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FIRST AMENDMENT - MARYLAND

Hassay v. Mayor

United States District Court, D. Maryland - July 3, 2013 - Not Reported in F.Supp.2d - 2013 WL 3364692

During every summer from 1995 until June 2012, plaintiff William F. Hassay, Jr., an accomplished violinist, performed as a street artist on the beachfront boardwalk in Ocean City, Maryland. On June 2012, Hassay was warned by an Ocean City police officer that the volume of his music violated an Ocean City noise ordinance enacted in February 2012, which prohibited, inter alia, the audibility of musical instruments and amplified sound at a distance of greater than thirty feet. Faced with the threat of arrest, three months' imprisonment, and a \$500 fine, Hassay never returned to the boardwalk to perform.

On April 10, 2013, Hassay filed suit against the Mayor and City Council of Ocean City, Maryland claiming that the 30-Foot Audibility Restriction violated plaintiff's rights under the First Amendment. Plaintiff also filed a motion for a preliminary injunction seeking to enjoin the enforcement of the 30-Foot Audibility Restriction on the boardwalk during the pendency of the case.

After undergoing the traditional First Amendment analysis, the court found that, by restricting the audibility of music on the boardwalk to a distance of thirty feet, Ocean City had effectively banned this form of expression from the boardwalk, a traditional public forum.

Accordingly, as applied to the Ocean City boardwalk, plaintiff had established a likelihood of success on the merits with respect to a violation of the First Amendment based on the 30-Foot Audibility Restriction. A preliminary injunction against the enforcement of the 30-Foot Audibility Restriction, as to the boardwalk, in accordance with Fed.R.Civ.P. 65, was issued.