

SUPREME COURT OF VERMONT

Venturella v. Addison-Rutland Supervisory Union

2010 VT 115 (2010) · No. 2009-344 · Decided December 15, 2010

SUMMARY

The Vermont Supreme Court affirmed a judgment for the defendant school district in a peer-harassment case. The court held that the plaintiffs and amicus curiae failed to preserve their challenges to the jury instructions under Vermont Rule of Civil Procedure 51(b). The court also declined to apply plain-error review because the appeal concerned compensatory damages for past conduct rather than a fundamental right requiring such review.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Paul L. Reiber, Chief Justice; John A. Dooley, Associate Justice; Denise R. Johnson, Associate Justice; Marilyn S. Skoglund, Associate Justice; Brian L. Burgess, Associate Justice
JURISDICTION	Vermont
DECIDED	December 15, 2010
DOCKET	2009-344
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed the superior court's judgment entered on a jury verdict for the defendant school district in a peer-harassment case. The Vermont Human Rights Commission participated as amicus curiae and presented the appellate arguments. Plaintiffs challenged the jury instructions, but the Supreme Court concluded that the challenges were not preserved.
STANDARD OF REVIEW	The Supreme Court ordinarily does not review issues not raised below. Under Vermont Rule of Civil Procedure 51(b), a party must object to a jury instruction before the jury retires, distinctly state the matter and grounds of the objection, and renew the objection after the charge. Plain-error review in civil cases is limited to claims involving deprivation of fundamental rights or, in a quasi-criminal probation hearing, a liberty interest.
PRECEDENTIAL VALUE	precedential

PARTIES

Frank Venturella, Sr., et al., Vermont Human Rights Commission,
amicus curiae v. Addison-Rutland Supervisory Union, et al.

TOPICS

preservation of error appellate procedure civil rights civil procedure

PRACTICE AREAS

Appellate procedure Civil procedure Education law Civil rights

QUESTIONS PRESENTED

1. Whether plaintiffs preserved their challenge to the jury's definition of harassment.
2. Whether plaintiffs preserved their challenge to the jury instruction requiring contextual consideration of the age of the students engaging in the alleged harassment.
3. Whether the alleged instructional errors qualified for plain-error review because the case implicated a fundamental right to public education.

HOLDINGS

1. The challenge was not preserved because plaintiffs agreed with the trial court's proposed definition at the charge conference and did not object to that definition after the jury was instructed.
2. The contextualization challenge was not preserved because the objection made below challenged the use of Title IX-based language, whereas the appellate argument challenged how the instruction required the jury to contextualize the alleged harassment and objectively assess the victims' reactions.
3. Plain-error review was unavailable because the appeal concerned compensatory damages for past conduct, not a prospective deprivation of a fundamental right or interest of the kind recognized in *Varnum*.

KEY QUOTATIONS

“To preserve an issue related to jury instructions on appeal, the objecting party must also renew any objection made during the charge conference after the court instructs the jury.” (¶ 5)

*“Access to compensatory damages, even for alleged deprivation of or interference with the right to public education, is not the kind of fundamental right we recognized in *Varnum*.”* (¶ 12)

“Under these circumstances, the failure of plaintiffs to preserve their claims of error in the jury instructions is an absolute bar to judicial review of these alleged errors.” (¶ 12)

FACTUAL BACKGROUND

Two children alleged that they had been harassed by peers at school and sought compensatory damages from the defendant school district. The jury was instructed that plaintiffs had to prove harassment that was severe, pervasive, and objectively offensive and that deprived them of access to educational opportunities or benefits.

The jury found that plaintiffs failed to meet that standard. Plaintiffs later challenged the harassment definition and the instruction requiring the jury to consider the age of the students engaging in the conduct.

PROCEDURAL HISTORY

A jury found that plaintiffs had not proved harassment so severe, pervasive, and objectively offensive that it deprived them of access to educational opportunities or benefits. The superior court entered judgment for the school district. On appeal, plaintiffs and the Vermont Human Rights Commission challenged the definition and contextualization portions of the jury instructions. The Supreme Court affirmed because neither challenge was properly preserved under Vermont Rule of Civil Procedure 51(b), and plain-error review was unavailable.

DISPOSITION

affirmed

CASES CITED

- Washington v. Pierce, 2005 VT 125, 179 Vt. 318, 895 A.2d 173
- Davis v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 651 (1999)
- Follo v. Florindo, 2009 VT 11, ¶ 14, 185 Vt. 390, 970 A.2d 1230
- Schaad v. Bell Atl. NYNEX Mobile, Inc., 173 Vt. 629, 631, 800 A.2d 455, 458 (2002) (mem.)
- Winey v. William E. Dailey, Inc., 161 Vt. 129, 137-38, 636 A.2d 744, 750 (1993)
- Varnum v. Varnum, 155 Vt. 376, 383, 586 A.2d 1107, 1111 (1990)
- Osier v. Osier, 410 A.2d 1027, 1029 (Me. 1980)

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