

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000907-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v.

APPEAL FROM WAYNE CIRCUIT COURT
HONORABLE ROBERT WILSON, JUDGE
ACTION NO. 02-CR-00008

MISTI HARRIS

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: JOHNSON, KNOPF AND McANULTY, JUDGES.

JOHNSON, JUDGE: The Commonwealth has appealed from an order entered by the Wayne Circuit Court on April 16, 2002, which dismissed an indictment against Misti Harris. Having concluded that the trial court properly dismissed the indictment against Harris pursuant to Commonwealth v. Welch,¹ we affirm.

On February 13, 2002, Harris gave birth to a baby boy. Shortly thereafter, she was indicted by a Wayne County grand

¹ Ky., 864 S.W.2d 280 (1993).

jury and charged with criminal abuse in the first degree.² The indictment alleged that “[o]n or about June, 2001 through the 13th day of February, 2002,” Harris intentionally abused her unborn child by intravenously injecting oxycodone during her pregnancy. Harris subsequently filed a motion to dismiss the indictment pursuant to Welch, supra. On April 16, 2002, the trial court entered an order dismissing the indictment. The trial court’s order stated, in relevant part, as follows:

[T]his Court is bound by the application [] of Commonwealth vs. Welch, [Ky., 864 S.W.2d 280 (1993)]. There, the Kentucky Supreme [Court] held emphatically that the General Assembly did not intend to include [] prenatal injur[ies] [arising] from [a] pregnant woman’s self abuse within the scope of [the] offense of criminal abuse. This Court is bound by that holding. The Court finds that the decision in Welch, is here[by] controlling and this action must be dismissed.

. . .

It is therefore the order of this Court that the [] indictment be dismissed. However, said indictment is dismissed without prejudice to allow the Commonwealth to charge the Defendant with violation of KRS 218A.1415, Possession of a Controlled Substance 1st Degree.

This appeal followed.

In Welch, our Supreme Court held that the General Assembly did not intend to include prenatal injuries to a baby

² Kentucky Revised Statutes (KRS) 508.100.

arising from a pregnant woman's self-abuse within the ambit of our criminal abuse statutes. The facts of that case centered on the actions of Connie Welch, who was arrested during the course of a police drug raid at the home of a suspected drug dealer. The police found Welch in possession of oxycodone, after which they discovered that she had just injected a quantity of the drug into her jugular vein. Welch was eight months pregnant at the time.³ Approximately three weeks later, Welch gave birth to a baby boy. She was subsequently indicted by a Boyd County grand jury and charged with, inter alia, criminal abuse in the second degree.⁴ Welch was tried and convicted on the criminal abuse charge. This Court vacated Welch's criminal abuse conviction and the Supreme Court affirmed.⁵

The Supreme Court based its decision on two interrelated grounds. First, the Court noted that if the criminal abuse statutes "are applied to women's conduct during pregnancy, they could have an unlimited scope and create an indefinite number of new crimes."⁶ The Court explained that punishing prenatal conduct under criminal abuse statutes "might

³ Welch, 864 S.W.2d at 280.

⁴ Id. See KRS 508.110.

⁵ Welch, supra at 281.

⁶ Id. at 283 (quoting Commonwealth v. Kemp, 18 Pa.D.& C.4th 53, 62-63 (Pa.Com.Pl. 1992)).

lead to a "slippery slope" whereby the law could be construed as covering the full range of a pregnant woman's behavior--a plainly unconstitutional result that would, among other things, render the statutes void for vagueness.'"⁷ The Court then turned to the following language contained in the preamble to the Maternal Health Act of 1992:⁸

[D]rug and alcohol impaired individuals pose extraordinary societal costs in terms of the medical, educational, and support services needed throughout the individual's lifetime; education and treatment are essential strategies in preventing prenatal exposure to alcohol and other drugs; pregnant substance abusing women face more barriers to substance abuse treatment than other persons seeking treatment; adequate prenatal care is an essential element in delivering a healthy, well-developed newborn; punitive actions taken against pregnant alcohol or substance abusers would create additional problems, including discouraging these individuals from seeking the essential prenatal care and substance abuse treatment necessary to delivery a healthy newborn; and

WHEREAS, the General Assembly finds it is necessary to treat the problem of alcohol and drug use during pregnancy solely as a public health problem by seeking expanded access to prenatal care and to alcohol and substance abuse education and treatment programs [emphasis omitted].⁹

⁷ Welch, 864 S.W.2d at 283 (quoting Kemp, supra at 63).

⁸ See 1992 Ky.Acts. ch. 442, eff. 07-14-1992.

⁹ Welch, supra at 284 (quoting the preamble to 1992 Ky.Acts ch. 442).

Based on this language, the Court concluded that the "General Assembly intend[ed] no additional criminal punishment for the pregnant woman's abuse of alcohol and drugs apart from the punishment imposed upon everyone caught committing a crime involving those substances."¹⁰

The Commonwealth argues on appeal that Welch was erroneously decided. However, as an intermediate appellate court "it is not our function to establish new rules of law or enunciate changes in Kentucky jurisprudence."¹¹ As stated in SCR¹² 1.030(8)(a), "[t]he Court of Appeals is bound by and shall follow applicable precedents established in the opinions of the Supreme Court and its predecessor court." Thus, we are bound by our Supreme Court's holding in Welch.

Based on the foregoing reasons, the order of the Wayne Circuit Court is affirmed.

ALL CONCUR.

¹⁰ Welch, 864 S.W.2d at 284.

¹¹ Tucker v. Tri-State Lawn & Garden, Inc., Ky.App., 708 S.W.2d 116, 118 (1986)(en banc).

¹² Kentucky Rules of the Supreme Court.

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