

IN RE INTEREST OF COLE J.

Caselaw No.

No. A-18-260

Filed on

Tuesday, February 26, 2019

Summary:

In this case the State filed a truancy petition, alleging that Cole, the juvenile, was habitually truant from school. Cole appeals from his adjudication as a juvenile within the meaning of Neb. Rev. Stat. § 43-247(3)(b) (Reissue 2016). Cole argues that the court erred in admitting evidence (log book of calls/contact) over his objections and relying on insufficient evidence when it found he was habitually truant. Court of Appeals affirmed the Lancaster County Juvenile Court's order.

Cole argued that the juvenile court should not have received exhibit 3, the log book, over his hearsay and foundation objections or received evidence of actions taken outside the time period alleged in the petition. Cole also argued that the court relied on insufficient evidence to adjudicate him.

At the adjudication hearing the State called two witnesses who both worked at Cole's high school: an attendance technician and a student advocate and truancy diversion coordinator. The witnesses established the missed days, the numerous attempts (phone calls and letters) to contact Cole's mother regarding the days missed. The witnesses also established that the mother was invited to the school collaborative meeting which she did not attend.

The Court found that sufficient foundation was laid by the State for the admission of exhibit 3, the log book, under the hearsay rule's exception for business records. The State, through witnesses, followed the three-part test. Namely the State established that 1. the activity recorded was of a type that regularly occurs in the course of the business' day-to-day activities, 2. the record was made as part of a regular business practice at or near the time of the event recorded and 3. the State authenticated the record by a custodian or other qualified witness.

While the Court agreed that the case was complicated by the State's decision to file the case immediately but then place Cole into a diversion program. The juvenile court recognized that the State had the burden to prove the allegations contained in the petition and clearly did not utilize any postpetition evidence against him in determining that the State had met its burden. Therefore, the juvenile court did not abuse its discretion in receiving postpetition evidence. The statutory obligation under section 43-276(2) was met and Cole was properly adjudicated as a juvenile within the meaning of section 43-247(3)(b) for being habitually truant from school.
