

SUPREME COURT OF KENTUCKY

Commonwealth of Kentucky, Energy and Environment Cabinet v. Shepherd

366 S.W.3d 1 (Ky. 2012) · No. 2011-SC-000482-MR; 2011-SC-000485-MR · Decided April 26, 2012

SUMMARY

The Supreme Court of Kentucky affirmed the denial of petitions for writs of mandamus and prohibition concerning a Franklin Circuit Court order allowing environmental citizen plaintiffs to intervene for the limited purpose of commenting on and objecting to a proposed consent judgment. The court held that the limited intervention was not preempted by federal law and that the petitioners had an adequate remedy by appeal for alleged procedural and consent-judgment errors.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Abramson; Abramson
JURISDICTION	Kentucky
DECIDED	April 26, 2012
DOCKET	2011-SC-000482-MR; 2011-SC-000485-MR
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Commonwealth of Kentucky Energy and Environment Cabinet and Frasure Creek Mining, LLC sought writs of mandamus and prohibition from the Kentucky Court of Appeals to prevent the Franklin Circuit Court from permitting citizen intervention and to compel entry of a negotiated consent judgment. After the Court of Appeals denied the consolidated writ petitions, the petitioners appealed to the Supreme Court of Kentucky.
STANDARD OF REVIEW	The Supreme Court reviews the Court of Appeals' legal rulings de novo, its factual findings for clear error, and its ultimate decision to grant or deny extraordinary relief for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Commonwealth of Kentucky, Energy and Environment Cabinet, Frasure Creek Mining, LLC v. Honorable Phillip J. Shepherd, Judge,

TOPICS

intervention writ of certiorari clean water act environmental law appellate procedure

PRACTICE AREAS

civil procedure environmental law administrative law appellate procedure remedies

QUESTIONS PRESENTED

1. Whether the Franklin Circuit Court's limited permission for Citizen Plaintiffs to intervene in the state enforcement action was preempted by the federal Clean Water Act's jurisdictional provisions.
2. Whether the Cabinet and Frasure Creek had an adequate remedy by appeal for alleged errors concerning intervention and review of the proposed consent judgment, thereby precluding extraordinary writ relief.
3. Whether the petitioners' alleged loss of the benefits of their negotiated consent judgment justified extraordinary relief under Kentucky law.

HOLDINGS

1. The Franklin Circuit Court was acting within its jurisdiction when it permitted the Citizen Plaintiffs to intervene for the limited purpose of commenting on and objecting to the proposed consent judgment. Federal law did not preempt that limited intervention.
2. The Cabinet and Frasure Creek had an adequate remedy by appeal, so they were not entitled to extraordinary writ relief.
3. The intervention did not deprive the Cabinet or Frasure Creek of a bargained-for right that could not be remedied by appeal, because the Citizen Plaintiffs were not parties to the settlement and the petitioners remained free to stand by their agreement.

KEY QUOTATIONS

“Because we agree with the Court of Appeals that the trial court is proceeding within its jurisdiction and that the Cabinet and Frasure Creek have an adequate remedy by appeal for the errors they allege, we affirm the Court of Appeals' denial of extraordinary relief.” (at 3)

“Because the trial court has jurisdiction to permit the Citizen Plaintiffs a limited intervention, and because the propriety of that intervention under Kentucky law can be challenged and assessed in the ordinary course of trial and appeal, the Court of Appeals correctly denied the Cabinet's and Frasure Creek's petitions for extraordinary relief.” (at 9)

FACTUAL BACKGROUND

Frasure Creek operated coal mines in Kentucky and discharged pollutants into the Kentucky, Big Sandy, and Licking Rivers and their tributaries under an NPDES permit issued by the Cabinet. Citizen Plaintiffs gave notice

of their intent to bring a federal Clean Water Act citizen suit, after which the Cabinet filed a state enforcement action against Frasure Creek and jointly moved with Frasure Creek for entry of a proposed consent judgment. The Franklin Circuit Court permitted the Citizen Plaintiffs to intervene for the limited purpose of commenting on and objecting to the proposed consent judgment, while holding their independent statutory claims in abeyance.

PROCEDURAL HISTORY

The Cabinet filed an enforcement action against Frasure Creek under Kentucky's analogue to the federal Clean Water Act and submitted a proposed consent judgment. Citizen Plaintiffs moved to intervene, and the Franklin Circuit Court allowed limited intervention so they could comment on and object to the proposed consent judgment while holding their independent Clean Water Act claims in abeyance. The Court of Appeals denied the Cabinet's and Frasure Creek's petitions for extraordinary relief, and the Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Friends of the Earth, Incorporated v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000)
- Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc., 484 U.S. 49, 108 S. Ct. 376, 98 L. Ed. 2d 306 (1987)
- Cox v. Braden, 266 S.W.3d 792 (Ky. 2008)
- Hoskins v. Maricle, 150 S.W.3d 1 (Ky. 2004)
- Grange Mutual Insurance Company v. Trude, 151 S.W.3d 803 (Ky. 2004)
- Goldstein v. Feeley, 299 S.W.3d 549 (Ky. 2009)
- Baykeeper v. NL Industries, Inc., 660 F.3d 686 (3d Cir. 2011)
- Adkins v. VIM Recycling, Inc., 644 F.3d 483 (7th Cir. 2011)
- Chico Service Station, Inc. v. Sol Puerto Rico Limited, 633 F.3d 20 (1st Cir. 2011)
- Davis v. Sun Oil Company, 148 F.3d 606 (6th Cir. 1998)
- Blue Legs v. U.S. Bureau of Indian Affairs, 867 F.2d 1094 (8th Cir. 1989)
- Chevron U.S.A. v. NRDC, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984)
- Natural Resources Defense Council, Inc. v. U.S. Environmental Protection Agency, 859 F.2d 156 (D.C. Cir. 1988)
- Frilling v. Village of Anna, 924 F. Supp. 821 (S.D. Ohio 1996)
- Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 890 F. Supp. 470 (D.S.C. 1995)
- Estate of Cline v. Weddle, 250 S.W.3d 330 (Ky. 2008)
- The Independent Order of Foresters v. Chauvin, 175 S.W.3d 610 (Ky. 2005)
- Webster v. Board of Education of Walton-Verona Independent School District, 437 S.W.2d 956 (Ky. 1969)

- Ashland Public Library Board of Trustees v. Scott, 610 S.W.2d 895 (Ky. 1981)
- United States v. Lexington-Fayette Urban County Government, 591 F.3d 484 (6th Cir. 2010)
- Sunbeam Corporation v. Dortch, 313 S.W.3d 114 (Ky. 2010)
- North Fork Collieries, LLC v. Hall, 322 S.W.3d 98 (Ky. 2010)

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