

Bond Case Briefs

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MUNICIPAL ORDINANCE - TEXAS

City of Port Arthur v. Thomas

Court of Appeals of Texas, Beaumont - August 31, 2022 - S.W.3d - 2022 WL 3868106

After city and city's public works director attempted to enforce ordinances regulating use of heavy vehicles on city street adjacent to owner's property where he operated landfarm for disposing used drilling mud from oil and gas operations, owner filed suit against city and director for tortious interference, violations of Equal Protection Clause and alternatively, inverse condemnation and regulatory taking, declaratory relief against both defendants, ultra vires actions against director, and sought to enjoin city's enforcement of ordinances.

Defendants filed plea to the jurisdiction. The District Court denied defendants' plea to the jurisdiction. Defendants appealed.

The Court of Appeals held that:

- Owner pled ultra vires claim sufficient to invoke trial court's jurisdiction;
- Owner failed to allege that director acted ultra vires in enforcing city roadway ordinances;
- Fact issues existed as to whether owner was "reasonably prudent operator" and whether director enforced road use ordinances in "commercially reasonable manner";
- City did not waive its sovereign immunity under Uniform Declaratory Judgments Act (UDJA);
- Fact issues as to whether director acted ultra vires in enforcing ordinance warranted denial of director's plea to the jurisdiction on owner's UDJA claim;
- Owner failed to demonstrate that defendants' actions in enforcing ordinance were not rationally related to legitimate government objectives; and
- Owner failed to allege viable inverse condemnation or regulatory takings claim to establish waiver of city's immunity.

Property owner who operated landfarm for disposing used drilling mud from oil and gas operations pled ultra vires claim sufficient to invoke trial court's jurisdiction, in his action against city's public works director asserting that director enforced road use ordinances in manner that was pre-empted by state law and/or violated owner's right to Equal Protection under Texas Constitution; owner complained that director's enforcement of statute by requiring him and his customers to obtain permit or agreement when director had not made others do so constituted ultra vires act, specifically pleading that director acted without reference to or in conflict with constraints placed on his discretion by local law authorizing him to act.

Property owner who operated landfarm for disposing used drilling mud from oil and gas operations failed to allege that city's public works director acted ultra vires in enforcing city roadway ordinances requiring applications to operate excess loads on roadways, for purposes of whether governmental immunity barred suit against director for enforcing ordinances in manner that was pre-empted by state law and/or violated owner's right to Equal Protection under Texas Constitution; ordinances vested director with authority to determine heavy truck routes and empowered him to take applications and to determine, based on information provided, whether to designate roadways capable of sustaining excess load and duration, and fact that owner was first person city required to

complete application did not mean that director acted outside his authority.

Fact issues existed as to whether property owner who operated landfarm for disposing used drilling mud from oil and gas operations was “reasonably prudent operator” and whether city’s public works director enforced road use ordinances in “commercially reasonable manner,” warranting denial of city and director’s plea to the jurisdiction in owner’s claim that city and director enforced road use ordinances in manner that was pre-empted by state law.

City did not waive its sovereign immunity under Uniform Declaratory Judgments Act (UDJA) in declaratory judgment action brought by property owner, who operated landfarm for disposing used drilling mud from oil and gas operations, seeking to prevent city from enforcing its road use ordinances requiring him to apply and obtain permit to operate excess loads on roadways; although city’s sovereign immunity could be waived if owner challenged validity of ordinances, owner did not challenge validity of ordinances but, rather, challenged enforcement of ordinances, and such a challenge did not fall within scope of UDJA’s express waivers of sovereign immunity.

Fact issues existed as to whether city’s public works director’s enforcement of road use ordinances constituted ultra vires action, warranting denial of director’s plea to the jurisdiction as to property owner’s Uniform Declaratory Judgments Act (UDJA) claim against director seeking to prevent him from enforcing road use ordinances requiring owner to apply and obtain permit to operate excess loads on roadways with respect to his operation of landfarm for disposing used drilling mud from oil and gas operations.

Property owner who operated landfarm for disposing used drilling mud from oil and gas operations failed to demonstrate that city and its public works director’s actions in enforcing ordinance requiring owner to file permit application to operate excess loads on roadways were not rationally related to legitimate government objective of responding to specific citizen complaints regarding owner’s operation and damage to city streets, and therefore owner failed to allege facially valid claim that city and director’s enforcement of ordinance violated Equal Protection Clause; city provided evidence that owner’s operation created more wear and tear on streets compared to purportedly similar trucks, and, although owner was first person city required to apply for permit under ordinance, city offered evidence it intended to use such permit applications going forward.

Property owner who operated landfarm for disposing used drilling mud from oil and gas operations, but was required to file permit application to operate excess loads on roadways pursuant to city ordinance, failed to allege viable inverse condemnation or regulatory takings claim to establish waiver of city’s immunity; ordinances dealt with regulating road use and specifically, heavy traffic on roads, which was not a regulation of owner’s property, and true nature of owner’s claim was based on city’s alleged wrongful enforcement of its ordinance, rather than an intentional taking or damage of his property for public use.

Whether state law preempted city ordinances requiring filing of permit application to operate excess loads on certain roadways necessarily depended upon whether city’s actions in enforcing it were “commercially reasonable” and whether property owner acted as “reasonably prudent operator” under civil statute expressly preempting municipal regulation of oil and gas operations with exception for municipality’s ability to enact or enforce ordinance regulating traffic or noise, and therefore, because essence of owner’s case against city and public works director was substantively more civil than criminal, trial court did not lack jurisdiction to enjoin enforcement of ordinance for violation of constitution and certain statutory provisions.

