

COURT OF APPEALS OF MARYLAND

State v. G & C Gulf, Inc.

442 Md. 716 (2015) · No. Misc. No. 4, September Term, 2014 · Decided April 22, 2015

SUMMARY

The Maryland Court of Appeals held that no justiciable controversy existed because G & C Gulf had not been prosecuted under the challenged towing statute and had not alleged and proved a credible threat of prosecution. The court therefore declined to reach the constitutional challenges to the statute's notice and anti-spotter provisions.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Battaglia, J.; Barbera, C.J.; Harrell, J.; Greene, J.; Adkins, J.; McDonald, J.; Watts, J.
JURISDICTION	Maryland
DECIDED	April 22, 2015
DOCKET	Misc. No. 4, September Term, 2014
DISPOSITION	remanded
PROCEDURAL POSTURE	The State appealed after the Circuit Court for Anne Arundel County denied the State's summary judgment motion, declared portions of Maryland's towing statute unconstitutional, severed those provisions, and enjoined their enforcement. The Court of Special Appeals certified the constitutional question to the Court of Appeals of Maryland, which reformulated the questions and addressed justiciability first.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of Maryland, Governor of Maryland, Attorney General of Maryland, State's Attorney for Montgomery County, Montgomery County v. G & C Gulf, Inc.

TOPICS

[ripeness](#)[mootness](#)[appellate procedure](#)[civil procedure](#)[due process](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a justiciable controversy existed where the plaintiff challenged criminal statutory provisions but had not been prosecuted and had not alleged and proven a credible, specific threat of prosecution.
2. Whether the Court should reach the constitutional challenges to the statutory notice, cost, and spotter provisions.
3. Whether the challenged statutory provisions were arbitrary, oppressive, unreasonable, or void for vagueness, and whether they were severable.

HOLDINGS

1. A litigant challenging the constitutionality of a criminal statute must have been prosecuted for the proscribed acts or must allege and prove a credible threat of prosecution. A general statement that authorities are enforcing the law, or a hypothetical threat arising from the mere existence of the criminal statute, is insufficient.
2. The court declined to reach the constitutional challenges because the absence of a justiciable controversy made the action nonjusticiable and unripe.

KEY QUOTATIONS

“A litigant must allege and prove that they have been prosecuted for a crime or that there is a credible threat of prosecution under a contested statute in order for the issue to constitute a justiciable controversy.” (442 Md. at 728)

“The purported threat, therefore, does not constitute a credible threat of enforcement. Accordingly, the present controversy is not justiciable.” (442 Md. at 733)

FACTUAL BACKGROUND

G & C Gulf operated a Maryland towing business that removed vehicles from parking lots, including out-of-state vehicles. It challenged criminalized statutory requirements concerning notice to vehicle owners, secured parties, and insurers, as well as a prohibition on compensating "spotters." G & C Gulf alleged that the provisions were unconstitutional but did not allege that it had violated the statute, been prosecuted, or received a specific threat of prosecution. Although Montgomery County counsel stated that the county was enforcing the statute and answered affirmatively when asked whether it was ready to charge G & C Gulf, the court found that this was not a specific threat directed to the company.

PROCEDURAL HISTORY

G & C Gulf filed a declaratory judgment action seeking injunctive relief and a declaration that portions of Maryland Transportation Article section 21-10A-04 were unconstitutional. The circuit court found a justiciable controversy based on statements by Montgomery County counsel and granted relief concerning the statutory notice and spotter provisions. The State appealed, and the Court of Special Appeals certified the matter to the

Court of Appeals. The Court of Appeals held that the controversy was not ripe because G & C Gulf had neither been prosecuted nor alleged and proven a credible, specific threat of prosecution, and remanded for dismissal.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The certified question was answered as set forth in the opinion. The case was remanded to the Court of Special Appeals with instructions to remand it to the Circuit Court for Anne Arundel County for dismissal. Costs in both appellate courts were assessed against G & C Gulf.

CASES CITED

- State Center, LLC v. Lexington Charles Ltd. Partnership, 438 Md. 451, 498, 591-92, 92 A.3d 400, 427-28, 483-84 (2014)
- Hatt v. Anderson, 297 Md. 42, 45, 464 A.2d 1076, 1078 (1983)
- Hamilton v. McAuliffe, 277 Md. 336, 339-40, 353 A.2d 634, 637 (1976)
- Hammond v. Lancaster, 194 Md. 462, 473-74, 71 A.2d 474, 479 (1950)
- Hitchcock v. Kloman, 196 Md. 351, 356, 76 A.2d 582, 584 (1950)
- WAAM, Inc. v. Ober, 199 Md. 203, 205-08, 86 A.2d 399, 401-02 (1952)
- Prince George's County v. Board of Trustees, 269 Md. 9, 304 A.2d 228 (1973)
- Patuxent Co. v. Commissioners, 212 Md. 543, 548, 129 A.2d 847 (1957)
- Prince George's County v. Chillum-Adelphi, 275 Md. 374, 340 A.2d 265 (1975)
- Liss v. Goodman, 224 Md. 173, 167 A.2d 123 (1961)
- Eberts v. Congressional Country Club, 197 Md. 461, 79 A.2d 518 (1951)
- Davis v. State, 183 Md. 385, 37 A.2d 880 (1944)
- Bachman v. Lembach, 192 Md. 35, 63 A.2d 641 (1949)
- Staley v. Safe Deposit & Trust Co., 189 Md. 447, 56 A.2d 144 (1947)
- MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 127 S. Ct. 764, 166 L. Ed. 2d 604 (2007)
- Governor of Maryland v. Exxon Corp., 279 Md. 410, 414, 370 A.2d 1102 (1977), *aff'd*, 437 U.S. 117, 98 S. Ct. 2207, 57 L. Ed. 2d 91 (1978)
- Bellamy v. State, 403 Md. 308, 327 n.19, 941 A.2d 1107, 1118 n.19 (2008)
- Watson v. Buck, 313 U.S. 387, 402, 61 S. Ct. 962, 967, 85 L. Ed. 1416 (1941)
- United Public Workers of America (C.I.O.) v. Mitchell, 330 U.S. 75, 90, 67 S. Ct. 556, 564, 91 L. Ed. 754 (1947)
- Kendall v. Howard County, 431 Md. 590, 593, 66 A.3d 684, 685 (2013)
- Boyds Civic Ass'n v. Montgomery County Council, 309 Md. 683, 690, 526 A.2d 598, 602 (1987)
- Prince Georges Properties, Inc. v. Rogers, 275 Md. 582, 587-88, 341 A.2d 804, 807 (1975)

