

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

People for Ethical Treatment of Animals, Inc. v. Gittens

364 U.S. App. D.C. 386 (D.C. Cir. 2005) · No. 02-7106; consolidated with Nos. 03-7190 and 03-7195 · Decided
January 28, 2005

SUMMARY

The D.C. Circuit considered consolidated appeals arising from the District of Columbia’s rejection of an animal sculpture design submitted by People for the Ethical Treatment of Animals for the “Party Animals” public art exhibit. The court declined to reach the First Amendment merits because the exhibit had ended and it was unclear whether the district court’s \$4,000 award was based on a constitutional violation or instead constituted a refund or restitution. The court dismissed two appeals, dismissed the preliminary-injunction appeal as moot, and remanded the damages appeal for clarification.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	Randolph; Ginsburg, Chief Judge; Randolph, Circuit Judge; Rogers, Circuit Judge
JURISDICTION	Federal
DECIDED	January 28, 2005
DOCKET	02-7106; consolidated with Nos. 03-7190 and 03-7195
DISPOSITION	other
PROCEDURAL POSTURE	The District appealed from a preliminary injunction requiring display of PETA's sculpture, from the district court's memorandum and order granting PETA summary judgment, and from the resulting \$4,000 judgment. The court of appeals dismissed the summary-judgment appeal and the preliminary-injunction appeal, and remanded the record concerning the \$4,000 award for clarification.
STANDARD OF REVIEW	De novo review of mootness and appellate jurisdiction; review of the district court's judgment and preliminary injunction in light of changed circumstances.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Anthony Gittens, Executive Director, District of Columbia
Commission on the Arts and Humanities, District of Columbia v.
People for the Ethical Treatment of Animals, Inc.

TOPICS

mootness appellate jurisdiction first amendment free speech section 1983

PRACTICE AREAS

constitutional law civil rights appellate procedure remedies municipal law

QUESTIONS PRESENTED

1. Whether the appeal from the preliminary injunction was moot after the five-month public art exhibit ended.
2. Whether the First Amendment controversy was capable of repetition yet evading review.
3. Whether the \$4,000 award was compensatory damages dependent on a constitutional violation, or instead a refund or restitution that would not preserve a live constitutional controversy.
4. Whether the appeal from the district court's November 2003 memorandum and order was appealable when the order was not entered on a separate document as required by Federal Rule of Civil Procedure 58(a).

HOLDINGS

1. The appeal from the preliminary injunction was moot because the Party Animals exhibit had ended and nothing remained to be enjoined through a permanent injunction.
2. The First Amendment controversy was not capable of repetition yet evading review.
3. The \$4,000 award could preserve a live constitutional controversy only if the district court intended it as damages contingent on a First Amendment violation; the record was remanded for clarification.
4. The appeal from the November 2003 memorandum and order was dismissed because the order was not entered on a separate document and therefore was not an effective judgment under Federal Rule of Civil Procedure 58(a).

KEY QUOTATIONS

“An appeal from an order granting a preliminary injunction becomes moot when, because of the defendant’s compliance or some other change in circumstances, nothing remains to be enjoined through a permanent injunction.” (at 10)

“The “wrong” that is, or is not, “capable of repetition” must be defined in terms of the precise controversy it spawns.” (at 12)

“In short, the First Amendment controversy in this case cannot be treated as capable of repetition but evading review.” (at 16)

FACTUAL BACKGROUND

The District of Columbia Commission on the Arts and Humanities sponsored a five-month public art exhibit called “Party Animals,” consisting of decorated donkey and elephant sculptures. PETA paid \$5,000 to sponsor an elephant and submitted designs criticizing circus mistreatment of animals; the Commission rejected the critical designs while accepting a happy circus elephant design. After the district court ordered the Commission to display PETA's sculpture, the elephant was displayed for only one month before the exhibit ended, and the district court later awarded PETA \$4,000.

PROCEDURAL HISTORY

PETA sued under 42 U.S.C. § 1983, alleging that the District violated its First Amendment rights by rejecting designs for a public art exhibit. The district court issued a preliminary injunction requiring the District to display PETA's elephant, later granted PETA summary judgment, and awarded \$4,000 in damages. Because the exhibit had ended, the court of appeals examined whether any live controversy remained and whether the \$4,000 award was dependent on the alleged constitutional violation.

DISPOSITION

other

REMAND INSTRUCTIONS

In No. 03-7195, the district court must clarify whether the \$4,000 award to PETA rested on the District's alleged First Amendment violation or instead represented a refund or restitution independent of that violation.

CASES CITED

- *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 346-47 (1936) (Brandeis, J., concurring)
- *Christian Knights of Ku Klux Klan Invisible Empire, Inc. v. District of Columbia*, 972 F.2d 365 (D.C. Cir. 1992)
- *Weinstein v. Bradford*, 423 U.S. 147 (1975)
- *Spivey v. Barry*, 665 F.2d 1222 (D.C. Cir. 1981)
- *Arkansas Educational Television Commission v. Forbes*, 523 U.S. 666 (1998)
- *Farrar v. Hobby*, 506 U.S. 103 (1992)
- *Powell v. McCormack*, 395 U.S. 486 (1969)
- *University of Texas v. Camenisch*, 451 U.S. 390 (1981)
- *People for the Ethical Treatment of Animals v. Giuliani*, 105 F. Supp. 2d 294 (S.D.N.Y. 2000)
- *Kidd v. District of Columbia*, 206 F.3d 35 (D.C. Cir. 2000)
- *Rosenberger v. Rector & Visitors of University of Virginia*, 515 U.S. 819 (1995)
- *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993)
- *National Endowment for the Arts v. Finley*, 524 U.S. 569 (1998)
- *United States v. American Library Association*, 539 U.S. 194 (2003)

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