

SUPREME COURT OF KENTUCKY

Commonwealth of Kentucky v. Edward Green Jameson

215 S.W.3d 9 (Ky. 2006) · No. 2004-SC-000983-DG · Decided November 22, 2006

SUMMARY

The Supreme Court of Kentucky reviewed McCracken County Ordinance No. 2000-4, which regulated sexually oriented businesses through requirements concerning dancer attire, operating hours, and physical contact with patrons. The court held that Jameson had not presented sufficient evidence to cast direct doubt on the county's rationale concerning the ordinance's secondary-effects regulation, reversed the Kentucky Court of Appeals, and reinstated the district court's judgment. The opinion addresses First Amendment standards applicable to sexually oriented businesses and the evidentiary framework for evaluating such regulations.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Scott; Scott
JURISDICTION	Kentucky
DECIDED	November 22, 2006
DOCKET	2004-SC-000983-DG
DISPOSITION	reversed
PROCEDURAL POSTURE	The Commonwealth appealed the Kentucky Court of Appeals' decision vacating the circuit court's judgment and remanding for further evidentiary proceedings concerning the constitutionality of McCracken County Ordinance No. 2000-4.
STANDARD OF REVIEW	De novo review applies to the construction and application of the ordinance because that is a matter of law.
PRECEDENTIAL VALUE	published opinion; binding Kentucky Supreme Court precedent
PARTIES	Commonwealth of Kentucky v. Edward Green Jameson

TOPICS

[free speech](#) [first amendment](#) [ordinances](#) [municipal law](#) [appellate procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether McCracken County Ordinance No. 2000-4 is a content-neutral regulation subject to the four-part test of *United States v. O'Brien*.
2. Whether the ordinance furthers a substantial governmental interest in combating the negative secondary effects associated with sexually oriented businesses.
3. Whether Jameson's evidence was sufficient to cast direct doubt on the county's rationale and shift the evidentiary burden back to the county under *City of Los Angeles v. Alameda Books, Inc.*
4. Whether a municipality must demonstrate localized secondary effects before enacting an ordinance regulating sexually oriented businesses.

HOLDINGS

1. The ordinance is content neutral because it regulates the negative secondary effects associated with sexually oriented businesses rather than suppressing the erotic message conveyed by nude dancing.
2. Ordinance No. 2000-4 satisfies the *O'Brien* test because it is within the county's constitutional power, furthers a substantial governmental interest, is unrelated to suppression of expression, and imposes only a minimal restriction on expression.
3. Jameson did not present actual and convincing evidence sufficient to cast direct doubt on the county's rationale, so the evidentiary burden did not shift back to the county.
4. A municipality need not demonstrate actual secondary effects in its own locality before adopting an ordinance regulating sexually oriented businesses.

KEY QUOTATIONS

"Thus, we hold that the ordinance at issue here is content neutral." (29-30)

"For the reasons outlined above, we find that McCracken County Ordinance No.2000-4 satisfies the second prong of O'Brien in that the ordinance furthers the county's substantial governmental interest in preventing and combating the negative secondary effects associated with sexually oriented businesses." (32)

"In this case, Jameson failed to present "actual and convincing evidence" sufficient to cast "direct doubt" on the fiscal court's rationale or findings or that the secondary effects generally associated with sexually oriented businesses are merely a pre-textual justification for the suppression of protected expression." (34)

FACTUAL BACKGROUND

McCracken County adopted Ordinance No. 2000-4 regulating sexually oriented businesses, including requirements that dancers wear pasties and G-strings, restrictions on hours of operation, and a prohibition on physical contact between dancers and patrons. Jameson operated Regina's II, an adult cabaret, and was cited for violating the ordinance by operating during prohibited hours, permitting total nudity, and allowing physical contact. At the constitutional hearing, Jameson presented evidence concerning police calls and local property values, but the Supreme Court concluded that this evidence did not directly rebut the county's reliance on

studies, judicial findings, and legislative judgments concerning the negative secondary effects of sexually oriented businesses.

PROCEDURAL HISTORY

Jameson was cited for operating an adult cabaret in violation of McCracken County's sexually oriented business ordinance and moved in district court for a declaration that the ordinance was unconstitutional. The McCracken District Court denied the motion, and the McCracken Circuit Court affirmed. The Kentucky Court of Appeals affirmed in part, vacated in part, and remanded for an evidentiary hearing on whether Jameson's evidence cast direct doubt on the county's rationale for requiring dancers to wear pasties and G-strings. The Supreme Court of Kentucky reversed the Court of Appeals and reinstated the district court's judgment.

DISPOSITION

reversed

REMAND INSTRUCTIONS

No remand was ordered by the Supreme Court. The Court reversed the Kentucky Court of Appeals insofar as it required further evidentiary hearings and supplemental evidence, and reinstated the McCracken District Court's judgment upholding the ordinance.

CASES CITED

- City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986)
- Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976)
- Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991)
- United States v. O'Brien, 391 U.S. 367 (1968)
- City of Erie v. Pap's A.M., 529 U.S. 277 (2000)
- City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002)
- Schad v. Borough of Mount Ephraim, 452 U.S. 61 (1981)
- California v. LaRue, 409 U.S. 109 (1972)
- 44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484 (1996)
- Marks v. United States, 430 U.S. 188 (1977)
- Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee County, Florida, 337 F.3d 1251 (11th Cir. 2003)
- Bob Hook Chevrolet Isuzu, Inc. v. Commonwealth, Transportation Cabinet, 983 S.W.2d 488 (Ky. 1998)
- Clark v. Community for Creative Non-Violence, 468 U.S. 288 (1984)
- Ward v. Rock Against Racism, 491 U.S. 781 (1989)
- Texas v. Johnson, 491 U.S. 397 (1989)
- Nixon v. Shrink Missouri Government PAC, 528 U.S. 377 (2000)
- Edenfield v. Fane, 507 U.S. 761 (1993)
- Restaurant Ventures, LLC v. Lexington-Fayette Urban County Government, 60 S.W.3d 572 (Ky. App. 2001)

- Fantasyland Video v. County of San Diego, 373 F. Supp. 2d 1094 (S.D. Cal. 2005)
- World Wide Video of Washington, Inc. v. City of Spokane, 368 F.3d 1186 (9th Cir. 2004)
- SOB, Inc. v. County of Benton, 317 F.3d 856 (8th Cir. 2003)
- Kentucky Restaurant Concepts, Inc. v. City of Louisville, Jefferson County, Kentucky, 209 F. Supp. 2d 672 (W.D. Ky. 2002)
- G.M. Enterprises, Inc. v. Town of St. Joseph, Wisconsin, 350 F.3d 631 (7th Cir. 2003)
- Heideman v. South Salt Lake City, 348 F.3d 1182 (10th Cir. 2003)
- City of Elko v. Abed, 677 N.W.2d 455 (Minn. App. 2004)
- Giovani Carandola, Ltd. v. Bason, 303 F.3d 507 (4th Cir. 2002)
- Baby Dolls Topless Saloons, Inc. v. City of Dallas, 295 F.3d 471 (5th Cir. 2002)
- Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003)

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