

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

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In Re: Samantha and Jessica

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DECISION

Held: The Grandmother of these students lacks standing to challenge the School Committee's approval of their home instruction program. The father's appeal is denied as he has failed to prove that the proposed home instruction program does not meet statutory requirements or that the approval of the program is invalid for other reasons.. The argument that the best interests of these children requires their attendance in East Providence public schools is appropriately made to the Rhode Island Family Court.

DATE: May 1, 2001

Travel of the Case:

On January 11, 2001 the father and paternal grandmother of Samantha and Jessica filed a notice of appeal of the East Providence School Committee's decision to approve the home instruction program for Samantha and Jessica. Their mother had requested that the School Committee approve her home instruction of both children and the School Committee gave its approval to the proposed programs on January 9, 2001. The undersigned was designated to hear and decide the appeal on January 19, 2001, and hearing took place on February 5, 2001. The record in the appeal closed on February 23, 2001 upon receipt of the transcript. Jurisdiction to decide this appeal is premised on R.I.G.L. 16-39-2 and R.I.G.L. 16-19-2 our home instruction statute.

Issues Presented:

- ◆ Do the appellants have standing to challenge the School Committee's decision?
- ◆ Do the home instruction programs approved by the East Providence School Committee meet the requirements of the statute?
- ◆ Is the School Committee's decision invalid because of questions concerning the childrens' residency in East Providence, their mother's alleged lack of credibility, evidence that one of the children may be eligible for special education or because of other reasons presented at the hearing?
- ◆ Should the School Committee have approved the home instruction programs despite their father's disagreement with mother's decision to home school them and his position that this type of educational program is not in their best interests?

Findings of Relevant Facts:

- Samantha, age 13 and Jessica, age 8 reside with their mother, who sought and received approval from the East Providence School Committee to home school both children on January 9, 2001. Tr. pp. 5, 32-33;
- Pursuant to the terms of a divorce decree entered on April 24, 1997 the parents of Samantha and Jessica were awarded joint custody of the children, with physical control of the children placed with their mother. Resp. Ex.A. The divorce decree required that

mother consult with the father on major health and welfare issues for the children, but make day-to-day decisions on her own. Resp. Ex.A.

- As the result of a neglect and dependency petition filed against both parents by the Department for Children, Youth and their Families on November 17, 2000,¹ an order of the Family Court entered on November 27, 2000 gave temporary custody of Samantha and Jessica to DCYF, restrained their mother from removing the children from the state of Rhode Island, and permitted their father supervised visitation. Resp. Ex. B and C. The petition was consolidated with motions filed in a pending custody dispute between the parents, and these proceedings were still pending at the time of hearing in this appeal. Tr.p.10.
- Subsequent to the November 27, 2000 order of the Family Court, a social caseworker from DCYF visited the home in East Providence where Samantha and Jessica are apparently² living, completed a home study, and submitted a report to the Family Court. Tr.p.69.
- The DCYF caseworker testified that she had been contacted and advised of mother's request to home instruct Samantha and Jessica by the Director of Elementary Education for the East Providence School Department and that, after thorough discussion of the program, she had no objection to home instruction at that time, nor does she have any objection to such program presently. Tr. p. 67.
- Prior to making her recommendation to approve the home instruction programs proposed for Samantha and Jessica, the Director of Elementary Education reviewed the request with their mother, went over the curriculum to be used and provided their mother with textbooks and other materials from the East Providence school department. Tr. pp. 34, 58
- Monitoring of the home instruction program is to be accomplished by the Director of Elementary Education's review of dated work samples, progress reports, and standardized testing. Tr. p.34; Resp. Ex. E.
- At the time the home instruction program was reviewed and approved for both children, their prior school records from the North Providence School Department had not yet been received by the East Providence school department. Tr. pp.42-43.

¹ a copy of the petition was not placed in the record, nor was there evidence received as to the basis for the DCYF petition.

² The East Providence school department has found no reason to question the children's residency and has accepted responsibility for approval and monitoring of their home instruction program. We make no finding as to the children's residency.

Positions of the Parties

The Appellants

Even though both children have been in the temporary custody of the Department of Children, Youth and Families since late November of 2000, Counsel for the Appellants takes the position that his clients, the father and paternal grandmother of Samantha and Jessica, have retained rights to participate in the educational decisions relating to the children. The children's father, in particular, has clear legal standing to object to the School Committee's approval of their being instructed at home since he is the natural parent, has joint custody under the terms of the divorce decree, and is responsible for ensuring that the children's health and welfare are not jeopardized. It is the appellants' position that they both are "interested persons" aggrieved by the action of the School Committee, as set forth in R.I.G.L. 16-19-2. They argue that the decision of the East Providence School Committee is invalid under the statute, and contrary to the best interests of both children. It is for these reasons that they have exercised their statutory right to seek the Commissioner's review of this decision.

The appellants further argue that the proposed home instruction program fails to meet the requirements of the statute (16-19-2) in that neither program mentions inclusion of the required subjects of United States history, history of Rhode Island, or principles of American government. In addition, the appellants argue that the mother lacks the skills or training to educate her children at home, and has no intention of actually instructing them in the required subjects. More importantly, it is argued, the mother has not been truthful with respect to her intentions and motivation in requesting approval for home instruction. She has misrepresented the fact of her current residence in East Providence, misrepresented those facts relating to where the children have been living since September of this school year and the nature of their educational programs during this time. The appellants contend that under such circumstances, it is unlikely that she will follow through and provide a home instruction program which meets the "thorough and efficient" standard as required by R.I.G.L. 16-19-2. For both children, but especially Jessica, who is alleged to have a learning disability, the consequences of such lack of instruction and the unavailability of services provided in a public school setting will be serious, the appellants argue. The School Department's approval of the program is characterized by the appellants as a hasty decision, based on inadequate

information on the specifics of the girls' programs, and based on incomplete knowledge of their educational history.

The East Providence School Committee

As a threshold issue, the school department takes the position that neither of the appellants has standing to seek the Commissioner's review of the School Committee's decision. Because DCYF has temporary custody of both children, only DCYF has standing to contest the mother's decision to home school the children, and standing to appeal the School Committee's approval of the proposed home program. The School Committee notes that the DCYF representative was provided with complete information on the proposed program at the time the mother's request was under review. DCYF saw no basis to object to the program then, nor does it have any objection to the children being instructed at home at the present time.

While it feels that the standing issue is dispositive of the case, the School Committee does address the merits of the issues raised by the appellants. The school department does not question residency. The school department is prepared, based on the facts it now has concerning the residency of these children, to accept them as residents of East Providence for school purposes. With the acceptance of their school residency, the school department has taken on educational responsibility for approval and monitoring of their home instruction programs. Prior to giving approval to both home instruction programs, they were thoroughly reviewed for compliance with the provisions of the statute. Mother indicated her willingness to cooperate with school personnel, and accepted their guidance in the nature of additional text books and instructional materials. The Director of Elementary Education has gone on record as to her plan to actively monitor the children's programs and their educational progress. If in fact it is found that one of the children has a learning disability, the district takes the position that this does not disqualify the child from home instruction, but would require close monitoring. The district implicitly argued that if the children are not found to have made adequate progress this year, any subsequent request for home instruction would be denied, and the children would be required to enroll in the public school. For these reasons, the School Committee requests that the appeal be denied and dismissed.

DECISION

With respect to the appellants' standing to bring this appeal to the Commissioner, we will deal with each of them in turn. It is our conclusion, after close review of the parties' arguments and the case law in this area, that the children's natural father retains a strong interest in his children's welfare and education. This interest accrues to a parent and entitles him to legal standing until any termination of parental rights. Longstanding constitutional tradition, as well as a long line of Commissioner's decisions on home instruction, have recognized the primary role of the parents, rather than the state or other persons, in deciding what type of education their children are to receive.³ While the situation in this case is somewhat unusual in that the parents have lost temporary legal custody of both children to the Department of Children, Youth and Families, the legal consequences of this do not include the termination of the fundamental liberty interest parents have in the care, custody, and management of their children. The Rhode Island Supreme Court has recently affirmed that parents' fundamental liberty interest is not extinguished because the parents have lost temporary custody of their child to the state. See *In Re Christina V.* 749 A.2d 1105 (R.I. 2000). Therefore, it is our conclusion that Samantha and Jessica's father has retained standing to seek review of the School Committee's decision.⁴

With respect to the paternal grandmother of these children, on the record made at this hearing, there are no facts that would extend legal recognition of her interests in the children and confer upon her legal standing in this matter. There have been no facts submitted on this record that the grandmother has acted in the role of parent or replaced her son as a de facto parent with respect to these children. We would note that Rhode Island law has recognized the relationship between a de facto parent and extended the acquisition of parental rights to those outside the immediate biological family of a child.⁵ When a person such as a grandparent acts in place of a parent, there is even recognition of their "parental" status under our special education laws⁶. As we understand it, however, the paternal grandmother in this

³ See *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Wisconsin v. Yoder*, 406 U.S. 205 (1972)

⁴ It would also seem legally inconsistent to acknowledge their mother's retention of the right to home instruct them and at the same time to deny the father's standing to challenge this decision.

⁵ See *Pettinato v. Pettinato*, 582 A 2d 909 (R.I. 1990); *Rubano v. DiCenzo*, 759 A 2d 959 (R.I. 2000).

⁶ See Section 300.20's definition of parent contained in the Regulations Governing The Education of Children With Disabilities (December 14, 2000)

case makes no claim that she has stepped into her son's role as a parent to these children. Under such circumstances, there is no sound basis to confer legal standing in this matter.⁷

We turn to the issue of whether the home instruction programs meet the requirements of R.I.G.L. 16-19-2. Although the written descriptions of Samantha and Jessica's proposed home instruction programs do not contain specific reference to United States history, Rhode Island history and principles of American Government⁸, the Director of Elementary and Secondary Education testified that in discussions with the mother it was indicated that these subjects would be covered. With this supplementary information in the record before us, we find that both of the programs, as proposed, meet the requirements of the statute. It has been our experience in adjudicating home instruction disputes that while some school districts in Rhode Island require very specific written information from the parent, others require only a very basic outline of the subjects to be covered and the materials to be used. In place of such specific information provided at the outset of the program, some administrators overseeing home instruction often rely on close monitoring to assure that the necessary material is covered. In the record in this matter, there is evidence that only two other children are receiving approved home instruction in East Providence. (Tr. p.60) If it is the administration's decision that close monitoring can better ensure that the program meets all the subject area requirements, we will not invalidate the program simply because it fails to describe coverage of all of the required subjects for home instruction.

Similarly, the mother's lack of teacher training is not found to be an obstacle to approval of the home program. In numerous decisions the commissioner has ruled that dedicated and concerned parents are capable of thorough and efficient home instruction. Based on the weight of evidence received at the hearing, and mother's demeanor in testifying at that time, we have no basis to conclude that she is anything but dedicated to providing an adequate home instruction program to her children.

Of concern, however, is information contained in the record that Samantha and Jessica lived, at least part of the time during this school year, in Allentown, Pennsylvania. The Report of the Guardian Ad Litem dated November 16, 2000 (Appellants' Ex.7) reports

⁷ See also the Commissioner's decision that a maternal uncle lacked standing to contest a school committee's approval of his niece's home instruction program in *Clif Payne vs. New Shoreham School Committee*, May 15, 1985.

⁸ See Respondent's Exhibit E.

statements with respect to Samantha and Jessica's residency and school history which are inconsistent with some of the testimony received at the hearing before us. This information is relevant to this dispute only in that it creates an inference on the record that the actual motivation for home instruction may be reasons unrelated to the reasons identified in the record by Samantha and Jessica's mother. If this is so, then the sincerity of mother's stated intent to educate the children at home would be brought into question.

Resolving this issue in the mother's favor at this time, but in responding reasonably to the information contained in this record, we direct the East Providence school department to ascertain the children's educational status as soon as possible. An assessment of Samantha and Jessica's progress this year should be made forthwith, with reference to their educational records from their prior school district as well as the assessment measures agreed upon in the home instruction approval process. If any of this information creates a suspicion that Jessica may have a learning disability, then the appropriate referral to the Evaluation Team for a special education services should be made. In addition, we assume that the school department will make appropriate use the assessment information obtained in making future decisions with respect to Samantha and Jessica's educational program and in evaluating the thoroughness and efficiency of the home instruction received this year. This same information should be of assistance to the Family Court in resolving the issue which is totally within the court's purview - the best interests of these children.

The appeal is denied and dismissed.

APPROVED:

Kathleen S. Murray
Hearing Officer

Peter McWalters, Commissioner

May 1, 2001
Date