

SUPREME COURT OF GEORGIA

In re D.H., a child

663 S.E.2d 139 (Ga. 2008) · No. No. S08A0011 · Decided June 2, 2008

SUMMARY

The Supreme Court of Georgia affirmed a juvenile delinquency adjudication under OCGA § 20-2-1181 for disrupting or interfering with the operation of a public school. The court held that the statute was not unconstitutionally vague and declined to consider the appellant’s overbreadth challenge because it had not been properly raised in the trial court.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Sears, Chief Justice
JURISDICTION	Georgia
DECIDED	June 2, 2008
DOCKET	No. S08A0011
DISPOSITION	affirmed
PROCEDURAL POSTURE	D.H., a thirteen-year-old juvenile, appealed the trial court's adjudication that she committed the delinquent offense of disrupting a public school and the resulting probation disposition. She challenged the constitutionality of OCGA § 20-2-1181 as vague and overbroad.
STANDARD OF REVIEW	Constitutional challenges to statutes are reviewed under the applicable constitutional standard; a constitutional challenge not directly and properly made in the trial court and distinctly ruled upon is procedurally barred on appeal.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia; precedential.
PARTIES	D.H. v. The State of Georgia

TOPICS

- void for vagueness
- overbreadth doctrine
- preservation of error
- appellate procedure
- statutory interpretation

PRACTICE AREAS

- constitutional law
- juvenile delinquency
- education law
- appellate procedure

QUESTIONS PRESENTED

1. Whether OCGA § 20-2-1181 is unconstitutionally vague because the terms "disrupt" and "interfere" are undefined.
2. Whether D.H. could raise on appeal an overbreadth challenge asserting that OCGA § 20-2-1181 punishes protected speech and conduct when that challenge was not properly raised or ruled upon in the trial court.

HOLDINGS

1. OCGA § 20-2-1181 is not unconstitutionally vague because the phrase "disrupt or interfere with the operation of any public school" uses words of ordinary meaning that provide fair notice of the conduct prohibited and sufficient guidance against arbitrary or discriminatory enforcement.
2. D.H. was procedurally barred from raising her overbreadth challenge on appeal because she did not identify overbreadth, protected speech or conduct, or the First Amendment in the trial court, and the trial court therefore did not distinctly rule on that challenge.

KEY QUOTATIONS

"A law may be unconstitutionally vague if it fails to provide the kind of notice that will enable ordinary people to conform their conduct to the law or if it fails to provide sufficient guidelines to govern the conduct of law enforcement authorities, thus making the law susceptible to arbitrary and discriminatory enforcement." (140)

"To properly raise a constitutional challenge to a statute, the party attacking the statute must show three things: "(1) [T]he statute or the particular part or parts of the statute which the party would challenge must be stated or pointed out with fair precision; (2) the provision of the Constitution which it is claimed has been violated must be clearly designated; and (3) it must be shown wherein the statute, or some designated part of it, violates such constitutional provision."" (141)

FACTUAL BACKGROUND

D.H. became boisterous, irate, and very loud during class, causing classroom activity to stop until she was removed. At the principal's office, she continued to act loudly and disrespectfully, refused to comply with the principal's requests, and left the office approximately five times, requiring school personnel to locate and return her. The trial court adjudicated her delinquent for disrupting a public school.

PROCEDURAL HISTORY

The trial court found D.H. delinquent after evidence that she disrupted classroom activity, remained loud and disrespectful in the principal's office, and repeatedly left despite instructions to remain. The court rejected her vagueness challenge and placed her on probation in her own home. On appeal, the Supreme Court of Georgia affirmed, holding that the vagueness challenge failed on the merits and that the overbreadth challenge was procedurally barred because it was not properly raised below.

DISPOSITION

affirmed

CASES CITED

- City of Chicago v. Morales, 527 U.S. 41, 56-62 (1999)
- State v. Fielden, 280 Ga. 444, 629 S.E.2d 252 (2006)
- Grayned v. City of Rockford, 408 U.S. 104, 108-112 (1972)
- Cameron v. Johnson, 390 U.S. 611, 616 (1968)
- Houston v. Hill, 482 U.S. 451, 453-467 (1987)
- In the Interest of J.R.R., 281 Ga. 662, 641 S.E.2d 526 (2007)
- Brewer v. State of Ga., 281 Ga. 283, 285, 637 S.E.2d 677 (2006)
- DeKalb County v. Post Properties, 245 Ga. 214, 218, 263 S.E.2d 905 (1980)
- Richmond Concrete Products Co. v. Ward, 212 Ga. 773, 774, 95 S.E.2d 677 (1956)
- Cooper v. State, 277 Ga. 282, 284, 587 S.E.2d 605 (2003)
- Wallin v. State, 248 Ga. 29, 30, 279 S.E.2d 687 (1981)

OPINION

PER CURIAM.

663 S.E.2d 139 (2008) In re D.H., a child. No. S08A0011. Supreme Court of Georgia. June 2, 2008. Jessica D. Huff, Greenville, Jerry F. Pittman, Carrollton, for appellant. Peter J. Skandalakis, Dist. Atty., Robert N. Peterkin, Asst. Dist. Atty., for appellee. SEARS, Chief Justice.

The appellant, thirteen-year-old D.H., appeals from the trial court's judgment that she had committed the delinquent offense of disrupting a public school under OCGA § 20-2-1181. On appeal, D.H. contends that OCGA § 20-2-1181 is unconstitutionally vague and overbroad.

For the reasons that follow, we affirm. 1. The evidence of record shows that D.H. became boisterous, irate, and "very loud" in a class and that the classroom activity had to stop until D.H. was removed. There was also evidence that, when D.H. was taken to the principal's office, she continued to be loud, boisterous, and disrespectful.

The school principal testified that D.H. refused to comply with anything that he asked her to do, and that, although he requested *140 that she remain in his office, D.H. left the office about five times, causing the principal and other staff members to stop what they were doing, "figure out where she was going and get her back to the office." Following the conclusion of testimony, D.H.'s attorney raised a constitutional challenge to OCGA § 20-2-1181 that consisted, in total, of his statement that the statute was unconstitutionally vague.

The trial court ruled against that challenge, found that D.H. was a delinquent juvenile, and placed her on probation in her own home subject to the supervision and direction of a juvenile probation

specialist. 2. OCGA § 20-2-1181 provides, in relevant part, that "[i]t shall be unlawful for any person to disrupt or interfere with the operation of any public school....

Any person violating this Code section shall be guilty of a misdemeanor of a high and aggravated nature." D.H. contends that the statute is unconstitutionally vague, as the terms "disrupt" and "interfere" are not defined.

We disagree. A law may be unconstitutionally vague if it fails to provide the kind of notice that will enable ordinary people to conform their conduct to the law or if it fails to provide sufficient guidelines to govern the conduct of law enforcement authorities, thus making the law susceptible to arbitrary and discriminatory enforcement.[1] In *Fielden*, we addressed a vagueness challenge to a statute that made it unlawful to, among other things, "prevent or disrupt a lawful meeting." [2] We concluded that the natural and obvious meaning of the language used in the statute was sufficiently definite to warn persons of ordinary intelligence of the conduct that was prohibited and that the statute was not subject to arbitrary and discriminatory enforcement.[3] We reach the same conclusion in this case and conclude that the phrase "disrupt or interfere with the operation of any public school" contains words of ordinary meaning that give fair notice as to the statute's application.[4] Accordingly, we affirm the trial court's ruling that the statute is not unconstitutionally vague.

3. D.H. also contends that the statute is overbroad in that it punishes speech and behavior protected by the First Amendment, such as the discussion of political issues or the handing out of pamphlets on school property.[5] Because D.H. did not properly raise this constitutional challenge before the trial court, D.H. is procedurally barred from raising it on appeal.

We have held that we will not pass upon the constitutionality of a statute when the challenge was not directly and properly made in the trial court and distinctly ruled on by the trial court.[6] To properly raise a constitutional challenge to a statute, the party attacking the statute must show three things: "(1) [T]he statute or the particular part or parts of the statute which the party would challenge must be stated or pointed out with fair precision; (2) the provision of the Constitution which it is claimed has been violated must be clearly designated; and (3) it must be shown wherein the statute, or *141 some designated part of it, violates such constitutional provision." [7] In the present case, D.H. did not contend that the statute was overbroad, did not contend that the statute could improperly punish protected conduct and speech, and did not refer to the First Amendment in making her challenge.

Under the foregoing standards for asserting constitutional challenges to a statute, D.H.'s reference to vagueness was insufficient to raise the overbreadth challenge she now asserts on appeal.[8] Judgment affirmed. All the Justices concur. NOTES [1] *City of Chicago v. Morales*, 527 U.S. 41, 56-62, (119 S. Ct. 1849, 144 L. Ed. 2d 67 (1999)); *State v. Fielden*, 280 Ga. 444, 444-445, 629 S.E.2d 252 (2006).

[2] Fielden, 280 Ga. at 444, 629 S.E.2d 252, quoting OCGA § 16-11-34(a). [3] Fielden, 280 Ga. at 444-445, 629 S.E.2d 252. [4] See Fielden, 280 Ga. at 444-445, 629 S.E.2d 252; Grayned v. City of Rockford, 408 U.S. 104, 108-112, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972) (school anti-noise ordinance not unconstitutionally vague, as ordinance, as a whole, clearly prohibits noisy or diversionary activity that disrupts normal school activity); Cameron v. Johnson, 390 U.S. 611, 616, 88 S. Ct.

1335, 20 L. Ed. 2d 182 (1968) (statute that prohibited "picketing... in such a manner as to obstruct or unreasonably interfere with free ingress or egress to and from any... county... courthouses" not unconstitutionally vague).

[5] Fielden, 280 Ga. at 445, 629 S.E.2d 252 (even if statute is clear about what it prohibits, it can be unconstitutionally overbroad under First Amendment if it stifles expression or conduct); Houston v. Hill, 482 U.S. 451, 453-467, 107 S. Ct. 2502, 96 L. Ed. 2d 398 (1987) (ordinance that is not vague may be struck down as overbroad under First Amendment).

[6] In the Interest of J.R.R., 281 Ga. 662-663, 641 S.E.2d 526 (2007); Brewer v. State of Ga., 281 Ga. 283, 285, 637 S.E.2d 677 (2006). [7] DeKalb County v. Post Properties, 245 Ga. 214, 218, 263 S.E.2d 905 (1980) (quoting Richmond Concrete Products Co. v. Ward, 212 Ga. 773, 774, 95 S.E.2d 677 (1956)). Accord Cooper v. State, 277 Ga. 282, 284, 587 S.E.2d 605 (2003); Wallin v. State, 248 Ga. 29, 30, 279 S.E.2d 687 (1981).

[8] Id.