

SUPREME COURT OF THE STATE OF WASHINGTON

Lemire v. State Dep't of Ecology & Pollution Control Hearings Bd.

No. 87703-3 · No. No. 87703-3 · Decided August 15, 2013

SUMMARY

The Washington Supreme Court reviewed an administrative order issued by the Department of Ecology directing cattle rancher Joseph Lemire to take measures to prevent pollution of Pataha Creek. The court held that Ecology had statutory authority to regulate nonpoint source pollution and that substantial evidence supported the order. It reversed the superior court, reinstated the Pollution Control Hearings Board's summary judgment and the agency order, and held that Lemire had not established an unconstitutional taking.

CASE DETAILS

COURT	Supreme Court of the State of Washington
WRITING FOR THE COURT	Stephens, J.
JURISDICTION	Washington
DECIDED	August 15, 2013
DOCKET	No. 87703-3
DISPOSITION	reversed
PROCEDURAL POSTURE	Review of an administrative order and the Pollution Control Hearings Board's grant of summary judgment under Washington's Administrative Procedure Act.
STANDARD OF REVIEW	In an Administrative Procedure Act appeal, the reviewing court stands in the same position as the superior court and reviews the administrative record directly. When the agency decision was made on summary judgment, the court applies the summary judgment standard, viewing facts in the administrative record in the light most favorable to the nonmoving party and reviewing conclusions of law de novo. The party asserting invalidity of the agency order bears the burden of proof.
PRECEDENTIAL VALUE	published precedential Washington Supreme Court decision
PARTIES	State of Washington, Department of Ecology, Pollution Control Hearings Board v. Joseph Lemire

TOPICS

judicial review of agency action

administrative procedure act

agency adjudication

standard of review

environmental law

PRACTICE AREAS

administrative law

environmental law

water pollution

constitutional property law

QUESTIONS PRESENTED

1. Whether substantial evidence supported Ecology's administrative order under the Water Pollution Control Act.
2. Whether Ecology had statutory authority to regulate nonpoint source pollution and issue the order.
3. Whether the order conflicted with statutory protections for stock water rights or agricultural land.
4. Whether Ecology's order effected an unconstitutional taking of Lemire's property.
5. Whether Lemire was entitled to attorney fees under the Equal Access to Justice Act after the superior court's judgment was reversed.

HOLDINGS

1. The administrative record contained substantial evidence supporting Ecology's determination that conditions on Lemire's property created a substantial potential to violate the Water Pollution Control Act, and the Board properly granted summary judgment.
2. Ecology has authority under Washington law to regulate nonpoint source pollution and to order corrective measures for nonpoint source conditions that create a substantial potential to violate the Water Pollution Control Act.
3. Lemire failed to establish that the order impaired protected stock water rights or violated statutory restrictions concerning conversion of agricultural land.
4. Lemire failed to establish that Ecology's order effected a taking.
5. Lemire was not entitled to attorney fees because reversal of the superior court judgment meant he was not the prevailing party.

KEY QUOTATIONS

"In an appeal under the Administrative Procedure Act (APA), chapter 34.05 RCW, the appellate court sits in the same position as the superior court, reviewing the administrative record directly rather than the superior court record." (at 3)

"We hold that Ecology did not exceed its authority when it ordered Lemire to comply with regulations concerning nonpoint source pollutant discharge into Pataha Creek." (at 14)

"We reverse the trial court and reinstate the Board's decision on summary judgment upholding Ecology's administrative order 7178." (at 18)

FACTUAL BACKGROUND

Joseph Lemire operated a small cattle ranch in Columbia County through which Pataha Creek ran. Ecology documented livestock access to the creek, manure and fecal contamination risks, erosion, bare ground, inadequate vegetation, trampled banks, cattle crossings, and other conditions that could contribute to water pollution. Pataha Creek was listed as a polluted water body exceeding standards for fecal coliform, pH, temperature, and dissolved oxygen. After attempting for several years to work with Lemire on corrective practices, Ecology issued an order requiring fencing, off-stream watering facilities, and other measures to eliminate or reduce livestock access to the stream corridor.

PROCEDURAL HISTORY

The Department of Ecology issued administrative order 7178 directing cattle rancher Joseph Lemire to take corrective measures to reduce the potential for pollution of Pataha Creek. The Pollution Control Hearings Board granted Ecology summary judgment and upheld the order. The Columbia County Superior Court reversed, invalidated the order for lack of substantial evidence, held that it effected a taking, and awarded Lemire attorney fees. The Court of Appeals, Division Three, certified the case directly to the Washington Supreme Court.

DISPOSITION

reversed

CASES CITED

- Griffith v. Emp't Sec. Dep't, 163 Wn. App. 1, 6, 259 P.3d 1111 (2011)
- Verizon Nw., Inc. v. Emp't Sec. Dep't, 164 Wn.2d 909, 916, 194 P.3d 255 (2008)
- Manufactured Hous. Cmty. of Wash. v. State, 142 Wn.2d 347, 355-361, 367, 13 P.3d 183 (2000)
- Brutsche v. City of Kent, 164 Wn.2d 664, 681 n.11, 193 P.3d 110 (2008)
- Guimont v. Clarke, 121 Wn.2d 586, 603, 854 P.2d 1 (1993)
- Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595, 133 S. Ct. 2586 (2013)
- Nollan v. California Coastal Comm'n, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987)
- Dolan v. City of Tigard, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994)