2-23-2010

Petitioners' Reply to Respondent State's Objections and Exceptions to Proposed Final Judgment 07-2-02323-2-160E

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MATHEW & STEPHANIE MCCLEARY, on their own behalf and on behalf of KELSEY & CARTER MCCLEARY, their two children in Washington's public schools; ROBERT & PATTY VENEMA, on their own behalf and on behalf of HALIE & ROBBIE VENEMA, their two children in Washington's public schools; and NETWORK FOR EXCELLENCE IN WASHINGTON SCHOOLS ("**NEWS**"), a state-wide coalition of community groups, public school districts, and education organizations,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

The Honorable John P. Erlick

No. 07-2-02323-2 SEA

Hearing Set for:
4:00 p.m. Wednesday, Feb. 24, 2010
[Maleng Regional Justice Center/KENT]

PETITIONERS' REPLY TO RESPONDENT STATE'S OBJECTIONS AND EXCEPTIONS TO PROPOSED FINAL JUDGMENT

This is Petitioners' Reply to the Objections/Exceptions filed yesterday by the State.

Proposed Final Judgment Paragraph 1: The State asserts that the court's February 4 Findings & Conclusions should not be considered part of the final judgment that the court came to in this case.

But that is exactly what the court's February 4 Findings & Conclusions are. They state, in detail, this court's final judgment as to what facts were established by the evidence at trial and what the law provides under those established facts. Indeed, that is precisely why the State's proposed Final Judgment incorporates those Findings & Conclusions as well, proposing in its Attachment A (bold italics added) that the Final Judgment should say:

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1. The meaning of "paramount", "ample", "all", and "education" under Article IX, §1, is ***as set forth in the Court's Conclusions of Law***,

2. ***As set forth in the Court's Findings and Conclusions***, Respondent State is not currently complying with its legal duty under this Court's interpretation of Article IX, §1;

3. ***As set forth in the Court's Conclusions***, the Legislature is ordered to....

The State is correct that this court's attention to detail made its February 4 ruling on the many factual and legal disputes in this case long. But the State cites no authority for its premise that a "final judgment" must be short. Especially after a long, complicated trial like the one here requiring a decision on many factual and legal issues of great public import.

There is no magic page limit or format that restricts how a court can render its final judgment in writing. See, e.g., *Steinmetz v. Call Realty*, 107 Wn.App. 307, 310-11 (2001) (letter opinion with informal findings of fact and conclusions of law, with a sentence saying "judgment is entered in favor of the defendant", was a "final judgment"); *Lynch v. Pettijohn*, 34 Wn.2d 437, 446-47 (1949) ("A judgment need not be in any particular form, nor is it essential that any particular technical phraseology or any prescribed form of expression be employed by the court; it is sufficient if it appears to be the act and adjudication of the court which renders it"; and "A record is sufficient as a judgment provided it appears therefrom that it was intended as such").

It therefore is not surprising that none of the cases cited by the State forbid a "final judgment" from incorporating the written findings and conclusions the court entered after trial. *Doolittle v. STOWW*, 94 Wn.App 126 (1999), determined the time limit for filing a cost bill after a party is dismissed on summary judgment. *San Juan County v. No New Gas Tax*, 160 Wn.2d 141 (2008), reviewed a pre-trial preliminary injunction. And *People's Nat'l Bank v. Birney's Enterprises*, 54 Wn.App 668 (1960), addressed whether an oral ruling can take the place of written findings and conclusions.

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In short, proposed Final Judgment paragraph 1 is proper because it is accurate. This court's February 4 Findings & Conclusions do state (in detail) its final judgment as to what facts were established by the evidence at trial and what the law provides under those established facts.

Proposed Final Judgment Paragraph 2: The State objects that there is "no basis offered" or "any support from the trial record" for the errata correction in paragraph 2. But that's incorrect. Courtesy Copies Of Trial Transcript Pages Relating To Proposed Final Judgment Paragraphs 2 & 3 at Tab 2 (pages i-iii) (confirming the 1% WSIPP projection was for reforms without additional money, not additional money without reforms). Indeed, the State itself acknowledges that WSIPP's zero-based projection "involved a reallocation of existing funding only", and thus "reallocation, instead of funding increases". State's Objection at 3:12-14.

The State's other objection to the errata correction in paragraph 2 is that this court should delay that correction until later – arguing that Petitioners' only option is to first secure a Final Judgment based on the uncorrected Findings/Conclusions ¶245, and then tell the court about its mistake in Findings/Conclusions ¶245. That makes no sense. The inadvertent transposition of "reforms" and "additional money" in Findings/Conclusion ¶245 should be corrected when spotted. The only reason for doing otherwise is more delay.

Proposed Final Judgment Paragraph 3: The State's objections to paragraph 3 are similar.

The State claims no support is given for paragraph 3. But that's incorrect. Courtesy Copies Of Trial Transcript Pages Relating To Proposed Final Judgment Paragraphs 2 & 3 at Tab 3 (pages iv-xvi) (examples of the repeated trial testimony that one of the facts supporting the conclusion that the State is not making ample provision for the education of all children is the fact that State funding does not provide school districts with the resources to provide all children with a realistic or effective opportunity to become equipped with the basic knowledge and skills included within the substantive "education" mandated by Article IX, §1).

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The State's other objection is that this court should delay entering paragraph 3 until some later date. But as with paragraph 2, the State's demand for delay in entering paragraph 3 makes no sense – other than simply being another way to cause more delay.

Proposed Final Judgment Paragraph 4: The State objects that the last sentence of paragraph 4 is "neither necessary nor appropriate" under the *Seattle School District* ruling. That last sentence says "The court trusts that the Respondent State will abide by the court's ruling and this final judgment". But that sentence is entirely consistent with the assumption for which the State quotes the *Seattle School District* ruling – i.e., "the assumption that the Legislature will comply with the [court's] judgment and its constitutional duties" State's Objection at 5:21-22 (brackets in State's quotation of that case).

The State objects to the other parts of paragraph 4 because, to be blunt, they make it clear that this court's ruling requires the State to do more than simply "look busy".

If the State's interpretation of this court's ruling is correct, and "look busy" is in fact all that this court is requiring the State to do, then the alternative proposed by the State in the final paragraph of its Attachment A may be appropriate (State's proposed paragraph 3).

But if this court's judgment is stronger than simply a command to "look busy", then the stronger final paragraph proposed by the Petitioners is the appropriate paragraph to enter (Petitioners' proposed paragraph 4).

And while the State (correctly) points out that in the course of this court's Findings & Conclusions the court says it is ***not*** dictating ***how*** the State must cure its current violation of Article IX, §1 (manner and means), the State's point only confirms why the Final Judgment in this case should include this court's Findings & Conclusions in full. The State's point does not refute the appropriateness of the Final Judgment's final paragraph leaving no doubt that this court ***is*** mandating ***that*** the State must cure its current violation of Article IX, §1.

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RESPECTFULLY SUBMITTED this 23rd day of February, 2010.

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