

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

AND

PROVIDENCE PLANTATIONS

JANE A.O. DOE

*

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V.

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EXETER-WEST GREENWICH

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REGIONAL SCHOOL COMMITTEE

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DECISION

Held: Mrs. Doe failed to furnish sufficient proof of her residency in the Town of Exeter. She also did not prove that she suffers from an illness which has rendered her incapable of caring for her daughter, such that her daughter's residency with her grand-mother in Exeter would entitle her to attend school there. The appointment of the grandmother as legal guardian was not shown to be for a substantial reason other than to change this child's residence for school purposes.

DATE : AUGUST 9, 1996

Travel of the Case

On January 9, 1996 Jane Doe (herein referred to as Mrs. Doe) appealed from a determination of the Superintendent of the Exeter-West Greenwich school district that her daughter was ineligible to continue in attendance in Exeter-West Greenwich schools. Pursuant to R.I.G.L. 16-64-6 Mrs. Doe filed her appeal directly with Commissioner Peter McWalters, rather than with the regional school committee.

The undersigned was designated by the Commissioner to hear this appeal, jurisdiction over which is conferred by R.I.G.L. 16-64-6 and 16-39-1. Hearing was held on the merits of this case on February 27, March 15, and March 22, 1996. The record closed on June 13, 1996 upon receipt of the transcript from the final hearing. Just prior to the closing of the record, counsel for the school committee requested that the hearing be reopened for submission of additional, newly-discovered evidence. This request was granted, but the school committee subsequently withdrew this request to seek an expedited decision. Commissioner McWalters granted the request for an expedited decision, based on the disruption that might result if this student, a fifth grader, was compelled to change schools after the beginning of the upcoming school year.

Issue: What is Student Doe's residency for school purposes?

Findings of Relevant Facts

- Jane Doe is the mother of Student Doe, age ten years.
- Student Doe has completed the fifth grade in the Exeter-West Greenwich school district, where she has been enrolled since kindergarten. Tr. 2/27/96, p. 3 S.C. Ex. C 1-4.
- Mrs. Doe is a resident of the town of Richmond, Rhode Island. (Record citations to follow in text of decision)

- Mrs. Doe's mother, Student Doe's grandmother, was appointed her legal guardian by the Probate Court of the Town of Exeter on February 26, 1996. S.C. Ex. F.

Positions of the Parties:

Jane Doe

Counsel for Mrs. Doe argues that she maintains two residences, one in the town of Richmond where her husband resides, and the other in the town of Exeter where Mrs. Doe's parents reside. Because of an abusive relationship with her husband, he contends that Mrs. Doe has gone back and forth "between both towns." Counsel further argues that because of her substance abuse problem, Mrs. Doe placed her daughter with the grandmother in Exeter for purposes of residence. She has resided with the grandmother since infancy. More recently¹, the grandmother was appointed legal guardian so that she would have clear authority to sign medical authorizations and the like. Counsel argues that given the fact of the legal guardianship and the child's residence with her grandmother in the town of Exeter, she is entitled to continue to attend school in the Exeter-West Greenwich School District.

School Committee

Counsel for the school committee takes the position that despite Student Doe's long period of enrollment in Exeter-West Greenwich schools, she is not legally entitled to continue in attendance there. He argues that Mrs. Doe actually resides in Richmond with her husband. Furthermore, he argues that until recently, Student Doe resided with her mother in Richmond. He points to direct observations of the child routinely being transported from Richmond on school mornings. Such observations were made by school officials several times in the fall of 1995, and over the course of several years by the driver of the school bus for the route where the Exeter residence is located. Counsel argued that the bus

¹In fact during the pendency of these administrative hearings.

has picked Student Doe up at her grandmother's house on a regular basis only since school officials pressed their challenge to her entitlement to attend schools in the Exeter-West Greenwich district.

The school committee responds to testimony regarding Mrs. Doe's inability to care for her child that her alleged substance abuse problem lacks factual support. Counsel notes that in her initial testimony Mrs. Doe cited a number of illnesses-- but not substance abuse-- as the reason she required her mother's assistance in raising her child. It was not until the second day of questioning (and in response to her own attorney's questions) that the substance abuse problem was mentioned. With regard to all of the medical problems, including her ongoing substance abuse issues, Mrs. Doe was unable to provide details of treatment or any documentation whatsoever. The School Committee points to this lack of evidence and argues that the proffered reason for the child's residency with her grandmother has not been proven.

Counsel for the school committee disputes any entitlement to attend school based on the grandmother's appointment as legal guardian. Firstly, he notes that since the guardian has not yet filed her qualification bond with the probate court, her appointment is not yet complete. Secondly, he argues that given the timing and circumstances of the grandmother's appointment as legal guardian, it clearly has been undertaken solely for the purpose of Student Doe's continuing in Exeter-West Greenwich schools. Since the grandmother has allegedly been taking care of Student Doe for a number of years without appointment as her legal guardian, her appointment during the course of this appeal was intended to create an entitlement to school attendance which would otherwise not exist. The school committee concludes that the child is a resident of Richmond for school purposes and must attend school there.

Decision

Our initial inquiry in this school residency dispute is a factual one-- the crucial fact being where does the parent, Mrs. Doe, reside². The reason for this is that R.I.G.L. 16-64-1 provides that:

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 . . .

Our statute goes on to provide that:

In cases where a parent has no living parents, has been abandoned by his or her parents or when parents are unable to care for their child on account of parental illness or family breakup, 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.

The above-cited provisions of title 16 chapter 64 have, on numerous occasions, been found to create a rebuttable presumption that a child's residence is the residence of his parents³. We have ruled that both the statute, as well as applicable rules of common law⁴, do not preclude a child from establishing residence for school purposes apart from the residence of his or her parents. The factual issue of Mrs. Doe's residence is a threshold issue because, as we understood Mrs. Doe's argument, one reason for her child's entitlement to attend Exeter-West Greenwich schools is because she, Mrs. Doe, resides in Exeter.

² Student Doe's biological father's whereabouts are unknown and he has evidently had no involvement in the raising of this child.

³ see decision of the Commissioner in Laura Doe v. Narragansett School Committee, April 17, 1984.

⁴ see decision of the Commissioner in the Matter of Pricilla H., September 7, 1983.

As our findings of fact indicate, we cannot conclude on the record before us that Mrs. Doe resides in Exeter. On the contrary, the preponderance of evidence establishes that she resides in Richmond. Mrs. Doe's husband resides in Richmond, at a home which was, at least initially, rented to both of them in 1991. Mrs. Doe testified she wasn't sure if she was still on the lease, but if she were still listed as a tenant it was only because her signature facilitated her husband's renting this house, since he was "not responsible with money," and the owners of the house were friends of her mother. Tr. 2/27/96, pp. 80-85. Mrs. Doe owns household furniture and keeps numerous pets at the house in Richmond, Tr. 2/27/96, pp. 84-86, 93-94. Until the fall 1995, her automobile was registered at the Richmond address, (Tr. 2/27/96, p 94, 97) and her driver's license still lists her address as the home in Richmond, Rhode Island. Tr. 2/27/96, pp. 75-76. Although the formal petition to appoint her mother as her daughter's legal guardian describes Mrs. Doe as a domiciled resident of Richmond, Mrs. Doe testified that even though she signed the petition (S.C. Ex. F) it is inaccurate. Tr. 2/27/96, p 75.

We find that Mrs. Doe's testimony that she does not live in Richmond but just visits there is not credible. More persuasive are the formal documents-- her license, car registration (only recently changed), the Probate Court Petition-- and direct observations by school officials that she resides in Richmond, Rhode Island. Especially convincing were School Committee exhibits C-1 through C-4 which are emergency information forms filled out by Mrs. Doe. Until the fall of 1995 (the time during which school officials challenged the residency of this child), Mrs. Doe listed her home number as the telephone number at the Richmond address (Tr. 2/27/96, p. 99). We believe that where a parent indicates they can be reached in an emergency involving their child is their actual residence, not a place they just visit. The record establishes that Mrs. Doe resides in the town of Richmond. Thus the presumption that is created with regard to Student Doe's residency, i.e.

that she is "deemed" to be a resident of the town where her mother resides results in no entitlement to attendance in the Exeter-West Greenwich school district.

As previously noted the statute does enable a child to establish residency for school purposes separate and apart from that of his or her parent. Section 16-64-1 specifically provides for the situation in which a child lives with a legal guardian, natural guardian, or other person acting in loco parentis. The child is "deemed" to be a resident of the town where such guardian or person acting in loco parentis lives if the child actually lives with such person and residence apart from the parent is because the parents have died, abandoned the child, or the parents are unable to care for the child on account of parental illness or family breakup. Evidence in the record suggests, and Mrs. Doe's counsel has implicitly argued, that Mrs. Doe suffers from an illness which renders her incapable of caring for her daughter. Further, he argues that the child actually resides with the grandmother in the Town of Exeter.

We find the record inconclusive on the fact of whether Student Doe actually resides in the town of Exeter with her grandmother. We acknowledge the testimony of both Mrs. Doe and the child's grandmother that the child lives there and that this child's bedroom furniture and toys are in the house in Exeter (Tr. 3/22/96, p. 22). However, this testimony is not without credibility issues. Mrs. Doe and her mother testified inconsistently as to how often Student Doe stays overnight at the house in Richmond. Mrs. Doe testified that the child spent only eight to ten nights (total) from September 1995 to the end of February 1996, while the grandmother testified that the child stays overnight in Richmond once a week, although she couldn't be too sure. We find this testimony to be in doubt, given this conflict and given the direct observations of school officials and the school bus driver that until quite recently the child was transported to school in the mornings from Richmond.

We are also unable to make any finding as to parental illness or inability to care for this child. The mother was questioned quite thoroughly under oath by School Committee counsel concerning any impediments to her caring for her child. She did not mention substance abuse at that time. It was not until the second hearing that a substance abuse problem was raised. The multitude of physical ailments described at the first hearing were never raised again. In response to questioning as to what testimony was presented in probate court in support of the need to appoint a guardian, Mrs. Doe responded:

More or less told them that I wasn't, wasn't really mentally stable, more or less, what I told you without saying that I had a drug abuse problem. Tr. 3/15/96, p. 47.

The fact that Mrs. Doe did not mention substance abuse in testifying before the Probate Court in support of the appointment of a legal guardian for her daughter, makes it difficult to accept as the "parental illness" requiring her daughter's residency with her grandmother. Mrs. Doe had no documentation supporting her claim of an ongoing substance abuse problem, despite the request for such documentation. Tr. 3/15/96, pp. 48-49. Given the varying nature of Mrs. Doe's illnesses, both in the hearing before us and in testimony before the Probate Court, we find that Mrs. Doe's claim of an illness requires more factual or documentary support. We are unable to conclude that she has an illness resulting in her inability to care for her child. If her daughter has changed her residency, it has not been shown to be based on parental illness and effectively changing her residency for school purposes under R.I.G.L. 16-64-1.

The final issue is the effect of the appointment of a legal guardian for Student Doe. As we read Chapter 16-64, and the applicable rules of common law expressly incorporated by reference in 16-64-1 the appointment of a legal guardian

can effectively change a child's residence for school purposes if the child actually takes up residence with the guardian, and the guardian was appointed for some substantial reason other than to change what would otherwise be the child's residence for school purposes⁵.

Again, the evidence does not demonstrate that Student Doe took up residence with her legal guardian until just prior to these hearings. If actual residency with the guardian has been established, and we will assume, arguendo, that it has been, we find that the appointment of the guardian was for the sole purpose of establishing school residency in Exeter.

Mrs. Doe's testimony was that the petition for appointment of a guardian was filed "three or four weeks ago", i.e. after her appeal to Commissioner McWalters. Tr. 3/15/96 p. 34. (On the copy of the petition placed in evidence, S.C. Ex. F. the date of filing is left blank; the year filed would indicate a 1995 filing date). Although Mrs. Doe and her mother testified that the guardianship had been considered for a long time prior to the actual filing of the petition, we find the time sequence here supports the School Committee's claim that it was prompted by the school residency dispute.

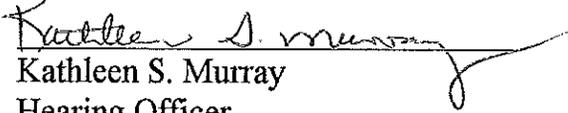
As to some "substantial reason" for the appointment of the guardian we are directed first to the mother's health problems. As previously noted in this decision, there is not sufficient evidence in this record to substantiate the existence of a substance abuse problem. We would note that Mrs. Doe testified that this was not the reason she advanced at the probate hearing at which time the grandmother was appointed legal guardian of her child. The record does contain mention of other

⁵The three stated conditions in 16-64-1 i.e. cases where a child has no living parents, has been abandoned by his or her parents or when parents are unable to care for their child on account of parental illness or family breakup are preconditions to a change of school residency under the statute. However, common law rules do permit a child to establish a different residence for school purposes even if one of these stated preconditions is not met. See the discussion in Laura Doe v. Narragansett School Committee decision of the Commissioner dated April 17, 1984.

reasons as the motivation for the guardianship--i.e. to facilitate the child's medical treatment (testimony of the grandmother Tr. 3/22/96 pp. 8, 24-25, 40 and to enable the grandmother to qualify for financial assistance (testimony of Mrs. Doe Tr. 3/15/96, p. 46).

This evidence was not sufficient to overcome the fact that prior to this dispute, the appointment of a guardian was not found necessary. The grandmother testified she had no problem obtaining any medical treatment for this child prior to her appointment as guardian. Mrs. Doe testified that it is she who provides her daughter's financial support. Tr. 2/27/96 p. 63. We have no facts in the record that this support is insufficient, or that the grandmother likewise provides financial support for this child. Thus, the statement regarding the grandmother's ability to obtain financial assistance or food stamps as a result of the guardianship remains unexplained and unsupported as a substantial reason for creation of the guardianship.

For the foregoing reasons, the appeal is denied and dismissed. Student Doe is not a resident of Exeter for school purposes, and should be enrolled in the Chariho School system.


Kathleen S. Murray
Hearing Officer

Approved:


Peter McWalters
Commissioner

Date: AUGUST 9, 1996