Legoo decision summary

In a 5-2 decision, the Illinois Supreme Court rejected Legoo's challenges and upheld his conviction for violating 720 ILCS 5/11-9.4-1(b) even though he had entered a public park in search of his own child.

There are two statutes that prohibit child sex offenders from entering public parks:

> 720 ILCS 5/11-11-9.3(a-10) prohibits child sex offenders from entering public parks and to approach contact, or communicate with a child under 18, but exempts prosecution of a parent who is in the park with his or her child. Violation of this statute is a Class 4 felony.
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> 720 ILCS 5/11-9.4-1(b) prohibits certain child sex offenders from entering a public park under any circumstance ("Romeo and Juliet" offenders are exempt). Violation of this statute is a Class A misdemeanor.

Legoo had argued that the exception found within the felony statute 11-9.3(a-10) which allows a child sex offender who is also a parent to be present in a public park when accompanied by his or her own child should be read into the misdemeanor statute 11-9.4-1(b) (the statute under which Legoo was convicted). In other words, the General Assembly intended them to be read in tandem.

The Illinois Supreme Court determined that although the statutes are similar, they are different in "important respects." First, 11-9.4-1(b) does not apply to "Romeo and Juliet" offenders. Second, 11-9.4-1(b) and 11-9.3(a-10) prohibit different conduct. Section 11-9.4-1(b) prohibits simply being in a park, whereas 11-9.3(a-10) prohibits child offenders from approaching and communicating with a child unless the offender's minor child is also present. Furthermore, the provisions provide for different punishments: 11-9.4-1(b) is a misdemeanor whereas 11-9.3(a-10) is a felony. These differences were sufficient enough for the Illinois Supreme Court to conclude that the legislature meant what it said, determining that it is not the Court's role to rewrite the plain language of 11-9.4-1(b) to include the exception found in 11-9.3(a-10).

Legoo also argued that 11-9.4-1(b) must include the same exception as found in 11-9.3(a-10) to avoid finding the statute unconstitutional, premised upon a parent's constitutional right to raise his or her child. In other words, Legoo argued that, as written, 11-9.4-1(b) violates the fundamental right of a parent to be present with his or her child since it is an outright ban against being in a public park with no exception (other than for "Romeo and Juliet" offenders.)

The Illinois Supreme Court noted that this "fundamental right of a parent" argument was not raised in the Trial Court or Appellate Court, but only in the Supreme Court. Nonetheless, the Court reached the merits and rejected Legoo's challenge on these constitutional grounds. The Court acknowledged that although a parent does have a

fundamental right to raise his or her own child, the Court had also recently held in *People v. Pepitone* that there is no fundamental right for a person to be present in a public park.

Thus, because there is no fundamental right to be present in a public park, the Court reasoned that it logically follows that there can be no fundamental right to take one's child to a public park.

The Illinois Supreme Court admitted that in certain circumstances, an offender charged with violating 11-9.4-1(b) might be able to raise a "necessity" affirmative defense to justify entering a public park to locate his or her child; but in this particular case, the Trial Court had rejected that defense, and that finding by the Trial Court had not been appealed by Legoo. The Supreme Court concluded that although Legoo claimed he had no one else to go into the park to search for his son, Legoo could have simply called the police for assistance.

In sum, Legoo failed to convince a majority of the Illinois Supreme Court that 11-9.4-1(b) interfered with his fundamental liberty interest of raising his child.

The majority did lament the confusing overlap of the two statutes, stating: "The offenders governed by the statutes and those responsible for their enforcement both certainly benefit from clear statutory provisions on this subject." The majority concluded its decision by urging the legislature to add clarity to these statutes.

Two justices dissented from the majority's holding and would have held that that the exception found in the text of 11-9.3(a-10) must be read into 11-9.4-1(b) to avoid potentially "ridiculous" results that the General Assembly surely did not intend (e.g. prohibiting all child offenders except "Romeo and Juliet" offenders from going into parks per the misdemeanor statute; but then, at the same time, carving out an exception only for the felony provision).

The dissent also criticized the majority's rationale that since there is no fundamental right to be in a park there can be no fundamental right to take one's child to a park. The dissent points out that, in this case, Legoo did not take his child to a park- he went to retrieve his child from the park. That is a big difference to the two dissenting justices; and the suggestion that Legoo could have called the busy police department for help is unrealistic.

But the dissent would not have reached the constitutional issue at all, because it would have first found that the exception in 11-9.3(a-10) must be read into 11-9.4-1(b), basing a decision on purely statutory and not constitutional grounds (i.e. fundamental right of a parent).

But the dissent is not a part of Court's holding and has no precedential value. Its only effect is to offer persuasive support to future cases.