

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 2 D.P.I. App. Dec. 236)

In re Michelle & Denise Oshel	:	
	:	
	:	
Kathryn Oshel, Appellant	:	DECISION
	:	
v.	:	
	:	
Creston Community School District, Appellee	:	[Admin. Dec. 570]

The above entitled matter was heard on December 10, 1980, before a hearing panel consisting of Dr. James Mitchell, deputy state superintendent and presiding officer; Mr. Dwight Carlson, director, school transportation and safety education division; and Mr. Gayle Obrecht, director, administration and finance division. Dr. Mitchell served as presiding officer pursuant to Section 257.22, The Code 1979. The hearing was held pursuant to Chapter 290, The Code 1979, and Chapter 670--51, Iowa Administrative Code. Mrs. Oshel was present and represented by Attorney Ronald Bonnett, and the Creston Community School District, (hereinafter District) was represented by Attorney Jeffrey Krausman.

The Appellant appealed a decision of the District Board of Directors regarding her residency for school purposes.

I.
Findings of Fact

The Hearing Panel finds that it and the State Board of Public Instruction have jurisdiction over the parties and subject matter.

Kathryn Oshel is married and the mother of two daughters currently enrolled in the first and fifth grades. At the beginning of the 1979-80 school year, Mrs. Oshel lived with her husband, Alan, and their children in the Diagonal Community School District. At the beginning of that school year, she began employment with Area Education Agency 14, (hereinafter AEA) as a Substance Abuse Prevention Coordinator in the AEA's Division of Educational Services. The administrative office of the AEA and the office out of which Mrs. Oshel works is located in the District about 30 miles from the Oshel home in the Diagonal District.

During Mrs. Oshel's first semester of employment, most of her working hours were devoted to establishing a substance abuse prevention program and making contacts with personnel in various school districts informing them of the availability of her services. By the second semester of the 1979-80 school year, the nature of Mrs. Oshel's job changed as she increased visitations to school districts in the AEA, including evening programs presented to professional and parent groups. Her current work schedule

includes night employment activities two to four evenings a week. Mrs. Oshel's increased time away from her family caused by her employment schedule resulted in an increasing strain on the family relationship. Mr. Oshel's work schedule was apparently unpredictable. While the record is not clear, he is apparently employed in some educationally-related position on a part-time basis with normal working hours in the morning. Sometimes his schedule is adjusted to meet the needs of students or staff at the schools in which he works. He is also self-employed as a farmer and apparently does some custom field work.

The result was two parents with irregular work schedules and the mother's primary place of employment more than a half hour's drive from their residence in the Diagonal District. Several possible solutions to the family's problems, including Mrs. Oshel and the children establishing residence in Creston, were considered by the family.

Some time in the spring of 1980, Mrs. Oshel discussed her domestic and employment situation and the possibility of her establishing a residence in Creston with Steve Swanson, her supervisor at the AEA. No apparent decision was made at that time.

Mrs. Oshel testified before the Hearing Panel that during the summer months the family decided not to make any changes in their life style, but to start the new school year as they had ended the last and see how things developed. When the current school year began, Mrs. Oshel resided with her husband and two children in the Diagonal School District, but the divergent work loads of the two parents renewed its strain on the family relationship. Mrs. Oshel repeatedly expressed in the record her concern that the driving time between the Diagonal residence and her employment were infringing upon her perceived parental role.

It was decided during the second week in September, 1980, that Mrs. Oshel and the two children would take up residence in the home of an aunt of Mrs. Oshel's in the District. In exchange for a monthly rental and payment of half the utilities, Mrs. Oshel and her children have the use of two sleeping rooms and share the rest of the home with the aunt. On September 12, 1980, Mrs. Oshel enrolled her two children in the District's Irving Elementary School. She gave her aunt's address in Creston as her residence to school authorities. Mrs. Oshel and her children moved into the Creston residence the next week.

During the week of September 15, District Superintendent Paul Grumley was advised by an unspecified source that Mrs. Oshel was actually residing in the Diagonal School District. He at first notified Mrs. Oshel that her children would be excluded from school but later agreed to their continued attendance until the District Board could discuss and rule upon the matter.

On October 9, the District Board met with Mr. & Mrs. Oshel in closed session and discussed the issue of Mrs. Oshel's residence. Superintendent Grumley told the Board that he considered the Creston address as an address of convenience rather than a residence for school purposes. He indicated that he felt that Mrs. Oshel's reasons for attempting to establish residency were suspect. At one point during the meeting he alluded to "common knowledge that you are unhappy with the Diagonal School District." He was not specific nor did he pursue the matter.

Mrs. Oshel immediately denied that as the reason for her actions. She responded that her primary purpose of establishing a residence in the District was to be nearer to her place of employment and to have less travel time to employment to enable her to spend more time with her children. She indicated to the District Board that she felt her "quality of parenting has greatly improved because of the [increased] time that we spend together."

Mrs. Oshel testified that her address has been changed to Creston for the purposes of voter registration, banking, personal mail and employment records. She has a telephone listing at the Creston address. At the hearing before the Panel, she attempted to introduce several retail sales records and an auto insurance invoice in an effort to show that she uses the Creston home of her aunt for personal purposes. She stated that most mail addressed to both her and her husband continues to be delivered at the Diagonal residence of her husband. She said that most mail so addressed primarily concerns him and not her.

The record shows that Mrs. Oshel does visit and stay the night in her husband's residence on weekends and other occasions and that Mr. Oshel visits and stays the night on occasions at Mrs. Oshel's residence in Creston. Mrs. Oshel testified that she plans to return to her husband's residence during the summer months.

Inferences drawn by the Hearing Panel from the record include the importance of the availability of Mrs. Oshel's aunt to supervise the children when Mrs. Oshel is not available during the week because of her evening work hours.

On October 16, the District Board again met with Mr. & Mrs. Oshel regarding the residence issue. The Oshel's and the Board both had their respective attorneys present. At one point, the Board Attorney asked Mrs. Oshel briefly whether she had a disagreement with the Diagonal School or was unhappy at that School. She replied that she had some concerns with the Diagonal School District's priorities, but that was not the primary reason for her decision to move to the Creston District. No more attention was given at the meeting to Mrs. Oshel's dissatisfaction with the Diagonal District's School System.

During the hearing before the Hearing Panel, Mrs. Oshel, under cross-examination, indicated that she had disagreed in previous school years with the Diagonal District over the use of a substitute teacher and that one of her daughter's teachers was unwilling to help improve self-concept in the child. No other evidence was presented regarding Mrs. Oshel's dispute with the Diagonal District. Mrs. Oshel stated several times that her primary purposes for establishing residence in the District were her employment and parenting responsibilities.

At the conclusion of the District Board's October 16 meeting, the following motion was unanimously adopted by the Board:

. . . that the two children of Mr. & Mrs. Alan Oshel be considered non-residents for enrollment purposes since it appears that the primary purpose for establishing residence in Creston was to obtain tuition free education in the Creston School District. [emphasis added]

Mrs. Oshel timely filed an appeal of that decision with the State Board of Public Instruction.

II. Conclusions of Law

In all of the deliberations of the District Board and arguments before the Hearing Panel there does not appear to be much dispute as to the law to be applied in questions of residence for school purposes. The dispute before us arises primarily in the application of the appropriate law to facts in the record. We will begin by restating generally, the legal principles involved.

The legal framework for resolving the issue is found in Sections 282.1 and 282.6, The Code 1979, and various interpretations of those sections. Section 282.6 provides in relevant part that, "[e]very school shall be free of tuition to all actual residents between the ages of five and twenty-one years. . .", and Section 282.1 provides in relevant part that, "[n]onresident children shall be charged the maximum tuition rate. . ."

The question, then, clearly focuses around the definition of "actual residents." Only if students are actual residents for school purposes, may they attend the public school without the necessity of paying tuition. The question of fact surrounding the issue of residence for school purposes is in the first instance to be decided by the local school board where the actual residence is claimed. 1958 O.A.G. 198. An adverse ruling may then be appealed under the provisions of Chapter 290, as has been accomplished here.

The recognized authoritative Iowa Supreme Court ruling in this area is Mt. Hope School District v. Hendrickson, 197 Ia. 191, 197 N.W. 47 (1924). The Mt. Hope decision contains a number of points relevant to our discussion here. The most important point is that a liberal construction of the phrase "actual residents" is to be applied in favor of those persons who claim residency. The decision states at page 194:

The principle of free education is the richest legacy of our Puritan civilization, and a liberal construction of our statute must be given, in order that its benefits may inure to those who claim its privileges.

While nothing akin to a legal presumption is created in favor of a student claiming residence for school purposes, it appears to the Hearing Panel that before a school district may refuse a claim of residency, it must make a sufficient investigation of the circumstances to reasonably determine a student is not a resident for school purposes. This means that the board must reasonably find either that the student is not actually residing in the district or that the student has come to the district with the primary purpose of attending school. From the language of the Board motion at issue here, it appears that the latter was the determination of the District Board and it is with that finding that the Hearing Panel has some problem.

Here, several important statements from the Mt. Hope decision need to be emphasized:

The test of residence which will confer school privileges is not the same as the test for taxation or for the exercise of the right of suffrage. p. 193

The word "domicile" indicates the real home. The word "residence" indicates the place, abode, or dwelling. p. 194

Mere intention cannot effect the change, but the intention to remain, coupled with the act of actual residence, establishes the domicile, notwithstanding a floating intention to return at some future time. In re Estate of Litterington, 139 Ia. 356. Id.

If a minor leaves the home of his father, to reside in another place for the sole purpose of securing free public school education, without bringing with him an actual residence, and with the intent to return to his former residence, he does not become an actual resident, within the purview of our school law. Id.

In summary, the distinction between "residence" and "domicile" is that residence means living in a particular locality, and domicile means a fixed and permanent home. Residence in its simplest terms requires bodily presence with the manifested intent to reside in a place, notwithstanding a technical domicile elsewhere. They may or may not be the same place.

Another important consideration is the holding in the Attorney General's Opinion appearing at 1970 O.A.G. 10. That Opinion determined that a wife could establish a residence for school purposes for herself and her children which is separate from that of the husband. It states in relevant part at page 11:

Where a child resides in the school district with one or both of his parents, such child is a resident for school purposes. If, for any purpose other than merely affording such child free public schooling, a parent or guardian maintains his or her home in any given community, the child living in that home should be considered a resident regardless of the fact that the other parent may be living in some other locality.

As we have stated previously, the primary issue at dispute here is not the law of residency for school purposes, as outlined above, but the application of that law to the facts before us. We find we must disagree with the District Board in that regard.

After two meetings with the Oshels, the District Board made a finding that Mrs. Oshel moved her residence to Creston for the primary purpose of obtaining a tuition-free education for her daughters. In those two meetings, there were only brief remarks made, mere innuendos, that Mrs. Oshel may have moved to Creston because of disputes with the Diagonal School District. No specific facts or circumstances were alleged at the meetings regarding problems with Diagonal School officials to which she had an opportunity to respond. She clearly disputed any indication that the primary purpose for her move was a dispute with the Diagonal District. From a review of the record, those unsupported innuendos appear to be the only evidence upon which the local Board could have based its decision that the Oshel children were nonresidents for the reason stated in its motion. That is hardly sufficient evidence upon which to base an important question regarding residency. Even though the Hearing Panel heard only brief testimony on cross-examination regarding Mrs. Oshel's disputes with the Diagonal School District, it was apparently more information than the District Board had before it when it made its decision. At the hearing before the Hearing Panel, Mrs. Oshel again denied that any dispute with the Diagonal School District was the primary reason for her establishing residence in Creston, and again, no significant evidence was introduced to refute her contentions. If indeed, there was evidence available, it should have been presented in such a manner as to give Mrs. Oshel the opportunity to respond.

We think, too, that in the absence of more convincing evidence to the contrary, the chronology of events aids Mrs. Oshel's position. Mrs. Oshel's testimony indicated that her disputes with the Diagonal District occurred in previous school years, not the current one. If she was changing residence for the primary purpose of school attendance, she could easily have done so during the summer months so that her daughters could have started the school year in Creston rather than disrupting their education by changing school several weeks after they started the school year in the Diagonal District. We are inclined to believe Mrs. Oshel's testimony that she and her husband started the 1980-81 school year with their residence in the Diagonal District with the hope that employment and parenting problems could be resolved, but then recognized several weeks after the start of the school year that the problems experienced in the second semester of the preceding school year were again present.

The District raised objection at the hearing to the introduction of a number of documents on the grounds that they were self-serving and not relevant. The documents in question included a variety of retail sales receipts, and other similar papers indicating that Mrs. Oshel holds herself out as residing at the Creston address. While it is possible that such records can be created with a self-serving motivation, we think as corroborating evidence, they are relevant for consideration by the Hearing Panel. This is, of course, with the understanding that the circumstances will lessen the weight of their value as evidence and if they had been offered as the primary basis for a finding of residency without additional competent evidence, the result may have been different.

All motions and objections of the parties not previously ruled upon are hereby overruled.

In conclusion, remembering that residence should be liberally construed in favor of those claiming residence, and in the absence of convincing evidence that Mrs. Oshel established her residence in the Creston District for the primary purpose of attending school tuition-free rather than for employment and parenting purposes, we find that we must rule in favor of the Appellant. We find that Mrs. Oshel's establishment of residency in the District was motivated primarily by employment and parenting considerations and not for the primary purpose of attending school tuition-free.

III.
Decision

The decision of the Creston Community School District Board of Directors in this matter is hereby overruled.

January 8, 1981

DATE

December 30, 1980

DATE

Susan M. Wilson
SUSAN M. WILSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

James E. Mitchell
JAMES E. MITCHELL
DEPUTY STATE SUPERINTENDENT
AND
PRESIDING OFFICER