take data-informed steps to eliminate or reduce the child's absences. RCW 28A.225.020(1)(c).

These steps must include, where appropriate: best practice or research-based intervention, or both, consistent with the WARNS profile or other assessment, if an assessment was applied; adjusting the school program, school, or course assignment; providing more individualized or remedial instruction; providing appropriate vocational courses or work

experience; referring the child to a community truancy board; requiring the child to attend an alternative school or program; or assisting the family to obtain services that might eliminate or ameliorate the causes of absences. RCW 28A.225.020(1)(c)(iv).

In this case, the district alleged in its petition that it sent a letter to R.L.P.'s parent, conducted one conference, and offered for R.L.P. to take the bus with his older brother. The petition did not allege, nor did the district present sufficient additional evidence, the school had taken any data-informed steps to eliminate or reduce R.L.P.'s unexcused absences. RCW 28A.225.020(1)(c). Such steps should have been taken as early as R.L.P.'s second unexcused absence. *Id*.

In addition, at the fact finding hearing, when asked whether the school had taken "data-informed steps to reduce or eliminate the absences," Mr. Barga appeared not to understand the concept, asking, "What do you mean by that?" RP 14. Upon clarification by defense counsel, Mr. Barga did not identify any data-informed steps taken by the school. Instead, he stated, "we're tracking the absences and, you know, I mean, you can look at what the absent percentage or rate was in November and look at what the absent rate is now and it's virtually unchanged." RP 14-15.

In response to questioning about adjustments to R.L.P.'s class schedule, Mr. Barga opined that R.L.P.'s teacher had 'obviously bent over backwards to make modifications," but did not elaborate what those modifications were, when they were offered, or whether such modifications were "data-informed steps" as required under RCW 28A.225.020(1)(c). The school did allow R.L.P. to rest in the office during school breaks, but again, the district presented no evidence this was a data-informed step aimed toward reducing or eliminating R.L.P.'s absences. RP 6-7. Moreover, although the petition alleged the school offered for R.L.P. to take the bus with his older brother, Mr. Barga clarified, "I think we talked about possibilities of him coming earlier with [his older brother]." RP 7-8. Other than that discussion, R.L.P. did not receive any additional assistance in getting to school. RP 11-12.

Importantly, the school did not provide best practice or research-based interventions, conduct any kind of assessment, refer R.L.P. to a community truancy board, require R.L.P. to attend an alternative school or program, or assist R.L.P.'s family in obtaining supplementary services to address the causes of the absences. RCW 28A.225.020(1)(c)(iv). Although such steps are only required "where appropriate," the district presented no evidence whatsoever that such data-informed steps would not have been appropriate for R.L.P. *Id.*

The school district failed to prove it took any data-informed steps to reduce or eliminate R.L.P.'s absences, despite the statutory mandate. RCW 28A.225.020(1)(c). Because the school did not take these necessary measures, the district cannot prove such measures were ineffective in reducing or eliminating R.L.P.'s absences. Therefore, the district did not meet its burden under RCW 28A.225.035(12), and the juvenile court erred in finding the school district had "taken steps to eliminate or reduce the child's absences pursuant to RCW 28A.225.020." CP 7.

F. CONCLUSION

The school district failed to prove by a preponderance of the evidence R.L.P. had accrued a sufficient number of unexcused absences to support a truancy finding. The district also failed to prove actions it had taken were unsuccessful at reducing or eliminating R.L.P's absences because the district did not take any data-informed steps. The juvenile court erred by finding the district had met its burden under RCW 28A.225.035(12), and this Court must reverse the truancy finding.

DATED this 23rd day of January, 2018

Respectfully submitted,

/s Tiffinie B. Ma

Tiffinie B. Ma – WSBA #51420
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

IN RE THE TRUANCY OF	)	
	)	
R.L.P.,	)	
	)	NO. 51327-7-II
Juvenile Appellant.	)	
	)	

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