9-4-2007

Motion for Reconsideration re: Legal Issue Number 2
07-2-02323-2-52

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MATHEW & STEPHANIE MCCLEARY, on their own behalf and on behalf of KELSEY & CARTER MCCLEARY; ROBERT & PATTY VENEMA, on their own behalf and on behalf of HALIE & ROBBIE VENEMA; and NETWORK FOR EXCELLENCE IN WASHINGTON SCHOOLS ("**NEWS**"),

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

Honorable Paris K. Kallas

Hearing Date:

No. 07-2-02323-2 SEA

MOTION FOR RECONSIDERATION RE: LEGAL ISSUE NUMBER 2

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I. RELIEF REQUESTED

Petitioners respectfully request that this Court reconsider its August 24 decision to not grant either party judgment on the second issue raised by Petitioners' summary judgment motion – i.e., the issue of whether RCW 29A.150.210 should be interpreted to define the substantive content of "basic education" in our State.

II. BACKGROUND FACTS

The background underlying this motion consists of five simple points:

- The Washington Supreme Court ruled in 1978 that "The Legislature has the duty to define 'basic education' ". *Seattle School District v. State*, 90 Wn.2d at 484.[1]
- Petitioners' interpret the four numbered provisions of RCW 28A.150.210 to provide that legislative definition.[2]
- The State interprets the basic program of education provided by RCW 28A.150.220 *et seq.* to be the equivalent of that legislative definition.[3]
- The parties' briefing does not dispute that this statutory interpretation issue is a pure issue of law for the Court do decide.
- This Court's August 24 summary judgment ruling declined to rule in this statutory interpretation issue.[4]

III. ISSUE PRESENTED

Should this Court reconsider its August 24 decision to not grant either party judgment on the second issue raised by Petitioners' summary judgment motion (i.e., the issue of whether

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[1] *See generally discussion at Petitioners' May 4 Motion at 4:10-6:12.*

[2] *The Petitioners' interpretation of RCW 28A.150.210 (H.B. 1209) is summarized in its August 10 Closing Brief at 2:3-4:7. Pursuant to that statute the State then adopted the corresponding eight Essential Learning Requirements (EALRs) to further establish the skills and knowledge that the State expects all Washington students to master. May 4 Motion at 5:6-6:2 & n.13, also at 13:18-24; accord State's Opposition Brief at 7:25-26 & 8:5-6 (admitting the Respondent State adopted the Essential Academic Learning Requirements (EALRs) to establish the basic reading, writing, math, science, etc. skills set forth in RCW 28A.150.210); accord State's August 3 Supplemental Opposition Brief at 7:22-8:2 (admitting that "The EALRs for reading, writing, math and science were all developed to carry out the four goals in the 1993 HB 1209 [RCW 28A.150.210]").*

[3] *The State's interpretation arguments are briefed at State's May 21 Opposition Brief and August 3 Supplemental Opposition Brief.*

[4] *Petitioners' May 4 Motion at 14:8-9 & n.27, Petitioners' August 10 Closing Brief at 2:8-9.*

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RCW 29A.150.210 should be interpreted to define the substantive content of basic education in our State)?

IV. EVIDENCE RELIED UPON

Petitioners rely upon this motion and the records and files in this case.

V. LEGAL DISCUSSION

Civil Rule 56 provides in part that "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). This rule applies to the second issue raised by Petitioners' May 4 Motion because, as noted earlier, the parties' summary judgment briefing acknowledges that it presents a statutory interpretation issue as to which one party (or the other) is entitled to judgment as a matter of law.

Civil Rule 59 further provides that this Court has discretion to reconsider a decision if it determines that "substantial justice has not been done". CR 59(a)(9). This rule applies to this Court's decision to not rule on the statutory interpretation issue presented by the parties because, as outlined below, resolving that legal issue will significantly effect the scope, direction, and expense of discovery and trial in this case, as well as the State's impending Washington Learns II study.

A. If The State's Interpretation Is Correct, Substantial Justice Calls For This Court To Say So *Now* Because The State's Interpretation Could Make A Trial Unnecessary.

The fundamental issue in this case is whether the State is complying with its "basic education" obligation under Washington law. And as noted earlier, the Petitioners interpret the four numbered provisions of RCW 28A.150.210 to provide the current legislative definition of "basic education" in Washington.

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The Respondent State flatly disagrees: "Contrary to Petitioners' contention, that statute [RCW 28A.150.210] does not define the content of basic education."[5] As noted earlier, the State instead interprets the basic program of education established by RCW 28A.150.220 *et seq.* to be the equivalent of that legislative definition.

If the State's legal interpretation is correct, then a trial in this case may be completely unnecessary – for the State insists that its enactment and funding of that program is accordingly all that Washington law requires.[6]

Petitioners do not agree with the State's interpretation. But they do agree that if the State's interpretation is correct, substantial justice is best served by this Court issuing that legal interpretation ruling now instead of burdening the parties and this Court with preparing for a trial that (under the State's reasoning) is completely unnecessary as a matter of law.

B. Substantial Justice Calls For This Court To Tell The Parties The Legal Interpretation That Will Govern This Case *Before* They Embark On Long And Expensive Discovery Into Whether The State Is Satisfying Its "Basic Education" Obligation.

The current uncertainty over what definition of "basic education" will be applied in this case also unnecessarily increases the burden and expense of the upcoming discovery phase.

The parties agree that discovery in an education suit such as this can be far-ranging and expensive. For example, the State has budgeted approximately $1 million this year alone to pay for school funding litigation,[7] and its briefing in this case has argued that discovery will be "cumbersome" and require "Third-party discovery across Washington and in other states".[8] The

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[5] *Respondent's Opposition at 17:23–24 (emphasis added).*

[6] *Respondent's Opposition at 19:3–5 ("The Basic Education Act itself declares that implementation of its statutory program and funding of the costs of basic education is 'full funding'. RCW 28A.150.250.").*

[7] *5/29 Osdiek Reply Dec. at Ex. GG ($992,000 for current fiscal year)*

[8] *Respondent's Opposition To Motion For Summary Judgment On Liability And Remedy at 13:15 – 17.*

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Petitioners have similarly acknowledged that the type of discovery sought by the State "will open up a consuming can of litigation worms" of expert discovery and intensive studies.[9]

Recent education cases in other States confirm this expensive fact. For example, even though the education litigation in Nebraska is "in its infancy", the plaintiffs in that case have already identified eleven expert witnesses and more than 130 fact witnesses.[10] As another example, the recent education funding trial in Missouri involved a "host of education finance experts", cost more than $2.9 million in legal fees, and lasted more than two months.[11] And as the Court itself noted during the August 24 hearing in this case, the trial in the *Seattle School District* litigation lasted more than two months.

The above expense will only be greater, and the discovery more sweeping and unfocused, if the parties do not know the legal interpretation of "basic education" that this Court will be applying in this case. Substantial justice is therefore best served if this Court rules on this legal interpretation issue before the parties undertake discovery on this case's fundamental issue of whether the State is satisfying its "basic education" obligation as defined under Washington law.

C. Substantial Justice Calls For The Court To Establish The Legal Interpretation That Will Govern This Case At The Outset In Order To Avoid The Ping-Pong Litigation Exercise Experienced In Other States.

The experience of other States confirms that the courts' failure to establish the underlying legal standard that will apply before the trial at hand runs a significant risk of unnecessarily wasting the time and resources of the parties and judicial system – and needlessly delaying resolution for the children whose education is ultimately at stake in such litigation.

For example, the trial court in Massachusetts issued a "thoughtful and comprehensive" 318-page decision after considering the testimony of 114 witnesses and over 1000 exhibits in a six-month trial – but its decision was ultimately reversed because the proceedings were

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[9] *Motion for a Protective Order at 7:1 – 5.*

[10] *Certificate of Compliance Concerning Discovery Conferences at ¶4 and Ex. 1.*

[11] *Certificate of Compliance at ¶4 and Ex. 2.*

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conducted under the wrong legal standard. *Hancock v. Comm'r of Educ.*, 822 N.E.2d 1134, 1145–1153 (Mass. 2005). Similarly, the judicial referees in New York issued a 57-page decision after a several month long proceeding that New York's highest court said "commands our attention as well as our respect" – but that decision too was overturned because the lengthy lower court proceedings were not conducted on the correct legal footing. *Campaign for Fiscal Equity, Inc. v. State*, 861 N.E.2d 50, 57 (N.Y. 2006) The trial court in Minnesota issued a written decision after a 67-day trial – but was ultimately overturned because the evidence was viewed under the wrong legal standard. *Skeen v. State*, 505 N.W.2d 299, 301, 310-12 (Minn. 1993). And the lack of an initial legal standard ruling in New Jersey (see *Abbott v. Burke,* 495 A.2d 376, 393 (1985), has effectively resulted in the *Abbott* case ping-ponging between the trial court, the State Supreme Court, and the legislature for more than 30 years. See *Abbott v. Burke,* -- A.2d --, 2007 WL 1518909 (N.J. 2007) ("Abbott XIV" compliance proceeding).

In short, substantial justice is best served if the definition of "basic education" that will apply in this case is established before the parties undertake lengthy discovery and trial over whether or not the State is satisfying that "basic education" obligation as defined under Washington law. (The issuance of such a ruling would also allow the parties to confirm the correctness of that ruling by seeking interlocutory appeal if appropriate.)

D. Substantial Justice Calls For This Court To Establish The Legal Interpretation Of "Basic Education" *Before* Washington Learns II Undertakes Its Impending Study Of Financing For The Basic Education Required By Washington Law.

As the Respondent State noted in the underlying summary judgment proceedings, the State is about to commence a Washington Learns II study under Engrossed Second Substitute Senate Bill 5627 ("Senate Bill 5627"), which promises to "make provision for some significant steps towards a new basic education funding system". Senate Bill 5627, Section 1. Much like the prior Washington Learns I bill, Senate Bill 5627 creates a task force to study the current education system and make recommendations for future changes. Id. That task force's first responsibility is to "review the definition of basic education and all current basic education

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funding formulas". Senate Bill 5627, Section 2. This task force must then report its recommendations on funding basic education to the legislature by September 15, 2008.[12]

But this new Washington Learns II endeavor – along with its studies and resulting report – will be of doubtful relevance unless it uses the same "basic education" definition that this Court eventually holds is the proper interpretation under Washington law.

By delaying its ruling on the statutory interpretation issue at hand, this Court is missing a significant opportunity to ensure that the "basic education" studied by the State's latest education task force is the same "basic education" that is defined under Washington law. There can be no dispute that taxpayer funds for the State's upcoming education study would be better directed if this Court rules on this fundamental "basic education" definition issue before the State's Washington Learns II study begins. Substantial justice accordingly calls for this Court to establish the legal interpretation of "basic education" before the Washington Learns II study financing that basic education proceeds.

VI. CONCLUSION

The parties, this Court, our State's taxpayers, and the students whose education is ultimately at stake in this suit are all better served if this Court rules on the parties' dispute over the legal interpretation of "basic education" under Washington law now rather than later. That issue is a pure issue of statutory interpretation to which one side or the other is entitled to a judgment as a matter of Washington law. The Petitioners therefore respectfully request that this Court enter judgment for either the State or the Petitioners on this fundamental legal issue that has been fully briefed and argued by the parties. Petitioners respectfully request the Court to reconsider its August 24 decision and rule on this question of statutory interpretation that has been presented.

[12] *Respondent's Supplemental Opposition To Motion For Summary Judgment On Liability And Remedy at 8:22 – 23.*

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RESPECTFULLY SUBMITTED this 4th day of September, 2007.

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