

SUPREME COURT OF PENNSYLVANIA

Theodore v. Delaware Valley School District, 575 Pa. 321

836 A.2d 76 (Pa. 2003) · Decided November 20, 2003

SUMMARY

The Supreme Court of Pennsylvania considered a challenge under Article I, Section 8 of the Pennsylvania Constitution to a school district policy requiring random, suspicionless drug and alcohol testing of students participating in extracurricular activities or holding parking permits. The court reviewed the case at the preliminary-objections stage and held that the policy could not be deemed constitutional as a matter of law, affirming reinstatement of the students' complaint so the case could proceed.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Castille; Cappy, C.J.; Castille, J.; Nigro, J.; Newman, J.; Saylor, J.; Eakin, J.; Lamb, J.
JURISDICTION	Pennsylvania
DECIDED	November 20, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Cross-appeal from an order of the Commonwealth Court reinstating the students' Pennsylvania constitutional challenge to the School District's drug-testing policy while affirming dismissal of the parents' claims. The case reached the Supreme Court of Pennsylvania after the trial court sustained preliminary objections in the nature of a demurrer and dismissed the complaint.
STANDARD OF REVIEW	Plenary review of the legal sufficiency of a complaint and the constitutionality of the policy. On preliminary objections in the nature of a demurrer, properly pleaded material facts and reasonable inferences are admitted, and a demurrer may be sustained only when it is clear that the plaintiff is not entitled to relief as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Delaware Valley School District, Louis Theodore, Mary Ellen Theodore, Jennifer Lynn Theodore, Louis Theodore and Mary Ellen Theodore, as natural guardians of Kimberly Ann Theodore v. Louis

Theodore, Mary Ellen Theodore, Jennifer Lynn Theodore, Louis Theodore and Mary Ellen Theodore, as natural guardians of Kimberly Ann Theodore, Delaware Valley School District

TOPICS

procedural due process appellate procedure standard of review civil procedure constitutional law

PRACTICE AREAS

constitutional law civil procedure education law appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court could sustain preliminary objections and hold Policy 227 constitutional as a matter of law under Article I, Section 8 of the Pennsylvania Constitution.
2. Whether Pennsylvania's heightened privacy protections require a school district defending a suspicionless drug-testing program to make an actual showing of a specific need for the policy and explain why the policy would address that need.
3. Whether the parents' claims concerning mandatory counseling and disclosure of positive test results were ripe when both students tested negative.

HOLDINGS

1. No. Policy 227 could not be deemed constitutional on its face at the preliminary-objections stage because the District had not shown a specific need for targeting the covered students or explained why the testing program would effectively address that need.
2. No. Generic concerns about drug use among schoolchildren, without factual support concerning the particular school district and the efficacy of the selected testing program, do not alone justify suspicionless drug testing under Article I, Section 8.
3. No. The parents' claims were abstract and unripe because both students tested negative and therefore had not been subjected to the challenged counseling, intervention, or disclosure consequences.

KEY QUOTATIONS

“We hold that those generic factors alone do not justify any and all drug testing programs for purposes of Article I, Section 8.” (836 A.2d at 95)

“In light of the nature of the intrusion authorized by Policy 227 and the heightened right to privacy recognized under the Pennsylvania Constitution, we hold that such a search policy will pass constitutional scrutiny only if the District makes some actual showing of the specific need for the policy and an explanation of its basis for believing that the policy would address that need.” (836 A.2d at 92)

FACTUAL BACKGROUND

Delaware Valley School District adopted Policy 227 requiring middle and high school students who participated in voluntary extracurricular activities or sought school parking privileges to consent to breath, urine, and blood testing for alcohol and controlled substances. The policy authorized initial, random, reasonable-suspicion, return-to-activity, and follow-up testing, with refusal treated as a positive result and positive results triggering counseling, additional testing, and suspension from activities or parking privileges. Jennifer and Kimberly Theodore were tested because of their extracurricular participation and parking privilege; both tests were negative. The District's pleadings identified no documented drug problem involving the targeted students or an active drug crisis in the District beyond a newspaper report of one heroin-related arrest and several marijuana arrests.

PROCEDURAL HISTORY

The parents sued to enjoin Policy 227, which required students participating in extracurricular activities or holding parking permits to consent to random, suspicionless drug and alcohol testing. The Court of Common Pleas of Pike County dismissed the complaint, ruling that the policy was constitutional as a matter of law and rejecting the parental-rights claims. The Commonwealth Court, sitting en banc, reinstated the students' Article I, Section 8 claim but affirmed dismissal of the parental-rights claims. The Supreme Court affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The students' Article I, Section 8 challenge proceeds for further factual development. The parental-rights claims remain dismissed as unripe.

CASES CITED

- Kohler v. McCrory Stores, 532 Pa. 130, 615 A.2d 27 (1992)
- Small v. Horn, 554 Pa. 600, 722 A.2d 664 (1998)
- Lampus v. Lampus, 541 Pa. 67, 660 A.2d 1308 (1995)
- Purple Orchid v. Pennsylvania State Police, 572 Pa. 171, 813 A.2d 801 (2002)
- Pennsylvania School Boards Association, Inc. v. Commonwealth Association of School Administrators, 569 Pa. 436, 805 A.2d 476 (2002)
- Phillips v. A-Best Products Co., 542 Pa. 124, 665 A.2d 1167 (1995)
- In re F.B., 555 Pa. 661, 726 A.2d 361 (1999)
- Commonwealth v. Cass, 551 Pa. 25, 709 A.2d 350 (1998)
- Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls, 536 U.S. 822 (2002)
- Vernonia School District 47J v. Acton, 515 U.S. 646 (1995)
- New Jersey v. T.L.O., 469 U.S. 325 (1985)
- National Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989)

- *Skinner v. Railway Labor Executives' Association*, 489 U.S. 602 (1989)
- *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969)
- *Terry v. Ohio*, 392 U.S. 1 (1968)
- *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976)
- *Commonwealth v. Glass*, 562 Pa. 187, 754 A.2d 655 (2000)
- *Commonwealth v. Waltson*, 555 Pa. 223, 724 A.2d 289 (1998)
- *Commonwealth v. Edmunds*, 526 Pa. 374, 586 A.2d 887 (1991)
- *Pap's A.M. v. City of Erie*, 571 Pa. 375, 812 A.2d 591 (2002)
- *Joye v. Hunterdon Central Regional High School Board of Education*, 176 N.J. 568, 826 A.2d 624 (2003)
- *Olmstead v. United States*, 277 U.S. 438 (1928)
- *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943)
- *Linke v. Northwestern School Corp.*, 763 N.E.2d 972 (Ind. 2001)
- *Trinidad School District No. 1 v. Lopez*, 963 P.2d 1095 (Colo. 1998)