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Equal Protection

FAMILY COURT

ROCKLAND COUNTY

A.S. v. A.G.[314]
(decided July 8, 1994)

Respondent claimed that a New York order of support statute[315] violated the Equal Protection Clauses of the New York State Constitution[316] and United States Constitution.[317] Respondent alleged that the establishment of a filing date for child support treated children who received public assistance differently from those who did not.[318] The Family Court of Rockland County held that the statute did not violate equal protection because the distinction drawn was rationally based on a legitimate state objective.[319]

In February 1993, the court determined that respondent, J.G., fathered a child, K.L.B., in October 1983. The court sent the case to the Hearing Examiner to determine the issue of child support.[320] Retroactive child support was denied.[321] The Hearing Examiner held that the child support provision denied equal protection to those children who did not receive public assistance as well as those parents who were required to pay the longer support period.[322] The Hearing Examiner concluded "that there [was] no rational basis for imposing different child support

314. 162 Misc. 2d 10, 615 N.Y.S.2d 579 (Fam. Ct. Rockland County 1994).

315. N.Y. FAM. CT. ACT § 545.1 (McKinney 1993).

316. N.Y. CONST. art. I, § 11. Article I, § 11 provides in pertinent part: "No person shall be denied the equal protection of the law of this state or any subdivision thereof." *Id.*

317. U.S. CONST. amend. XIV, § 1. The Equal Protection Clause provides in relevant part: "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

318. *A.S.*, 162 Misc. 2d at 11, 615 N.Y.S.2d at 580.

319. *Id.* at 17, 615 N.Y.S.2d at 584.

320. *Id.* at 11, 615 N.Y.S.2d at 580.

321. *Id.* at 11-12, 615 N.Y.S.2d at 580.

322. *Id.* at 12, 615 N.Y.S.2d at 581.

obligations."[323] The petitioner, A.S., claimed that the Hearing Examiner erred when it found the statute unconstitutional.[324] In addition, A.S. claimed that the child support should not have been awarded retroactively to the date when public assistance was filed.[325]

The issue before the New York Family Court was whether the provision in section 545.1 of the Family Court Act[326] was an unconstitutional violation of the Equal Protection Clause because it allowed children who received public assistance, to receive child support for a longer period of time than those children who did not receive assistance. This discrepancy existed because the payor had to pay retroactively to the date of filing for *public assistance*, whereas one who did not receive public assistance only received child support retroactively from the date of filing for *support*.[327] The New York Family Court reversed the decision of the Hearing Examiner and held that "no declaration of unconstitutionality should have been entertained."[328] Further,

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323. *Id.*

324. *Id.* at 12, 615 N.Y.S.2d 580.

325. The petitioners also argued that the hearing Examiner erred in the amount of the base child support when she reduced it from $136.91 to $70.00 per week. *Id.* at 12, 615 N.Y.S.2d at 580. At the end of the opinion the court stated that it had "considered the other contentions raised on the objections[,]" such as the reduction in child support, and denied them. *Id.* at 18, 615 N.Y.S.2d at 584.

326. N.Y. FAM. CT. ACT § 545.1 (1993). The Act states that the order of filiation

> shall be effective as of the earlier of the date of the application for an order of filiation, or, if the children for whom support is sought are in receipt of public assistance, the date for which their eligibility for public assistance was effective. Any retroactive amount of child support shall be support arrears/past-due support and shall be paid in one sum or periodic sums as the court shall direct . . . .

Id.

327. *A.S.*, 162 Misc. 2d at 17, 615 N.Y.S.2d at 584.

328. *Id.* Although the hearing examiner claimed that the statute was unconstitutional on both a state and federal level the family court did not address the Federal Equal Protection Clause. *Id.* at 12, 615 N.Y.S.2d at 581. However, prior decisions of the court of appeals have held that the New York State Equal Protection clause is as broad as that of the United States

the court held that the classification between the children was reasonable.[329]

Initially, the Family Court questioned the authority of the Hearing Examiner to declare section 545.1 unconstitutional.[330] The court stated that a court of original jurisdiction should not declare a statue unconstitutional unless the "'conclusion is inescapable' or where the consequences "may be severe and the damage irreparable.'"[331] The court determined that there was no such occasion.[332] Furthermore, if this was such an instance, the Hearing Examiner had failed to follow the specific procedural requirements.[333]

Next, the court evaluated the equal protection claim. Generally, New York courts have applied the standard set out in *Alevy v. Downstate Medical Center*[334] when analyzing equal protection issues. The *Alevy* standard sets forth a two tiered approach.[335] The first tier triggers strict scrutiny when the individual is in a "suspect"[336] classification[337] or when a fundamental interest,

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Constitution. *See generally* Golden v. Clark, 76 N.Y.2d 618, 624, 564 N.E.2d 611, 614, 563 N.Y.S.2d 1, 4 (1990).

329. *A.S.*, 162 Misc. 2d at 17, 615 N.Y.S.2d at 584.

330. *Id.* at 12-13, 615 N.Y.S.2d at 581.

331. *Id.* "A statute should not ordinarily be set aside as unconstitutional by a court of original jurisdiction unless such conclusion is inescapable." *See generally* N.Y. STATUTE § 150 (McKinney 1993).

332. *A.S.*, 162 Misc. 2d at 12-13, 615 N.Y.S.2d at 581.

333. *Id.* at 13-14, 615 N.Y.S.2d at 581-82. The court explained that according to CPLR § 1012(b), when a court finds that there is a question of constitutionality of a statute, the Attorney General must be notified of the proceeding. In this case, the Hearing Examiner failed to notify the Attorney General. *See* N.Y. CIV. PRAC. L. & R. 1012(b) (McKinney 1993).

334. 39 N.Y.2d 326, 348 N.E.2d 537, 384 N.Y.S.2d 82 (1976). The petitioner claimed that respondents admissions policies violated State and Federal Equal Protection Clauses because the policies gave minority students with lower qualifications and scores a better opportunity for acceptance. *Id.* at 331, 348 N.E.2d at 542, 384 N.Y.S.2d at 87.

335. *Id.* at 332, 348 N.E.2d at 542, 384 N.Y.S.2d at 87.

336. *See generally In re* Griffiths, 413 U.S. 717 (1973). In *Griffiths*, the Supreme Court stated that "[i]n order to justify the use of a suspect classification, a State must show that its purpose or interest is both constitutionally permissible and substantial and that its use of the classification

such as "voting, travel, [or] . . . free speech" is involved.[338] The second tier, which contains the rationality test, is applied when neither a fundamental interest nor a suspect class is affected.[339] Under this tier, the court questions whether there is a "reasonable relationship to some legitimate legislative objective."[340] The Family Court concluded that section 545.1 of the Family Court Act did not fit into the categories in the first tier and applied the rational basis standard.[341]

The federal courts, when analyzing equal protection issues for social and welfare programs, use a rational relation test similar to

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is 'necessary . . . to the accomplishment' of its purpose or the safeguarding of its interest." *Id.* (citations omitted).

337. *A.S.*, 162 Misc. 2d at 14, 615 N.Y.S.2d at 582. "Suspect classifications include those based upon national origin, race, [or] alienage." *Id.* (citations omitted). *See In re Griffiths*, 413 U.S. at 717 (1973) (finding the state bar exclusion of aliens was a violation of the Equal Protection Clause because it "deprives them of employment opportunities"); Loving v. Virginia, 388 U.S. 1 (1967) (concluding that statutes that prevent interracial marriages violate equal protection because the freedom to marry a person from a different race cannot be infringed upon by the state); Hernandez v. Texas, 347 U.S. 475 (1954) (stating that a jury that does not contain any members of the same class as the defendant is a violation of equal protection rights).

338. *A.S.*, 162 Misc. 2d at 14, 615 N.Y.S.2d at 582. *See* Dunn v. Blumstein, 405 U.S. 330 (1972) (finding that durational residency requirements violate equal protection for those who frequently move because it infringes on the fundamental interest in voting); Police Dep't of Chicago v. Mosely, 408 U.S. 92 (1972) (holding that a city ordinance prohibiting picketing in front of a school is a violation of equal protection rights because it makes a distinction between employment picketing and peaceful picketing).

339. *A.S.*, 162 Misc. 2d at 14, 615 N.Y.S.2d at 582.

340. Alevy v. Downstate Medical Ctr., 39 N.Y.2d 326, 332, 348 N.E.2d 537, 542, 384 N.Y.S.2d 82, 87.

341. *A.S.*, 162 Misc. 2d at 14, 615 N.Y.S.2d at 582.

> The [rational basis] test has been applied with great indulgence, especially in the area of economics and social welfare where, for example, it has been said that '[i]f the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality."' Indeed, in actual application the rejection of classifications under this test appears to be rare.

Id. at 14-15, 615 N.Y.S.2d at 582. (quoting Alevy, 39 N.Y.2d at 332, 348 N.E.2d at 542, 384 N.Y.S.2d at 87).

that found in *Dandridge v. Williams*.[342] In *Dandridge*, the United States Supreme Court held that there was no violation of equal protection when the provision challenged was reasonably related to a legitimate government interest.[343] Further, the Court stated that a provision, in social or welfare programs, was not unconstitutional merely because it was imperfect.[344]

Similarly, the *A.S.* court determined that the objective to protect "the public purse" was a sufficient legislative purpose and therefore upheld the statute.[345] To achieve this objective, the state mandated a parent to pay child support retroactively to the date of filing for public assistance. This measure would have served to recoup the public assistance received by "persons legally responsible for those children."[346] In addition to the mandate, the *A.S.* court added that the statute in question would not violate the Equal Protection Clause merely because it was not perfect or based on mathematical certainty.[347]

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342. 397 U.S. 471 (1970). The action was brought pursuant to a provision in the Maryland welfare system that only permitted $250 for a family in need of assistance regardless of the size of the household. *Id.* at 473-74.

343. *Id.* at 485.

344. *Id.*

345. *A.S.*, 162 Misc. 2d at 16, 615 N.Y.S.2d at 583. Finding this first reason sufficient, the court left analysis of the legislative history for a later date. *Id.* at 17, 615 N.Y.S.2d at 584.

346. *Id.* at 16, 615 N.Y.S.2d at 583.

347. *Id.* at 15, 615 N.Y.S.2d at 582-83. The court based its decision, in part, on the reasoning in *In re* Davis, 57 N.Y.2d 382, 442 N.E.2d 1227, 456 N.Y.S.2d 716 (1982). In *Davis*, the court of appeals upheld the constitutionality of the New York State Social Services Law which classified people who were eligible for medical assistance benefits on a reasonable basis and further held that:

> [I]n the area of economics and social welfare, a state does not violate the Equal Protection Clause merely because the classifications made by its law are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.'

Id. at 388, 442 N.E.2d at 1229-30, 456 N.Y.S.2d at 719. (quoting Dandridge v. Williams, 397 U.S. 471, 485 (1970) (quoting Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911))).

The Family Court also relied on two New York Court of Appeals decisions, *Wiggins v. Town of Somers*[348] and *McGee v. Korman*,[349] to determine the constitutionality of section 545.1.[350] In *Wiggins*, the court stated that statutes are presumed to be constitutional unless their invalidity is demonstrated beyond a reasonable doubt.[351] Twenty-nine years later *McGee* upheld *Wiggins*. The *McGee* court stated that "[e]nactments of the Legislature - a coequal branch of government - may not casually be set aside by the judiciary. The applicable legal principles for finding invalidity are firmly embedded in the law: Statutes are presumed constitutional; while the presumption is rebuttable, invalidity must be demonstrated beyond a reasonable doubt."[352] In addition, the *A.S.* court stated that action to declare a statute unconstitutional should be used only as a last resort.[353]

In sum, the court used the two tiered system of equal protection analysis followed by both state and federal courts. The court held that the New York order of support statute was rationally related

348. 4 N.Y.2d 215, 149 N.E.2d 869, 173 N.Y.S.2d 579 (1958).

349. 70 N.Y.2d 225, 513 N.E.2d 236, 519 N.Y.S.2d 350 (1987). Candidates running for the office of the surrogate were required to obtain a different number of signatures. Plaintiffs brought action under equal protection.

350. *A.S.*, 162 Misc. 2d at 15-16, 615 N.Y.S.2d at 583.

351. Wiggins v. Town of Somers, 4 N.Y.2d 215, 217-18, 149 N.E.2d 869, 870-71, 173 N.Y.S.2d 579, 581 (1958). The plaintiff brought an action alleging that the town ordinance which provides "that no person may transport or dump within the town garbage 'originating outside of the Town of Somers'" is arbitrary because it distinguishes between Somers and non-Somers garbage. The court held that the ordinance is merely trying to reduce the amount of garbage dumped and is therefore not a violation of rights. *Id.*

352. McGee v. Korman, 70 N.Y.2d 225, 231, 513 N.E.2d 236, 238, 519 N.Y.S.2d 350, 352. The *A.S.* court agreed with *McGee* and stated "where a statute is challenged as irrational or arbitrary, a court may even hypothesize the motivations of the State Legislature to discern any conceivable legitimate objective promoted by the provision under attack." *A.S.*, 162 Misc. 2d 16, 615 N.Y.S.2d 583 (citing Meresca v. Cuomo, 64 N.Y.2d 242, 251, 475 N.E.2d 95, 99, 485 N.Y.S.2d 724, 728 (1984)). "The drastic step of striking a statute as unconstitutional is to be taken as a last resort." *A.S.*, 162 Misc. 2d at 16, 615 N.Y.S.2d at 583 (citing *Wiggins*, 4 N.Y.2d 215, 149 N.E.2d 869, 173 N.Y.S.2d 579 (1958)).

353. *Id.*

to the state objective of protecting the public purse, and upheld the statute as constitutional.