

SUPREME COURT OF GEORGIA

Morgan Cnty. v. May

Morgan Cnty. v. May, 824 S.E.2d 365 · No. S18A1622 · Decided February 18, 2019

SUMMARY

The Supreme Court of Georgia held that a county's pre-amendment zoning ordinance was unconstitutionally vague as applied to short-term rentals (seven-night stays) because it failed to provide fair notice of what rental durations were prohibited, rendering the use "grandfathered" and not subject to the amended ordinance's explicit ban on rentals under 30 days. The court affirmed dismissal of a criminal citation for violating the amended ordinance, reasoning that the old ordinance's silence on rental duration and reliance on undefined "residential" terms did not give a person of ordinary intelligence fair warning that week-long rentals were unlawful. Key topics: vagueness (as-applied), due process, nonconforming/grandfathered use, short-term rental regulation, and zoning ordinance interpretation.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	NAHMIAS
JURISDICTION	Georgia
DECIDED	February 18, 2019
DOCKET	S18A1622
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the trial court's order dismissing criminal citation on grounds of unconstitutional vagueness and grandfathering.
PRECEDENTIAL VALUE	Published
PARTIES	Morgan County v. Christine B. May

TOPICS

- zoning
- due process
- constitutional law
- criminal procedure
- appellate procedure

PRACTICE AREAS

- Zoning and Land Use
- Constitutional Law

QUESTIONS PRESENTED

1. Whether the old zoning ordinance was unconstitutionally vague as applied to seven-night rentals of May's property, so that her use was grandfathered and not subject to the amended ordinance's prohibition.

HOLDINGS

1. The old zoning ordinance was unconstitutionally vague as applied because it failed to provide fair warning that fewer-than-30-day rentals were prohibited and encouraged arbitrary enforcement.

KEY QUOTATIONS

“a challenged statute or ordinance [must] give a person of ordinary intelligence fair warning that specific conduct is forbidden or mandated and provide sufficient specificity so as not to encourage arbitrary and discriminatory enforcement.” (at 367)

“The County's definitions within definitions fail to provide any sort of practical guidelines to enable a homeowner to determine at what point a structure ceases to be 'residential.'” (at 368)

“a structure ... which is designed or used exclusively for residential purposes” (at 367)

FACTUAL BACKGROUND

May built a vacation home in Morgan County, and in 2008 she began renting it out for about a week. The old zoning ordinance did not specifically address rentals of any duration. In October 2010, the County amended the ordinance to explicitly prohibit short-term rentals (fewer than 30 days). In August 2011, after a seven-night rental, the County issued a criminal citation. The procedural history includes a civil lawsuit and multiple appeals.

PROCEDURAL HISTORY

May was cited for violating the amended zoning ordinance in August 2011. The criminal case was stayed for several years while a civil lawsuit was litigated. After the civil case ended, the criminal case was revived in 2015. May filed a motion to dismiss, which was denied on non-constitutional grounds, and she was found guilty. She appealed, and the Court of Appeals remanded for a ruling on her constitutional vagueness challenge. On remand, the trial court granted the motion to dismiss. The County appealed, and May cross-appealed.

DISPOSITION

affirmed

CASES CITED

- Parker v. City of Glennville, 288 Ga. 34, 35, 701 S.E.2d 182 (2010)
- Haugen v. Henry County, 277 Ga. 743, 744-745, 594 S.E.2d 324 (2004)
- Dozier v. Baker, 283 Ga. 543, 545, 661 S.E.2d 543 (2008)
- Conrad v. Conrad, 278 Ga. 107, 108, 597 S.E.2d 369 (2004)

- Rockdale County v. Burdette, 278 Ga. 755, 756, 604 S.E.2d 820 (2004)
- BBC Land & Dev., Inc. v. Butts County, 281 Ga. 472, 473, 640 S.E.2d 33 (2007)
- May v. Morgan County, 343 Ga.App. 255, 260-262, 807 S.E.2d 28 (2017)

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