

SUPREME COURT OF WASHINGTON

To-Ro Trade Shows v. Collins, 144 Wash. 2d 403

27 P.3d 1149 (2001) · Decided August 2, 2001

OPINION

OWENS, J.

Owens, J. — We must decide whether a producer of recreational-vehicle (RV) trade shows presented a justiciable controversy under Washington’s Uniform Declaratory Judgments Act (chapter 7.24 RCW) (the Act). To-Ro Trade Shows (To-Ro) brought a declaratory judgment action against the State after the Department of Licensing (DOL) enforced the dealer licensing statute (RCW 46.70.021) at To-Ro’s 1994 Spokane RV show.

To-Ro contended that the State’s closure of that portion of its show dedicated to an *406unlicensed RV dealer violated To-Ro’s rights under the Commerce Clause and the First and Fourteenth Amendments to the United States Constitution.

The trial court dismissed To-Ro’s claims, and the Court of Appeals affirmed, concluding that, because To-Ro had failed to “demonstrate a direct and certain financial impact” arising from the State’s enforcement of the licensing statute, To-Ro lacked standing to pursue declaratory relief.

To-Ro Trade Shows v. Collins, 100 Wn. App. 483, 493, 997 P.2d 960 (2000). We agree and hold that To-Ro could not maintain an action for declaratory relief because it failed to present an actual, immediate dispute in which it had a direct, substantial interest.

We affirm the Court of Appeals. FACTS To-Ro produces a variety of consumer trade shows, including RV, boat, home and garden, and sportsman shows. To-Ro secures a site for an event, rents space to exhibitors, and charges admission to the public.

To-Ro scheduled an RV show for April 7-10, 1994, at the Interstate Fairgrounds in Spokane. When a number of dealers in the local RV association decided not to rent space at the show, To-Ro invited an RV dealer from Coeur d’Alene, Idaho, to participate. Aware that the dealer, Lake City RV, was licensed to conduct business in Idaho but not in Washington, To-Ro’s Robert O’Loughlin spoke with Grant Collins, a DOL investigator.

Collins told O’Loughlin that a license was required and that the dealer should not participate without one. O’Loughlin then contacted DOL supervisors in Tacoma and Spokane, who also confirmed that an out-of-state dealer was required to have a Washington license in order to participate.

Before the event opened, DOL received an anonymous tip that an unlicensed dealership had brought its vehicles to the fairgrounds. Collins went to the fairgrounds and gave Douglas Foster, Lake City RVs sales manager, written notice that his dealership's participation would be unlawful.⁴⁰⁷

On Friday, the second day of the show, Collins returned to find that Lake City RV was indeed participating in the show. At a meeting in O'Loughlin's office, O'Loughlin tried to persuade Collins that Lake City RV could participate as long as it placed "For Display Only" signs on its vehicles, posted no prices, and sold no vehicles, but after checking with his superiors, Collins reiterated that a license was required for Lake City RV to participate.¹ While at the show on Friday, Collins observed that Lake City RV did not have any restrictive "For Display Only" signs on the vehicles.

Lake City RV had posted manufacturer's suggested retail prices on its vehicles, as well as handwritten signs reading "show special" or "show prices." Report of Proceedings (RP) at 358-60. Collins asked Lake City RV to close and lock its vehicles, and Lake City RV complied.

After the Lake City RV exhibit was closed, O'Loughlin posted a note on its vehicles stating that "show prices are good thru next Sunday April 17th." RP at 360-61, Ex. 13. Alleging that DOL's enforcement of the statute violated To-Ro's constitutional rights under the Commerce Clause and the First and Fourteenth Amendments, To-Ro filed a declaratory judgment action in March 1995 challenging the constitutionality of RCW 46.70.021; To-Ro sought damages under 42 U.S.C. § 1983 and also claimed that DOL had tortiously interfered with To-Ro's business expectancy.² O'Loughlin claimed that, because Lake City RV was a major exhibitor in the Spokane RV show, patrons had ⁴⁰⁸demanded refunds after its exhibit was closed.

O'Loughlin asserted that, to compensate for the exhibit's closure, he had offered free admission on Friday evening and had reduced ticket prices for Saturday and Sunday, and he cited as an additional loss his refund of Lake City RV's rental fee of \$4,800.

On cross-motions for summary judgment, the trial court dismissed To-Ro's Commerce Clause claim for lack of standing. The court also dismissed To-Ro's claim that RCW 46-.70.021 violated the First Amendment on its face, but the court simultaneously entered a second order ruling that the statute neither prohibited unlicensed dealers from displaying and pricing their RVs at trade shows nor precluded product representatives from accompanying those displayed vehicles.

When the case went to trial, the parties disagreed as to the meaning of the second order, so the court prohibited any mention of the order in opening statements. At the close of the evidence and outside of the jury's presence, the court dismissed all of To-Ro's causes of action.

The court ruled that, because Lake City RV was unlicensed, it had no property interest that would give rise to a procedural due process claim and that, even if Lake City RV had had such a claim,

To-Ro lacked standing to assert it.

Having determined that To-Ro lacked standing to raise its Commerce Clause and due process claims, the court dismissed To-Ro's claim for damages under 42 U.S.C. § 1983, accepting as a second basis for dismissal the State's qualified immunity defense.

The court also addressed the implications of the second summary judgment order, which it termed a "stipulation... without the court's independent ruling." RP at 517. In the court's view, the transcript of the summary judgment hearing showed that the court had never ruled on whether RCW 46.70.021 prohibited an unlicensed dealer from participating in a trade show on a "display only" basis.

The court recognized that at trial the State had argued a position contrary to the stipulation and that To-Ro had not *409objected. Thus, contrary to the disputed order, the court ruled "that displaying products at a trade show where the products are physically present with the public is engaging in business... as contemplated by the Department of Licensing regulations or statutes." RP at 586.

The court rejected To-Ro's claim that RCW 46.70.021 violated the First Amendment. In ruling that the statute had been fairly applied to exclude Lake City RV, the court foreclosed the tortious interference claim because, as the State argued and the court agreed, To-Ro could have no valid business expectancy from a party in violation of the law.

After dismissing all claims, the court submitted, with the parties' approval, three questions to the jury.³ The court reasoned that, if the State were indeed bound by the second summary judgment order (wherein the parties had stipulated that the licensing statute did not apply to dealers participating on a "display only" basis), the jury would need to resolve certain factual questions.

Consequently, the jury was asked whether To-Ro had proven (1) that no prices were ever displayed on Lake City RV's vehicles, (2) that "For Display Only" signs had been posted on Lake City RV's vehicles at all times during the show, and (3) that the State's closure proximately caused To-Ro damages.

The verdict form also asked the jury to state the amount of damages, should it answer the third question affirmatively. The jury answered "No" to all three questions.⁴ To-Ro appealed. The Court of Appeals affirmed the trial court, holding that To-Ro lacked standing to challenge the *410State's enforcement of RCW 46.70.021 against Lake City RV.

To-Ro Trade Shows, 100 Wn. App. at 493-94. We granted To-Ro's petition for review. **ISSUE** Did To-Ro present a justiciable controversy under the Uniform Declaratory Judgments Act? **ANALYSIS** To-Ro sought a declaration under the Uniform Declaratory Judgments Act that

Washington's dealer licensing statute, RCW 46.70.021, unconstitutionally precluded unlicensed dealers from displaying their vehicles at trade shows held in Washington.

The challenged licensing statute, which aims to protect Washington consumers from "frauds, impositions, and other abuses," makes it "unlawful for any person, firm, or association to act as a vehicle dealer..., to engage in business as such,... [or] solicit sales as such,... without first obtaining and holding a current license as provided in this chapter." RCW 46-.70.005,.021 (emphasis added).

The trial court dismissed To-Ro's claims attacking the statute, and the Court of Appeals affirmed,' denying relief under the Act. Recalling the Act's provision that "[a]ll orders, judgments and decrees under this chapter may be reviewed as other orders, judgments and decrees," we apply the customary principles of appellate review. RCW 7.24.070; see *Nollette v. Christianson*, 115 Wn.2d 594, 599-600, 800 P.2d 359 (1990).

Because To-Ro has contested no factual findings but seeks reversal of the trial court's legal conclusions, our review of the trial court's denial of declaratory relief is de novo. *Nollette*, 115 Wn.2d at 600. The Act provides in part that "[a] person... whose rights, status or other legal relations are affected by a statute... may have determined any question of construction or validity arising under the... statute... and obtain a declaration of rights, status or other legal relations *411thereunder." RCW 7.24.020.

In *Diversified Industries Development Corp. v. Ripley*, 82 Wn.2d 811, 814-15, 514 P.2d 137 (1973), we acknowledged that, "in the absence of the intrusion of issues of broad overriding public import, [we had] steadfastly adhered to the virtually universal rule that, before the jurisdiction of a court may be invoked under the act, there must be a justiciable controversy." We defined a justiciable controversy as "(1)... an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive." *Diversified Indus.*

Dev. Corp., 82 Wn.2d at 815; see also *Wash. Beauty Coll., Inc. v. Huse*, 195 Wash. 160, 164-65, 80 P.2d 403 (1938). Inherent in these four requirements are the traditional limiting doctrines of standing, mootness, and ripeness, as well as the federal case-or-controversy requirement.⁵ In sum, the four justiciability factors must "coalesce" to ensure that the court will be rendering a final judgment on an actual dispute between opposing parties with a genuine stake in the resolution.

Diversified Indus. Dev. Corp., 82 Wn.2d at 815. We agree with the Court of Appeals that To-Ro failed to meet the third justiciability requirement. See *To-Ro Trade Shows*, 100 Wn. App. at 493. To-Ro did not show that its "interests" in the dispute over DOL's enforcement of the dealer

licensing statute were “direct and substantial” as opposed to “potential, theoretical, abstract or academic.” *Diversified Indus.*

Dev. Corp., 82 Wn.2d at 815. Under the Act, “[o]ne may not... challenge the constitutionality of a *412 statute unless it appears that he will be directly damaged in person or in property by its enforcement.” *DeCano v. State*, 7 Wn.2d 613, 616, 110 P.2d 627 (1941) (emphasis added); see also *Walker v. Munro*, 124 Wn.2d 402, 412, 879 P.2d 920 (1994) (finding that petitioners’ failure to identify any “actual, concrete harm” caused by Initiative 601 precluded declaratory action).

The jury rejected To-Ro’s claim that the State’s 1994 closure of the Lake City RV exhibit had damaged To-Ro.⁶ To the extent that To-Ro contended that the licensing statute had an adverse financial impact beyond the alleged harm from the Lake City RV closure, To-Ro failed to show that its interests were direct and substantial, rather than contingent and inconsequential.

Support for this conclusion is found in prior analogous cases. In *Washington Beauty College*, a hairdressing school challenged a Washington statute that required a person to obtain a high school education as a prerequisite to becoming a licensed hairdresser.

The school claimed to have enrolled a number of students who would be unable to procure a high school education after completing the course. The school thus asserted that the statute unconstitutionally interfered with its right to contract with those students and with other prospective students. Affirming the trial court, this court concluded that “[n]o showing ha[d] been made of any direct or substantial injury threatened or suffered by [the beauty college] so as to present a justiciable issue.” *Wash. Beauty Coll.*, 195 Wash., at 165 (emphasis added).

The school’s “interest [was] too remote to entitle it to invoke the declaratory judgment[s] act.” *Id.* (emphasis added). While it might have been conceivable that the additional statutory requirement could have discouraged some enrolled or prospective students, the school could not prove an immediate, significant effect on its enrollment. *413 We considered a similar circumstance in *Yakima County (West Valley) Fire Protection District No. 12 v. City of Yakima*, 122 Wn.2d 371, 858 P.2d 245 (1993).

There, in order to secure sewer service from the City of Yakima, homeowners outside the city limits signed agreements binding them to support a future annexation. The homeowners and the local fire district later sought a declaratory judgment nullifying the agreements.

On direct review, we affirmed the trial court’s dismissal of the fire district for lack of standing. We reasoned that, while the fire district’s value would be diminished by annexation, the homeowners’ annexation agreements did not directly affect the fire district because those agreements did not ensure annexation. They provided only 66 percent of the necessary 75 percent of the property value required for annexation, and a successful annexation petition would remain vulnerable to further governmental review.

Thus, although the agreements increased the likelihood of annexation, the fire district's interest in their validity could not satisfy the justiciability requirement of a direct and substantial interest in the dispute over the agreements' validity. *Yakima County (W. Valley) Fire Prot. Dist. No. 12*, 122 Wn.2d at 379-80.

In sum, just as the losses of the beauty college were contingent on the intervening event of lower enrollment, the losses that the fire district anticipated were dependent on the intervening prospect of annexation; absent any certainty of annexation or lower enrollment, the plaintiffs in the two cases could not satisfy the third justiciability factor.

To-Ro did not prove that DOL's enforcement of the statute against unlicensed dealers had harmed (or would harm) To-Ro directly and substantially. As a consumer show promoter, To-Ro makes money by renting exhibit space to dealers and charging admission to patrons.

To-Ro did not show that there was a pool of RV dealers who wanted to forgo the licensing process and display their vehicles with no prices affixed. To the contrary, motor vehicle dealers testified that it was unimaginable that dealers would incur *414the expense of participating in an RV trade show if they were not allowed to sell vehicles at the show.

Moreover, as the State pointed out, "[i]t is likely that licensed dealers would oppose unlicensed dealers enjoying the benefits of engaging in business in Washington without paying for a license." Resp't's Answer to Amicus at 9. Nor did To-Ro show that the statute caused To-Ro to miss out on a large market of patrons who were eager to attend shows featuring unlicensed out-of-state dealers exhibiting vehicles bearing no price tags.

Therefore, just as we determined that the enforcement of the statute in *Washington Beauty College* and the validation of the agreements in *Yakima County (West Valley) Fire Protection District No. 12* caused no direct, substantial financial harm to the beauty college or the fire district, here, we conclude that DOL's enforcement of the statute's prohibition against display by unlicensed dealers caused no demonstrably direct or substantial financial harm to To-Ro.

This third justiciability requirement of a direct, substantial interest in the dispute encompasses the doctrine of standing. To have standing to challenge the constitutionality of a statute, a party must show, in addition to "sufficient factual injury," that " 'the interest sought to be protected... is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.' " *Seattle Sch.*

Dist. No. 1 v. State, 90 Wn.2d 476, 494, 493, 585 P.2d 71 (1978) (quoting *Ass'n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153, 90 S. Ct. 827, 25 L. Ed. 2d 184 (1970)). To-Ro asserts that RCW 46.70.021 violates its First Amendment rights by prohibiting it from allowing unlicensed dealers to display their vehicles at its trade shows. But plainly, To-Ro's

interest in seeking declaratory relief lies outside the zone of interests regulated by RCW 46.70.021.

The purpose of the dealer licensing statute is to protect the public from “frauds, impositions, and other abuses” by vehicle dealers. RCW 46.70.005. To-Ro is not a vehicle dealer, licensed or otherwise, nor is it acting in a representative capacity for *415any organization of consumers or vehicle dealers. See *Vovos v. Grant*, 87 Wn.2d 697, 700, 555 P.2d 1343 (1976) (interest sufficient to confer standing may be shown in personal or representative capacity).

The interest To-Ro is seeking to protect is its own theoretical interest in increasing the number of exhibitors participating in its trade shows. To-Ro’s potential financial interest as a show promoter clearly does not coincide with the statute’s aim of protecting consumers from fraudulent or abusive conduct by vehicle dealers.

We must conclude that, because To-Ro is not within the zone of interests regulated in RCW 46.70.021, it lacks standing to challenge the statute on First Amendment grounds; any such challenge would belong to the excluded dealer, not To-Ro.

Although the Court of Appeals confined its analysis to the third justiciability factor, we reach the additional conclusion that To-Ro likewise failed to satisfy the first requirement — demonstration of “an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement.” *Diversified Indus.*

Dev. Corp., 82 Wn.2d at 815. On the one hand, were we to limit our focus to the State’s 1994 closure of the Lake City RV exhibit, we would necessarily conclude that To-Ro’s dispute with the State is moot. Even if we were to determine that the dealer licensing statute should not have been enforced against an unlicensed dealer participating on a “display only” basis, such a pronouncement would be academic because the jury in this case made the uncontested factual determination that Lake City RV had not participated on a “display only” basis.

If, in the alternative, we decline to limit our consideration of the dispute between To-Ro and the State to the 1994 Lake City RV closure, then the dispute To-Ro presents is “dormant, hypothetical, [or] speculative.” *Diversified Indus. Dev. Corp.*, 82 Wn.2d at 815.

As discussed above, To-Ro has not shown that there are unlicensed dealers waiting in the wings to display their unpriced vehicles at a To-Ro trade show. Just as we have repeatedly *416refused to find a justiciable controversy where the event at issue has not yet occurred or remains a matter of speculation, we do not find a justiciable controversy here. See, e.g., *Diversified Indus.*

Dev. Corp., 82 Wn.2d at 815 (where minor child’s tort claim against lessor remained “an unpredictable contingency,” the matter was “not ripe for declaratory relief”); *Port of Seattle v. Wash. Utils. & Transp. Comm’n*, 92 Wn.2d 789, 806, 597 P.2d 383 (1979) (where issue of Port’s

future actions on certain contract rights “appear [ed] to be founded on a hypothetical factual situation,” declaratory judgment was inappropriate); *DiNino v. State ex rel.*

Gorton, 102 Wn.2d 327, 331, 684 P.2d 1297 (1984) (where party who was neither pregnant nor terminally ill challenged statute nullifying health care directive of pregnant or terminally ill patient, cause was not “ripe” for declaratory judgment); *Lawson v. State*, 107 Wn.2d 444, 460, 730 P.2d 1308 (1986) (where railroad had not abandoned right-of-way and county had expressed no intent to acquire it, property owners’ challenge to statutes permitting recreational public use of rights of way was “premature”).

Where the four justiciability factors are not met, “the court steps into the prohibited area of advisory opinions.” *Diversified Indus. Dev. Corp.*, 82 Wn.2d at 815. We exercise our discretion and deliver advisory opinions only “on those rare occasions where the interest of the public in the resolution of an issue is overwhelming” and where the issue has been “ ‘adequately briefed and argued.’ ” *In re Disciplinary Proceeding Against Denting*, 108 Wn.2d 82, 122-23, 736 P.2d 639, 744 P.2d 340 (1987) (Utter, J., concurring) (quoting *Citizens Council Against Crime v. Bjork*, 84 Wn.2d 891, 895, 529 P.2d 1072 (1975)); see also *Seattle Sch.*

Dist. No. 1, 90 Wn.2d at 490. We decline to deliver an advisory opinion in this case. To-Ro’s commercial interest in including unlicensed dealers in its trade shows does not appear to be a matter of “broad overriding public import.” *Diversified Indus. Dev. Corp.*, 82 Wn.2d at 814. That dealers participating in such trade shows are expected to be licensed was *417not a matter of confusion; both To-Ro and Lake City RV knew before the show that a license was required, and To-Ro’s own manual referred to the licensing requirement.

Far from being raised as a matter of overwhelming public interest, this challenge to the dealer licensing statute arose out of a particular situation in 1994 when To-Ro attempted to fill out an underbooked show by extending a belated invitation to an unlicensed dealer. **CONCLUSION** While we have acknowledged that the Uniform Declaratory Judgments Act provides a procedure “peculiarly well suited to the judicial determination of controversies concerning constitutional rights and... the constitutionality of legislative action,” we have resolutely maintained that no decisions should be made under the Act absent a “justiciable controversy.” *Seattle Sch.*

Dist. No. 1, 90 Wn.2d at 490; *Diversified Indus. Dev. Corp.*, 82 Wn.2d at 815. The criteria for identifying a justiciable controversy are now well settled. To satisfy our four-factor justiciability test, a party must demonstrate a direct, substantial interest in an actual, immediate dispute with a truly adverse party, and that dispute must be one that the court’s decision will conclusively resolve.

Diversified Indus. Dev. Corp., 82 Wn.2d at 815. Folded into this test are the familiar restraint doctrines. An actual, immediate dispute cannot be moot and must be ripe, and a party lacking a

direct, substantial interest in the dispute will lack standing.

To-Ro's challenge to the State's enforcement of RCW 46.70.021, the dealer licensing statute, does not present a justiciable controversy under the Act. We agree with the Court of Appeals that To-Ro failed to prove a direct, substantial financial interest in the dispute sufficient to confer standing, and we further find that, in light of the jury's factual findings, To-Ro was unable to demonstrate an actual, immediate dispute.

Having determined that To-Ro did not establish a justiciable controversy and that this case *418presents no issues of overwhelming public importance, we affirm the Court of Appeals. Alexander, C.J., and Smith, Johnson, Madsen, Ireland, Bridge, and Chambers, JJ., concur. DOL's position was consistent with To-Ro's own manual for exhibitors, which stated that participating dealers must obtain Washington licenses and mentioned no licensing exception for vehicles that were marked "For Display Only." To-Ro's complaint, filed March 6, 1995, in Spokane County Superior Court (No.

95-2-01225-1), was not included in the clerk's papers. Under RAP 9.6(b)(1)(D), To-Ro was required to include in the clerk's papers, if not the final complaint and answer, a final pretrial order or other pleadings setting out the issues to be tried.

In its summary judgment memorandum, To-Ro states that it seeks "a legal determination that RCW 49.70.021 [sic] and RCW 49.70.023 [sic] are unconstitutional on their face" and that "the manner in which the State carried out the enforcement actions... was unconstitutional." Clerk's Papers (CP) at 78.

To-Ro's trial brief provides that "[t]his case now comes on for trial on the plaintiff's claims for damages that the conduct of the state agents tortiously interfered with its business relations in violation of 42 U.S.C. § 1983." CP at 482.

In its notice of appeal (which, contrary to RAP 9.6(b)(1)(A), To-Ro did not include in the clerk's papers), To-Ro refers to a March 10, 1998, order "[s]ubmitting advisory interrogatories to the jury." The Court of Appeals termed it an "advisory verdict." *To-Ro Trade Shows v. Collins*, 100 Wn. App. 483, 488 n.4, 997 P.2d 960 (2000).

The verdict form simply bears the title "Verdict," but under CR 49(a) this was a special verdict, a series of findings on three issues of fact. Clerk's Papers (CP) at 549. That this was a special verdict form was made clear in the trial judge's instructions to the jury: "You will be furnished the exhibits admitted into evidence, these instructions, and a special verdict form which consists of several questions for you to answer." Report of Proceedings at 538 (Instruction 7) (emphasis added).

See CP at 549. The Court of Appeals entered an order on April 21, 2000, unsealing the verdict and making it a public record. As we have noted, “under the Uniform Declaratory Judgments Act, the requirement of standing tends to overlap justiciability requirements.” *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 203, 11 P.3d 762 (2000) (citing 15 Lewis H. Orland & Karl B. Tegland, *Washington Practice: Trial Practice*, Civil § 602, at 394 (5th ed.

1996)). See also Philip A. Talmadge, *Understanding the Limits of Power: Judicial Restraint in General Jurisdiction Court Systems*, 22 *Seattle U. L. Rev.* 695, 717 (1999). By repeatedly asserting that the State’s enforcement of the dealer licensing statute harmed To-Ro financially, the dissent simply champions To-Ro’s unproven claims. Even though the trial judge’s submission of the special verdict form to the jury was highly unusual and has no binding legal effect, the jury in this six-day trial received To-Ro’s evidence, heard its closing argument on damages, and concluded that the closure of the Lake City RV display did not proximately cause To-Ro’s damages.

See RP at 541-46, 549-50, 557-61.