

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000048-MR

UNITED SIGN, LTD.,
GENE CALDWELL AND LORI CALDWELL,
MARVIN BOWLIN AND LANA BOWLIN APPELLANTS

APPEAL FROM ROCKCASTLE CIRCUIT COURT
v. HONORABLE DANIEL J. VENTERS, JUDGE
ACTION NO. 97-CI-00162

COMMONWEALTH OF KENTUCKY,
TRANSPORTATION CABINET,
DEPARTMENT OF HIGHWAYS APPELLEES

AND 2002-CA-000049-MR

UNITED SIGN, LTD.,
AND C.V. ADVERTISING, INC. APPELLANTS

APPEAL FROM ROCKCASTLE CIRCUIT COURT
v. HONORABLE DANIEL J. VENTERS, JUDGE
ACTION NO. 97-CI-00159

COMMONWEALTH OF KENTUCKY,
TRANSPORTATION CABINET,
DEPARTMENT OF HIGHWAYS APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: EMBERTON, CHIEF JUDGE; BUCKINGHAM AND PAISLEY, JUDGES.

BUCKINGHAM, JUDGE: The appellants in these two cases appeal from an order of the Rockcastle Circuit Court authorizing the Transportation Cabinet (Cabinet) to remove several billboards which had been erected along Interstate Highway 75 in Rockcastle County. We affirm.

The six billboards at issue were erected on Interstate Highway 75 without permits in March and July of 1997. Permit applications were filed by the appellants with the Cabinet at approximately the same time the billboards were erected. The Cabinet filed its complaints against the appellants in the Rockcastle Circuit Court, and therein it sought removal of the billboards for alleged violation of the Billboard Act (KRS¹ 177.830-.890).

The circuit court granted summary judgment in favor of the Cabinet on January 15, 1998, and amended the judgment on November 19, 1998. However, in response to the appellants' motion to alter, amend, or vacate the judgment, the court suspended the portion of the judgment directing the removal of the billboards during the pendency of the appellants' appeals of the judgments. In an opinion rendered on October 27, 2000, a panel of this court affirmed the judgments of the circuit court.

¹ Kentucky Revised Statutes.

See United Signs, Ltd. V. Commonwealth, Ky. App., 44 S.W.3d 794 (2001). A petition for rehearing was denied on December 1, 2000, and the appellants' motion for discretionary review was denied by the Kentucky Supreme Court on June 6, 2001.

The Cabinet then filed a motion to reinstate the removal order. The appellants responded by filing a motion for summary judgment for the dismissal of the Cabinet's remaining claims, including the claim for orders requiring removal of the billboards. The appellants asserted that there were unresolved issues to be determined. On December 5, 2001, the circuit court denied the appellants' motions for summary judgment and reinstated the removal orders. The appellants then filed these appeals.²

The appellants raise two arguments on appeal. First, they argue that a mandatory injunction may not be entered for removal of an advertising devise controlled by the Billboard Act solely because the devise was erected without a permit. Second, they argue that the circuit court erred in granting a mandatory injunction requiring removal of the six billboards. However, we conclude that these arguments concern the substantive basis for the prior order of removal rather than the reinstatement of the prior order.

² Because the same issues are involved in both cases, we elected to consider the cases together.

The Cabinet argues that the appellants' arguments in this appeal are barred by the doctrine of *res judicata*. Specifically, the Cabinet asserts that the claims are barred by issue preclusion. "Issue preclusion bars the parties from relitigating any issue actually litigated and finally decided in an earlier action. . . . If the two suits concern the same controversy, then the previous suit is deemed to have adjudicated every matter which was or could have been brought in support of the cause of action." Yeoman v. Commonwealth, Health Policy Bd., Ky., 983 S.W.2d 459, 465 (1998). We agree with the Cabinet that the issues raised by the appellants were or could have been decided in the initial summary judgment entered by the circuit court.

More to the point, the law of the case doctrine is applicable. "[T]he law of the case doctrine is intended to prevent defendants from endlessly litigating the same issue in appeal after appeal. It also prevents a dissatisfied party from presenting piecemeal issues to the appellate courts so that no decision is ever final." Commonwealth of Kentucky v. Tamme, Ky., 83 S.W.3d 465, 468 (2002).

Although the appellants did not address their new issues in the initial appeal, they were free to do so. When this court upheld the summary judgment of the circuit court and discretionary review was denied by the Kentucky Supreme Court,

the issue of the Cabinet's right to remove the billboards was final. Only the reinstatement of the order allowing enforcement remained. Thus, the law of the case doctrine precluded the appellants from litigating the issues they now bring before this court.

The order of the Rockcastle Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

Philip E. Wilson
Lexington, Kentucky

BRIEFS FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky

Stuart W. Cobb
Assistant Attorney General
Frankfort, Kentucky