STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of BROOKE HERRONEN, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JACK L. HERRONEN,

Respondent-Appellant.

UNPUBLISHED
October 20, 2000

No. 226698
Gogebic Circuit Court
Family Division
LC No. 99-200086-NA

Before: Fitzgerald, P.J., and Hood and McDonald, JJ.

PER CURIAM.

Respondent appeals as of right the family court order taking jurisdiction of the minor child pursuant to MCL 712A.2(b); MSA 27.3178(598.2)(b). We affirm.

Respondent first argues that the trial court's order must be reversed because the term "cruelty" in § 2(b) is unconstitutionally vague. Although respondent did not raise this issue in the trial court, this Court will consider claims of constitutional error for the first time on appeal when the alleged error would have been decisive to the outcome. *In re Hildebrant*, 216 Mich App 384, 389; 548 NW2d 715 (1996). We review the question of a statute's constitutionality under the void-for-vagueness doctrine de novo on appeal. *In re Gosnell*, 234 Mich App 326, 333; 594 NW2d 90 (1999).

Statutes are presumed to be constitutional and must be construed as such unless it is clearly apparent that the statute is unconstitutional. *Mahaffey v Attorney General*, 222 Mich App 325, 344; 564 NW2d 104 (1997). The party asserting the constitutional challenge has the burden of proving the law's invalidity. *Michigan Soft Drink Ass'n v Dep't of Treasury*, 206 Mich App 392, 401; 522 NW2d 643 (1994). A statute may be challenged for vagueness on three grounds: (1) that it is overbroad and impinges on First Amendment freedoms, (2) that it does not provide fair notice of the conduct proscribed, and (3) that it is so indefinite that it confers unstructured and unlimited discretion on the trier of fact to determine whether the law has been violated. *People v Hubbard (After Remand)*, 217 Mich App 459, 484; 552 NW2d 493 (1996).

Respondent challenges the statute's constitutionality under the second ground, i.e. lack of fair notice. To give fair notice, a statute must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, or required. *Gosnell*, *supra* at 334. The statute cannot use terms that require persons of ordinary intelligence to guess its meaning and differ about its application. *Id.* A statute is not vague if the meaning of the disputed words within the statute can fairly be ascertained by reference to judicial interpretations, the common law, dictionaries, treatises, or the commonly accepted meanings of words. *Id.*, 335. Challenges of vagueness that do not involve First Amendment freedoms must be examined in light of the facts of the particular case. *West Bloomfield Twp v Karchon*, 209 Mich App 43, 48-49; 530 NW2d 99 (1995).

We initially note that § 2(b) has survived a constitutional challenge on vagueness grounds. See *In re Gentry*, 142 Mich App 701, 707-708; 369 NW2d 889 (1985). Further, with regard to the facts of this case, a person of ordinary intelligence would understand that hitting a thirteen-year-old girl more than once in the face severe enough to necessitate a hospital visit, pulling her hair, or pushing her into a wall causing her to become dizzy would fall within the purview of cruelty. Moreover, this Court has held, in addressing a different statute, that the term "cruelty" has a "plain, common and ordinary meaning[] readily and easily understandable to people of ordinary intelligence." See *People v Jackson*, 140 Mich App 283, 287; 364 NW2d 310 (1985).[1]

Respondent also suggests that the term "cruelty" is overly broad. However, in order for respondent to have standing to challenge the statute based on overbreadth, the statute must be overbroad in relation to his conduct. See *Gentry*, *supra*. Consequently, even if there were questions regarding the proper application of § 2(b) to other cases, it is apparent that respondent's conduct in this case clearly fits within the statute. Accordingly, respondent does not have standing to argue that the statute is overbroad or that it does not provide fair notice of the conduct proscribed.

Next, respondent argues that § 2(b) is unconstitutional because it denies him the right to discipline his child based on his religious beliefs. In making this claim, respondent cites Proverbs 13:24 of the Bible: "[h]e that spareth the rod hateth his son; but he that loveth him chasteneth him betimes." We initially note that respondent has failed to sufficiently argue this claim. A respondent may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *People v Kelly*, 231 Mich App 627, 641; 588 NW2d 480 (1998).

In any event, we recognize that parents have a fundamental right to autonomy in the guidance and control of their children. US Const, Am XIV, § 1; Const 1963, art 1, § 17. However, a parent's right to control and discipline a child is not absolute and inviolable. Rather, that right is limited by the welfare of the child. See *People v Green*, 155 Mich 524, 532-533; 119 NW 1087 (1909); *People v*

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[1] Contrary to respondent's suggestion, the fact that a range of potential acts could fall under the term "cruelty" does not equate with a finding that the statute itself is unconstitutionally vague. See, e.g., *Gosnell*, *supra* at 336.

Alderete, 132 Mich App 351; 347 NW2d 229 (1984). Contrary to respondent's claim, § 2(b) does not prohibit or interfere with a parent's right to administer reasonable discipline to his child, but prohibits discipline that is not reasonable. A parent cannot use the cloak of the constitution, i.e. religious liberty, to go beyond reasonable methods of discipline. *Green*, *supra* at 533. Accordingly, because respondent's conduct went beyond mere discipline and constituted abuse and cruelty, we reject this claim.

Finally, respondent argues that the jury instructions were inadequate because the trial court failed to provide definitions for the terms "cruelty" and "mistreatment." Because respondent failed to object to the trial court's instructions on the ground now raised on appeal, appellate review is precluded absent manifest injustice. *Janda v Detroit*, 175 Mich App 120, 126; 437 NW2d 326 (1989).

We have reviewed the instructions given to the jury and conclude that no manifest injustice occurred. A copy of the instructions was provided to respondent weeks before trial, and the instructions were discussed on numerous occasions. Respondent never requested that the trial court provide any further explanation for the terms cruelty and mistreatment. It is well-settled that error requiring reversal must be that of the trial court and not that to which the appellant contributed by plan or negligence. *Fellows v Superior Products Co*, 201 Mich App 155, 165; 506 NW2d 534 (1993). Moreover, our review of the instructions reveals that the trial court adequately and fairly conveyed the applicable law. Accordingly, reversal is not required on this basis.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Harold Hood
/s/ Gary R. McDonald