

SUPREME COURT OF LOUISIANA

Meaux v. Galtier

972 So. 2d 1137 (La. 2008) · No. 07-CA-2474 · Decided January 25, 2008

SUMMARY

The Supreme Court of Louisiana dismissed an appeal invoking its constitutional appellate jurisdiction over a purported declaration that Louisiana Civil Code article 191 was unconstitutional. The court held that the district court's judgment merely denied an exception of prescription or peremption, and that constitutional arguments raised only in a memorandum were not properly pleaded or sufficient to establish appellate jurisdiction.

CASE DETAILS

COURT	Supreme Court of Louisiana
JURISDICTION	Louisiana
DECIDED	January 25, 2008
DOCKET	07-CA-2474
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants appealed directly to the Louisiana Supreme Court under La. Const. art. V, § 5(D), asserting that the district court had declared La. Civ. Code art. 191 unconstitutional.
PRECEDENTIAL VALUE	published Louisiana Supreme Court opinion
PARTIES	John Hammond, Geraldine Hammond v. Stacy Michael Meaux

TOPICS

- appellate jurisdiction
- pleadings
- appellate procedure
- constitutional law
- preservation of error

PRACTICE AREAS

- civil procedure
- appellate jurisdiction
- constitutional law

QUESTIONS PRESENTED

- Whether the Louisiana Supreme Court had appellate jurisdiction under La. Const. art. V, § 5(D) when the district court's judgment denied an exception but did not declare a law or ordinance unconstitutional.

2. Whether a constitutional challenge to a statute may be raised in a memorandum rather than in a pleading recognized by the Louisiana Code of Civil Procedure.

HOLDINGS

1. The Supreme Court lacked appellate jurisdiction because the district court's judgment did not declare any law or ordinance unconstitutional; discussion of constitutionality in the court's reasons was insufficient.
2. A constitutional challenge must be specially pleaded in a petition, exception, written motion, or answer; it may not be raised solely in a memorandum, opposition, or brief.

KEY QUOTATIONS

“a statute must first be questioned in the trial court, not the appellate courts, and the unconstitutionality of a statute must be specially pleaded and the grounds for the claim particularized.” (972 So. 2d at 1138)

“It cannot be raised in a memorandum, opposition or brief as those documents do not constitute pleadings.” (972 So. 2d at 1138)

FACTUAL BACKGROUND

The district court denied defendants' exception of prescription/peremption. Its reasons for judgment discussed the constitutionality of La. Civ. Code art. 191, but the judgment itself contained no declaration that the statute was unconstitutional. The plaintiff raised the constitutional issue in a memorandum opposing the exceptions rather than in a petition, exception, motion, or answer.

PROCEDURAL HISTORY

The district court denied defendants' exception of prescription/peremption. Although the district court's written reasons discussed the constitutionality of La. Civ. Code art. 191, the judgment did not declare the statute unconstitutional, and the constitutional challenge had been raised in a memorandum rather than a recognized pleading. The Supreme Court dismissed the appeal for lack of appellate jurisdiction and remanded for further proceedings.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

The case was remanded to the district court for further proceedings.

CASES CITED

- *Carmena v. East Baton Rouge Parish Sheriff's Office*, 947 So. 2d 715 (La. 2007)
- *Haynes v. United Parcel Service*, 933 So. 2d 765 (La. 2006)
- *Vallo v. Gayle Oil Co.*, 646 So. 2d 859 (La. 1994)

OPINION

PER CURIAM.

972 So.2d 1137 (2008) Stacy Michael MEAUX v. Lucille GALTIER, Scott Hammond, John Hammond, and Geraldine Hammond. No. 07-CA-2474. Supreme Court of Louisiana. January 25, 2008. PER CURIAM. Defendants, John. Hammond and Geraldine Hammond, invoke the appellate jurisdiction of this court pursuant to La. Const. art. V, § 5(D), on the ground that the district court declared La. Civ.Code art. 191, as enacted by Act 530 of the 2004 Regular Session, to be unconstitutional.

Premitting the merits, we find the appeal is not properly before this court. Article V, § 5(D) vests appellate jurisdiction in this court in cases in which "a law or ordinance has been declared unconstitutional...." A review of the district court's judgment indicates the court merely denied defendants' exception of prescription/peremption. Nothing in the judgment declares a law or ordinance unconstitutional.

Although the district court's reasons for judgment discuss the constitutionality of La. Civ.Code art. 191, it is well-settled law that the trial court's oral or written reasons form no part of the judgment. See La.Code Civ. P. art.1918; see also *Carmena v. East Baton Rouge Parish Sheriffs Office*, 06-2680 (La.2/2/07), 947 So.2d 715; *Haynes v. United Parcel Service*, 05-2378 (La.7/6/06), 933 So.2d 765.

Moreover, we question whether the constitutionality of La. Civ.Code art. 191 was properly pleaded in the district court by plaintiff. In *Vallo v. Gayle Oil Company, Inc.*, 94-1238 (La.11/20/94), 646 So.2d 859, we explained the requirements for pleading the unconstitutionality of a statute in the district court: *1138 Our Code of Civil Procedure does not require a single procedure or type of proceeding for challenging or assailing the constitutionality of a statute.

However, the long-standing jurisprudential rule of law is: a statute must first be questioned in the trial court, not the appellate courts, and the unconstitutionality of a statute must be specially pleaded and the grounds for the claim particularized.

The pleadings allowed in civil actions are petitions, exceptions, written motions and answers. LSA-C.C.P. art, 852. Therefore, when the unconstitutionality of a statute is specifically pled, the claim must be raised in a petition (the original petition, an amended and supplemental petition or a petition in an incidental demand), an exception, a motion or an answer.

It cannot be raised in a memorandum, opposition or brief as those documents do not constitute pleadings. [emphasis added; citations and footnotes omitted]. A review of the record in the instant case indicates the issue of constitutionality was raised in a filing by plaintiff captioned "Plaintiffs Memorandum in Opposition to Exceptions of Prescription/Peremption Filed by Defendants."

As we explained in Vallo, a memorandum is not a pleading recognized under the Code of Civil Procedure and is therefore not a proper method to challenge the constitutionality of a statute.[1] For these reasons, we find there is no proper declaration of unconstitutionality and, therefore, no basis for the exercise of this court's appellate jurisdiction.

Accordingly, the appeal is dismissed, and the case is remanded to the district court for further proceedings. NOTES [1] We also note that it does not appear the attorney general was given notice of the constitutional challenge. See La. R.S. 49:257; see also Vallo, 94-1238 at p. 7, 646 So.2d at 864 ("the attorney general should be served a copy of the pleading which contests the constitutionality of a statute").