

SUPREME COURT OF OHIO

DeRolph v. State, 94 Ohio St. 3d 40

760 N.E.2d 452 (Ohio 2001) · Decided December 13, 2001

SUMMARY

The Ohio Supreme Court rejects the State’s objections to the participants and counsel identified for a court-ordered settlement conference in the DeRolph school-funding litigation. The court holds that the State waived objections to separate counsel for certain officials, explains that mediation is distinct from litigation and should include representatives of relevant legislative interests, and denies the Attorney General’s request for a status conference.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Moyer, C.J.; Douglas, J.; Pfeifer, J.; Resnick, J.; Cook, J.; F.E. Sweeney, J.; Lundberg Stratton, J.
JURISDICTION	Ohio
DECIDED	December 13, 2001
DISPOSITION	other
PROCEDURAL POSTURE	After referring the case to a court-ordered settlement conference and mediation, the state sought clarification of the court's order, challenged the designated participating counsel and parties, and requested a status conference.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of Ohio, Ohio Board of Education, Ohio Superintendent of Public Instruction, Ohio Department of Education v. DeRolph plaintiffs

TOPICS

appellate procedure waiver civil procedure

PRACTICE AREAS

civil procedure alternative dispute resolution constitutional law education law appellate procedure

QUESTIONS PRESENTED

1. Whether the state waived its objection to the separate appearance and representation of the Governor, legislative leaders, and minority-party representatives.
2. Whether a court-ordered settlement conference under S.Ct.Prac.R. XIV(6) is a litigation proceeding that restricts participation to formal parties and their governmental counsel.
3. Whether representatives of the Governor, majority and minority legislative interests, and other stakeholders could appropriately participate in the court-ordered mediation.
4. Whether the Attorney General's request for a status conference should be granted.

HOLDINGS

1. The state waived its right to challenge the separate appearance of the officials and representatives identified in the court's mediation order because it had acquiesced in those attorney-client designations for approximately six years and had accepted the benefits of separate amicus appearances.
2. A court-ordered settlement conference under S.Ct.Prac.R. XIV(6) is a separate and independent alternative-dispute-resolution mechanism and is not litigation.
3. It was appropriate to include the Governor, legislative leaders, and a representative of the legislative minority in the mediation because the State of Ohio includes the General Assembly and effective resolution of a public-policy dispute requires representation of stakeholders with authority or influence to implement a settlement.
4. The Attorney General could not represent both the state officials supporting the defendants' position and minority-party representatives supporting the plaintiffs' position at the same time if doing so created an unacceptable conflict of interest.
5. The Attorney General's request for a status conference was denied at that time.

KEY QUOTATIONS

“Mediation is not litigation.” (44)

“A vital component of mediation of public-policy disputes is that those with authority to implement a settlement agreement must be fully represented at the mediation table.” (45)

FACTUAL BACKGROUND

The court had ordered mediation in the long-running DeRolph school-funding litigation and identified representatives and counsel to participate. The Attorney General objected that only she, assistant attorneys general, or appointed special counsel could represent state entities and argued that including amici and minority-party legislators improperly altered party status or divided the General Assembly. The record showed that elected officials and legislative representatives had appeared through separate counsel in the litigation for approximately six years without a timely objection, and that the Attorney General had previously accepted separate appearances supporting the state's position.

PROCEDURAL HISTORY

The Supreme Court of Ohio had ordered the cause referred to a settlement conference under S.Ct.Prac.R. XIV(6) and identified parties, counsel, and potential master commissioners. The state challenged the participation of counsel for the Governor, legislative leaders, and minority-party legislators, argued that amici should not participate, and requested a status conference. The court rejected the challenges, found the objection to certain separate counsel waived, and denied the status-conference request.

DISPOSITION

other

CASES CITED

- DeRolph v. State, 93 Ohio St. 3d 628, 758 N.E.2d 1113 (Ohio 2001)
- DeRolph v. State, 93 Ohio St. 3d 309, 754 N.E.2d 1184 (Ohio 2001)
- DeRolph v. State, 78 Ohio St. 3d 193, 677 N.E.2d 733 (Ohio 1997)
- Minneapolis Branch of the NAACP v. Minnesota and Xiong v. Minnesota, Hennepin Cty. Dist. Ct. Nos. 95-14800 and 98-2816 (consolidated) (2000)