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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 REPLY BRIEF

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A. ARGUMENT IN REPLY

1. The Court should consider this appeal because the issues presented are capable of repetition yet may evade review so long as a school district dismisses a truancy petition at the end of a school year.

This Court may review a moot case so long as it presents issues of continuing and substantial public interest. *In re Marriage of Horner*, 151 Wn.2d 884, 891, 93 P.3d 124 (2004). Courts consider three determinative factors to decide whether a case presents such issues such that review is appropriate despite mootness: (1) whether the issues is of a public or private nature, (2) whether an authoritative determination is desirable to provide future guidance to public officers, and (3) whether the issue is likely to recur. *Id.* at 892 (citing *Westerman v. Cary*, 125 Wn.2d 277, 286-87, 892 P.2d 1067 (1994)). The courts may also “consider the likelihood the issue will escape review because the facts of the controversy are short-lived.” *Id.*

In this case, R.L.P.’s appeal is moot because the Chimacum School District (“the district”) voluntarily moved to dismiss this matter at the end of the 2016-17 school year. CP 14. Nevertheless, this case presents issues of continuing and substantial public interest warranting this Court’s review because it asks whether the district adequately complied with the Compulsory School Attendance and Admission statutes. *See* Chapter

28A.225 RCW. First, this issue is of a public nature because it concerns the interpretation of RCW 28A.225.030 and whether school districts are permitted to file truancy petitions absent the requisite number of unexcused absences.¹

Second, guidance on this issue is desirable because no Washington courts appear to have addressed whether a truancy petition may be filed where a school district does not allege the requisite number of absences.

Third, this issue is likely to recur given the increasing frequency with which truancy petitions are filed in Washington. *See Coker, E. and McCurley, C., Truancy in Washington State: Filing Trends, Juvenile Court Responses, and the Educational Outcomes of Petitioned Truant Youth at 12* (2015) (finding approximately 11,300 truancy petitions were filed each year from 2011-2014).²

Finally, these issues are likely to evade review because truancy matters are often short-lived. As happened in this case, school districts may prevent review by simply dismissing truancy petitions at the close of

¹ As discussed in the Opening Brief, RCW 28A.225.030(1) requires a school district to file a truancy petition “not later than the seventh unexcused absence by a child within any month during the current school year or not later than the tenth unexcused absence during the current school year.” Br. of Appellant at 7. Moreover, the truancy petition must allege the student “has the requisite number of absences.” RCW 28A.225.035(1)(a).

² Available at <https://www.courts.wa.gov/subsite/wscctr/docs/WSCCRTruancyUpdate2015.pdf> (last visited Aug. 10, 2018).

each school year. The appellate process will almost always take longer than the school year once a child accrues the requisite number of absences.

For these reasons, this Court should decide this case on its merits.

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.

As discussed in the opening brief, 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. The district does not refute this argument, and it concedes its petition and attendance records only alleged nine unexcused absences during the school year. Br. of Respondent at 1, 7. Instead, the district argues R.L.P. had the requisite number of absences by the time of the hearing on the truancy petition. *Id.* at 7. The district does not explain why this fact excuses its failure to comply with the requirements of RCW 28A.225.035(1)(a). The statute is clear a truancy petition shall consist of an allegation, “The child has unexcused absences as described in RCW 28A.225.030(1).” RCW 28A.225.035(1)(a). That is, the district must allege the child has a minimum of seven unexcused absences in a month,

or ten unexcused absences in a school year. RCW 28A.225.030(1), (2).

These circumstances were not present here.

Moreover, even if the petition properly alleged an adequate number of unexcused absences, the district still failed to prove by a preponderance of the evidence R.L.P. had the requisite number of absences to support a truancy finding. The attendance records attached to the district's petition note "21.00 DAYS UNEXCUSED," but the record does not clarify how the school calculated this number when its attendance records only show nine separate dates with such absences. CP 3-4.

More confusing still, Principal 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 Principal 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 calendar month. *Id.* None

of those were the case 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.

As discussed in the opening brief, the district must prove it has taken unsuccessful actions to reduce a child's unexcused absences *before* a court may grant truancy petition. RCW 28A.225.035(1)(b), (12). Although RCW 28A.225.035 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).

The district does not argue it took data-informed steps to reduce R.L.P.'s absences. Instead, the district argues, "As for what 'data-informed' steps look like in a pre-truancy setting – that is questionable, and also not likely available." Br. of Respondent at 5. This argument is nonsensical and contrary to the requirements of Washington's compulsory attendance laws. RCW 28A.225.020(1)(c) *requires* the district to take "data-informed steps to eliminate or reduce the child's absences" before filing a truancy petition. Moreover, the district must allege in its petition that any steps taken have unsuccessful at improving attendance. RCW 28A.225.035(1)(b). That is, these steps must occur *prior* to filing to the petition.

The district also argues it wrote a letter to R.L.P.'s mother, met or conferred with her, and "tried to entice R.L.P. to attend school by permitting him to go to the office at recess to rest." Br. of Respondent at 7. These are the only steps the district argues it took before initiating truancy procedures. Notably, 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.*

Notably, the school principal did not seem aware of these statutory requirements. When asked whether the school had taken “data-informed steps to reduce or eliminate the absences,” Principal Barga appeared not to understand the concept, asking, “What do you mean by that?” RP 14. Upon clarification by defense counsel, Principal 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.

B. 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. Substantial public interest also warrants review due to the likelihood the issues will recur and evade review.

DATED this 10th day of August 2018

Respectfully submitted,

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