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Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002514-MR

COMMONWEALTH OF KENTUCKY, EX REL,
ALBERT B. CHANDLER, III, ATTORNEY GENERAL APPELLANT

v.

APPEAL FROM GARRARD CIRCUIT COURT
HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 01-CI-00062

GREG CRUTCHFIELD APPELLEE

OPINION

AFFIRMING

** ** ** ** **

BEFORE: BAKER, BARBER, and JOHNSON, JUDGES.

BAKER, JUDGE. The Commonwealth of Kentucky, ex rel, Albert B. Chandler, III, Attorney General, (the Commonwealth) brings this appeal from an October 26, 2001, summary judgment of the Garrard Circuit Court. We affirm.

In November 2000, Greg Crutchfield was elected a member of the Garrard County Board of Education and assumed the office of school board member in January 2001.

On March 21, 2001, the Commonwealth filed a complaint seeking the ouster of Crutchfield from office. Kentucky Revised Statute (KRS) 415.060. Therein, the Commonwealth sought to remove Crutchfield for violation of KRS 160.180(2)(i) which prohibits membership on the board if a "relative" is employed by the school district. The Commonwealth pointed out that Crutchfield's uncle is a bus driver employed by the Garrard County School District.

Crutchfield admitted to the factual allegations contained in the complaint but counter-claimed alleging that KRS 160.180(1) and (2)(i) violated Ky. Const. § 2 and U.S. Const. amends. I and XIV. The circuit court entered summary judgment in favor of Crutchfield. Ky. R. Civ. P. 56. The circuit court concluded that KRS 160.180(1) and (2)(i) were unconstitutional, thus precipitating this appeal.

The Commonwealth contends the circuit court erred by concluding that KRS 160.180(1) and (2)(i) violated the equal protection clause of the Fourteenth Amendment.[1] Summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. Steelvest,

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[1] The Commonwealth argues that Chapman v. Gorman, Ky., 839 S.W.2d 232 (1992) upheld the constitutionality of KRS 160.180(1) and (2)(i) upon equal protection grounds and that we are bound to follow Chapman. We, however, do not view Chapman as dispositive. The Chapman court was not presented with the issue of whether KRS 160.180(1)'s differential treatment of aunt/uncle and niece/nephew offended the equal protection clause. Instead, the Court was presented with and resolved other issues surrounding the equal protection clause and KRS 160.180.

Inc. v. Scansteel Serv. Ctr., Inc., Ky., 807 S.W.2d 476 (1991). Resolution of this appeal centers upon a question of law--the constitutionality of KRS 160.180(1) and (2)(i).

KRS 160.180 provides, in relevant part, as follows:

> (1) As used in this section, "relative" means father, mother, brother, sister, husband, wife, son, daughter, **aunt, uncle**, son-in-law, and daughter-in-law.
> (2) No person shall be eligible to membership on a board of education:
>
> . . . .
>
> (i) Who has a relative as defined in subsection (1) of this section employed by the school district and is elected after July 13, 1990. (emphases added).

The Constitutional attack upon KRS 160.180 centers upon its definition of "relative" found in subsection (1). Therein, "relative" is defined as including aunt/uncle, but not as including niece/nephew.

Crutchfield argues that KRS 160.180(1) offended traditional notions of equality by including aunt/uncle in the definition of relative while excluding niece/nephew. Crutchfield believes, as did the circuit court, the legislative distinction between aunt/uncle and niece/nephew contravenes the equal protection clause of the Fourteenth Amendment.

Conversely, the Commonwealth argues that KRS 160.180(1) and (2)(i) were enacted to abolish nepotism in the

public school system; thus, the inclusion of aunt/uncle in the definition of "relative" undoubtedly furthers this governmental goal. Moreover, "[t]hat the statute does not include nephews or nieces in the definition does not make it invalid, nor does it make the inclusion of uncles/aunts any less rationally related to eliminating nepotism in the school system. . . . Here, because the General Assembly *could have* done more to stamp out nepotism by including 'nephews' and 'nieces' does not render the classification unconstitutional." Brief for Commonwealth at 11.

To pass constitutional scrutiny upon equal protection grounds, the classification between aunt/uncle and niece/nephew must be rationally related to a legitimate governmental interest. In Nordlinger v. Hahn, 505 U.S. 1, 10-11, 112 S. Ct. 2326, 120 L. Ed. 2d. 1 (1992), the United States Supreme Court articulately enunciated the "rational basis test" as follows:

> The Equal Protection Clause of the Fourteenth Amendment, § 1, commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws." Of course, most laws differentiate in some fashion between classes of persons. The Equal Protection Clause does not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike.
>
> . . . .
>
> The appropriate standard of review is whether the difference in treatment . . .

rationally furthers a legitimate state interest. (Citation omitted).

In the case at hand, there must exist a legitimate governmental interest rationally related to the differential treatment or the classification of aunt/uncle and niece/nephew under KRS 160.180(1). If a legitimate governmental interest exists, the classification of aunt/uncle and niece/nephew is constitutional; if such interest does not exist, the classification of aunt/uncle and niece/nephew is unconstitutional.

The legitimate governmental interest offered by the Commonwealth is that of eliminating nepotism and the appearance of nepotism in the public school system. Obviously, the goal of eliminating nepotism and the appearance thereof is furthered by prohibiting an individual from serving on a board of education if an aunt/uncle is employed by that public school system. Our query, however, cannot end there. As stated in Commonwealth v. Meyers, Ky. App., 8 S.W.3d. 58, 61 (1999), "[t]he relevant inquiry under the equal protection analysis is whether the classification (that is, the **difference in treatment**) is rationally related to a legitimate governmental interest." Thus, the classification of aunt/uncle and niece/nephew must rationally further the government's goal of eliminating nepotism and the appearance thereof.

We are unable to discern the rational basis for the difference in treatment or classification of aunt/uncle and niece/nephew in KRS 160.180(1). We observe that an aunt/uncle and a niece/nephew are within the same degree of kinship and, thus, are "similarly situated" for equal protection purposes. Further, the goal of ending nepotism and the appearance thereof certainly could be promoted by including both aunt/uncle and niece/nephew in the definition of relative in KRS 160.180(1). As such, we are of the opinion that the goal of ending nepotism does not provide a rational basis for the classification of aunt/uncle and niece/nephew. Simply stated, we view the classification as lacking a rational basis and as violative of the equal protection clause.

We shall now consider the effect of the unconstitutional classification upon KRS 160.180(1) and (2)(i). We, of course, view the unconstitutional language of KRS 160.180(1) to be "aunt, uncle"; we think the proper remedy is to "sever" the aforementioned unconstitutional language from the statute. In so doing, we rely upon our severability statute, KRS 446.090, which reads:

> It shall be considered that it is the intent of the General Assembly, in enacting any statute, that if any part of the statute be held unconstitutional the remaining parts shall remain in force, unless the statute provides otherwise, or unless the remaining parts are so essentially and inseparably

> connected with and dependent upon the unconstitutional part that it is apparent that the General Assembly would not have enacted the remaining parts without the unconstitutional part, or unless the remaining parts, standing alone, are incomplete and incapable of being executed in accordance with the intent of the General Assembly.

We observe that the terms "aunt, uncle" are not inseparable from the remainder of KRS 160.180(1) and that the remainder of KRS 160.180(1) is entirely capable of "standing alone." Accordingly, we hold that the language of "aunt, uncle" should be severed from KRS 160.180(1), thus preserving the constitutionality of KRS 160.180(1) and (2)(i).

For the foregoing reasons, the summary judgment of the Garrard Circuit Court is affirmed.

ALL CONCUR.

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