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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000448-MR

RED RIVER RANCH, LLC. and
GLENN M. SALYER — APPELLANTS

v.

APPEAL FROM POWELL CIRCUIT COURT
HONORABLE LARRY MILLER, JUDGE
ACTION NO. 03-CI-00332

CITY OF STANTON, KENTUCKY; VIRGINIA WILLS, SOLELY IN HER CAPACITY AS MAYOR OF STANTON, KENTUCKY AND AS A MEMBER OF THE STANTON CITY COUNCIL; JAMES MARTIN, SOLELY IN HIS CAPACITY AS A MEMBER OF THE STANTON CITY COUNCIL; DANNY MCCORMICK, SOLELY IN HIS CAPACITY AS A MEMBER OF THE STANTON CITY COUNCIL; MIKE LOCKARD, SOLELY IN HIS CAPACITY AS A MEMBER OF THE STANTON CITY COUNCIL; MARIAM SMALLWOOD, SOLELY IN HER CAPACITY AS A MEMBER OF THE STANTON CITY COUNCIL; PAM TIPTON, SOLELY IN HER CAPACITY AS A MEMBER OF THE STANTON CITY COUNCIL; BILLY RAY ESTES, SOLELY IN HIS CAPACITY AS A MEMBER OF THE STANTON CITY COUNCIL; VICKIE SLEMP, SOLELY IN HER CAPACITY AS CITY CLERK FOR THE CITY OF STANTON, KENTUCKY; and ED HASH, SOLELY IN HIS CAPACITY AS ZONING ENFORCEMENT OFFICER FOR THE CITY OF STANTON, KENTUCKY — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ABRAMSON AND TAYLOR, JUDGES; KNOPF,[1] SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Appellants, Red River Ranch, LLC, and Glenn M. Salyer appeal from the denial of their motions to enjoin the City of Stanton, Kentucky, from enforcing local ordinance 04-1111 on constitutional and various other grounds. We affirm.

Red River Ranch is a Kentucky corporation owned by Glenn M. Salyer for the purpose of operating a fleet of trucks that engage in the hauling of municipal solid waste and household trash from the Lexington-Fayette County Transfer Station to landfills at various locations in Central Kentucky. On November 13, 2003, the City of Stanton, through its City Council, adopted Ordinance No. 03-1114, entitled "An Ordinance Relating to the Storage, Collection, and Transportation of Garbage Trucks in the City Limits of the City of Stanton." Ordinance No. 03-1114 prohibited the transportation and parking in excess of one hour by common carriers of garbage and waste within the city limits of Stanton. Prior to the enactment of the ordinance, Red River Ranch parked four to six loaded trucks overnight at its terminal within the city limits of Stanton, Kentucky. Red River Ranch sought both a temporary and permanent injunction to prohibit the enforcement of the ordinance. During the pendency of that action, the City of Stanton revised the ordinance by adding a set of definitions and

[1] Senior Judge William L. Knopf, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

adopted Ordinance No. 04-1111[2]. The Powell Circuit Court denied the motions for a temporary and permanent injunction. This appeal follows.

Red River Ranch first argues that the ordinance is void-for-vagueness. In *Wilfong v. Commonwealth*, 175 S.W.3d 84, 95 (Ky.App. 2005), this Court explained the void-for-vagueness doctrine as follows:

> The void-for-vagueness doctrine requires a statute to provide fair notice by containing sufficient definiteness so that ordinary people can understand what conduct is proscribed. In addition, the doctrine mandates that the statute be worded in such a manner so as not to encourage arbitrary or discriminatory enforcement. The degree of specificity necessary to avoid unconstitutional vagueness varies depending on the type of provision. Nevertheless, the legislature need not define every term or factual situation in a statute, and terms left undefined are to be accorded their common, everyday meaning... In reviewing a vagueness challenge, the essential inquiry is whether the statute describes the forbidden conduct sufficiently so that persons of common intelligence disposed to obey the law can understand its meaning and application.

(internal citations omitted). When considering a vagueness challenge, the court should focus on the complaining party's conduct before examining hypothetical applications of the law. *Commonwealth v. Kash*, 967 S.W.2d 37, 42 (Ky.App. 1997).

The complained-of portions of the ordinance read in pertinent part:

> The term "garbage" as used in this Ordinance shall mean all waste, animal or vegetable, such as but not limited to waste material, refuse and similar material from kitchens, residences, grocery stores, restaurants, cafes, hotels, and all other deleterious substances.

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[2] We will refer to Ordinance No. 03-1114 and Revised Ordinance No. 04-1111 collectively as the "ordinance."

The term “refuse” as used in this Ordinance shall mean all waste, rubbish or any material of any kind that has been discarded, rejected, cast aside, or thrown away as worthless, except body wastes.

The term “trash” as used in this Ordinance shall mean all rubbish such as ashes, tin cans, paper boxes, glass, wood, shrubs, yard clippings, leaves, tree trimmings and similar matter.

SECTION 2. That from the date of this Ordinance forward, no individual or corporate and/or legal entity shall store or allow to remain in the city limits of the City of Stanton for a period in excess of one hour, any accumulation of either garbage, refuse and/or trash gathered or collected from any private or public sources which is placed in a garbage truck or similar vehicle.

SECTION 3. That no individual or corporate and/or legal entity shall transport along a public highway into the city limits of Stanton and allow to remain in city limits for a period in excess of one hour, any accumulation of either garbage, refuse and/or trash gathered from any private or public sources and which is placed in a garbage truck or similar vehicle. Nothing herein shall be construed as to prohibit the transportation of either garbage, refuse and/or trash through the city limits of Stanton, so long as said transportation is accomplished within the one-hour period set forth above.

SECTION 6. That nothing herein shall prohibit those agencies or businesses employed by the City of Stanton for garbage collection purposes from coming into the city limits of Stanton and collecting garbage, refuse, trash, and similar waste from the residents of Stanton and Powell County for the purpose of transporting said materials and waste outside the city limits of Stanton.

We find that the ordinance, as it is written, provides fair notice of the prohibited conduct. The ordinance states with sufficient clarity what materials are

prohibited from being stored in garbage trucks or similar vehicles within the city limits for a definite time period. A person of common understanding disposed to obey the law could determine what conduct would constitute a violation of this ordinance.

Nor are we persuaded that the ordinance provides for arbitrary or discriminatory enforcement. The ordinance by its terms applies in an even-handed manner. The exception for garbage trucks employed by the city of Stanton simply allows local garbage collection services to make their rounds in excess of one hour without violating the ordinance. Further, the exception by its wording does not extend to the storage of the garbage within the city limits, but is "for the purpose of transporting said material outside the city limits of Stanton." The ordinance is not unconstitutionally vague.

Red River Ranch next argues that the ordinance is overbroad. The overbreadth doctrine analyzes the potential impact of a statute upon the exercise of a fundamental right. *Wilfong*, 175 S.W.3d at 95. Essentially, the overbreadth doctrine prohibits a statute from reaching constitutionally permissible conduct in its "effort to control proscribable conduct..." *Id.* The standard for an overbreadth challenge is as follows:

> ...when First Amendment rights involving conduct rather than speech is at issue, an overbreadth challenge only exists where the impact of the statute upon these rights is both real and substantial when considered in relation to the statute's plainly legitimate sweep. A law should not be invalidated for overbreadth unless it reaches a substantial number of impermissible applications. The overbreadth claimant bears

> the burden of demonstrating from the text of the law that substantial overbreadth exists.

Id. at 96 (internal citations omitted).

Red River Ranch does not point to any potential applications of the ordinance that would infringe upon consitituionally protected conduct. Instead, it argues that the overbreadth of the ordinance encourages arbitrary and discriminatory enforcement. The issue of arbitrary enforcement is applicable to the void-for-vagueness analysis. *Kash*, *supra.* We have considered this argument above. The ordinance does not fail for overbreadth.

Red River Ranch next argues that the ordinance violates the Commerce Clause of the United States Constitution. As a preliminary matter, we have doubts regarding Red River Ranch's standing to bring this claim because they have not alleged any participation in, or connection their particular business has to, interstate commerce. Nevertheless, we will address the claim.

Article I, § 8 cl. 3 of the United States Constitution provides in part that "Congress shall have the Power... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The Commerce Clause contains a self-executing limitation that prevents the States from enacting laws that impose substantial burdens on interstate commerce. *Eastern Kentucky Resources v. Fiscal Court of Magoffin County*, 127 F.3d 532, 539 (6th Cir. 1997). This self-executing limitation is known as the "dormant" aspect of the Commerce Clause. *Id.* at 540. The Commerce Clause prohibits "outright economic protectionism or regulatory measures designed to

benefit in-state actors by burdening out-of-state actors." *Id.* There is a two-part inquiry for determining whether a statute violates the dormant Commerce Clause. *Id.* First, courts must determine whether "the statute directly burdens interstate commerce or discriminates against out-of-state interests." *Id.* Discrimination has been defined as the "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Id.* (quoting *Oregon Waste Sys. Inc. v. Department of Envtl. Quality of Oregon*, 511 U.S. 93, 99 (1994)). "A statute can discriminate against out-of-state interests in three different ways: (a) facially, (b) purposefully, or (c) in practical effect." *Id.* If a statute is discriminatory, then it is per se invalid, unless "the state can demonstrate that it is 'demonstrably justified by a valid factor unrelated to economic protectionism.'" *Id.* (quoting *New Energy Co. of Ind. v. Limbach,* 486 U.S. 269, 274 (1988)). The second part of the inquiry will invalidate an otherwise non-discriminatory statute if the burdens on interstate commerce are "clearly excessive in relation to the putative local benefits." *Id.* (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)).

We find that the ordinance does not discriminate against out-of-state interests. The language of the ordinance is facially neutral and makes no distinction between in-state and out-of-state actors. The ordinance was clearly enacted for the purpose of protecting the health and safety of the public rather than from a discriminatory motive against interstate commerce. Neither are we persuaded that the ordinance has a discriminatory effect. The ordinance applies equally to both in-state and out-of-state

actors. Again, the exemption granted to the local collectors does not apply to the storage of garbage, but rather only allows them more than one hour to complete the collection and transportation of local waste out of the city limits. Moreover, the ordinance does nothing to impede the transportation of waste through the city, but merely provides a reasonable time restriction. The local benefit of protecting the health of the public clearly outweighs the burden, if any, the ordinance places on interstate commerce. The ordinance does not violate the Commerce Clause.

Next, Red River Ranch argues that the ordinance is an unconstitutional invasion of property rights and an interference with its right to conduct business. We are not persuaded by this argument. The Supreme Court of Kentucky has held that the collection of garbage is clearly within the police powers of local government and that the "adequate disposal of garbage is necessary to public health and consequently local government, through its police power, has the right and responsibility to regulate such activity pursuant to statute." *Eastern Kentucky Resources v. Arnett*, 934 S.W.2d 270, 275 (Ky. 1996).

Finally, Red River Ranch argues that the ordinance violates KRS 83A.060 because it fails to embrace only one subject. KRS 83A.060(1) provides "[e]ach ordinance shall embrace only one (1) subject and shall have a title that shall clearly state the subject." The ordinance is entitled "An Ordinance Relating to the Storage, Collection and Transportation of Garbage and Related Matter in the City Limits of Stanton, Kentucky." The provisions of the ordinance are all germane to the purpose

announced in its title and do not deal with other subjects. *Rigelwood v. City of Bowling Green*, 238 S.W.2d 147, 148 (Ky. 1951). The ordinance conforms to KRS 83A.060(1).

Accordingly, the order of the Powell Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

John S. Talbott
DeCamp & Talbott, P.S.C.
Lexington, Kentucky

BRIEF FOR APPELLEE:

B. Scott Graham
Stanton, Kentucky