

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002555-MR

DOUGLAS MORRIS

APPELLANT

v. APPEAL FROM JESSAMINE CIRCUIT COURT
HONORABLE ROBERT J. JACKSON, JUDGE
ACTION NO. 98-CR-000013

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: COMBS, EMBERTON, and GUIDUGLI, Judges.

COMBS, JUDGE: The appellant, Douglas Morris, appeals from the judgment of the Jessamine Circuit Court convicting him of three counts of trafficking in a controlled substance within 1,000 yards of a school. Having reviewed the record on appeal, we affirm the judgment of the circuit court.

On January 16, 1998, Morris was indicted by the Jessamine County Grand Jury for five counts of trafficking in a controlled substance within 1,000 yards of the ABC Learning Tree Montessori School. (KRS 218A.1411). He entered a plea of not guilty and moved the court to dismiss the charges against him, arguing that the ABC Learning Tree Montessori School is not a

"school" within the meaning of KRS 218A.1411. After conducting an evidentiary hearing on the matter, the court entered an order finding that the ABC Learning Tree Montessori School was a school as used in KRS 218A.1411.

On September 2, 1998, Morris filed a petition to enter a conditional plea of guilty to three counts of trafficking in a controlled substance within 1,000 yards of a school. He reserved the right to appeal the issue of whether the ABC Learning Tree Montessori School constituted a "school." The court entered an order on September 30, 1998, accepting Morris's guilty plea and sentencing him to a total sentence of one and one-half years' imprisonment; the two other counts against Morris were dismissed. This appeal followed.

KRS 218A.1411 provides:

Any person who unlawfully traffics [sic] in a controlled substance classified in Schedules I, II, III, IV or V, or a controlled substance analogue in any building used primarily for classroom instruction in a school or on any premises located within one thousand (1,000) yards of any school building used primarily for classroom instruction shall be guilty of a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply. The measurement shall be taken in a straight line from the nearest wall of the school to the place of violation.

Morris argues on appeal that the ABC Learning Tree is a daycare facility and that it is not a "school" as contemplated by KRS 218A.1411. He also contends that the building in which the ABC Learning Tree is located is not used primarily for classroom instruction. Morris maintains that KRS 218A.1411 is not applicable to the facts of his case and, therefore, that the

court erred in denying his motion to dismiss the charges against him. We disagree.

Absent specific statutory definition, we must construe the words of a statute according to their common usage. Kentucky Unemployment Insurance Commission v. Jones, Ky. App., 809 S.W.2d 715 (1991). Statutory language must be accorded its literal meaning "unless to do so would lead to an absurd or wholly unreasonable result." Id. at 716. "All words and phrases shall be construed according to the common and approved usage of language . . ." KRS 446.080(4). Furthermore,

our duty is to ascertain and give effect to the intent of the General Assembly. We are not at liberty to add or subtract from the legislative enactment nor discover meaning not reasonably ascertainable from the language used.

Beckham v. Board of Education of Jefferson County, Ky., 873 S.W.2d 575, 577 (1994).

In Sanders v. Commonwealth, Ky. App., 901 S.W.2d 51 (1995), this court rejected the appellant's contention that KRS 218A.1411 should be read to apply only to elementary and secondary schools. We held that the legislature has chosen to use the generic term "school," which must be given its ordinary meaning. In Webster's II New College Dictionary, 988 (1985), the definition of "school" includes "an institution for the instruction of children." We hold that the ABC Learning Tree falls within this expansive definition of "school".

The ABC Learning Tree is a certified Montessori school and a licensed daycare facility. Dara Hensley, the proprietor of the ABC Learning Tree, testified that the school provides

educational instruction to children between the ages of 2 and 8 years of age. The school follows an educational curriculum, which includes lessons in the subjects of geography, science, and math. There is also kindergarten at the school. An educational program is followed until around 2:30 p.m., at which time the ABC Learning Tree provides after-school care. The after-school program is based upon the Montessori philosophy but does not follow a specific educational curriculum. The record amply establishes that the ABC Learning School is "school" based upon the common and ordinary usage of the word and that it is used primarily for classroom instruction.

Based upon the foregoing reasons, we affirm the judgment of the Jessamine Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Christopher L. Thomas
Nicholasville, KY

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky

Anitria M. Franklin
Assistant Attorney General
Frankfort, KY