

SUPREME COURT OF KENTUCKY

Brown-Forman Corporation and Heaven Hill Distilleries, Inc. v. George Miller

528 S.W.3d 886 (Ky. 2017) · No. 2014-SC-000717-DG · Decided September 28, 2017

SUMMARY

The Kentucky Supreme Court considered whether the federal Clean Air Act preempted George Miller's state-law claims arising from ethanol emissions and related whiskey fungus from nearby bourbon warehouses. The court held that the Act did not preempt Miller's claims for damages based on negligence, private nuisance, and trespass, but concluded that the requested injunction requiring pollution-control technology was inappropriate because the companies were operating under valid permits. The court affirmed in part and reversed and remanded in part.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Wright
JURISDICTION	Kentucky
DECIDED	September 28, 2017
DOCKET	2014-SC-000717-DG
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a dismissal for failure to state a claim upon which relief could be granted, following discretionary review of the Court of Appeals' decision reversing and remanding the trial court's dismissal.
STANDARD OF REVIEW	De novo review of questions of law and a dismissal for failure to state a claim. The pleadings are liberally construed in the plaintiff's favor, with allegations taken as true; dismissal is proper only when the plaintiff would not be entitled to relief under any set of facts that could be proved.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Brown-Forman Corporation, Heaven Hill Distilleries, Inc. v. George Miller

TOPICS

clean air act

nuisance

statutory interpretation

federalism

environmental law

PRACTICE AREAS

environmental law

environmental torts

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civil procedure

remedies

QUESTIONS PRESENTED

1. Whether the federal Clean Air Act preempts Miller's Kentucky common-law tort claims seeking damages for particularized harm to his property.
2. Whether the Clean Air Act preempts state-law injunctive relief based on nuisance when the defendants operate in compliance with permits issued after regulatory balancing of environmental and economic factors.
3. Whether the requested injunction stated a claim upon which relief could be granted.

HOLDINGS

1. The Clean Air Act does not preempt Miller's state-law claims for negligence, private nuisance, or trespass seeking monetary damages for particularized harm to specific property.
2. The Clean Air Act does not categorically preempt injunctive relief linked to state tort law because the citizen-suit provision is not an exclusive remedy and does not revoke other available remedies.
3. The requested injunction was unavailable and failed to state a claim because it would require permitted facilities to adopt pollution-control technology not required by their permits and would improperly second-guess regulatory decisions entrusted to the EPA and Metro District.

KEY QUOTATIONS

“State courts are arms of the 'State,' and that the phrase 'any requirement,' employed in the states' rights savings clause, clearly covered common law standards adopted by those state courts.” (at 11)

“The purpose and function of the Act differs sufficiently from the purpose and function of “a private lawsuit seeking damages anchored in ownership of real property,” id., to avoid issues of conflict preemption.” (at 13)

“Therefore, the Clean Air Act does not preempt state injunctive relief.” (at 15)

FACTUAL BACKGROUND

George Miller owned property near bourbon-aging warehouses operated by Brown-Forman Corporation and Heaven Hill Distilleries in Jefferson County, Kentucky. Ethanol emissions escaping from bourbon barrels allegedly promoted the growth of *Baudoinia compniacensis*, or whiskey fungus, which formed a black film on outdoor surfaces of Miller's property. The distillers maintained operating permits, and Miller did not allege that either company violated its permit. Miller sought damages under negligence, trespass, and nuisance theories and an injunction requiring pollution-control technology not required by the permits.

PROCEDURAL HISTORY

George Miller filed Kentucky state-law claims for negligence, trespass, and nuisance damages and injunctive relief based on whiskey-fungus contamination allegedly caused by ethanol emissions from appellants' bourbon warehouses. Jefferson Circuit Court dismissed the claims on the ground that the federal Clean Air Act preempted them. The Court of Appeals reversed and remanded, holding that the Act did not preempt the claims. The Supreme Court of Kentucky affirmed as to the damages claims but reversed as to injunctive relief and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to Jefferson Circuit Court for further proceedings consistent with the opinion. Miller's state-law damages claims may proceed; the requested injunctive relief remains dismissed for failure to state a claim.

CASES CITED

- *Pari-Mutuel Clerks' Union Local 541 v. Kentucky Jockey Club*, 551 S.W.2d 801 (Ky. 1977)
- *Morgan v. Bird*, 289 S.W.3d 222 (Ky. App. 2009)
- *Fox v. Grayson*, 317 S.W.3d 1 (Ky. 2010)
- *James v. Wilson*, 95 S.W.3d 875 (Ky. App. 2002)
- *Hughes v. Talen Energy Marketing, LLC*, 136 S. Ct. 1288 (2016)
- *M'Culloch v. Maryland*, 17 U.S. 316 (1819)
- *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000)
- *Merrick v. Diageo Americas Supply, Inc.*, 805 F.3d 685 (6th Cir. 2015)
- *International Paper Co. v. Ouellette*, 479 U.S. 481 (1987)
- *Bell v. Cheswick Generating Station*, 734 F.3d 188 (3d Cir. 2013)
- *Freeman v. Grain Processing Corp.*, 848 N.W.2d 58 (Iowa 2014)
- *North Carolina ex rel. Cooper v. Tennessee Valley Authority*, 615 F.3d 291 (4th Cir. 2010)
- *Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996)
- *Ellis v. Gallatin Steel Co.*, 390 F.3d 461 (6th Cir. 2004)
- *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011)
- *Graham County Soil & Water Conservation District v. United States ex rel. Wilson*, 559 U.S. 280 (2010)
- *City of Milwaukee v. Illinois*, 451 U.S. 304 (1981)

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