

SUPREME COURT OF LOUISIANA

Farmer's Seafood Co. v. State ex rel. Dep't of Pub. Safety

44 So. 3d 676 (La. 2010) · No. 2010-CA-1534 · Decided September 3, 2010

SUMMARY

The Louisiana Supreme Court held that a district court improperly declared portions of a statute and administrative regulation unconstitutional during a preliminary-injunction proceeding. The court vacated that portion of the judgment without reaching the constitutional merits and transferred the case to the Court of Appeal for expedited review of the preliminary-injunction ruling.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Louisiana
DECIDED	September 3, 2010
DOCKET	2010-CA-1534
DISPOSITION	vacated
PROCEDURAL POSTURE	The State invoked the Louisiana Supreme Court's appellate jurisdiction to challenge a district court judgment declaring portions of a statute and administrative regulation unconstitutional after granting Farmer's petition for injunctive relief.
STANDARD OF REVIEW	At a preliminary-injunction hearing, the moving party must prove irreparable injury, entitlement to the relief as a matter of law, and a likelihood of prevailing on the merits.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court opinion; precedential.
PARTIES	State of Louisiana, through the Department of Public Safety, Office of State Police, and State of Louisiana, through the Louisiana Gaming Control Board v. Farmer's Seafood Company, Inc., Alex S. Mijalis, John Cosse, Johnny Mijalis

TOPICS

[injunctions](#)[appellate jurisdiction](#)[appellate procedure](#)[constitutional law](#)[administrative law](#)

PRACTICE AREAS

Civil procedure

Appellate procedure

Constitutional law

Administrative law

Gambling regulation

QUESTIONS PRESENTED

1. Whether the district court could decide the constitutionality of the challenged statute and regulation and grant declaratory relief during a hearing on a petition for preliminary injunctive relief.
2. Whether the district court's judgment declaring portions of the statute and regulation unconstitutional should be vacated when the merits of constitutionality were not properly before the court at the injunction hearing.

HOLDINGS

1. A hearing on a preliminary injunction is limited to determining whether the movant will suffer irreparable injury, is entitled to the requested relief as a matter of law, and is likely to prevail on the merits; the court may not effectively grant declaratory relief on the ultimate constitutionality issue absent an agreement to try the merits.

KEY QUOTATIONS

“For the reasons that follow, we find the district court's judgment of unconstitutionality procedurally improper, and we therefore vacate that judgment without reaching the merits.” (at 677)

“The only issue to be considered at a hearing on a preliminary injunction is whether the moving party has met its burden of proving that it will suffer irreparable injury, loss, or damage if the injunction is not issued, that it is entitled to the relief sought as a matter of law, and that it will likely prevail on the merits of the case.” (at 678)

FACTUAL BACKGROUND

Farmer's Seafood Company and the individual plaintiffs faced an upcoming administrative hearing before the Louisiana Gaming Control Board. They sought to enjoin that hearing, arguing that the statute and regulations to be applied impermissibly delegated legislative authority to an administrative agency. The district court granted injunctive relief and declared portions of the statute and regulation unconstitutional.

PROCEDURAL HISTORY

Farmer's sought to enjoin an upcoming Gaming Control Board administrative hearing, alleging that the governing statute and regulations unconstitutionally delegated legislative authority. The district court granted preliminary injunctive relief and declared portions of the statute and regulation unconstitutional. The State appealed. The Supreme Court vacated the unconstitutionality judgment and transferred the matter to the Court of Appeal, First Circuit, for expedited review of the preliminary-injunction merits.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The judgment was vacated and set aside insofar as it declared portions of La. R.S. 27:28(H)(1) and La. Admin. Code, Title 42, part XIII, § 2901(B)(2)(a) unconstitutional. The case was transferred to the Court of Appeal, First Circuit, for expedited review as a timely filed appeal on the merits of the preliminary-injunction judgment.

CASES CITED

- General Motors Acceptance Corp. v. Daniels, 377 So. 2d 346 (La. 1979)
- Women's Health Clinic v. State, 804 So. 2d 625 (La. 2001)
- Kruger v. Garden Dist. Ass'n, 756 So. 2d 309 (La. 2000)

OPINION

PER CURIAM.

44 So.3d 676 (2010) FARMER'S SEAFOOD COMPANY, INC., Alex S. Mijalis, John Cosse, and Johnny Mijalis v. STATE of Louisiana, Through The DEPARTMENT OF PUBLIC SAFETY, Office of State Police, and State of Louisiana, Through the Louisiana Gaming Board. No. 2010-CA-1534. Supreme Court of Louisiana. September 3, 2010. *677 Hon. James D. Caldwell, Attorney General, Karen L. Godwin, Asst.

Atty. Gen., for Applicant. Karl J. Koch, Baton Rouge, for Respondent. PER CURIAM.[*] The State of Louisiana, through the Department of Public Safety, Office of State Police, and State of Louisiana, through the Louisiana Gaming Control Board (collectively referred to hereinafter as "State") invoke the appellate jurisdiction of this court pursuant to La. Const. art. V, § 5(D), on the ground that the district court declared portions of La. R.S.

27:28(H)(1) and La. Admin. Code, Title 42, part XIII, § 2901(B)(2)(a) unconstitutional. For the reasons that follow, we find the district court's judgment of unconstitutionality procedurally improper, and we therefore vacate that judgment without reaching the merits. UNDERLYING FACTS AND PROCEDURAL HISTORY Plaintiffs, Farmer's Seafood Company, Inc., Alex S. Mijalis, John Cosse, and Johnny Mijalis (collectively referred to hereinafter as "Farmer's") filed the instant "Petition for Injunctive Relief," naming the State as a defendant.

The petition sought to enjoin an upcoming administrative hearing before the Gaming Control Board on the ground the statutes and administrative *678 regulations to be applied at the hearing, namely La. R.S. 27:28(H)(1) and La. Admin. Code, Title 42, part XIII, § 2901(B)(1) and (B)(2)(a), are unconstitutional.

In particular, Farmer's alleged the statute and regulations are unconstitutional because they impermissibly delegate legislative authority to an administrative agency. The State filed an exception of improper use of summary proceeding, arguing the constitutionality of the statute is more properly reserved for an ordinary proceeding, such as a petition for declaratory relief.

The State also filed an exception of vagueness. In opposing the petition, the State argued there is a strong presumption in favor of the constitutionality of statutes, and Farmer's has not made a sufficient prima facie showing that it is likely to prevail on the merits. It contends La. R.S. 27:28(H)(1) does not violate the separation of powers pursuant to La. Const.

Art. II, §§ 1 and 2. The district court granted Farmer's Petition for Injunctive Relief, and rendered judgment declaring portions of La. R.S. 27:28(H)(1) and La. Admin. Code, Title 42, part XIII, § 2901(B)(2)(a) unconstitutional, pursuant to La. Const. Art. II, § 2.

The State now appeals that judgment to this court. **DISCUSSION** The only issue to be considered at a hearing on a preliminary injunction is whether the moving party has met its burden of proving that it will suffer irreparable injury, loss, or damage if the injunction is not issued, that it is entitled to the relief sought as a matter of law, and that it will likely prevail on the merits of the case.

General Motors Acceptance Corp. v. Daniels, 377 So.2d 346 (La.1979). In the case at bar, the district court's declaration of unconstitutionality went beyond Farmer's request for injunctive relief, and in effect granted Farmer's declaratory relief on the merits. There is nothing in the record which would indicate the parties agreed to try the merits of the constitutionality issue at the hearing on the preliminary injunction.[1] Thus, the issue of the constitutionality was not ripe for determination.

See *Women's Health Clinic v. State*, 01-2645 (La.11/9/01), 804 So.2d 625; *Kruger v. Garden Dist. Ass'n*, 99-3344 (La.3/24/00), 756 So.2d 309. **DECREE** For the reasons assigned, the district court's judgment is vacated and set aside insofar as it declares portions of La. R.S. 27:28(H)(1) and La. Admin. Code, Title 42, part XIII, § 2901(B)(2)(a) unconstitutional.

The case is hereby transferred to the Court of Appeal, First Circuit, for expedited review as a timely filed appeal on the merits of the judgment granting the preliminary injunction. **NOTES** [*] Chief Justice Kimball not participating in this opinion.

[1] In fact, the State filed an exception of improper use of summary proceeding, asserting the constitutionality of the statute is more properly reserved for an ordinary proceeding, such as a petition for declaratory relief.