

SUPREME COURT OF VIRGINIA

Commonwealth of Virginia, et al. v. John Doe, 278 Va. 223

682 S.E.2d 906 (2009) · No. Record No. 081691 · Decided September 18, 2009

SUMMARY

The Supreme Court of Virginia interpreted Code § 18.2-370.5(B), which permits courts to lift the statutory prohibition against convicted violent sex offenders entering school property. The court held that lifting the statutory ban does not eliminate a public school board's constitutional supervisory authority to decide whether and under what conditions the offender may enter. The court reversed and remanded for a determination whether, and to what extent, the ban should be lifted.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Barbara Milano Keenan; All the Justices
JURISDICTION	Virginia
DECIDED	September 18, 2009
DOCKET	Record No. 081691
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Commonwealth, the Charlottesville City School Board, and the Charlottesville City Schools superintendent appealed from a circuit court order permitting a convicted violent sex offender to enter public school property under specified conditions. The Supreme Court of Virginia granted the Commonwealth's petition for appeal.
STANDARD OF REVIEW	De novo review of the statutory-construction and constitutional issue.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Virginia
PARTIES	Commonwealth of Virginia, Charlottesville City School Board, Superintendent of the Charlottesville City Schools v. John Doe

TOPICS

- statutory interpretation
- constitutional law
- legislative intent
- absurdity doctrine
- appellate procedure

PRACTICE AREAS

- statutory interpretation
- constitutional law
- education law
- criminal law

QUESTIONS PRESENTED

1. Whether Code § 18.2-370.5(B) authorizes a court to give a convicted violent sex offender an enforceable right to enter public school property despite a contrary decision by the local school board.
2. Whether Code § 18.2-370.5(B) should instead be construed to permit a court to lift the statutory prohibition in whole or in part while preserving the school board's constitutional authority under Article VIII, Section 7, of the Virginia Constitution to determine whether and under what circumstances the offender may enter school property.

HOLDINGS

1. Code § 18.2-370.5(B) authorizes a court to lift the statutory ban on a convicted violent sex offender's entry onto school property, in whole or in part and subject to specified limits, but it does not authorize the court to compel a public school board or private school or day-care proprietor to admit the offender. After the statutory ban is lifted, the affected school board or private entity retains authority to decide whether and under what circumstances the offender may enter.

KEY QUOTATIONS

“The essential deficiency in Doe's analysis is that it improperly invokes the police power of the legislature to impose the presence of a violent sex offender on public school property.” (278 Va. at 229)

“Once a circuit court has lifted the ban imposed by Code § 18.2-370.5(A), the school board would be permitted to determine whether, and under what circumstances, an offender may enter onto school property.” (278 Va. at 230)

FACTUAL BACKGROUND

In 1999, John Doe was convicted of two counts of taking indecent liberties with a child while in a custodial or supervisory relationship, offenses classified as sexually violent offenses. After his release and completion of probation, Doe petitioned to enter Charlottesville public school property for activities involving his stepson. The circuit court granted limited permission, subject to advance notice, school-administration conditions, and restrictions on the purposes and timing of his presence.

PROCEDURAL HISTORY

John Doe petitioned the Circuit Court for the City of Charlottesville under Code § 18.2-370.5(B) for permission to enter Charlottesville public school property to attend events involving his stepson. The circuit court granted the petition and imposed conditions governing Doe's access. The Supreme Court of Virginia reversed and remanded for determination whether, and under what circumstances, the statutory ban should be lifted.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court must determine whether, and under what circumstances, the statutory ban applicable to Doe should be lifted in whole or in part, while preserving the affected school board's authority to decide whether and under what circumstances Doe may enter school property.

CASES CITED

- *Kopalchick v. Catholic Diocese of Richmond*, 274 Va. 332, 340, 645 S.E.2d 439, 443 (2007)
- *Jeffress v. Stith*, 241 Va. 313, 317, 402 S.E.2d 14, 16 (1991)
- *Tanner v. City of Virginia Beach*, 277 Va. 432, 438-39, 674 S.E.2d 848, 852 (2009)
- *In re Phillips*, 265 Va. 81, 85-86, 574 S.E.2d 270, 272 (2003)
- *Marshall v. Northern Virginia Transp. Auth.*, 275 Va. 419, 428, 657 S.E.2d 71, 75 (2008)
- *Yamaha Motor Corp. v. Quillian*, 264 Va. 656, 665, 571 S.E.2d 122, 127 (2002)
- *Eaton v. Davis*, 176 Va. 330, 339, 10 S.E.2d 893, 897 (1940)
- *Ocean View Improvement Corp. v. Norfolk & W. Ry. Co.*, 205 Va. 949, 955, 140 S.E.2d 700, 704 (1965)
- *H.L. Carpel of Richmond, Inc. v. City of Richmond*, 162 Va. 833, 840, 175 S.E. 316, 318 (1934)
- *Conyers v. Martial Arts World of Richmond, Inc.*, 273 Va. 96, 104, 639 S.E.2d 174, 178 (2007)
- *Cummings v. Fulghum*, 261 Va. 73, 77, 540 S.E.2d 494, 496 (2001)