

SUPREME COURT OF ALABAMA

City of Selma v. Dallas County

964 So. 2d 12 (Ala. 2007) · Decided March 9, 2007

SUMMARY

The Alabama Court of Civil Appeals considers whether Dallas County’s construction and operation of an emergency communications tower at the county courthouse was subject to Selma zoning and historic-preservation ordinances. The court holds that the governmental/proprietary-function distinction remains applicable to zoning immunity and concludes that the tower served a governmental function related to emergency management and homeland security. The trial court’s summary judgment for Dallas County was affirmed.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Woodall, Justice; Cobb, Chief Justice; Parker, Justice; See, Justice; Smith, Justice
JURISDICTION	Alabama
DECIDED	March 9, 2007
DISPOSITION	affirmed
PROCEDURAL POSTURE	The City appealed from a summary judgment entered for Dallas County in the City's declaratory-judgment action challenging the County's construction of a communications tower at the Dallas County courthouse.
STANDARD OF REVIEW	The opinion reviewed the trial court's summary judgment; the underlying facts were undisputed or unchallenged.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion; precedential.
PARTIES	City of Selma v. Dallas County

TOPICS

- municipal law
- ordinances
- constitutional law
- public utilities

PRACTICE AREAS

municipal law

zoning

constitutional law

governmental immunity

public utilities

emergency management

QUESTIONS PRESENTED

1. Whether the governmental-function/proprietary-function distinction remained applicable for determining whether municipal zoning ordinances could be enforced against a political subdivision after *Jackson v. City of Florence*.
2. Whether Dallas County's construction and operation of an interoperable emergency communications tower constituted a governmental function immune from Selma's zoning ordinances.
3. Whether the communications tower was a public utility or private enterprise subject to Alabama Constitution article I, section 220 and therefore required Selma's consent.

HOLDINGS

1. *Jackson v. City of Florence* did not abrogate the governmental-function/proprietary-function distinction for purposes of determining whether zoning ordinances may be applied to political subdivisions.
2. The construction and operation of Dallas County's interoperable emergency communications tower was a governmental function and therefore was not subject to Selma's zoning ordinances.
3. The communications tower was not a public utility or private enterprise within the meaning of article I, section 220, so Selma's consent was not required.

KEY QUOTATIONS

"Consequently, we hold that Jackson did not abrogate the distinction between governmental functions and proprietary functions for the purpose of applying zoning ordinances." (at 19)

"Thus, the construction and operation of the tower is "done by authority of law to promote the health and well-being of the people."" (at 22)

"In conclusion, the interoperable communications tower constructed at the Dallas County courthouse is neither proprietary in nature, nor is it a public utility." (at 24)

FACTUAL BACKGROUND

Dallas County constructed an interoperable communications tower adjacent to the Dallas County Courthouse Annex within Selma's geographical limits. The tower was funded through federal and state homeland-security grants and was intended to allow county, municipal, volunteer, and multijurisdictional emergency responders to communicate across incompatible radio frequencies. The City alleged that the tower violated its historic-properties ordinance, wireless-telecommunications siting ordinance, and Alabama Constitution article I, section 220 because the County had not obtained Selma's permission.

PROCEDURAL HISTORY

The City sought to enjoin construction of the tower, alleging violations of two Selma ordinances and article I, section 220 of the Alabama Constitution. The parties filed cross-motions for summary judgment. The trial court granted the County's motion, denied the City's motion, held that the ordinances were zoning ordinances unenforceable against the County, and ruled that the tower did not violate section 220. The Supreme Court of Alabama affirmed.

DISPOSITION

affirmed

CASES CITED

- Lane v. Zoning Bd. of Talladega, 669 So. 2d 958 (Ala. Civ. App. 1995)
- City of Birmingham v. Scogin, 269 Ala. 679, 115 So. 2d 505 (1959)
- Lauderdale County Bd. of Educ. v. Alexander, 269 Ala. 79, 110 So. 2d 911 (1959)
- Water Works Bd. of Birmingham v. Stephens, 262 Ala. 203, 78 So. 2d 267 (1955)
- Alabama Alcoholic Beverage Control Bd. v. City of Birmingham, 253 Ala. 402, 44 So. 2d 593 (1950)
- Cunningham v. City of Attalla, 918 So. 2d 119 (Ala. Civ. App. 2005)
- Jackson v. City of Florence, 294 Ala. 592, 320 So. 2d 68 (1975)
- Neighbors v. City of Birmingham, 384 So. 2d 113 (Ala. 1980)
- Pennick v. City of Florala, 529 F.2d 1242 (5th Cir. 1976)
- Jefferson County v. City of Birmingham, 256 Ala. 436, 55 So. 2d 196 (1951)
- Town of Mulga v. Town of Maytown, 502 So. 2d 731 (Ala. 1987)
- Kent County Aeronautics Board v. Department of State Police, 239 Mich. App. 563, 609 N.W.2d 593 (2000), aff'd sub nom. Byrne v. State, 463 Mich. 652, 624 N.W.2d 906 (2001)
- Coastal States Gas Transmission Co. v. Alabama Pub. Serv. Comm'n, 524 So. 2d 357 (Ala. 1988)
- Mobile County v. City of Saraland, 501 So. 2d 438 (Ala. 1986)
- Schmidt v. Village of Kimberly, 74 Idaho 48, 256 P.2d 515 (1953)