

[Cite as *In re S.N.V.*, 2009-Ohio-4219.]

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

In re: :  
S.N.V., : No. 09AP-432  
(State of Ohio, : (C.P.C. No. 08JU-06-8104)  
Appellant). : (ACCELERATED CALENDAR)

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D E C I S I O N

Rendered on August 20, 2009

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*Ron O'Brien*, Prosecuting Attorney, and *Katherine J. Press*,  
for appellant.

*Angela Lloyd*, for appellee.

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APPEAL from the Franklin County Court of Common Pleas,  
Division of Domestic Relations, Juvenile Branch.

BROWN, J.

{¶1} The State of Ohio ("state"), appellant, appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, in which the court adopted the magistrate's decision that dismissed the state's complaint alleging chronic school truancy, in violation of R.C. 2152.02(F)(5), a minor misdemeanor.

{¶2} On June 5, 2008, the state filed a complaint, naming S.N.V., appellee, as the sole party and alleging S.N.V. to be delinquent for committing the offense of chronic

school truancy. On September 26, 2008, S.N.V. filed a motion to dismiss, alleging the state was required to file a complaint against both the juvenile and the juvenile's parents or guardians pursuant to R.C. 2152.021(A)(2). On April 27, 2009, the trial court granted S.N.V.'s motion and dismissed the state's complaint. The court concluded that R.C. 2152.021(A)(2) required that both parent and child be charged when the state seeks a delinquency charge of chronic truancy from school. The state appeals the judgment of the trial court, asserting the following assignment of error:

A COMPLAINT FILED PURSUANT TO R.C. §2152.02(F), ALLEGING THAT A CHILD IS DELINQUENT DUE TO HIS CHRONIC TRUANCY FROM SCHOOL, MAY BE FILED PURSUANT TO R.C. §2152.021(A)(1) WITH RESPECT TO THE CHILD ALONE. IN CHRONIC SCHOOL TRUANCY CASES THE STATE OF OHIO IS NOT REQUIRED TO PROCEED PURSUANT TO R.C. §2152.021(A)(2) WHICH PROVIDES AN ALTERNATIVE PROCEDURE IN WHICH TO PROSECUTE THE CHILD AND HIS PARENT OR GUARDIAN JOINTLY, ALLEGING THAT THE CHILD IS DELINQUENT FOR HIS FAILURE TO ATTEND SCHOOL AND THE PARENT OR GUARDIAN IS LIKEWISE CULPABLE, IN VIOLATION OF R.C. §3321.38, FOR FAILING TO CAUSE THE CHILD'S ATTENDANCE AT SCHOOL.

{¶3} The state argues in its assignment of error that the trial court erred when it granted S.N.V.'s motion to dismiss the state's complaint. The trial court dismissed the state's complaint based on insufficiency, concluding that the state's complaint failed to name S.N.V.'s parents in the complaint as required by R.C. 2152.021. To resolve the issue raised by the state, we must interpret R.C. 2152.021. An appellate court's review of the interpretation and application of a statute is a question of law subject to de novo review. *Akron v. Frazier* (2001), 142 Ohio App.3d 718. De novo review is independent

and without deference to the trial court's judgment. *In re J.L.*, 176 Ohio App.3d 186, 2008-Ohio-1488, ¶33.

{¶4} In construing R.C. 2152.021, our paramount concern is the legislative intent in enacting the statute. *State v. Buehler*, 113 Ohio St.3d 114, 2007-Ohio-1246, ¶29, citing *State ex rel. Steele v. Morrissey*, 103 Ohio St.3d 355, 2004-Ohio-4960, ¶21. In determining this intent, we first review the statutory language, reading words and phrases in context and construing them according to the rules of grammar and common usage. *Id.*, citing *Steele* at ¶21; R.C. 1.42. If the statutory text is unambiguous, we apply it. *State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, ¶13. An unambiguous statute must be applied in a manner consistent with the plain meaning of the statutory language. *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, ¶9.

{¶5} R.C. 2152.021 provides, in pertinent part:

(A)(1) Subject to division (A)(2) of this section, any person having knowledge of a child who appears to be a juvenile traffic offender or to be a delinquent child may file a sworn complaint with respect to that child in the juvenile court of the county in which the child has a residence or legal settlement or in which the traffic offense or delinquent act allegedly occurred. The sworn complaint may be upon information and belief, and, in addition to the allegation that the child is a delinquent child or a juvenile traffic offender, the complaint shall allege the particular facts upon which the allegation that the child is a delinquent child or a juvenile traffic offender is based.

\* \* \*

(2) Any person having knowledge of a child who appears to be a delinquent child for being an habitual or chronic truant may file a sworn complaint with respect to that child and the parent, guardian, or other person having care of the child in the juvenile court of the county in which the child has a residence or legal settlement or in which the child is supposed

to attend public school. The sworn complaint may be upon information and belief and shall contain the following allegations:

(a) That the child is a delinquent child for being a chronic truant or an habitual truant who previously has been adjudicated an unruly child for being a habitual truant and, in addition, the particular facts upon which that allegation is based;

(b) That the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code and, in addition, the particular facts upon which that allegation is based.

{¶6} Here, the trial court found R.C. 2152.021 requires the state, in every habitual or chronic school truancy-delinquency prosecution, to prosecute both the juvenile and his or her parent or guardian. The trial court reasoned that, although subsection (A)(1) permits any person to file a sworn complaint against only the child who appears to be a delinquent child, this section indicates it is "[s]ubject to division (A)(2)," which requires a person to file a complaint against both the juvenile and the parent or guardian when the delinquency is due to habitual or chronic truancy.

{¶7} We agree with the trial court's reading of R.C. 2152.021 and find its provisions unambiguous. A plain reading of subsection (A)(1) and (2) leads us to the conclusion that, when a person files a sworn complaint related to a child who appears to be a delinquent for being a chronic or habitual truant, the person must name both the child and parent or guardian. Subsection (A)(1) is a general provision that applies to all children who appear to be a juvenile traffic offender or delinquent, and it is specifically "subject to" the provisions in subsection (A)(2). "Subject to" has a plain and ordinary meaning. The phrase "subject to" has been defined as meaning contingent or conditional

upon. *Purdin v. Hitchcock* (Jan. 21, 1993), 4th Dist. No. CA 531, citing Webster's New World Dictionary (3d ed.1988). Thus, the provisions in subsection (A)(1) are conditional upon the provisions in subsection (A)(2). Unlike the general provisions of subsection (A)(1), subsection (2) is a specific provision that applies only to children who are delinquent for being habitual or chronic truants. Therefore, although both subsections (A)(1) and (2) apply to delinquent children, (A)(2) contains the additional parent/guardian filing requirements not found in (A)(1) for the subset of delinquent children who are delinquent due to habitual or chronic truancy. Accordingly, these two provisions conflict insofar as cases involving a certain class of delinquent children, i.e., those who are delinquent due to habitual or chronic truancy, have more filing requirements under (A)(2) than cases involving delinquent children due to reasons other than habitual or chronic truancy. When statutes conflict, the more specific provision controls over the more general provision. *Minster Farmers Coop. Exchange Co. v. Meyer*, 117 Ohio St.3d 459, 2008-Ohio-1259, ¶25. R.C. 1.51 also provides that, if a general provision irreconcilably conflicts with a special provision, the special provision prevails as an exception to the general provision. Here, according to these principles, the more specific provisions applying to children delinquent due to truancy in (A)(2) must control over the more general provisions applying to all delinquent children.

{¶8} After reading R.C. 2152.021(A)(2), it is clear to this court that the intent of the legislature was to require persons filing a complaint related to children who were delinquent for being habitual or chronic truants to file against both the child and the parent or guardian. Initially, (A)(2) specifically indicates that "[a]ny person having knowledge of a child who appears to be a delinquent child for being an habitual or chronic truant may file

a sworn complaint with respect to that child and the parent, guardian, or other person having care of the child." Thus, this provision plainly indicates that filing against the child and the parent or guardian is required. Subsection (A)(2) also goes on to provide that "[t]he sworn complaint \* \* \* shall contain" allegations that the child is a delinquent child for being a chronic truant or an habitual truant, and that the parent, guardian or other person having care of the child has failed to cause the child's attendance at school in violation of R.C. 3321.38. The word "shall" has been consistently interpreted to make mandatory the provision in which it is contained. *State v. Palmer*, 112 Ohio St.3d 457, 2007-Ohio-374, ¶19, citing *Lakewood v. Papadelis* (1987), 32 Ohio St.3d 1, 3-4, citing *Dorrian v. Scioto Conservancy Dist.* (1971), 27 Ohio St.2d 102, paragraph one of the syllabus. Thus, the "shall" language in (A)(2) also mandates that the complainant file the complaint against both the child and the parent or guardian.

{¶9} The state's arguments to the contrary are unpersuasive. The state contends that R.C. 2152.021(A)(1) and (2) are alternative methods of filing a truancy complaint. However, the language in (A)(2) is clear that its provisions apply to all delinquency complaints related to habitual or chronic truancy. It would be against the specific language of (A)(2) for a person to file a delinquency complaint under (A)(1) that related to habitual or chronic truancy. If the legislature had meant to permit a person to file a delinquency complaint for habitual or chronic truancy against either the child or the child and parent, it could have used much clearer language to do so, including words such as "alternatively" and "or." That the legislature chose the statutory structure and language it did is telling. Furthermore, to permit a habitual or chronic truancy-delinquency filing under (A)(1) would render meaningless the "[s]ubject to division (A)(2)" language found in

(A)(1). A basic rule of statutory construction requires that no words in statutes be ignored. *E. Ohio Gas Co. v. Pub. Utilities Comm.* (1988), 39 Ohio St.3d 295, 299. Moreover, no part of statutory language should be treated as superfluous unless that is manifestly required, and the court should avoid that construction that renders a provision meaningless. *State ex rel. Myers v. Bd. of Edn. of Rural School Dist. of Spencer Twp. Lucas Cty., Ohio* (1917), 95 Ohio St. 367, 372-73. Therefore, we find the state's argument that R.C. 2152.021(A)(1) and (2) are presented in the alternative is without merit.

{¶10} The state also argues that prosecutors have broad discretion to decide whom to prosecute and the strength of a case, and requiring prosecutors to file a complaint against both the allegedly delinquent truant child and the child's parent or guardian divests them of such discretion. The state also points to the principle that a prosecutor may not institute a complaint absent probable cause to believe that an offense is committed, and requiring a prosecutor to file a complaint against a parent or guardian of an allegedly delinquent truant would run counter to the law and the rules of professional conduct. The trial court agreed that the statute improperly impinges on the state's discretion as to whom should be charged, but found it did not interfere with the state's decision to proceed with a complaint once the decision to charge is made. The trial court also found that there exist sufficient prosecutorial alternatives to avoid a finding that the statute is unconstitutional. The trial court noted a child may be charged with an "unruly" offense of chronic school truancy, pursuant to R.C. 2152.02(F), without jointly prosecuting her/his parent or guardian. The trial court also noted the state may utilize its option to amend complaints that lack a parent or guardian co-defendant to reflect an unruly charge of chronic truancy. The court further explained that, while not a palatable

option, Juv.R. 29(F)(1) permits the filer to dismiss the complaint against the parent or guardian if the allegations remain unproven after the initial hearing. The trial court also observed that the state has at its disposal the provisions in R.C. 3319 and 3321.38 to pursue parents and guardians who fail to comply with the school attendance laws.

{¶11} The trial court went on to voice its opinion that it was incredibly disturbing that R.C. 2152.021(A)(2) had an inherent risk of propelling innocent citizens into unnecessary and costly litigation. The trial court opined it was wasteful of judicial time and prosecutorial resources to bring groundless claims against parents who had done everything in their power to compel their child's school attendance. The trial court noted parental monies would be needlessly squandered, parents would unnecessarily miss work, and many parents would require appointed counsel due to indigency. The trial court also acknowledged that, while most children's truancy hearings proceed uncontested, the vast majority of parents will likely contest their liability. We echo the trial court's sentiments in these respects, but also find the state's arguments unavailing for the reasons stated by the trial court. For all the above reasons, the trial court did not err when it dismissed the state's complaint against S.N.V. only, and the state's assignment of error is overruled.

{¶12} Accordingly, the state's single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is affirmed.

*Judgment affirmed.*

BRYANT and CONNOR, JJ., concur.

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