

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JOHN AND JANE DOE

vs.

JOHNSTON SCHOOL COMMITTEE

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DECISION

Held: Children are residents of Johnston for school enrollment purposes based on their living with family friends who are acting in loco parentis to the children because the children's parents are unable to care for them on account of a family break-up.

Introduction

Appellant initiated this proceeding after he received a January 29, 1993 letter from the Johnston School Department informing him that "you do not reside in the Town of Johnston, therefore your children, [John and Jane Doe],¹ will not be allowed to attend the High School in Johnston." (Appellant's Exhibit 1A). Subsequent to Appellant's letter of appeal, the Johnston School Department requested a residency hearing with regard to John and Jane who, according to the School Department, "are not living in Johnston but rather are living in Woonsocket, and therefore should not be attending Johnston Public Schools." (Hearing Officer's Exhibit 1).²

For the reasons set forth below, we hold that Appellant's children are residents of Johnston for school enrollment purposes.

Background

Appellant and his wife were divorced in May 1990. The divorce provided for joint custody of the children. Appellant's ex-wife had possession of the children following the divorce. Two of the children, John and Jane, attended Johnston public schools in the 1990-1991 and 1991-1992 school years. In the latter part of the 1991-1992 school year the Johnston School Department questioned Appellant's residency. The School Department permitted John and Jane to finish the year in Johnston schools but it directed

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- 1 Although the names of Appellant and his children are disclosed in the record of this proceeding, we have used fictitious names in this Decision for privacy reasons given the nature of the circumstances of this case.
 - 2 The undersigned hearing officer was designated to hear this appeal. It was heard on March 4 and April 2, 1993. The Woonsocket School Committee was represented by counsel at both hearings.

Appellant to enroll the children "in the school district where you are residing beginning in September for the 1992-1993 school year." (School Committee Exhibit 4).

At some point in 1992 Appellant obtained possession of John and Jane after learning that his ex-wife had relapsed into drug and alcohol abuse. In August 1992 Appellant rented an apartment in Johnston and began living there with John and Jane. On August 27, 1992, Appellant registered John and Jane in the 11th and 9th grades, respectively, at Johnston High School. (School Committee Exhibits 1 and 1A). After confirming that Appellant and his children lived at the address in Johnston, the School Department enrolled John and Jane in the high school.

The Johnston apartment proved to be uninhabitable, however, as the pipes leaked and the central heating system failed. When repairs were not made, Appellant refused to pay rent which led to an eviction notice. Appellant and his children left the apartment in early January 1993.

Appellant moved to his girlfriend's apartment in Woonsocket. Appellant's girlfriend has 2 children who live with her. John and Jane moved to the Johnston home of the Roe³ family, former neighbors of the Appellant's family.

Mr. Roe testified that the Appellant's family "lived around the block from us," (4/2/93 transcript, p. 61), and that "we have been as close to his kids as he has been to his kids . . . His kids practically grew up, in all honesty, at our house." (4/2/93⁴)

3 A fictitious name is used for privacy reasons.

4 Mrs. Roe is a godparent to one of Appellant's children, and (continued on next page)

transcript, pp. 57-58). Mr. Roe stated that Appellant "has had some difficult times," (4/2/93 transcript, p. 57), "the last 4 or 5 years we noticed a great deterioration in their family unit," (4/2/93 transcript, p. 62), and "these kids were over our house all the time . . . we had support for them." (4/2/93 transcript, p. 62). According to Mr. Roe, Appellant "knew he was going through some difficult times, and we were concerned about the kids. . . We offered to take the kids in until he could get back on his feet." (4/2/93 transcript, p. 58). Appellant and Mr. and Mrs. Roe reached an understanding that the Roes would care for John and Jane.

Appellant testified that in January 1993 his business was in decline, and "between finances being bad and [the] unavailability of apartments, I wasn't able to care for the kids at the time." (4/2/93 transcript, p. 8). Appellant also is in a drug and alcohol abuse recovery program which requires his participation on a daily basis. Appellant's ex-wife, whose whereabouts are unknown, could not care for the children due to her "active drug and alcohol addiction," (4/2/93 transcript, p. 4) and "very erratic lifestyle. In and out of places, found, unfound." (3/4/93 transcript, p. 53).

John and Jane stay at the Roe home an average of 5 nights a week. They spend an average of 2 nights a week, mostly weekends, in Woonsocket with Appellant. Appellant, who sees the children daily, testified that "I don't like the fact that . . . somebody else has to father and mother my kids. . . I will change that as

4 (continued) Appellant's children consider Mr. and Mrs. Roe as their "aunt and uncle."

soon as possible." (4/2/93 transcript, p. 46).

Positions of the Parties

Appellant asserts that the evidence shows that John and Jane have been living with the Roe family in Johnston since January 1993, and that the Roe family has agreed to provide for the children until Appellant is able to reestablish his residency in Johnston. Appellant cites to R.I.G.L. 16-64-1 which states that in cases of parental illness or family break-up, "the child shall be deemed to be a resident of the town where the child lives with his or her legal guardian, natural guardian, or other person acting in loco parentis to the child." Appellant emphasizes his intent to reestablish residency in Johnston with his children as soon as his finances and recovery efforts permit him to do so.

The School Committee contends that the evidence establishes that Appellant resides in Woonsocket, that John and Jane live with him regularly, and that he is a good and capable father. The School Committee argues that the evidence fails to establish that Appellant is incapable of caring for his children. It also contends that the only reason Appellant's children are living in Johnston 5 days a week is to attend Johnston schools, which is not a valid basis to establish residency for school enrollment purposes.

Discussion

Under R.I.G.L. 16-64-6, the Commissioner has the authority to resolve disputes concerning the residency of children for school enrollment purposes. With regard to residency, R.I.G.L. 16-64-1 states in relevant part that

Except as otherwise provided by law or by agreement a child shall be enrolled in the school system of the town wherein he or she resides. A child shall be deemed to be a resident of the town where his or her parents reside. If the child's parents reside in different towns the child shall be deemed to be a resident of the town in which the parent having actual custody of the child resides. In cases where a child has no living parents, or when parents are unable to care for their child on account of parental illness or family break-up, the child shall be deemed to be a resident of the town where the child lives with his or her legal guardian, natural guardian, or other person acting in loco parentis to the child.

We find that the circumstances of this case establish that the parents of John and Jane Doe are unable to care for them because of a "family break-up" as described in the statute.

John and Jane's parents are divorced. Both parents have had drug and alcohol abuse problems. Appellant's ex-wife continues to experience these problems. Appellant is recovering from these problems, an effort that requires daily attention. He attempted to live with and care for John and Jane in the latter half of 1992 at the Johnston apartment, but was unable to do so given his financial and recovery situation. Appellant's ex-wife is unable to care for John and Jane at this time because of her ongoing substance abuse problems. Appellant does not know where his ex-wife is living.

In light of the divorce and the other problems described above, it is clear that a family break-up has occurred. With the family no longer intact, neither of John and Jane's parents is able to care for them at the present time. Appellant has acted to remedy this situation by agreeing to let longstanding friends of

the family take care of John and Jane. The Roe family has had a close relationship with John and Jane in the past and is presently providing a stable home for John and Jane in Johnston.

We find that Mr. and Mrs. Roe are acting in loco parentis to John and Jane. Although John and Jane stay with Appellant in Woonsocket an average of 2 nights a week and see him daily, Mr. and Mrs. Roe are acting as the "father and mother to [the] kids," as stated by Appellant. We therefore hold that John and Jane, for purposes of R.I.G.L. 16-64-1, are residents of Johnston. We shall order the Johnston School Committee to continue to provide education to John and Jane while they reside with the Roe family.

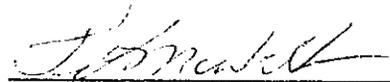
Conclusion

John and Jane Doe are residents of the Town of Johnston for school enrollment purposes. The Johnston School Committee shall continue to provide education to John and Jane for as long as they reside with the Roe family in Johnston with Mr. and Mrs. Roe acting in loco parentis.



Paul E. Pontarelli
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

Date: May 27, 1993