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IN THE
COURT OF APPEALS OF INDIANA

Scott A. Blattert, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 15, 2022

Court of Appeals Case No.
21A-CR-1082

Appeal from the
Lawrence Superior Court

The Honorable
John M. Plummer, III, Judge

Trial Court Cause No.
47D01-1911-F3-2104

Molter, Judge.

[1] The State of Indiana charged Scott A. Blattert, Jr. with aggravated battery (Level 3 felony), strangulation (Level 6 felony), five counts of domestic battery resulting in bodily injury to a person less than fourteen years of age (Level 5 felony), and three counts of domestic battery resulting in moderate bodily injury (Level 6 felony). The charges were based on the allegation that Blattert

repeatedly punished his children by beating and strangling them. He claims a defense under Indiana's Religious Freedom Restoration Act ("RFRA"), Ind. Code §§ 34-13-9-0.7 to -11, which provides a defense to criminal prosecutions that substantially burden religious exercise unless the State shows the prosecutions are the least restrictive means of furthering a compelling governmental interest.

[2] Blattert is a member of the Ellettsville Church of Christ who believes he must follow God's commands as conveyed through the Bible. He understands one of those commands to be that he discipline his children with corporal punishment as he sees fit, even if that includes punching them in the face, striking their heads with his elbow, and choking them, as the State alleges he has done. Blattert argues he must be permitted to present a RFRA defense to a jury because the statutes he is charged with violating substantially burden his religious exercise. But the trial court granted the State's motion in limine to exclude Blattert's RFRA defense at trial because protecting Blattert's children from physical abuse is a compelling governmental interest and this prosecution is the least restrictive means of furthering that interest. Because we agree, we affirm and remand for further proceedings.

Facts and Procedural History

[3] In the fall of 2019, the Indiana Department of Child Services ("DCS") investigated a report that Blattert had physically abused his children. At the time, he lived in Springville, Indiana with his wife and nine children. The investigation revealed a video of Blattert striking his fourteen-year-old daughter

with a belt twenty-five times. The video also depicted him punching his daughter in the face, pushing her to the ground, holding her down, and striking her on the back of her head with his elbow, all of which Blattert contends was appropriate parental discipline.

[4] Shortly after, two of Blattert's teenage daughters were forensically interviewed. The eldest daughter, H.B., reported that Blattert and his wife disciplined their children with industrial-grade glue sticks. After experimenting with wooden spoons and dowel rods, Blattert allegedly settled on punishing the children with glue sticks because they caused the most pain while bruising the children the least. Also, H.B. disclosed that her mother would keep a list of the children's transgressions throughout the day and provide that list to Blattert when he returned home from work so that he could discipline them. He would often use glue sticks, his belt, or his hand to do so.

[5] H.B. stated that two of her brothers received the most frequent punishment from Blattert. She described one incident in which Blattert grabbed the boys by the fronts of their necks and slammed them against a wall for misbehaving during one of their mother's religious discussions. She reported that her fourteen-year-old sister, A.B., received more violent punishment from Blattert because she talked back to or glared at him. At one point, Blattert allegedly choked A.B with his hands and forced her face into a cushion so that she could not breathe. During her separate forensic interview, A.B. disclosed these same incidents of alleged physical abuse.

[6] To conceal their abusive practices, Blattert and his wife allegedly instructed the children to "never speak of [their] punishment[s] to DCS or [the] police because it [would] ruin the whole family." Appellant's App. Vol. 2 at 25. Moreover, after DCS visited the Blattert family in the spring of 2019, Blattert allegedly struck H.B. and A.B. repeatedly with his belt because they disclosed too much information to DCS. He also allegedly moved the family to their current residence because a DCS employee moved into their old neighborhood. Blattert and his wife reportedly told the children that DCS "work[ed] against religious people." *Id.* at 24.

[7] The Blattert family attends Ellettsville Church of Christ, which relies on teachings from the Bible. Blattert believes "the Bible is the word of God" and he must "do what Christ commands"—including practicing corporal punishment. Tr. at 42. He compares physical punishment to the "Rod of Correction" and describes the rod as an "abstract form," which can include the authority or discretion of a father to discipline his family. *Id.*

[8] The State charged Blattert with aggravated battery, strangulation, and eight counts of domestic battery. The charges alleged acts of physical abuse against five of Blattert's nine children. In the fall of 2020, Blattert filed a notice that set forth his intent "to invoke the privileges and immunities established" under Indiana's RFRA. Appellant's App. Vol. 2 at 110. The State then filed a motion in limine asking the trial court to strike the defense.

[9] The trial court held a hearing on the motion in limine, which included extensive legal argument and Blattert's testimony about his religious beliefs and exercise. Following the hearing, the court granted the State's motion insofar as it precluded Blattert from asserting a RFRA defense based on its conclusion that the State's protection of children from physical abuse is a compelling governmental interest, and this prosecution is the least restrictive means of advancing that interest. Blattert now challenges that ruling through this interlocutory appeal.

Discussion and Decision

[10] Under Indiana's RFRA, "a governmental entity may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability," unless it "demonstrates that application of the burden to the person" is: (1) "in furtherance of a compelling governmental interest" and (2) "the least restrictive means of furthering that compelling governmental interest." Ind. Code § 34-13-9-8. RFRA does not exempt criminal statutes, so defendants may raise a RFRA defense in criminal prosecutions. *Tyms-Bey v. State*, 69 N.E.3d 488, 490 (Ind. Ct. App. 2017), *trans. denied*.

[11] A party establishes a prima facie RFRA defense by showing the disputed governmental action substantially burdens a sincerely held religious belief.

Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 705 (2014).[1] Then the burden shifts to the government to establish that a compelling governmental interest is "satisfied through application of the challenged law 'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 420 (2006). Further, the government must establish that the substantial burden is the least restrictive means of furthering that interest. Ind. Code § 34-13-9-8; *see Hobby Lobby*, 573 U.S. at 728. If the party asserting RFRA meets its prima facie burden, and the government does not meet its burden, then "the court . . . shall allow a defense . . . and shall grant appropriate relief against the governmental entity." Ind. Code § 34-13-9-10(a).

[12] Blattert contends that even if his behavior when physically disciplining his children was unreasonable as a matter of criminal law, RFRA precludes a jury from convicting him of a crime because the discipline was an exercise of his sincerely held religious beliefs. The State responds that RFRA does not apply because limiting Blattert's discipline to reasonable force does not substantially burden his religious exercise, and, even if it did, the State's prosecution here is the least restrictive means to further its compelling interest in protecting Blattert's children from abuse. Without deciding whether the State's

[1] The relevant statutory language in Indiana's RFRA largely tracks the language in the federal RFRA statute, so federal caselaw provides some useful guidance. *See* 42 U.S.C.A. § 2000bb-1 (providing that the government "shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" unless the governmental action is "in furtherance of a compelling governmental interest" and "is the least restrictive means of furthering that compelling governmental interest").

prosecution substantially burdens Blattert's religious exercise, we agree with the State insofar as we hold that its prosecution is the least restrictive means of furthering a compelling governmental interest, and RFRA therefore does not apply as a matter of law.

I. Blattert's Prima Facie Burden

[13] Blattert contends he satisfied his prima facie burden by testifying he belongs to the Ellettsville Church of Christ; that his church relies on biblical teachings for religious instruction on how to live one's life; that he must follow God's commands as conveyed through the Bible; and that those commands include physically punishing his children as he sees fit. He argues the conduct the State alleges—punching his children in the face, striking their heads with his elbow, and choking them—all falls within the authority God commands him to exercise, and by prosecuting him the State is burdening his sincerely held religious beliefs. Because we can decide this case on other grounds, we assume, without deciding, that Blattert's testimony satisfies his prima facie burden to establish the State is substantially burdening his religious exercise. *See, e.g.*, *Tyms-Bey*, 69 N.E.3d at 490 ("We will assume solely for argument's sake that Tyms-Bey pleaded a RFRA defense properly and met his burden of showing that this prosecution substantially burdens his exercise of religion.").

II. State's Burden

[14] The burden then shifts to the State to show this prosecution is the least restrictive means to further a compelling interest. Blattert contends these are

questions for the jury to decide, but he is mistaken. Whether the State's interest is sufficiently compelling and whether the State has chosen the least restrictive means to further that interest are purely legal issues for the court to decide. *See id.* at 489 ("We find as a matter of law that the State's compelling interest in a uniform and mandatory taxation system falls into the statutory exception such that RFRA affords no relief to Tyms-Bey."). Blattert does not cite, and we do not find, any authority holding otherwise. *See, e.g.*, *United States v. Anderson*, 854 F.3d 1033, 1037 (8th Cir. 2017) ("Furthermore, we reject Anderson's argument that he was entitled to present his RFRA defense to the jury. Because the district court concluded that prosecuting Anderson under the CSA was the least restrictive means to further a compelling governmental interest, it was proper for the court to reject Anderson's RFRA defense as a matter of law and to prohibit him from raising it again at trial.").

[15] The State satisfied its burden to show that its prosecution furthers a compelling governmental interest. Compelling governmental interests are "only those interests of the highest order," *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972), and Indiana's courts routinely recognize that protecting the welfare of children is one of them. *See, e.g.*, *In re B.J.*, 879 N.E.2d 7, 17 (Ind. Ct. App. 2008) ("[T]he State has a compelling interest in protecting the welfare of the child by intervening in the parent-child relationship when parental neglect, abuse, or abandonment are at issue." (quotation marks omitted)), *trans. denied*; *see also New York v. Ferber*, 458 U.S. 747, 756–57 (1982) ("It is evident beyond the need for elaboration that a [s]tate's interest in safeguarding the physical and

psychological well-being of a minor is compelling." (quotation marks omitted)). While a parent has a fundamental interest in directing "the upbringing and education of children," which may include "the use of reasonable or moderate physical force to control behavior," the State also has a "powerful interest in preventing and deterring the mistreatment of children." *Willis v. State*, 888 N.E.2d 177, 180 (Ind. 2008).

[16] Blattert acknowledges that, broadly speaking, the State has a compelling interest in preventing and deterring the mistreatment of children. Appellant's Br. at 28. But he contends the State must also show that prosecuting *him* in particular advances the State's broader interest. The State easily makes that showing. Blattert's children fall within the State's compelling interest in protecting children from physical abuse, so prosecuting Blattert's alleged excessive physical punishment of them furthers that interest.

[17] Blattert doesn't really argue otherwise. Instead, he argues that the "parental privilege" is an exception to the statutes he is charged with violating, and exceptions to a statute "undermine an argument that there is a compelling interest." Appellant's Reply Br. at 18. This argument fails because the parental privilege does not offer any exceptions related to the interests the State seeks to advance through this prosecution.

[18] Both sides agree that, regardless of any religious beliefs, all of the State's charges against Blattert are subject to the parental privilege, which is that: "A parent is privileged to apply such reasonable force or to impose such reasonable

confinement upon his or her child as he or she reasonably believes to be necessary for its proper control, training, or education." *Willis*, 888 N.E.2d at 182 (brackets omitted). "The defense of parental privilege, like self-defense, is a complete defense. That is to say a valid claim of parental privilege is a legal justification for an otherwise criminal act." *Id.* To "negate a claim of parental privilege, the State must disprove at least one element of the defense beyond a reasonable doubt." *Id.*

[19] So the parental privilege is an exception to a criminal prohibition on some corporal punishment which might otherwise be prohibited even though it is *reasonable*. But the compelling governmental interest the State seeks to advance here is protecting children from physical abuse, which does not require a prohibition on reasonable corporal punishment. Advancing that interest only requires a ban on *unreasonable* corporal punishment, and the parental privilege does not offer any exception to that restriction. Rather than providing an exception undermining the notion that Blattert's prosecution advances a compelling interest, the parental privilege operates to ensure the State has chosen the least restrictive means to advance its interest, which leads to the next element of the State's burden.

[20] The least-restrictive-means standard invokes a "comparative analysis." *United States v. Christie*, 825 F.3d 1048, 1061 (9th Cir. 2016). We must take the State's preferred means—imposing criminal penalties on those who use unreasonable physical force when disciplining their children—and then we must "lay such preferred means side by side with other potential options." *Id.* Because it is the

State's burden to satisfy this test, it "must address those alternatives of which it has become aware during the course of th[e] litigation." *Id.*

[21] Therefore, the State's "burden is two-fold: it must support its choice of regulation, and it must refute the *alternative schemes offered by the challenger*." *United States v. Wilgus*, 638 F.3d 1274, 1289 (10th Cir. 2011) (emphasis added); *see United States v. Grady*, 18 F.4th 1275, 1286 (11th Cir. 2021) ("In meeting its burden, the government must refute the alternative schemes proposed by the petitioners."); *Christie*, 825 F.3d at 1061 ("The government must show that each proposed alternative either is not 'less restrictive' within the meaning of RFRA or is not plausibly capable of allowing the government to achieve all of its compelling interests." (alteration adopted and citation omitted)). "If a less restrictive means is available for the [g]overnment to achieve its goals, [it] must use it." *Holt v. Hobbs*, 574 U.S. 352, 365 (2015) (alteration adopted).

[22] The State has satisfied this part of its burden because it offers the parental privilege as a defense to battery and similar crimes rather than completely banning the practice of corporal punishments. This accommodates religious practices which require reasonable corporal punishment. While it does not accommodate religious practices requiring unreasonable corporal punishment, there is no apparent accommodation of those practices which would still allow the State to achieve its compelling interest in protecting children from physical abuse.

[23] Tellingly, Blattert does not proffer an alternative scheme which is less restrictive than the State's proposed means. While it is the State's burden to show it has chosen the least restrictive means, it need not refute the "universe of all possible alternatives." *Smith v. Owens*, 13 F.4th 1319, 1326 (11th Cir. 2021) (referring to the United States Supreme Court's decision in *Holt*); *see Wilgus*, 638 F.3d at 1289 (stating that the government need not refute every conceivable alternative). "It would be a herculean burden to require [the State] to refute every conceivable option in order to satisfy the least restrictive means prong of RFRA." *Fowler v. Crawford*, 534 F.3d 931, 940 (8th Cir. 2008) (citation and quotation marks omitted). Without an immediately apparent less restrictive means, and without identifying any less restrictive means, Blattert cannot carry his burden as the appellant to persuade us that the trial court erred. *See, e.g.*, *Wells Fargo Bank, N.A. v. Rieth-Riley Constr. Co.*, 38 N.E.3d 666, 670 (Ind. Ct. App. 2015) ("The trial court's order is cloaked with the presumption of validity and it is the appellant's burden to persuade us that its decision was erroneous.").

[24] Therefore, we agree with the trial court that the State has demonstrated it has chosen the least restrictive means to advance a compelling governmental interest, and RFRA does not apply. The trial court's order is affirmed, and this matter is remanded for further proceedings.

[25] Affirmed.

Riley, J., and Robb, J., concur.