STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: September 30, 2013)

WILLIAM and KIMBERLY DISTEFANO, et al.,	:	
Plaintiffs	:	
v.	:	**C.A. No. PC 12-4970**
	:	
EAST GREENWICH SCHOOL DISTRICT, et al.,	:	
Defendants	:	

DECISION

CARNES, J. Before this Court is an administrative appeal from a residency determination made by the Commissioner of Education for the State of Rhode Island (Commissioner) from which the parents of a minor child with a disability (Appellants) appeal. The Commissioner found that Appellants were residents of North Kingstown for educational purposes, determining that the residency requirement for school enrollment purposes as proscribed by G.L. 1956 § 16-64-1 was not satisfied. Thus, the Commissioner denied Appellants' request seeking to maintain the student's special education placement in the East Greenwich School District (School District). This Court's jurisdiction is pursuant to §§ 16-39-4, 42-35-15, 42-35-15.1, and 16-64-6.

I

Facts and Travel

Appellants established their residency in North Kingstown, Rhode Island in 2001, when the family purchased and moved into a home therein. In 2007, the Appellants purchased a second home in East Greenwich, Rhode Island and registered their son in the East Greenwich School District, using the East Greenwich property address on the required enrollment forms. The

minor child has been in attendance at the school since that time, though the family still resides in their North Kingstown home.

In May 2012, the principal of the East Greenwich School District was made aware of the family's living arrangement, and a school attendance officer investigated the matter. Upon completing its observation, the School District immediately directed the Appellants to withdraw their son from the school, thus giving rise to the present residency dispute.

The School District conducted a hearing on the instant matter on August 2, 2012.[1] There, Appellants argued that the School District's investigation did not establish lack of residency in East Greenwich, and that the family's home ownership and "constellation of interests" in East Greenwich were sufficient to establish residency for school purposes. The School District argued that the compilation of evidentiary support established that the minor child resided in North

[1] Rhode Island General Laws § 16-64-6 provides the proper administrative procedure that applies to a student residency dispute, stating the following:

> "When a school district or a state agency charged with educating children denies that it is responsible for educating a child on the grounds that the child is not a resident of the school district or that the child is not the educational responsibility of the state agency, the dispute shall, on the motion of any party to the dispute, be resolved by the commissioner of elementary and secondary education or the commissioner's designee who shall hold a hearing and determine the issue. At any hearing, all parties in interest shall have the right to a notice of the hearing and an opportunity to present evidence and argument on their own behalf. A hearing under § 16-39-2 shall not be a prerequisite to a hearing under this section. The commissioner of elementary and secondary education shall have power to issue any interim orders pending a hearing needed to insure that a child receives education during the pendency of any matter. Interim orders and all final orders shall be enforceable in the superior court for Providence County at the request of any interested party and shall be subject to review in the superior court in accordance with the Rhode Island Administrative Procedures Act, chapter 35 of title 42."

Kingstown according to the definition of "residence," citing to the Commissioner's prior decisions, the school attendance officer's surveillance results and insufficient testimony.

On August 27, 2012, the Commissioner issued a Decision affirming the School District's decision. After considering the documentary and testimonial evidence presented by the parties, the Commissioner relied on his prior relevant decisions to support his findings that the family resided in North Kingstown. The Commissioner found that "[t]he evidence in this case does not show that [Appellants] conduct their household activities or sleep in its East Greenwich house . . . therefore [the family] does not reside in East Greenwich . . . and [the minor child] has no entitlement to educational services from the East Greenwich public schools." In re Residency of W. Doe, Aug. 27, 2012.

II

Standard of Review

This Court's review of a decision of the Commissioner of Education is controlled by G.L. 1956 § 42-35-15(g) of the Administrative Procedures Act, which provides the following:

> "The Court shall not substitute its judgment for that of the agency as to the weight of the evidence on the questions of fact. The court may affirm a decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (1) In violation of constitutional or statutory provisions;
>
> (2) In excess of the statutory authority of the agency;
>
> (3) Made upon unlawful procedure;
>
> (4) Affected by other error or law;
>
> (5) Clearly erroneous in view of reliable, probative, and substantial evidence on the whole record; or

> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

This section precludes a reviewing court from substituting its judgment for that of the agency in regard to the credibility of witnesses or the weight of evidence concerning questions of fact. Costa v. Registry of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988); Carmody v. R.I. Conflict of Interest Commission, 509 A.2d 453, 458 (R.I. 1986). Therefore, this Court's review is limited to determining whether substantial evidence exists to support the Commissioner's Decision. See Newport Shipyard v. Rhode Island Commission for Human Rights, 484 A.2d 893 (R.I. 1984). "'Substantial evidence" is that which a "reasonable mind might accept to . . . support a conclusion.'" Id. at 897. (quoting Caswell v. George Sherman Sand & Gravel Co., 120 R.I. 1981, 424 A.2d 646, 647 (1981)). This is true even in cases where the court, after reviewing the certified record and evidence, might be inclined to view the evidence differently than the agency. Berberian v. Dept. of Employment Security, 414 A.2d 480, 482 (R.I. 1980). This Court will "reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record." Milardo v. Coastal Resources Management Council, 434 A.2d 266, 272 (R.I. 1981).

Additionally, pursuant to § 42-35-15, the Superior Court acts in the capacity of an appellate court when reviewing a decision of an administrative agency. Mine Safety Appliances Co. v. Berry, 620 A.2d 1255, 1259 (R.I. 1993). The Superior Court is confined to "'an examination of the certified record to determine if there is any legally competent evidence therein to support the agency's decision.'" Johnston Ambulatory Surgical Associates, Ltd. v. Nolan, 755 A.2d 799, 805 (R.I. 2000) (quoting Barrington School Committee v. Rhode Island State Labor Relations Board, 608 A.2d 1126, 1138 (R.I. 1992)). If the agency decision was based on sufficient competent evidence in the record, the reviewing court must affirm the

agency's decision. Nolan, 755 A.2d at 805 (citing Barrington School, 608 A.2d at 1138). "'A judicial officer . . . may reverse [the] findings of the administrative agency only in instances where the conclusions and the findings of fact are 'totally devoid of competent evidentiary support in the record,' (Bunch v. Board of Review, 690 A.2d 335, 337 (R.I. 1997); Milardo v. Coastal Resources Management Council, 434 A.2d 266, 272 (R.I. 1981), or from the reasonable inference that might be drawn from such evidence.'" Bunch, 690 A.2d at 337 (quoting Guarino v. Department of Social Welfare, 122 R.I. 583, 588-89, 410 A.2d 425, 428 (1980)). However, questions of law are not binding upon the court and are reviewed de novo. Narragansett Wire Co. v. Norberg, 118 R.I. 596, 376 A.2d 1, 16 (R.I. 1977); Bunch, 690 A.2d at 337.

III

Analysis

The Rhode Island Supreme Court has held that residence "is not a word of fixed legal definition but must be interpreted according to the context and the purpose of the statute in which it is found.[2] See also, Flather v. Norberg, 377 A.2d 225, 228 (R.I. 1977).[3] The absence of a

[2] Residence: place where one actually lives or has his home. . . ; reside: Live, dwell, stay, remain, lodge. . . . Black's Law Dictionary 902 (6th ed. 1990).

[3] Our Supreme Court has stated in Meyer v. Meyer, 68 A.3d 571, 588 n.9 (R.I. 2013), the following:

> "The term 'resident' has been legislatively defined in various ways in several other statutes unrelated to the divorce context. . . See, e.g., G.L.1956 § 23–24.4–3 (defining, in the context of the Hazardous Substances Community Right to Know Act, a 'Resident' as 'any person whose principal domicile is located in the state'); G.L.1956 § 20–2.2–3 (defining, in the context of recreational saltwater fishing licenses, a 'Resident' as 'an individual who has had his or her actual place of residence and has lived in the State of Rhode Island for a continuous period of not less than six (6) months); G.L.1956 § 27–2.4–2 (defining, in the context of producer licensing, a 'Resident' as 'a person who either resides in Rhode Island or maintains an office in Rhode Island * * * and designates Rhode Island as the residence for purposes of licensure');

statutory definition of the term "resides" in Sec. § 16-64-1 necessarily has resulted over the years in judicial divination of precisely what the General Assembly intended that term to mean in that statute. Meyer, 68 A.3d 571 at 588.

Except as provided otherwise by statute, children of parents who are not residents of a school district generally may not attend school in such district; however, under some statutes, children living outside a school district or town may attend school therein with the consent of the school authorities of the district in which the school is located. 17A Am. Jur. 2d Residence – Children Residing Outside District § 990 at 309 (1980). In order to fulfill the criteria for a child's residency for school purposes, however, Rhode Island law clearly provides in pertinent part: "[e]xcept as provided by law or by agreement, a child shall be enrolled in the school system of the city or town where he or she resides. A child shall be deemed to be a resident of the city or town where his or her parents reside." Sec. 16-64-1.

> G.L.1956 § 27–34.3–5 (defining, in the context of life and health insurance guarantees, a 'Resident' as 'a person to whom a contractual obligation is owed and who resides in this state on the date of entry of court order * * *. A person may be a resident of only one state * * * '); G.L.1956 § 31–1–18 (defining, in the context of motor and other vehicles, a 'Resident' as a 'person: (1) [w]ho owns, rents, or leases real estate * * * as his or her residence and: (i) [e]ngages in a trade, business, or profession in this state; or (ii) [e]nrolls his or her children in a school in this state for a period exceeding ninety (90) days; or (2) [w]ho is registered to vote or is eligible to register to vote under the laws of this state'); G.L.1956 § 44–31.3–2 (defining, in the context of musical and theatrical production tax credits, a 'Resident' or 'Rhode Island resident' as, 'for the purpose of determination of eligibility for the tax incentives provided by this chapter, an individual who is domiciled in the State of Rhode Island or who is not domiciled in this state but maintains a permanent place of abode in this state and is in this state for an aggregate of more than one hundred eighty-three (183) days of the taxable year * * * '); G.L.1956 § 40–5.2–8 (defining, in the context of the Rhode Island Works Program, a 'Resident' as 'a person who maintains residence by his or her continuous physical presence in the state'").

Here, after listening to the testimony and reviewing the language of § 16-64-1, the Commissioner found that at all relevant times, the Appellants were residents of North Kingstown. In Re: Residency of W. Doe, Aug. 27, 2012. The Commissioner considered its prior relevant decisions[4]—In Re: Residency of T. Doe, Jan. 28, 2005; In Re: Residency of J.R., Commissioner of Education, Aug. 23, 2000; In Re: Residency of John Doe (CS) and Jane Doe (LS), Feb. 2, 2000—for his determination of residency. As such, the minor child was not a resident of East Greenwich for school purposes. Thus, the Commissioner found in his Decision that the minor child does not reside in the East Greenwich home and is therefore not entitled to attend East Greenwich public schools.[5]

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[4] The Rhode Island Supreme Court has recognized the "'well-recognized doctrine of administrative law that deference will be accorded to an administrative agency when it interprets a statute whose administration and enforcement have been entrusted to the agency even when the agency's interpretation is not the only permissible interpretation that could be applied.'" Auto Body Ass'n of Rhode Island v. State Dept. of Bus. Reg., 996 A.2d 91, 97 (R.I. 2010) (quoting, Pawtucket Power Associates Limited Partnership v. City of Pawtucket, 622 A.2d 452, 456-57 (R.I. 1993); see also, Unistrut Corp. v. State Department of Labor and Training, 922 A.2d 93, 99 (R.I. 2007) ("[W]hen the administration of a statute has been entrusted to a governmental agency, deference is due to that agency's interpretation of an ambiguous statute unless such interpretation is clearly erroneous or unauthorized.").

[5] Sec. 16-64-1 provides:

> "Except as provided by law or by agreement, a child shall be enrolled in the school system of the city or town where he or she resides. A child shall be deemed to be a resident of the city or town where his or her parents reside. If the child's parents reside in different cities or towns the child shall be deemed to be a resident of the city or town in which the parent having actual custody of the child resides. In 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 break-up, the child shall be deemed to be a resident of the city or town where the child lives with his or her legal guardian, natural guardian, or other person acting in loco parentis to the child. An emancipated minor shall be deemed to be a resident of the city or town where he or she lives. Children placed in group homes, in foster care, in child caring facilities, or by a Rhode Island state agency or a Rhode Island licensed child placing agency shall be deemed to be residents of

Contrarily, Appellants maintain that they do, in fact, own a residence within the School District and pay taxes on said residence. (R. at 56 ¶¶ 15-24.) Appellants argue that the legislature's intent was designed to protect school districts against having to educate those without any connection to the district and/or those seeking a tax-free education, asserting that neither scenario exists in the present matter. Appellants heavily rely on In re Residency of J.R., Commissioner of Education, Aug. 23, 2000 for the proposition that "the determination of residency where a dwelling overlaps district boundaries is 'based on the whole constellation of interests including both geography and the community orientation of the student and the family.'" Id. (quoting Rapp, Education Law § 5.03(4)(g)). Appellants argue that unlike the "self-serving cache of documents" exclusively relied upon in that case, Appellants here have demonstrated their community and social involvement in East Greenwich, noting that it is the location of their automobile registration, church affiliation, religious education, dining, day-to-day living needs, social gatherings and receipt of most of their personal and business mail.

It is well-settled that a child's residency for school purposes is located in the city or town in which he or she resides, and he or she is a resident of the city or town in which his or her parents reside. See, sec. 16-64-1 ("Except as provided by law or by agreement, a child shall be enrolled in the school system of the city or town where he or she resides . . . ."). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. Providence Journal Co. v. Rodgers, 711 A.2d

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> the city or town where the group home, child caring facility, or foster home is located for the purposes of enrollment, and this city or town shall be reimbursed or the child's education shall be paid for in accordance with § 16-64-1.1. In all other cases a child's residence shall be determined in accordance with the applicable rules of the common law. . . ."

1131, 1134 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. Id. In disputes regarding the definition of residency for school purposes, said disputes are resolved by "the commissioner of elementary and secondary education or the commissioner's designee." Sec. 16-64-1; see generally Myhre v. School Bd., 122 N.W.2d 816 (N.D. 1963) (noting statutes frequently leave admission of non-residents to the discretion of the education governing board). In interpreting the language of sec. 16-64-1, this Court accords deference to the Commissioner's interpretation "even when it is not the "only permissible interpretation that could be applied." Pawtucket Power Assoc. Ltd. Partner, 622 A.2d at 456-57.

Here the Commissioner found that the Appellants were residents of North Kingstown and as their child did not reside in the East Greenwich home, he was not a resident of East Greenwich for school purposes. The Commissioner had before it the following evidence. Mr. DiStefano maintains that he currently resides at three (3) homes. (R. at 49 ¶¶ 13-25, 50 ¶ 1.) Additionally, in response to questions regarding the filing of tax returns, the Appellant stated that he lists the North Kingstown address to indicate the family's place of residence. (R. at 50 ¶¶ 2-7.) The Appellant also testified that he is a registered voter in the North Kingstown District, stating that he has never registered to vote in any other district, including East Greenwich. (R. at 50 ¶¶ 8-24.) When trying to recall when he last slept at the East Greenwich property, the Appellant simply could not remember, but stated that it was sometime "earlier in the year." (R. at 54 ¶¶ 4-7.) Moreover, when asked where he "physically lives," the Appellant's response was, "I reside wherever I am." (R. at 54 ¶¶ 12-15.) Further, the Appellant explained, "I might tonight pick up and drive to New Hampshire and spend the night or two or three there if I want. I have

three homes available to me at anytime, and I pick and choose when I stay in 'em. I think I have that right."

In his Decision, the Commissioner noted that in prior residency matters, "[w]e have employed a constellation-of-interests analysis . . . but only in 'rare' [state] boundary line cases where one dwelling was involved." See, In re Residency of T. Doe, Jan. 28, 2005; Residency of Student C.D., Dec. 9, 2003; In re Residency of J.R., Aug. 23, 2000; see also, Charles M. Smith III and Maria Casimoro v. Peter McWalters, C.A. No. 00-928. Placing "the focus …on the household, not community activities," the Commissioner thus found that the child resided in East Greenwich.

This Court gives deference to "decisions of law reached by an administrative agency" particularly regarding an ambiguous statutory definition. See Auto Body Ass'n of Rhode Island v. State Dept. of Bus. Reg., 996 A.2d 91, 97 (R.I. 2010) (recognizing here, that the hearing justice should have accorded deference to the agency's judgment when the statute was subject to more than one interpretation.)

It is well-settled that deference is accorded to an agency's interpretation of its governing statute. See, Labor Ready Northeast, Inc. v. McConaghy, 849 A.2d 340, 344-45 (R.I. 2004); In re Lallo, 768 A.2d 921, 926 (R.I. 2001). With respect to the determination of residency, this Court finds that the Commissioner neither exceeded its authority, nor erred as a matter of law in its interpretation of § 16-64-1, in concluding that the focus in this matter "is on the household, not community activities. . . ." Thus, the Commissioner's definition of the term "reside" effectuates the intent of the Legislature which grants the Commissioner the duty "[t]o carry out the policies and program formulated by the board of regents for elementary and secondary

education," finding that Appellants were not residents of East Greenwich for school purposes is not clearly erroneous. Sec. 16-1-5.

IV

Conclusion

After review of the entire record, this Court finds that the Commissioner's Decision is supported by the reliable, probative, and substantial evidence of record and is not clearly erroneous. Substantial rights of the Appellants have not been prejudiced. Counsel shall present the appropriate order and judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	William and Kimberly DiStefano, et. al v. East Greenwich School District, et al.
CASE NO:	2012-4970
COURT:	Providence Superior Court
DATE DECISION FILED:	September 30, 2013
JUSTICE/MAGISTRATE:	Carnes, J.
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