Supreme Court of Georgia
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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Friday, November 7, 2014

Special Session
Emory University School of Law
Atlanta, Georgia

10:00 A.M. Session

CORVI V. THE STATE (S14A1705)

A Uruguayan woman is appealing her convictions for child cruelty after two little girls in her care, including her own granddaughter, drowned in the family pool. Her criminal convictions led to her deportation.

FACTS: In 2012, Eduardo and Sandra Juarez were living in **Paulding County** with their three children, Nahuel (age 13), Maximo (age 10), and Sophia (age 5). Marta Sonia Corvi had for the past seven years performed seasonal work cleaning dormitories for the Juarez family business. In 2012, however, there was not enough work to keep her on, but the Juarez's agreed to let Corvi live with them until the business picked back up. In exchange, she helped around the house by cleaning, doing laundry, watching the children and helping with the cooking. On June 10th, Mia Penoyer – Corvi's 5-year-old granddaughter – was at the Suarez house playing with Sophia Suarez. Mia's reminded Corvi that Mia could not swim when he dropped her off. When Mia and Sophia asked if they could swim out back in the family pool, Corvi and the Juarez

parents said no. Around noon, Sandra and Eduardo Juarez left to go Sam's Club to get food for a cookout they decided to have while watching the afternoon's soccer game on TV. Their 10-year-old went with them, but they left the other children –Nahuel, Sophia and Mia – with Corvi. After they left, Corvi sent the girls upstairs to play dress-up while she washed the hardwood floors on the main level, opening the door to the back deck to clear the house of the strong smell of the soap. Corvi had diabetes, and when she started feeling dizzy, she mentioned to Nahuel that she was going down to the basement to take her diabetes medication. She told the 13-year-old to stay in his room, which overlooked the main floor, while she was in the basement. He went back to his room, put on his headphones to listen to music and fell asleep. He did not notice when Sophia and Mia, who had been instructed not to go swimming, walked past his room on their way to the pool. Corvi meanwhile continued cleaning and at some point, after receiving a text message, made a personal phone call which a detective later testified lasted more than 45 minutes. When the Juarez's returned with the groceries, they asked Corvi where the girls were, and she said they were upstairs playing. Eventually, 10-year-old Maximo found his sister, Sophia, floating face down in the pool; Mia was on the bottom. Maximo screamed for his parents and tried to pull Sophia out of the pool. His father helped pull Sophia out, then dove in to get Mia. The parents tried resuscitating the girls then frantically rushed them to the hospital. An ambulance met them on the way and took over the resuscitation, but at the hospital, the girls were pronounced dead. Shortly after, police spoke to Corvi, describing her as "devastated," according to court testimony.

Corvi was indicted by a Paulding County grand jury for two counts of cruelty to children in the second degree under Georgia Code § 16-5-70 and two counts of reckless conduct under § 16-5-60. The indictment read that Corvi was being charged with child cruelty because she "did cause Mia Penoyer a child under the age of 18 years, cruel and excessive physical pain by **failing to reasonably supervise** said child who drowned while under the care and control of the accused in violation of § 16-5-70." There was an identical count regarding Sophia Juarez. The indictment further stated Corvi was being accused of reckless conduct because she "unlawfully did endanger the bodily safety of Mia Penoyer [and Sophia] by consciously disregarding the substantial and unjustifiable risk that her omission and **failure to reasonably supervise** Mia Penoyer…would cause harm to and endanger the safety of said child and the disregard constituted a gross deviation from the standard of care which a reasonable person would exercise in the situation in violation of § 16-5-60." Corvi's attorney filed a motion to "quash," or throw out, the indictment, arguing it was legally void based on its vagueness. In his motion, Corvi's attorney argued that the language, "failure to reasonably supervise," is neither criminalized nor defined in the Georgia statute. The trial court denied the motion, finding that Corvi had fair notice that her conduct was outlawed under the statutes. During the trial, the judge denied the defense attorney's request to instruct the jury that the defendant had to have knowledge that a crime was being committed to be found guilty. Corvi was subsequently convicted and sentenced to 10 years' probation. She was deported as a result of her convictions, and her attorney now appeals to the state Supreme Court.

ARGUMENTS: Corvi's attorney argues the statutes at issue were unconstitutionally applied to her due to their vagueness. The trial court erred in finding that Corvi had fair notice that it was illegal to leave two 5-year-olds to play in their room with only a 13-year-old and a latched gate to prevent them from entering the pool, the attorney argues. In its 1997 decision in *Hall v. State,* the Georgia Supreme Court ruled that § 16-5-60, the reckless conduct statute, was

"void for vagueness" as applied to two adults who left their children – ages 1, 3 and 5 – in the care of an 11-year-old for four hours. ("Void for vagueness" is a legal term that suggests a violation of the constitutional right to due process.) While they were gone, the 3-year-old died of a head injury. "Conceding that the child's death was tragic, this Honorable Court still held the statute's vague language allowed the State to selectively and arbitrarily prosecute a parent whose worst sin was leaving her children in the care of an older sibling," the attorney argues. "Because the statute provided no guidance on what 'proper supervision' meant, it violated Due Process and Equal Protection to hold the defendants to an unwritten standard." There was no evidence presented at trial that Corvi knew the little girls knew how to operate the latch to the gate leading from the kitchen to the pool, "or that they had any propensity to be disobedient." Where there was no such evidence, "there was no negligence," the attorney argues. "[A] long history of negligent supervision cases in Georgia establishes that mere inattention, even for as long as an hour and a half, does not provide an issue of fact for a jury to decide" under Georgia statutory law. If a brief failure to supervise a child in the area of a pool constitutes criminal negligence, "then many Georgia civil attorneys have been putting their clients at serious risk of criminal prosecution for decades by suing landowners in whose pools unattended children drowned," the attorney argues. Even Paulding County police were surprised by the prosecution of Corvi, the attorney argues, and a detective testified that to his knowledge, Paulding County had never prosecuted anyone before for an accidental drowning. "Corvi was prosecuted for what happened, not for what she did," her attorney argues. "If we are going to impose new parenting standards on the residents of Georgia, we should do so clearly." Neither of the two statutes at issue defines what "reasonable supervision" is. "Across this state, thousands of parents take phone calls while supervising their children. They go to the bathroom. Tragedy can happen in a flash, yet the State does not pursue charges against each of these parents on the theory that they have created an unjustifiable risk, or have been criminally negligent. When the State chooses to take ordinary behavior and punish it as criminal based solely on its unlikely consequences, it vitiates the Due Process and Equal Protection rights of its citizens. Not every child's funeral should end in an arrest….Marta Corvi did something that every parent does – she let two children play in another room. It was not a crime. She could not have been on notice that it was. And it was not for the jury to draw that line." As a result, the trial court erred in failing to direct a not guilty verdict, Corvi's attorney argues, because her actions were not criminally negligent.

The State argues that Corvi, who went to the basement and made a personal phone call that lasted more than 45 minutes, "completely ignored the girls during that call and both girls died as a result of her negligence." The State argues that Corvi's attorney failed to raise a constitutional challenge at the trial court level, and therefore is prohibited from raising it for the first time on appeal. "Because the challenge was not properly raised and preserved at the trial court level, [Corvi] is unable to raise it before the Supreme Court," the District Attorney argues in briefs on behalf of the State. In his motion to quash the indictment as "void for vagueness as applied," Corvi's attorney failed to mention he was making a "constitutional" challenge. Corvi's attorney also argued that the charges against her failed to put her on notice as to how she was negligent or in what ways she failed to reasonably supervise the children. "Again, [Corvi] fails to make reference to any specific constitutional provision," the State argues. "[M]erely claiming that a statute is vague is insufficient to raise a constitutional challenge." The trial court did not err in finding that the two statutes – § 16-5-60 and § 16-5-70 – were not void due to their

vagueness. Both statutes "as applied provide sufficient notice to enable an ordinary person to understand the conduct prohibited or required," the State contends. In this case, "not only did [Corvi] leave both 5-year-old girls unsupervised for more than 45 minutes, but imminent danger was increased by [Corvi] leaving the back door to the pool area wide open for the girls to wander outside." Also, the facts from the *Hall* decision, which was cited by Corvi's lawyer, were different from this case. In the *Hall* case, the children were left under the supervision of an older child. In this case, the children were "left with no supervision whatsoever," the State argues. "[Corvi] never told anyone she had asked Nahuel to watch the children. In fact, [Corvi] only instructed him to go to his room." The statutes as applied "do not authorize or encourage arbitrary or discriminatory enforcement." Initially, law enforcement officers were "not investigating the girls' deaths as a criminal matter until [Corvi's] conduct with regard to the phone call and complete lack of supervision came to light." Finally, the State contends, there was "sufficient evidence before the jury to support the jury's verdict of guilty on all counts, and accordingly, defendant's motion for directed verdict was properly denied."
Attorney for Appellant (Corvi): Andrew Fleischman
Attorneys for Appellee (State): Donald Donovan, District Attorney, Thomas Lyles, Sr. Asst. D.A.

INDIA-AMERICAN CULTURAL ASSOCIATION, INC., V. ILINK PROFESSIONALS, INC. (S14A1824)

The appeal in this **DeKalb County** case stems from a dispute between two Indian-American organizations over the use of the name, "MISS INDIA GEORGIA," to describe a beauty pageant that one of the organizations has held for more than 20 years.

FACTS: The India-American Cultural Association, Inc. was founded in 1971 to support Indian-Americans and help preserve Indian culture. In 1987, it held its first MISS INDIA GEORGIA and MISS TEEN INDIA GEORGIA beauty pageants. It held the pageants annually through 2010 under the same names. In 2011, due to budgetary constraints, the association decided it could not hold the beauty pageant and devoted its resources instead to the annual Festival of India event. After its finances improved and a new executive committee had taken charge, the association began making plans for the 2012 pageant, according to briefs it has filed in this case. Since 2006, Salmon "Sonny" Molu had been involved in the pageant helping with stage production. Due to his past involvement, the association approached Molu, the president of iLink Professionals, Inc., about assisting in the 2012 pageant. ILink describes itself in briefsas the promoter of two pageants: the "Miss India Georgia" and "Miss Teen India Georgia" pageants. Molu indicated that iLink wished to host the event in 2012, which the association agreed to, and iLink listed the India-American Cultural Association as a sponsor of the MISS INDIA GEORGIA and MISS TEEN INDIA GEORGIA beauty pageants. The parties dispute what occurred that year over use of the names, or "marks," as they call them. ILink claims that Rina Gupta and Lakshmi Vedala, representatives of the India-American Cultural Association, informed Molu that the association had "no plans to conduct any pageants" and no objection to iLink hosting the pageants and using the names. However, Gupta denied in an affidavit that she made any representations to Molu about the association's intent regarding pageants beyond 2012 and merely told him they did not have the personnel to organize a pageant that year. In 2013, iLink registered with the Secretary of State the names, MISS INDIA GEORGIA and MISS

TEEN INDIA GEORGIA, as its trademarks. In January 2013, iLink announced it would hold the pageants on July 20, 2013. Soon after, the association announced it would hold the pageants one week earlier on July 13, 2013, and it secured the Ferst Center for the Arts at Georgia Tech as the location. On May 13, 2013, iLink sent a letter to the India-American Cultural Association demanding that it cease use of the "marks." On May 31, 2013, the association sent a letter to iLink demanding that it cease use of the "marks." In June 2013, iLink sued the association in DeKalb County Superior Court, asserting trademark infringement. It also filed an emergency motion for an "interlocutory" – or pretrial – injunction. Following a hearing, the trial court ruled in iLink's favor and granted the interlocutory injunction, temporarily prohibiting the association from using the names, MISS INDIA GEORGIA or MISS TEEN INDIA GEORGIA. The India-American Cultural Association now appeals to the state Supreme Court.

ARGUMENTS: Attorneys for the association argue the trial court erred by treating the state trademark registrations as mandatory, rather than permissive. "It is well established under Georgia's statutory and case law that trademark rights are acquired through use, not registration, and a party is not obligated to register its mark to obtain protection," the attorneys argue in briefs. "The trial court, however, granted the injunction on the basis that iLink had obtained registrations of the marks and [the association] had not." Georgia Code § 10-1-452, the statute governing trademark registration, states that "nothing in this part shall adversely affect the rights or the enforcement of rights in trademarks or service marks acquired in good faith at any time at common law." "Trademark rights are acquired through use of the marks in commerce," the attorneys argue. And under clear Georgia statutory and case law, "iLink's 2013 Georgia service mark registrations do not disturb or trump [the India-American Cultural Association's] prior common-law rights." The trial court's failure to consider the association's prior rights in the marks, which the association had used since 1987, "mandates that the injunction be reversed and the proceeding remanded for a full determination of the parties' rights in the marks." ILink's wrongfully obtained registrations did not create prior rights in the marks. To determine which party had prior rights, "the trial court was required to evaluate each party's respective use of the marks," the association's attorneys argue. "The trial court failed to do so, starting its analysis in the wrong place – namely in 2013 when iLink improperly obtained registrations of the marks." For more than 20 years, since 1987, the association's MISS INDIA GEORGIA and MISS TEEN INDIA GEORGIA pageants have attracted hundreds of contestants, entertained thousands of patrons, and solicited tens of thousands of dollars from sponsors," the attorneys argue. "As a result of [the association's] decades of use, its marks have acquired distinctiveness sufficient to establish [its] ownership rights that long predate any rights claimed by iLink." To issue an injunction, the trial court had to have found that the association either abandoned its rights to the marks or assigned them to iLink. "The standard for abandonment is stringent – a party must show *not only* that the mark owner discontinued use, *but also* that it does not have an intent to resume use." Despite what iLink claims, the association's representatives never said they did not intend to resume the use of its marks. The Georgia Supreme Court should reverse the trial court's pre-trial injunction, the attorneys argue.

ILink's attorney argues the trial court "simply did not do what is alleged in the first enumeration of error, which claims that the trial court 'treated' trademarks in a certain way." The trial court simply issued a pre-trial injunction, the purpose of which is "to preserve the status quo of the parties pending a final adjudication of the case." It is clearly settled in Georgia law that

"the appellate courts will not disturb the trial court's exercise of its discretion unless a manifest abuse of discretion is shown or there was no evidence on which to base the ruling." In this case, neither exists. "The injunction was fully justified by the evidence," which shows "that whatever rights [the association] had in the service marks at issue were abandoned by the India-American Cultural Association to iLink," the attorney argues. The association did not hold a pageant in 2011, and iLink did hold one in 2012 "with [the association's] consent and participation, having abandoned the marks to iLink." The association's pageants had been "sparsely attended, failed to attract significant sponsorship and ultimately were discontinued. The last was held in 2010." The association "goes to great length" to argue how rights to the marks "may not be extinguished by mere registration on the part of a later user." "But in this appeal, such arguments are not to any point," the attorney argues. The evidence shows that iLink, not the association, "was holding rights in the marks, not only based on use but also on abandonment of the marks by [the association] to iLink." Based on the evidence, "the trial court was justified in crediting iLink's claim to ownership of the subject marks," iLink's attorney argues. It was justified in preserving the status quo and the injunction "should be affirmed and the case allowed to proceed to discovery and trial."

Attorneys for Appellant (Association): William Brewster, Wab Kadaba, Allison Roach, Nichole Chollet

Attorneys for Appellee (iLink): Michael Higgins