

SUPREME COURT OF KENTUCKY

Kentucky Public Service Commission v. Shadoan

325 S.W.3d 360 (Ky. 2010) · No. 2009-SC-000053-DG · Decided November 18, 2010

SUMMARY

The Supreme Court of Kentucky held that the local planning commission, rather than the Kentucky Public Service Commission, had jurisdiction over the placement and construction of a proposed cellular antenna tower because the site was within the geographic jurisdiction of a planning commission that had adopted planning and zoning regulations. The court also held that the appellees substantially complied with KRS 278.420(2) by attaching the relevant PSC order, despite not filing a separately titled designation of the record. The judgment of the Court of Appeals was reversed and the matter was remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Schroder; Chief Justice Minton; Justice Abramson; Justice Cunningham; Justice Noble; Justice Venters; Justice Scott
JURISDICTION	Kentucky
DECIDED	November 18, 2010
DOCKET	2009-SC-000053-DG
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Discretionary review of a Court of Appeals decision affirming a Franklin Circuit Court judgment that the Public Service Commission had jurisdiction over the proposed cellular tower and granting summary judgment to the Shadoans.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion; precedential
PARTIES	Kentucky Public Service Commission v. L. Glenn Shadoan, Sue Shadoan, Bluegrass Wireless, LLC

TOPICS

administrative law

judicial review of agency action

appellate procedure

statutory interpretation

public utilities

PRACTICE AREAS

administrative law

land use and zoning

public utilities

appellate procedure

QUESTIONS PRESENTED

1. Whether the Shadoans complied with KRS 278.420(2) by attaching the PSC's rehearing order to their petition without filing a separate document formally designated as a designation of record.
2. Whether jurisdiction over the siting and construction of the proposed cellular antenna tower rested with the local planning commission or with the Kentucky Public Service Commission.

HOLDINGS

1. The Shadoans complied with KRS 278.420(2) because, although they did not file a separate document entitled a designation of record, they attached the PSC order disposing of the sole legal issue presented, thereby identifying the only portion of the administrative record necessary and relevant to review.
2. When the proposed cellular tower is located within the jurisdiction of a planning unit that has adopted planning and zoning regulations, jurisdiction over the tower's placement and construction rests with the local planning commission, not the PSC, even if the local planning unit has not enacted regulations specifically addressing cellular towers.

KEY QUOTATIONS

“If the area of the proposed cellular tower has a planning unit that has adopted planning and zoning regulations, the jurisdiction over matters relating to cellular tower placement and construction rests with that planning commission, not the PSC, regardless of whether the planning unit has enacted regulations specifically relating to cellular towers.” (325 S.W.3d at 365)

“Accordingly, we adjudge that the Shadoans complied with KRS 278.420(2).” (325 S.W.3d at 363)

FACTUAL BACKGROUND

Bluegrass Wireless sought approval to construct a cellular antenna tower on property in London, Kentucky, adjacent to property owned by Glenn and Sue Shadoan. The application was initially filed with the Kentucky Public Service Commission, but the PSC dismissed it after determining that the London/Laurel County Joint Planning Commission had jurisdiction under KRS 100.987. The local planning commission had adopted planning and zoning regulations but had not adopted regulations specifically addressing cellular towers.

PROCEDURAL HISTORY

Bluegrass Wireless applied to the Public Service Commission for a certificate of public convenience and necessity to construct a cellular tower. The PSC dismissed the proceedings for lack of jurisdiction, concluding that the local planning commission had jurisdiction. The Shadoans sought review in Franklin Circuit Court, which denied a motion to dismiss based on failure to designate the administrative record and granted summary judgment to the Shadoans. The Court of Appeals affirmed, and the Supreme Court of Kentucky accepted discretionary review, reversed, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Any further proceedings on Bluegrass Wireless's application must occur before the London/Laurel County Joint Planning Commission.

CASES CITED

- Louisville Gas and Electric Co. v. Hardin and Meade County Property Owners for Co-Location, 319 S.W.3d 397, 401 (Ky. 2010)
- Kentucky Insurance Guaranty Ass'n v. Jeffers ex rel. Jeffers, 13 S.W.3d 606 (Ky. 2000)
- Devasier v. James, 278 S.W.3d 625 (Ky. 2009)
- Combs v. Hubb Coal Corp., 934 S.W.2d 250, 252 (Ky. 1996)
- Grannis v. Schroder, 978 S.W.2d 328, 330 (Ky. App. 1997)