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COURT OF APPEALS
DIVISION II

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No. 44196-9-II
THE COURT OF APPEALS STATE OF WASHINGTON
DIVISION II BY CS
OF THE STATE OF WASHINGTON DEPUTY

KENNETH ANDERSON

Appellant/Petitioner,

and

RANA BLAES, fka RANA ANDERSON

Respondent

ON APPEAL FROM PIERCE COUNTY SUPERIOR COURT
(Hon. James Orlando)

APPELLANT'S OPENING BRIEF

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ORIGINAL

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I. ASSIGNMENT OF ERROR

Did the trial court err in not terminating child support for Erial Anderson under the September 24, 2009 Order of Child Support.

II. ISSUES

A. Was Erial Anderson enrolled in school on November 10, 2011, the date of her 18th birthday?

B. If Erial Anderson was not enrolled in school on November 10, 2011, did her child support under the September 24, 2009 Order of Child Support terminate on November 10, 2011 by operation of law and the September 24, 2009 Order of Child Support?

C. If Erial Anderson's Child Support terminated on November 10, 2011, is Mr. Anderson entitled to equitable relief from his overpayments of child support for Erial since November 2011?

III. STATEMENT OF THE CASE

Mr. Anderson and Ms. Blaes' marriage was dissolved on June 28, 2002 and along with the Decree, a Parenting Plan was entered which awarded the primary residential care of the parties' then three (3) minor children to Ms. Blaes. (CP 117) Paragraph 4.2 of this Plan gave Ms. Blaes sole decision making with regards to the children's education. (CP 117) At the time of the entry of the Parenting Plan, Ken Anderson was on

active duty with the U.S. Army and was shortly thereafter assigned overseas. (CP 53, 117)

On September 24, 2009 an Order of Child Support was entered that modified the parties' June 28, 2002 Order of Child Support. (CP 52; 32-34) This order was a result of a modification petition brought by the Pierce County Prosecuting Attorney's office. (CP 52)

At the time that this order was entered, Mr. Anderson was still in the U.S. Army stationed in New York. (CP 52) He represented himself during this proceeding, as did Ms. Blaes. (CP 65) The September 24, 2009 Order of Child Support ordered Mr. Anderson to pay \$571.50 per month for the support of his daughter, Erial Anderson, who at the time was 15 and \$571.50 per month for the support of his son, Isaac Anderson, who was 14 at the time. (CP 52) The support order was prepared by Ms. Kilpatrick of the Prosecutor's office and paragraph 3.13 Termination of Support, provided that:

“Support shall be paid: Until the child(ren) reach(es) the age of 18 or as long as the child(ren) remain(s) enrolled in high school, whichever occurs last, except as otherwise provided below in paragraph 3.14.”

(Paragraph 3.14 provided “Not addressed at this hearing.”) (CP 36)

When this order was entered, Mr. Anderson had not had any contact with Ms. Blaes or his children for approximately seven years and he had had no contact with Ms. Blaes during the 2009 modification proceeding, except to receive her financial information. (CP 53)

Mr. Anderson dutifully paid his support under the September 25, 2009 order. However, unbeknownst to Mr. Anderson, his daughter Erial's schooling had been in a state of chaos. According to Erial's Tacoma School District records, Erial had been the subject of BECCA proceedings in 2005, 2006, 2007, 2008, 2009 and 2010. (CP 8-13; 54)

In 2009, Erial failed every class that she attended, except for one where she received a D. (CP 3; 54)

In 2010, Erial failed every class that she attended. (CP 3; 54)

In February 2, 2010, Erial dropped out of Lincoln High School. (CP 3; 54) She did not return to school until September 10, 2010, when she apparently entered and left Oakland High School (an alternative high school) the same day. (CP 3; 54) Erial then entered Lincoln High School on September 20, 2010, but again left school after only one (1) month on October 20, 2010. (CP 3; 54.) At the time Erial left Lincoln High School, she was 16 years old, one month shy of her 17th birthday (DOB 11/10/93), but had only reached the 9th grade level. (CP 3) She left with a GPA of

0.00, having not met any of the State requirements for reading, writing, High School and Beyond Plan and Culminating Project. (CP 3; 54)

Erial remained out of school for the remainder of the 2010/2011 school year. (CP 3; 55)

At the start of the 2011/2012 school year in September 2011, Erial did not enroll in school. (CP 3; 54-55)

Because Erial's 18th birthday was now approaching (11/10/11), the DCS case worker assigned to Ken's case, Mr. McGillis, mailed to Ms. Blaes DCS's form letter on September 27, 2011, requesting confirmation that Erial was enrolled in school so that support for her under the September 25, 2009 order would not be terminated by DCS when Erial turned 18. (CP 54; 31)

Ms. Blaes received this DCS letter. (Verbatim Transcript, page 6, line 9)

On November 16, 2011 Erial was enrolled in and began attending class at Oakland High School.¹ This attendance/enrollment is both confirmed by Erial's school records (CP 3) and a March 21, 2012 letter from Micah Banton, Erial's counselor at Oakland High School that was

¹ According to the school, given Erial's current schedule, she will not be eligible to graduate from high school until June 2015 when she will be 21½ years old. (CP 55) It is somewhat instructive to note that pursuant to WAC 388-14A-3810(2), child support under an administrative support order terminates at age 19 even if the child is still in high school.

provided to Mr. Anderson in Ms. Blaes' discovery answers. (CP 73) Ms. Blaes has never refuted that November 16, 2011 is the date Erial began her class attendance at Oakland High School.

On May 24, 2012 Mr. Anderson filed an Amended Petition for Modification of Child Support (CP 74-78) and a Motion to Modify Order of Child Support and/or Terminate Child Support (CP 50-51) which in part requested that his obligation of support for Erial Anderson be terminated as of December 2011, with a credit for his overpayment of child support since Mr. Anderson had continued to honor the September 25, 2009 order. In support of this motion, he filed his May 24, 2012 declaration (CP 52-77), Erial's school records (CP 1-13) and a copy of the Tacoma School District Policy Manual which incorporated the State's definition of an enrolled student found at WAC 391-121-106. (CP 79-83)

Ms. Blaes, acting pro se, did not file any declarations in response to Mr. Anderson's May 24, 2012 motion.

The initial hearing on Mr. Anderson's motion was heard by a Court Commissioner on June 26, 2012.

Instead of terminating Mr. Anderson's obligation of child support for Erial, the Commissioner entered an Order of Child Support on June 26, 2012 which suspended Erial's support effective with July 2012, but which also ordered a review hearing. (CP 84-98)

After the June 26, 2012 hearing, additional records for Erial from the Tacoma School District were filed with the Superior Court on September 10, 2012. (CP 14-29)

The Commissioner's review hearing was heard on September 18, 2012. Ms. Blaes, again acting pro se, appeared at this hearing. She filed no legal memorandum or any declaration. The Commissioner entered an order on September 18, 2012 which resumed Mr. Anderson's obligation to support his now almost 19 year old daughter effective with the month of September 2012. (CP 113-114)

On September 28, 2012 Mr. Anderson filed his Motion of Revision which requested that continued support for Erial be denied and that her support be terminated. (CP 115-116) Ms. Blaes did not file any pleadings in response to this motion.

The trial court heard Mr. Anderson's motion on October 12, 2012. As reflected in the verbatim transcript of this hearing, before even hearing argument, the trial court focused its attention on whether or not Erial was still dependent and therefore in need of support. (Verbatim Transcript, page 2, lines 22-24) After hearing argument the trial court opined that Erial was still enrolled in school (which is true), that some children suffer the effects of a dissolution more than others and that they have school issues and that to expect Erial to be a fully functioning adult at age 18 is

unrealistic. (Verbatim Transcript, page 7, lines 23-25; page 8, lines 1-3) With those observations, the trial court denied Mr. Anderson's motion to revise and entered an Order of Child Support that ordered Mr. Anderson to pay \$349.39 in child support for Erial Anderson effective with the month of September 2012. (CP 140-156)

On November 13, 2012 Mr. Anderson timely filed his Notice of Appeal to the Court of Appeals seeking a reversal of the trial court's October 12, 2012 Order of Child Support as it relates to Erial Anderson. (CP 157-178)

IV. ARGUMENT

A. Erial Anderson was not enrolled in school on her 18th birthday, November 10, 2011.

Oakland High School is in the Tacoma Public School District. The Tacoma Public School District has its own Policy Manual which in part has a section (Policy No. 3120) that specifically addresses student enrollment. (CP 79-83) This Policy Manual refers to and adopts the Washington Administration Code definition on an enrolled student which is found at WAC 392-121-106.

For Erial Anderson to have been considered an enrolled student on the date of her 18th birthday, November 10, 2011, she would have had to

have met all five (5) conditions set out in WAC 392-121-106 (CP 132).

Pursuant to WAC 392-121-106, an “enrolled student” is a person who:

(1) is eligible to enroll in the school district’s education programs because he or she:

(a) Resides in the school district with or without an address (RCW 28A.225.010, 28A.225.160 and 28A.225.215);

(b) Resides on a United States reservation, national park, national forest, or Indian reservation contiguous to the school district (RCW 28.225.170);

(c) Resides in a school district not offering the grade for which they are eligible to enroll such as a nonhigh district (RCW 28A.225.210);

(d) Has been released from the school district he or she resides in and has been accepted by the school district claiming enrollment (RCW 28A.225.225 and 28A.225.230);

(e) Will be attending the school district as part of an interdistrict cooperative program (RCW 28A.225.250); or

(f) Will be attending school in a school district in another state per a reciprocity agreement pursuant to RCW 28A.225.260.

(2) After the close of the prior school year has presented himself or herself, or has been presented, to the school district’s appropriate official to be entered on the school district’s rolls for the purpose of attending school in grades kindergarten through twelve;

(3) Is under twenty-one years of age at the beginning of the school year;

(4) Actually participated on a school day during the first four school days of the current school term (semester or quarter), or on a school day during the current school year

on or prior to the date being counted, in a course of study offered by the school district as defined in WAC 392-121-107; and

(5) Does not qualify for any of the enrollment exclusions set forth in WAC 392-121-108.

On November 10, 2011, Erial Anderson appears to have met conditions (1) through (3).

However, on November 10, 2011, Erial Anderson did not satisfy conditions (4) or (5)

Under the first prong of condition (4), to be an enrolled student, Erial had to have “actually participated on a school day during the first four school days of the current term (semester or quarter).” Erial’s class attendance at Oakland High School did not start until November 16, 2011, the first possible date on which she could have met this condition of enrollment, i.e., 6 days after her 18th birthday. Under the second prong of condition (4), to be an enrolled student, Erial had to have participated “on a school day during the current school year on or prior to the date being counted.” The date to be counted was her 18th birthday, November 10, 2011, and again on that date Erial had not yet attended a class. Therefore, under both prongs of condition (4), Erial was not an enrolled student as of her 18th birthday.

As stated, Erial also did not satisfy condition (5) and was, therefore also not an enrolled student on November 10, 2011. To satisfy condition (5), Erial would have had to not qualify for any of the enrollment exclusions set forth in WAC 392-121-108. (CP 134-135) This WAC provides that if a student qualifies for any of the enrollment exclusions set forth in WAC 392-121-108, that student cannot be considered an enrolled student. Of the 8 listed exclusions, Erial, without question, qualified for at least one and likely more of the following:

(1) Absences – Except as provided in (a) and (b) of this subsection, a student whose consecutive days of absence from school exceed twenty school days, or a part-time student that has not attended school at least once within a time period consisting of twenty consecutive school days, shall not be counted as an enrolled student until attendance is resumed. School days are defined as the regularly scheduled instructional days for the general population of the school or district the student is enrolled in, regardless of the student’s individualized schedule.

(a) If there is a written agreement between the appropriate school official and a student’s parent or guardian pursuant to RCW 28A.225.010 that the student’s temporary absence is not deemed to cause a serious adverse effect upon the student’s educational progress, the absent student may be counted as an enrolled student for up to two monthly enrollment count dates as specified in WAC 392-121-122.

(b) A student receiving home and/or hospital service pursuant to WAC 392-172A-02100 shall be counted as an enrolled student provided in WAC 392-122-145.

Prior to her 18th birthday, Erial clearly had more than twenty (20) consecutive days of absence from school. She was out of school for over a year. Under this provision, Erial could not have been an enrolled student until she resumed her class attendance. Her class attendance did not start until November 16, 2011, after her 18th birthday.

(2) Dropouts – A student for whom the school district has received notification of dropping out of school by the student or the student’s parent or guardian shall not be counted as an enrolled student until attendance is resumed.

Erial’s official school records clearly showed that she dropped out of school. As a result, Erial could not be an enrolled student until she resumed class attendance, which again did not happen until November 16, 2011.

(4) Suspensions – A student who has been suspended from school pursuant to WAC 392-400-260, when the conditions of the suspension will cause the student to lose academic grades or credit, shall not be counted as an enrolled student until attendance is resumed.

Again, a suspended student cannot be considered an enrolled student until attendance is resumed.

(5) Expulsions – A student who has been expelled from all school subjects or classes by the school district pursuant to WAC 392-400-275 or 392-400-295 shall not be counted as an enrolled student; a student who has been partially expelled, such as from a single school subject or class, by the school district pursuant to WAC 392-400-275 or 392-400-292 may be considered a part-time enrolled student.

Under this provision, as with (1), (2), and (4), an expelled student cannot be an enrolled student until attendance is resumed. If Erial did not dropout of Lincoln High School in October 2010, she must surely have been expelled. In either case, Erial was not enrolled at Oakland High School until she started her class attendance on November 16, 2011.

As can be seen for all of the exclusions in WAC 392-121-108 and for condition (4) of WAC 392-121-106, the key to the starting date of a student's enrollment is actual class attendance. As for Erial, she did not achieve the status of an enrolled student at Oakland High School until she began her attendance on November 16, 2011. It is without question that on Erial's 18th birthday, November 10, 2011, Erial was not enrolled in Oakland High School or any other school.

B. Erial Anderson's child support terminated on November 10, 2011.

The trial court's focus and apparent reliance on whether Erial was/is a dependent child/adult is misplaced. The question of whether Erial Anderson's child support terminated on November 10, 2011 is governed by both statute and the wording of paragraph 3.13 of the September 24, 2009 Order of Child Support.

RCW 26.09.170(3) provides as follows:

Unless otherwise agreed to in writing or expressly provided in the decree, provisions for the support of a child are

terminated by emancipation of the child or by the death of the parent obligated to support the child.

Emancipation for purposes of RCW 26.09.170(3) occurs when the child attains the age of majority (18) or becomes emancipated in fact, whichever occurs first. *In Re Marriage of Gimlett*, 95 W2d. 699, 702 629 P.2d 450 (1981).

However, in this case, the September 24, 2009 Order of Child Support at paragraph 3.13 did provide in writing that Erial's child support could continue past her emancipation/18th birthday. However, to avoid the statutory termination provided by RCW 26.09.170(3), Erial simply had to have been enrolled in high school at the time of her 18th birthday. As is clearly shown in the analysis set forth in subsection (A) above, Erial was not enrolled in high school at the time of her 18th birthday. Therefore, by operation of statute (RCW 26.09.170(3)) in conjunction with the operation of paragraph 3.13 of the September 24, 2009 Order of Child Support, Erial's child support terminated. The fact that Erial may have been still dependent on her 18th birthday was neither a statutory or court ordered basis for her support continuing past her emancipation. The fact that Erial may have been affected by her parents' dissolution and was not a fully functioning adult at 18 likewise were not basis for continuing her support.

C. Support Overpayments.

Mr. Anderson has overpaid child support to Ms. Blaes since November 2011. Because of Erial's emancipation on November 10, 2011, her \$571.30 per month child support pursuant to paragraph 3.5 of the September 24, 2009 Order of Child Support should have stopped. As a result, from November 2011 until the court's June 26, 2012 Order of Child Support (CP 84-98) which set support only for Isaac Anderson, Mr. Anderson overpaid at the rate of \$571.30 for eight (8) months (November 2011 – June 2012). Mr. Anderson again overpaid support in the sum of \$295.77 per month (\$698.77 per the court order, less \$403 support for Isaac only) from September 2012 to the date of this Court's decision.

It is requested pursuant to RAP 12.8 and *Marriage of Stern*, 68 Wn. App. 922, 932, 846 P.2d 1387 (1993) that the trial court be directed on remand to determine the extent of equitable relief to which Mr. Anderson is entitled by reason of the above overpayments in support.

V. CONCLUSION

Under the clear wording of paragraph 3.13 of the September 24, 2009 Order of Child Support, in order for Mr. Anderson to be obligated to continue to pay support for Erial after her 18th birthday, Erial had to have been an enrolled student at Oakland High School or at any other public or private school on November 18, 2011. Erial could have easily met this

requirement had Ms. Blaes not allowed Erial to drop out of Lincoln High School in October 2011. Erial could have easily met this requirement had Ms. Blaes insisted that her daughter resume her high school education at the start of the 2011/2012 school year by enrolling at Oakland High School or any other high school in September 2011. Apparently, neither Erial nor Ms. Blaes thought Erial's schooling was important enough to do so, because nothing was done about getting Erial back in school until Ms. Blaes received the September 27, 2011 DCS letter. (CP 31)

It is submitted that the facts and law are undisputable. Pursuant to Tacoma Public School's definition of an enrolled student, Erial did not enroll in Oakland High School until she attended her first class, which was November 16, 2011. Because she was not enrolled on November 10, 2011, Erial's support and Mr. Anderson's obligation to pay it to Ms. Blaes terminated on that date. At first blush this may appear to be an unfair result for Erial. However, this result is not unfair to Erial nor does it discourage her from staying in school. This is not a post-secondary education support case where a parent failed to petition for said support before the student's support obligation terminated by reason of an 18th birthday or their graduation from high school (i.e., the operation of paragraph 3.13 of a support order), thereby depriving that student of the

opportunity to go to college because neither parent had the legal obligation to contribute to tuition.

Erial's attendance at Oakland High School is free. It is a public school and in fact Erial has continued to attend. Terminating Mr. Anderson's support obligation only affects Ms. Blaes and the support she will receive from him. This result is directly the result of Ms. Blaes' failure: (1) to keep Erial in school, or (2) to get her back in school when the 2011/2012 school year started. Ms. Blaes has no one else to blame for this result, a result that is required by paragraph 3.13 of the September 24, 2009 Order of Child Support, by the school district's definition of an enrolled student and by RCW 26.09.170(3).

Dated this 25th day of January, 2013.

RESPECTFULLY SUBMITTED:



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WSBA #7447
Attorney for Appellant

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BY [Signature]
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KENNETH ANDERSON,

APPELLANT,

vs.

RANA BLAES, fka Rana Anderson,

RESPONDENT.

No. 44196-9-II

DECLARATION
OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

I am employed by the law firm of Morton McGoldrick, P.S.

At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the state of Washington, over the age of eighteen (18) years, not a party to the above entitled action, and competent to be a witness herein.

On the 25th day of January, 2013, I served in the manner noted the document(s) entitled: **Appellant's Opening Brief** on the following person:

Rana Blaes
9823 F Street E
Tacoma, WA 98445-2051

U.S. Mail
 Telecopier
 Messenger

DATED this 25th day of January, 2013 at Tacoma, Washington.

[Signature]
Susan K. Toma