

COURT OF APPEALS OF MARYLAND

James Kane, Jr. and Realty Development Group, Inc. v. The Board of Appeals of Prince George's County, Sitting as the Board of Administrative Appeals, 390 Md. 145

887 A.2d 1060 (2005) · No. No. 29, September Term, 2005 · Decided December 12, 2005

SUMMARY

The Maryland Court of Appeals considered whether Prince George's County could issue fire-code correction orders to a landlord and management agent for hazardous conditions caused by tenants. The court held that the plain language of the County Code authorized citations to property owners and agents, even when they did not create the violations. It also held that the code, as applied, did not violate the petitioners' due-process or equal-protection rights.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Cathell, J.; Bell, C.J.; Raker, J.; Wilner, J.; Harrell, J.; Battaglia, J.; Greene, J.
JURISDICTION	Maryland
DECIDED	December 12, 2005
DOCKET	No. 29, September Term, 2005
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioners sought review of county fire-code correction orders issued to the property owner and management agent for dangerous conditions allegedly created by tenants. After the Board of Appeals affirmed the orders, the Circuit Court for Prince George's County remanded twice and ultimately affirmed the Board's decision. The Court of Special Appeals affirmed, and the Court of Appeals of Maryland granted certiorari.
STANDARD OF REVIEW	The court reviews an administrative agency's decision under the same statutory standards as the circuit court, determining whether substantial evidence supports the agency's findings and conclusions and whether the decision rests on an erroneous conclusion of law. Agency factual findings and reasonable inferences are reviewed

	deferentially, while statutory interpretation and constitutional issues are reviewed by the court.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	James Kane, Jr., Realty Development Group, Inc. v. Board of Appeals of Prince George's County, Sitting as the Board of Administrative Appeals

TOPICS

statutory interpretation

plain meaning rule

administrative law

judicial review of agency action

equal protection

PRACTICE AREAS

administrative law

constitutional law

municipal law

real estate

landlord tenant

QUESTIONS PRESENTED

1. Whether Prince George's County Code § 11-162 permits the Fire Department to issue correction orders and citations to an owner, operator, occupant, or agent even when that person did not cause the condition or violation.
2. Whether the County Fire Code, as applied to petitioners, violated due process by requiring the owner or manager to correct dangerous conditions caused by tenants.
3. Whether the County's practice of citing landlords or managers rather than tenants violated the Equal Protection Clause of the United States Constitution or Article 24 of the Maryland Declaration of Rights.

HOLDINGS

1. The plain language of § 11-162 permits the Fire Department to serve orders or notices on the owner, operator, occupant, or agent, even if that person did not cause the condition or violation; the qualifying phrase "responsible for the condition or violation" modifies only "other person."
2. The County Fire Code, as applied, did not violate due process because requiring landlords or managers to correct dangerous fire conditions bears a real and substantial relation to public health, safety, and welfare and was not shown to be arbitrary, oppressive, or unreasonable.
3. The County's practice of citing landlords and managers rather than tenants did not violate equal protection because the classification is subject to rational-basis review and is rationally related to the legitimate governmental objective of quickly and effectively correcting dangerous fire conditions.

KEY QUOTATIONS

"As a result, there are five separate persons or entities who can be cited under the County Code: (1) the owner, (2) the operator, (3) the occupant, (4) the agent, or (5) "other person responsible for the condition or violation."" (390 Md. at 162-163)

“As a result, the owner, operator, occupant, or agent may be cited even though they may not have caused the condition or violation.” (390 Md. at 163)

“The County's purpose to ensure the safety and welfare of its citizens is an appropriate objective of government.” (390 Md. at 168)

FACTUAL BACKGROUND

Realty Development Group owned three rental properties in College Park, Maryland, and James Kane acted as its agent or manager. During fire-department inspections, one tenant's unit contained an approximately three-foot accumulation of newspapers, magazines, food containers, and other combustible materials, while another room containing a boiler and water heater was being used as a storage room. The Fire Department issued correction orders to Kane as owner or manager, requiring the dangerous conditions to be corrected; the County did not assess fines at that time.

PROCEDURAL HISTORY

The Prince George's County Fire Department issued correction orders identifying James Kane as the owner and requiring abatement of dangerous accumulations of combustible materials and a storage-room condition. The Board affirmed after hearings and remand proceedings concerning equal protection and the County's practice of citing landlords rather than tenants. The Circuit Court and Court of Special Appeals affirmed. The Court of Appeals affirmed the judgment of the Court of Special Appeals.

DISPOSITION

affirmed

CASES CITED

- Kane v. Board of Appeals, 387 Md. 465, 875 A.2d 769 (2005)
- Annapolis Market Place, L.L.C. v. Parker, 369 Md. 689, 802 A.2d 1029 (2002)
- Jordan Towing, Inc. v. Hebbville Auto Repair, Inc., 369 Md. 439, 800 A.2d 768 (2002)
- Board of Physician Quality Assurance v. Banks, 354 Md. 59, 729 A.2d 376 (1999)
- United Parcel v. People's Counsel, 336 Md. 569, 650 A.2d 226 (1994)
- Bulluck v. Pelham Wood Apartments, 283 Md. 505, 390 A.2d 1119 (1978)
- O'Connor v. Baltimore County, 382 Md. 102, 854 A.2d 1191 (2004)
- Rockwood Casualty Insurance Co. v. Uninsured Employers' Fund, 385 Md. 99, 867 A.2d 1026 (2005)
- Oaks v. Connors, 339 Md. 24, 660 A.2d 423 (1995)
- Comptroller of the Treasury v. Kolzig, 375 Md. 562, 826 A.2d 467 (2003)
- Moore v. State, 388 Md. 446, 879 A.2d 1111 (2005)
- Sullivan v. Dixon, 280 Md. 444, 373 A.2d 1245 (1977)
- Maryland Department of the Environment v. Underwood, 368 Md. 160, 792 A.2d 1130 (2002)
- Employment Security Administration v. Weimer, 285 Md. 96, 400 A.2d 1101 (1979)

- Schmerling v. Injured Workers' Insurance Fund, 368 Md. 434, 795 A.2d 715 (2002)
- Bowie Inn, Inc. v. Bowie, 274 Md. 230, 335 A.2d 679 (1975)
- Steuart Petroleum Co. v. Board of County Commissioners, 276 Md. 435, 347 A.2d 854 (1975)
- Maryland Board of Pharmacy v. Sav-A-Lot, Inc., 270 Md. 103, 311 A.2d 242 (1973)
- Salisbury Beauty Schools v. State Board of Cosmetologists, 268 Md. 32, 300 A.2d 367 (1973)
- McBriety v. Baltimore, 219 Md. 223, 148 A.2d 408 (1959)
- Md. Green Party v. Maryland Board of Elections, 377 Md. 127, 832 A.2d 214 (2003)
- Kirsch v. Prince George's County, 331 Md. 89, 626 A.2d 372 (1993)
- New York State Club Association, Inc. v. New York, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988)
- Vance v. Bradley, 440 U.S. 93, 99 S. Ct. 939, 59 L. Ed. 2d 171 (1979)
- Owings v. Jones, 9 Md. 108 (1856)
- Matthews v. Amberwood Associates, 351 Md. 544, 719 A.2d 119 (1998)
- Smith v. Walsh, 92 Md. 518, 48 A. 92 (1901)
- Hemmings v. Pelham Wood Limited Liability Limited Partnership, 375 Md. 522, 826 A.2d 443 (2003)
- Rhaney v. University of Maryland Eastern Shore, 388 Md. 585, 880 A.2d 357 (2005)
- Richwind v. Brunson, 335 Md. 661, 645 A.2d 1147 (1994)
- Brooks v. Lewin Realty III, Inc., 378 Md. 70, 835 A.2d 616 (2003)
- Cleburne v. Cleburne Living Center, 473 U.S. 432, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985)
- Murphy v. Edmonds, 325 Md. 342, 601 A.2d 102 (1992)