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Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000778-MR

COMMONWEALTH OF KENTUCKY,
TRANSPORTATION CABINET

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE RODNEY BURRESS, JUDGE
ACTION NO. 15-CI-00709

BENJAMIN ROBARDS

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * ** * **

BEFORE: GOODWINE, KRAMER AND K. THOMPSON, JUDGES.

THOMPSON, K., JUDGE: The Commonwealth of Kentucky, Transportation Cabinet appeals from an order of the Bullitt Circuit Court denying its petition to enforce the final order of the Secretary of the Kentucky Transportation Cabinet requiring Benjamin Robards to remove an advertising device located within 660 feet of interstate 65 (I-65). We conclude that Robards continues to maintain an

advertising device in violation of the Kentucky Billboard Act and reverse and remand for an order directing Robards to remove the advertising sign from a semi-trailer.

The Cabinet is a state agency charged with enforcing the Kentucky Billboard Act, KRS¹ 177.830 *et. seq.* This case began in the spring of 2013, after the Cabinet learned that Robards placed or allowed to be placed an advertising device on real property he owned located alongside I-65 in Bullitt County. The device consisted of a vinyl sign advertising a quilt outlet draped over a semi-trailer.

On June 13, 2013, the Cabinet advised Robards in writing that the advertising device must be removed. He was further advised that he could request an administrative hearing if he chose to contest the sign removal. Robards requested an administrative hearing.

After discovery was conducted, the Cabinet moved for summary judgment on the basis that Robards had no permit for the advertising device on his property and, in fact, under the applicable statutes and regulations, a permit could not be issued for the location in question.

The following facts were undisputed. The sign is within 660 feet of I-65, is clearly visible from the interstate and tied to the side of a semi-trailer. Robards collects monthly rent of \$300 from the individual who owns the House of

¹ Kentucky Revised Statutes

Quilts for the advertisement. Robards never applied for a permit to erect an advertising device on his property.

Robards operates a horse farm on the property and uses the semi-trailer for agricultural purposes. Inside the semi-trailer, he stores farm tools, equipment, and hay. From time to time, Robards moves the semi-trailer to other locations on his farm.

The hearing officer concluded that “hauling and maintaining a trailer to a position parallel to the boundary fence along an interstate and collecting monthly payments for the large advertising sign tied to the outside of the trailer is erecting an advertising device within a protected and prohibited area.” The hearing officer recommended that summary judgment be entered in favor of the Cabinet.

The Secretary of the Transportation Cabinet adopted, in full, the hearing officer’s recommended order. Although the final order advised Robards of his right to seek judicial review pursuant to KRS 13B.140, Robards did not seek judicial review of the final order.

Robards did not remove the vinyl sign from the semi-trailer and this action was filed by the Cabinet requesting that the Bullitt Circuit Court enforce the final order requiring that Robards remove the advertising device and permanently enjoin Robards from continuing to allow the advertisement to remain on the semi-trailer.

After this action was filed, Robards removed the vinyl sign on the semi-trailer. However, the removal of the vinyl sign revealed a nearly identical painted-on sign beneath it advertising for the same entity as the vinyl sign advertised. The Cabinet then filed an amended complaint alleging that the painted-on sign was the equivalent of the vinyl sign ordered to be removed by the Secretary as an illegal advertising device and requesting that the circuit court order its removal.

Following a hearing, the circuit court issued its findings of fact, conclusions of law and judgment. The Bullitt Circuit Court concluded that the semi-trailer with the painted-on sign advertising the House of Quilts was not an advertising device. The circuit court acknowledged that the semi-trailer is kept within 660 feet of the right-of-way of I-65, it is clearly visible to travelers on the highway, the purpose of the sign is to gain the attention of those travelers and Robards receives a monthly payment for maintaining the sign. Nevertheless, the circuit court found that because the semi-trailer is used for agricultural purposes, it is not an advertising device and, therefore, the Kentucky Billboard Act does not apply. The circuit court concluded that “it would be unjust to prohibit [Robards] from using his trailer on his farm when [he] made [it] exceedingly clear that the trailer plays a critical part of his horse business and farming operations.” The Cabinet appealed.

The Kentucky Billboard Act was enacted to comply with the Federal Highway Beautification Act, 23 United States Code §131, making the state eligible for federal funding. *Unisign, Inc. v. Commonwealth*, 19 S.W.3d 652, 655 (Ky. 2000). Among the purposes of the Act are the prevention of distractions to operators of motor vehicles and “[to] preserve and enhance the natural scenic beauty or the aesthetic features of the aforementioned interstate highways, limited-access highways, federal-aid primary highways, turnpikes, and adjacent areas[.]” KRS 177.850(2) and (4).

To further the purposes of the Act, KRS 177.841, with certain exceptions not applicable here, prohibits the erection or maintenance of any advertising device upon or within six hundred sixty (660) feet of the right-of-way of any interstate highway or federal-aid primary highway. To implement that law, 603 KAR² 3:080 Section 1(29)³ provides that “all areas within the boundaries of this Commonwealth which are adjacent to and within 660 feet (210.17 meters) of the state-owned highway right-of-way of the interstate” are protected areas. Section 4(3)(d) of 603 KAR 3:080 provides that an advertising device is not permitted in a protected area of an interstate if “[i]t is not securely affixed to a

² Kentucky Administrative Regulations.

³ The sections cited in 603 KAR 3:080 are now contained in 603 KAR Chapter 10. Because the hearing officer relied on sections in 603 KAR Chapter 3 and because there is no substantive difference in either Chapter as relevant to this case, we continue to cite 603 KAR Chapter 3 as relied upon by the hearing officer.

substantial structure permanently attached to the ground[.]” As relevant here, an advertising device is defined as “any billboard, sign, notice, poster, display, or other device intended to attract the attention of operators of motor vehicles on the highways[.]” KRS 177.830(5).

Applying the above definitions, the Secretary concluded that maintaining a semi-trailer in a position parallel to the boundary fence along I-65 and collecting monthly payments for the advertising sign tied to the outside of the trailer is prohibited by the applicable statutes and regulations. Robards argues that he has complied with the Secretary’s final order by removing the vinyl sign from the semi-trailer. He argues that the Secretary never determined whether the semi-trailer without the vinyl sign attached is an advertising device.

Although we agree that removal of the vinyl sign would have been sufficient to comply with the Secretary’s order in the absence of the painted advertisement on the semi-trailer, we cannot agree with Robards’s logic that replacing one advertisement with another complied with the Secretary’s order. His reasoning falls way short of logic when the definition of “erect” as used in the applicable KAR is applied. “Erect” includes “paint” or “in any way bring into being or establish[.]” 603 KAR 3:080 Section (1)(15). While the painted-on sign is not tied to the outside of the trailer, Robards continues to maintain the semi-trailer parallel to the interstate and collect a monthly fee for a painted-on sign

advertising the House of Quilts. There is no question that the purpose of the sign on the semi-trailer is to attract the attention of travelers on I-65, the House of Quilts is foreign to Robards's farming operations, and the semi-trailer on which it is located is not a substantial structure.

The circuit court seemed to believe that because the semi-trailer is used for agricultural purposes, it cannot be an advertising device. This reasoning is unsound. The Kentucky Billboard Act contains no exceptions for agricultural equipment that is used in such a manner so as to also make it an advertising device.

To be clear, the Cabinet does not contend that Robards cannot keep the semi-trailer within 660 feet of the interstate. It only contends that he cannot keep the semi-trailer displaying an advertisement within 660 feet of the interstate and be paid for doing so. Robards is free to use the semi-trailer in his farming operations; what he cannot do is use the semi-trailer as an advertising device. As the Cabinet suggests, he can paint over the sign, drape a blank sign over the advertisement or otherwise conceal the advertisement without impairing his use of the semi-trailer for agricultural purposes.

For the reasons stated, the Bullitt Circuit Court's findings of fact, conclusions of law and judgment is reversed. The case is remanded for an order requiring Robards to remove or conceal the advertising signage on the semi-trailer located within 660 feet of I-65.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Clayton B. Patrick
Frankfort, Kentucky

P. Kevin Moore
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Joseph J. Wantland
Shepherdsville, Kentucky