

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

National Amusements Inc. v. Borough of Palmyra

716 F.3d 57 (3d Cir. 2013) · No. Nos. 12-1630 and 12-2386 · Decided May 9, 2013

SUMMARY

The United States Court of Appeals for the Third Circuit affirmed summary judgment for the Borough of Palmyra and the denial of interim attorney's fees to National Amusements Inc. The court held that the emergency closure of a flea market due to unexploded munitions did not violate procedural due process or constitute a compensable taking, and was not arbitrary or capricious under New Jersey law. The court further held that temporary relief under a consent order did not make National Amusements a prevailing party under 42 U.S.C. § 1988 after its constitutional claims were rejected on the merits.

CASE DETAILS

COURT	United States Court of Appeals for the Third Circuit
WRITING FOR THE COURT	Barry, Circuit Judge; Fuentes, Circuit Judge; Chagares, Circuit Judge
JURISDICTION	Federal
DECIDED	May 9, 2013
DOCKET	Nos. 12-1630 and 12-2386
DISPOSITION	affirmed
PROCEDURAL POSTURE	National Amusements appealed the District Court's grant of summary judgment for the Borough on its constitutional and New Jersey-law claims and the denial of its motion for attorney's fees under 42 U.S.C. § 1988.
STANDARD OF REVIEW	The grant of summary judgment was reviewed de novo, with facts viewed in the light most favorable to the nonmoving party. Legal issues concerning the applicable standard for attorney's fees were reviewed plenary, and the reasonableness of the fee ruling was reviewed for abuse of discretion. The New Jersey prerogative-writ claim was reviewed under a deferential rational-basis, arbitrary-and-capricious standard.
PRECEDENTIAL VALUE	precedential
PARTIES	National Amusements Inc. v. The Borough of Palmyra, Environmental Resources Management, Inc., Munitions Management Group, LLC

TOPICS

procedural due process takings clause section 1983 municipal law appellate procedure

PRACTICE AREAS

constitutional law civil rights municipal law appellate procedure attorney's fees

QUESTIONS PRESENTED

1. Whether Palmyra violated procedural due process by temporarily closing the market without pre-deprivation notice or an opportunity to be heard.
2. Whether Palmyra's temporary emergency closure of the market constituted a compensable taking under the Fifth Amendment.
3. Whether Palmyra's emergency closure was arbitrary, capricious, unreasonable, unsupported by the evidence, or contrary to law under New Jersey's action-in-lieu-of-prerogative-writ standard.
4. Whether National Amusements qualified as a prevailing party entitled to attorney's fees under 42 U.S.C. § 1988 based on the consent order allowing the market to reopen, despite losing its § 1983 claims on the merits.

HOLDINGS

1. Palmyra was not required to provide pre-deprivation notice or a hearing before temporarily closing the market because the immediate public-safety threat posed by unexploded munitions justified prompt action, and National Amusements did not contend that available post-deprivation procedures were inadequate.
2. Palmyra's temporary closure of the market to abate the danger posed by unexploded artillery shells was an exercise of the police power and did not constitute a compensable taking.
3. Palmyra's temporary restriction of access was not arbitrary, capricious, unreasonable, unsupported by the evidence, or contrary to law under New Jersey's deferential rational-basis standard.
4. National Amusements was not entitled to attorney's fees under § 1988 because interim relief obtained through the consent order could not establish prevailing-party status after the District Court ultimately dismissed its § 1983 claims on the merits.

KEY QUOTATIONS

“a municipality need not conduct a pre-deprivation hearing before acting to prevent the public from walking around a surface littered with live explosives.” (at 6)

“It is difficult to imagine an act closer to the heartland of a state's traditional police power than abating the danger posed by unexploded artillery shells.” (at 7)

“a plaintiff who 'secur[es] a preliminary injunction, then loses on the merits as the case plays out and judgment is entered against [her], has '[won] a battle but los[t] the war.'” (at 10)

FACTUAL BACKGROUND

National Amusements operated an open-air flea market on property that had formerly been used as a United States Army weapons-testing facility. In 2008, a contractor discovered an unexploded artillery shell near the surface of the market's parking lot, creating a potential detonation risk in an area where vendors drove stakes into the ground. After National Amusements declined to close voluntarily, Palmyra issued an emergency order restricting access while hundreds of munitions were detected and removed. The parties later agreed to reopen the market subject to safety controls, but the District Court ultimately rejected National Amusements's constitutional and state-law claims.

PROCEDURAL HISTORY

National Amusements filed suit after Palmyra temporarily closed its flea market because of unexploded munitions on the property, asserting procedural due process, takings, and New Jersey-law claims. The parties entered a consent order allowing the market to reopen subject to safety controls. The District Court later granted Palmyra summary judgment on all claims and denied National Amusements's request for attorney's fees, concluding that any success associated with the consent order arose from state-law claims. The Third Circuit affirmed both orders, although it relied on different reasoning regarding the fee request.

DISPOSITION

affirmed

CASES CITED

- A.W. v. Jersey City Pub. Sch., 486 F.3d 791, 794 (3d Cir. 2007)
- Schmidt v. Creedon, 639 F.3d 587, 595 (3d Cir. 2011)
- Gilbert v. Homar, 520 U.S. 924, 930, 932-33 (1997)
- Mathews v. Eldridge, 424 U.S. 319, 333, 335 (1976)
- N. Am. Cold Storage Co. v. City of Chicago, 211 U.S. 306, 320 (1908)
- Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 537 (2005)
- Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1032 (1992)
- Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 335 (2002)
- Rivkin v. Dover Twp. Rent Leveling Bd., 671 A.2d 567, 580-81 (N.J. 1996)
- Worthington v. Fauver, 440 A.2d 1128, 1139 (N.J. 1982)
- People Against Police Violence v. City of Pittsburgh, 520 F.3d 226, 231, 234-36 (3d Cir. 2008)
- Hensley v. Eckerhart, 461 U.S. 424, 429, 433 (1983)
- Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res., 532 U.S. 598, 604 (2001)
- P.N. v. Clementon Bd. of Educ., 442 F.3d 848, 853 (3d Cir. 2006)
- Sole v. Wyner, 551 U.S. 74, 78-86 (2007)
- Watson v. Cnty. of Riverside, 300 F.3d 1092, 1096 (9th Cir. 2002)
- Luria Bros. & Co. v. Allen, 672 F.2d 347, 357-58 (3d Cir. 1982)

- Biodiversity Conservation Alliance v. Stern, 519 F.3d 1226, 1232 (10th Cir. 2008)

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