

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002136-MR

REV. NOAH BROUGHTON; REV. EARL OWENS;
REV. RON LITTLE; REV. BILLY MILLER;
REV. JAMES LOCKARD; REV. ROBERT FLYNN;
REV. JAMES MILLS; REV. STUART MASON;
REV. CHARLES BULLOCK; REV. DAVID CARR;
REV. KENNETH NICHOLS; REV. CHARLES PRATER;
REV. CLINT KEITH; DAN COGGINS

APPELLANTS

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE WILLIAM T. CAIN, JUDGE
ACTION NO. 99-CI-00345

PULASKI FISCAL COURT

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: HUDDLESTON, MILLER AND TACKETT, JUDGES.

TACKETT, JUDGE: Appellants, Dan Coggins, as well as Revs. Noah Broughton, Earl Owens, Ron Little, Billy Miller, James Lockard, Robert Flynn, James Mills, Stuart Mason, Charles Bullock, David Carr, Kenneth Nichols, Charles Prater, and Clint Keith, appeal from a declaratory judgment issued by the Pulaski Circuit Court. We affirm.

Appellants are persons who receive remuneration from the practice of their religious activities in Pulaski County.

All appellants except Coggins are employed as pastors, evangelists, or youth ministers in Pulaski County. Coggins is principal of a religious school in Pulaski County. Appellants filed a declaratory judgment action in the Pulaski Circuit Court against appellee, Pulaski Fiscal Court (Fiscal Court), seeking to have that court find certain Pulaski County Fiscal Court ordinances declared unconstitutional. The ordinances in question, enacted under the auspices of Kentucky Revised Statute (KRS) 68.197, assess a license fee, commonly called an occupational tax, on businesses, trades, occupations, and professions transacting business in Pulaski County. The license fee is assessed as a percentage of wages or net profits earned.¹

Appellants contended that the license fee violated the free exercise of religion clause of the United States and Kentucky Constitutions. (Specifically, §§ 1, 5 and 8, of the United States and § 181 of the Kentucky Constitution.)²

Appellants and the Fiscal Court filed motions for judgment on the

¹The record does not contain copies of the ordinances in question. However, all parties agree as to their relevant contents.

²Section one of the Kentucky Constitution protects, inter alia, the right of people to worship "Almighty God according to the dictates of their consciences." Section five also protects religious freedom. Section eight protects freedom of speech and of the press. Section 181 of the Kentucky Constitution permits the General Assembly to "delegate the power to counties, towns, cities and other municipal corporations, to impose and collect license fees . . . on franchises, trades, occupations and professions." However, local governments are not permitted to levy local income taxes. See e.g., Hopson v. Commissioners of Sinking Fund of City of Louisville, Ky., 613 S.W.2d 619, 620 (1981) (Palmore, J., concurring), cert. denied 454 U.S. 826, 102 S.Ct. 117, 70 L.Ed.2d 101 (1981). The First Amendment to the United States Constitution protects freedom of religion and freedom of speech.

pleadings. Kentucky Rule of Civil Procedure (CR) 12.03. The trial court issued a declaratory judgment finding the ordinances to be constitutional and applicable to the appellants. After the trial court denied a motion to alter, amend, or vacate, this appeal was filed.

Appellants argue on appeal that the ordinances in question violate the constitutional provisions previously set forth herein. "The question thus presented is one of law" as a party moving for judgment on the pleadings "admits for the purposes of his motion not only the truth of all of his adversary's well-pleaded allegations and fair inferences therefrom, but also the untruth of all of his own allegations which have been denied by his adversary." Archer v. Citizens Fidelity Bank & Trust Company, Ky., 365 S.W.2d 727, 729 (1962). The trial court's decisions on questions of law are entitled to no deference. See e.g., Scifres v. Kraft, Ky. App., 916 S.W.2d 779, 781 (1996). An ordinance is presumed valid if "any proper reasonable basis" can be identified to support it. City of Erlanger v. KSL Realty Corporation, Ky., 704 S.W.2d 649, 650 (1986). However, "the established policy in the interpretation of taxing statutes [or ordinances] is to resolve doubts in favor of the taxpayer." George Wiedemann Brewing Company v. City of Newport, Ky., 321 S.W.2d 404, 407 (1959).

Among the appellants' arguments is that the license fee is an impermissible income tax, contrary to § 181 of the Kentucky Constitution. This argument is without merit as the appellate courts of this state have consistently viewed similar revenue

producing measures to be permissible occupational taxes, not impermissible income taxes. See e.g., City of Louisville v. Sebree, 308 Ky. 420, 214 S.W.2d 248 (1948); Commissioners of the Sinking Fund of the City of Louisville v. Hopson, Ky. App., 613 S.W.2d 621 (1980); Patrick v. City of Frankfort, Ky., 539 S.W.2d 275 (1976).³

This appeal turns on whether Pulaski County's occupational tax may be levied upon the appellants. Relying primarily upon Murdock v. Pennsylvania, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292 (1943) and Follett v. Town of McCormick, 321 U.S. 573, 64 S.Ct. 717, 88 L.Ed.2d 938 (1944), appellants argue that Pulaski County's occupational tax improperly violates their constitutional right to freely exercise their religion. Those cases are distinguishable, however, because they did not involve an occupational tax levied as a percentage of a person's income. Rather, those cases involved a flat fee to be paid before someone could engage in their religious activities. This distinction was

³Although the courts of this state have steadfastly refused to change their ultimate opinion that these types of revenue producing measures are not income taxes, they have questioned the legal basis for that conclusion. See e.g., Commissioners of the Sinking Fund of the City of Louisville v. South Central Bell Telephone Company, Ky., 809 S.W.2d 380, 381-82 (1991) ("We in Kentucky have deluded ourselves into believing that an occupational tax is not an income tax through the medium of City of Louisville v. Sebree . . . "); Hopson, *supra* at 621 ("the occupational tax is a tax on income, and probably would be illegal except for the fact that this court in City of Louisville v. Sebree . . . saw fit to legalize it by the stratagem of calling it something else"). Even if we were inclined to overrule Sebree, *arguendo*, we could not do so under Supreme Court Rule (SCR) 1.030(8)(a), which states that "[t]he Court of Appeals is bound by and shall follow applicable precedents established in the opinions of the Supreme Court and its predecessor court."

made evident in Jimmy Swaggart Ministries v. Board of Equalization of California, 493 U.S. 378, 389, 110 S.Ct. 688, 695, 107 L.Ed.2d 796 (1990), in which the Court limited "Murdock and Follett to apply only where a flat license tax operates as a prior restraint on the free exercise or religious beliefs".

Pulaski County's occupational tax does not regulate per se any religious activity. As noted by the trial court, "the Pulaski County license fee in no way . . . impedes, interferes with, dictates, or infringes upon how they [appellants] exercise any aspect of their religion. They are free to practice their religion totally unencumbered by any regulation by Pulaski County." To put it plainly, Pulaski county's occupational tax is a straight forward, neutral revenue-producing measure intended to help pay for the services offered to the general public by that county.

We do not doubt in any way the sincerity of appellants' religious beliefs. However, it is undisputed that appellants derive income from their employment in Pulaski County. Therefore, they stand in the same position as all others similarly situated who have raised similar claims⁴ as freedom of religion does not mean that one is free "from all financial burdens of government, including taxes on income or property." Follett, supra at 321 U.S. 578, 64 S.Ct. 719. Accord Murdock, supra at 319 U.S. 112, 63 S.Ct. 874.

The judgment of the Pulaski Circuit Court is affirmed.

⁴Judicial officers are not exempt from similar taxes, Hopson, supra at 624, nor are federal employees, Patrick, supra.

ALL CONCUR.

BRIEF FOR APPELLANTS:

A.C. Donahue
Somerset, Kentucky

David C. Gibbs, III
Seminole, Florida

BRIEF FOR APPELLEE:

Michael Louis Duncan
Somerset, Kentucky