

Case review – Sept. 2004 to August 2005

By: J. H. Isonhood

Maida v. County of Santa Barbara, 2005 WL 980598 (Cal. App. 2 Dist.)

This case involved an on premise sign that had legally existed for some thirty years. In the Early 90's, the County adopted a zoning ordinance that required removal of all such on premise signs. The new ordinance also provided for amortization of the signs to be removed.

On receiving a complaint from a local group, the County began the process of ordering the removal of the said sign. The business owner requested a variance allowing the sign to remain, citing as a basis his variance the unusual location of his business. The County denied the variance and the business owner appealed to the County Board and local court which both affirmed the decision.

The business appealed the County's decision on the basis that there was lack of substantial evidence for the findings. The Appeals Court held that there was sufficient evidence to support the decision of the board and that the decision involved a discretionary act by the board. The business owner also raised equal protection and First Amendment issues which were all dismissed by the court. The court held that the ordinance was neither overly broad nor vague and the ordinance was completely content neutral. The court also held that the business owner had not shown that he had been "singled out" by the county for enforcement of this ordinance. The county had stated that its enforcement of the ordinance was on a "complaints made" basis. As such, the county was not selectively enforcing the ordinance.

Regency Outdoor Advertising v. City of Los Angeles, 126 Cal. App. 4th 1281, 25 Cal Rptr. 3d 73, (Cal App. 2005)

Regency Outdoor Advertising involves an inverse condemnation claim. Regency claimed that the planting of trees on Airport Boulevard by the city obstructed the view of their billboards by passing motorists. After summarily dismissing the related contract claim of Regency, the trial court heard testimony regarding the inverse condemnation claim. The trial court determined that Regency was not entitled to compensation for the partial obstruction of the view of their billboards.

On appeal, Regency argued that the trial court was wrong in stating that Regency had no cause of action based on mere obstruction of view. The appeals court determined that the trial court was in error and that an action in inverse condemnation could be based on obstruction of view. However, the appeals court also agreed that the trial court had properly determined that the obstruction of view in the instant case was not substantial enough, standing alone, to require compensation. The appeals court reviewed a number of decisions cited by Regency and noted that in each case, impairment was not the only basis for compensation. The cases cited all involved some

form of impairment of access as well as visibility. For this reason, the appeals court held that the trial court was within its discretion in determining that the impairment of view was not substantial enough to merit compensation. The appeals court also upheld the award of attorney fees and expert witness fees against Regency on the basis of an offer of settlement.

St. Louis Park Post No. 5632 v. City of St. Louis Park, 687 N.W. 2d 405 (Ct. App. Minn. 2005)

In this case, Clear Channel Outdoor entered into a rental agreement with a local VFW Post to place an advertising sign on its roof. The billboard was considered by the city as a legal but non-conforming use under its zoning statutes. Another entity purchased the building and sought to convert the second floor of the two-story building to office space. The new owner applied for a conditional use permit from the city to allow the conversion. The city granted the conditional use permit but required that the other non-conforming uses be removed from the building. This requirement stemmed from a passage in the zoning law requiring the cure of any non-conforming uses prior to the granting of a conditional use permit.

The new owner gave notice to Clear Channel of its termination of the lease as provided under the lease agreement. Clear Channel filed suit against the city for inverse condemnation and to overturn the decision of the city as being arbitrary and capricious. The Minnesota Court of Appeals determined that Clear Channel was not entitled to compensation as a result of the action of the city. The court reasoned that the imposition of the condition was against the land owner and not against Clear Channel. The land owner made the choice as to whether to terminate the lease. As such, Clear Channel is not entitled to compensation. The Court of Appeals affirmed on this ground but reversed the decision of the trial court on dismissal of Clear Channel's other claims. The trial court had not specified its basis for the dismissal of the other claims. For this reason, the case was remanded to the trial court for clarification.

Society Created to Reduce Urban Blight v. Zoning Hearing Board of Adjustment of the City of Philadelphia, 858 A.2d 679 (Commonwealth Court Pennsylvania) 2004.

In this case the Society Created to Reduce Urban Bight (SCRUB) filed an action to overturn the decision of a zoning board. The Zoning board had granted a variance to the owner of the former Frankford Arsenal in the City of Philadelphia. The developer that owned this property was experiencing financial hardship from a number of factors in attempting to turn this property into a commercial office development. The owner of the property filed a request for a variance with the city planning board in order to erect two outdoor advertising signs on the property. Although the property was zoned commercial, the signs for which the applications was made were violating the spacing requirements, size requirement, height requirement, and distance from interchange requirements of the local ordinance. The planning board granted the variances on the basis of an economic hardship. SCRUB appealed that decision to the local trial court which affirmed the decision.

The appeals court, in reversing the decision of the trial court, determined that the granting of variances under these circumstances was not a proper action. There was no provision for granting variances for economic hardship in the applicable ordinance. In addition, granting variances under these circumstances usually involved minor degrees of variance from the standards. The outdoor advertising signs to be erected violated almost every size and spacing requirement set out in the city ordinances. For this reason the board's decision was reversed and the variances denied.

Outdoor Advertising, Inc. v. City of Sanford, 603 S.E.2d 168 N.C. App. 2004

Outdoor Advertising applied for six billboard permits along a highway in the City of Sanford. The City of Sanford's ordinance regarding billboards referred to the federal and state statutes. Specifically, Sanford prohibited all billboards except directional signs, real estate signs, on-premise signs, landmark signs and free coffee signs. The trial court affirmed the decision of the board and Outdoor advertising appealed.

The appeals court stated that the city ordinance was ambiguous and that the decision of the board was arbitrary and capricious. The city had effectively banned outdoor advertising since 1975.

Lamar Advantage G.P. Company, LLC v. Addison Park District, 820 N.E. 2d 626

Lamar had entered into an agreement with predecessor in title for a fifteen year lease which was renewable at the end of said lease for an additional fifteen years. Lamar maintained the billboard on said property. Addison Park District purchased the property from said predecessor. At the time of purchase there were approximately four years remaining on said lease. Addison entered into negotiations with Lamar to renew the lease. With approximately two years remaining on the lease, the district entered into an agreement with the City of Addison to allow annexation of the property by the city. As part of that agreement, the district agreed to remove the subject billboard on termination of the lease.

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The lease at issue here was renewable unless one of the parties notified of the intent not to renew more than sixty days prior to the termination of the lease. The district sent a termination notice one year prior to the termination day and a second notice approximately sixty days prior to the termination date. Lamar filed a suit for inverse condemnation, violation of various property rights and civil conspiracy. The trial court dismissed all suits on summary judgment and Lamar appealed.

The appeals court determined that there was no condemnation process involved herein and no taking by the district. The district had merely assumed the position of landlord from its predecessor in title and elected not to renew the lease. The court noted that the district had given every indication of continuing the lease agreement until its termination. For this reason the appeals court upheld the dismissal.

Prime Media, Inc. v. City of Brentwood, 398 F.3d 814 (6th Circuit 2005).

The City of Brentwood passed ordinances restricting overall height of signs to 6 feet and overall size of signs to 120 square feet. The ordinance also prohibited off-premises signs – meaning signs that were not on the premises for which they advertised. Prime Media requested permits for a number of billboards along Interstate 65 which were all denied. The billboards proposed by Prime Media failed all three of the referenced restrictions. Based on the denial, Prime Media filed for suit in the local district court. Brentwood amended its ordinance after suit was filed, removing the off-premises restriction and adding a purpose to the ordinance. The suit by Prime Media was based on free speech and equal protection issues. The district court held that the restrictions in the city ordinance were content neutral but they failed the “narrowly tailored” test. Specifically, the district court questioned the basis for restricting signs to 6 feet with no evidence as to how that affected traffic or aesthetic beauty. The city appealed.

The 6th Circuit agreed with the district court as to content neutral character of the sign ordinance. However, the 6th Circuit said that the burden imposed on the narrowly tailored test by the district court was unreasonable. Instead of concentrating on the evidence for the specific size set, the circuit court said that the restrictions in the ordinance go no further than is necessary to protect the city’s goals. The court further states that it would be a heavy burden to require cities to run studies to attempt to determine an exact optimum size restriction. As to the on-premises language which was struck down, the appeals court held that because the permits were denied on the basis of size as well as the on-premises test, Prime Media was not entitled to damages resulting from the impermissible on-premises language.

Eller Media Company v. Mississippi Transportation Commission, (Miss. 2005)

This case involves condemnation of a billboard in DeSoto County, Mississippi. The Transportation Commission entered into a settlement with the lessor to Eller and claimed that the purchase of said property under these circumstances constituted a sale of the property which would trigger a termination clause in the lease between the property owner and Eller. Eller claimed that the sale of the property under the threat of eminent domain did not constitute a sale under the terms of the lease. The trial court held for the Mississippi Transportation Commission and Eller appealed. On appeal the Supreme Court of Mississippi held that a sale under threat of eminent domain is not an arms length sale that would trigger the language in the lease agreement. The clause in the lease agreement stated that on a sale of the premises, the owner could terminate on 30 days notice. The Supreme Court said that no such sale took place here. As such, the leasehold interest of Eller was viable and the case was remanded to the trial court for determination of the value thereof.

Nichols Media Group, LLC v. Town of Babylon, 2005 WL 885501 (E.D.N.Y. 2005)

This decision by the Federal District Court in the Eastern District of New York reviewed the constitutionality in the Towns of Babylon and Islip with regard to the first amendment free speech and the commerce clause. The ordinances of the Towns were essentially identical. The ordinances prohibited all outdoor advertising except on-premise signs. No off-premise advertising was allowed and no on-premise advertising was allowed that advertised anything other than the business on the location. The court analyzing the ordinances determined that they were narrowly tailored to protect traffic safety and the aesthetics of the city. The sign company also raised a number of issues including the fact that the prohibition of obscene signs was unconstitutionally vague and that the licensing costs were unconstitutional. The court held that these provisions were all constitutional with the exception of the terms, "immoral", "institutional", "historic" and "public interest" in one of the city's ordinances. Off-premise signs were allowed in certain business districts but only for businesses within the district. The sign company had argued that this was an unconstitutional burden on the commerce clause. The court held that this provision burdened not only out of state businesses but in state businesses and in city businesses as well. For this reason the effect on interstate commerce was held to be minimal.

The court did hold that the exemption for government signs was unconstitutional. The court reasoned that this would allow the government an avenue for expressing its views not authorized for the business. The court also held that the provisions limited each owner to one sign per parcel of property was constitutional. The district court determined that the unconstitutional provisions were severable and that the ordinances generally would stand after the unconstitutional portion were stricken.

Young Electric Sign Company, Inc. v. Utah Department of Transportation, (UT App.2005)

Young Electric Sign Company had an existing permitted sign on Interstate 15 in the State of Utah. The owner of the property on which said sign existed asked the sign company to move the sign to another portion of the property. The sign company filed an application for new permit for the relocated sign. Utah DOT denied the permit for said sign stating that it was within 500 feet of an interchange. The sign company filed suit and summary judgment was granted to Utah DOT.

On appeal the Utah Appeals Court reviewed the pertinent law and determined that the State's interpretation of the law was incorrect. The State had argued that the interchange ended at the end of the acceleration lane. And that this was the point of pavement widening. The appeals court held that the point of widening occurred when the entrance ramp intersected the acceleration lane. The court also noted that state statute limited the length of the interchange to 2640 feet from the centerline of the intersecting street or highway. The interpretation of UDOT exceeded this distance. For these reasons the appeals court reversed the decision of the lower court.

Larry Vance Dean vs Florida
lawsuit against state law Case + HBA
Case

MCC Outdoor v. Town of Franklinton Board of Commissioners, Ct. App. N.C. 2005

MCC Outdoor filed a petition for a special use permit to erect two billboards in the town. After two public meetings at which the board made its findings, it denied the special use permits. The trial court upheld the decision of the Board and the sign company appealed.

On appeal the appeals court noted that the city ordinance zoning code allowed for the granting of a special use permit if certain criteria are met. The two criteria in dispute involve whether the sign complied with the rules and regulations of the North Carolina Department of Transportation and whether the sign would be compatible with the general neighborhood. The court reviewing the findings of fact noted that the board had addressed numerous safety concerns as well as concerns by various residents in the area. The appeals court held that this was not sufficient to show that the proposed signs would be incompatible with the local neighborhood. Addressing the issue of compatibility, the appeals court noted that there was a railroad as well as numerous businesses in the vicinity. The court also noted that the billboard was one of the uses specifically authorized in the zone classification that applied to the area. For these reasons the appeals court held that there was no substantial evidence on which the board could base its decision.

KH Outdoor LLC v. City of Trussville, Alabama, 2005 WL 995485

The City of Trussville had ordinances similar to other cities that essentially banned signs that weren't commercial or industrial. KH was denied a number of permits and filed suit in district court. The opinion is from the district court on opposing the motions for summary judgment. The district court in evaluating the various signs ordinances of the city found all to be constitutional with regard to free speech except one section. There was one section of the ordinance that prohibited any signs except billboards in an area zoned commercial. The problems seemed to stem from the fact that billboards were defined as only having commercial speech on their face. For this reason, non-commercial speech was prohibited in areas that allowed billboards. The courts struck down this provision and severed it from the remainder of the ordinance.

The court also reviewed the question of the overall regulation of commercial speech and determined that the ordinance was sufficiently narrowly tailored to comply with the requirements of the first amendment.

Commonwealth Transportation Cabinet Department of Highways v. United Signs Limited, Kentucky Appeal 2005

United Sign Limited erected six billboards in the State of Kentucky without obtaining permits prior to their erection. In a series of suits and appeals the State filed suit and obtained an order for the removal of said billboards. During the appeals process, the billboard company removed all of the structures except the poles. The

State contended that the poles must be removed as well and the trial court determined that the poles could remain.

The appeals court looked at the definition of structure under the Kentucky statutes. In overturning the trial court, the appeals court determined that an outdoor advertising structure includes the poles.