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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
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COURT OF APPEALS FOR DIVISION III
STATE OF WASHINGTON

PAUL LAWSON,

Respondent,

vs.

CITY OF PASCO, a municipal corporation,

Appellant.

RESPONDENT'S BRIEF

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I. ISSUE PRESENTED FOR REVIEW

Whether a city may prohibit the placement of a recreational vehicle, used as a permanent residence, in a manufactured home park, when state law demands that a recreational vehicle, used as a permanent residence, be treated as a manufactured home and allowed into a manufactured home park?

II. STATEMENT OF THE CASE

Pasco seeks to enforce PMC 25.40.060, which reads that: “no recreational vehicle sites for occupancy purposes shall be permitted within any residential park.” CP 85. Paul Lawson owns a mobile home park, i.e., a residential park, in which sits a recreational vehicle. CP 50, 51. Lawson admits that the presence of the recreational vehicle violates the Pasco Code, but contends he is bound to allow the recreational vehicle in the mobile home park, because of state law. State law characterizes a recreational vehicle, used as a permanent residence, as a mobile home and does not allow evictions of recreational vehicles from parks. Since state law trumps a city ordinance, Paul Lawson contends Pasco may not enforce its ordinance against him.

The Superior Court agreed with Paul Lawson and dismissed a citation issued against Lawson. CP 8, 9. The Superior Court ruled that RCW 59.20, the Residential Manufactured/Mobile Home Landlord Tenant Act, preempts the Pasco ordinance. CP 8, 9. Pasco appeals the Superior Court order. CP 7A.

Paul Lawson owns a mobile home park in Pasco. CP 50, 51. Mobile homes have been placed in the park since at least the 1980s. CP 51. On January 23, 2006, the City of Pasco issued a correction notice to Lawson. CP 98. The notice stated that Paul Lawson violated the Pasco Municipal Code by allowing recreational vehicles, used as primary residences, to be within the mobile home park. CP 98. The notice directed Lawson to remove the recreational vehicles from the mobile home park. CP 98.

After the issuance of the notice, Paul Lawson notified the City of Pasco that state law did not allow him to discriminate against recreational vehicles. CP 105, 106. Lawson informed the City of Pasco that state law trumped and superceded the Pasco Municipal Code, and, thus, the Pasco Municipal Code could not be applied to prevent the placement of a recreational vehicle, used as a primary residence, in the mobile home park.

CP 105, 106.

The City of Pasco Code Enforcement Board conducted a hearing on May 4, 2006, upon the correction notice issued to Paul Lawson on January 23, 2006. CP 43. During the hearing, Tye Gimmel testified and averred that the recreational vehicle, at issue, is his home. CP 56. Gimmel uses the home as his permanent residence. CP 56. He possesses a written lease agreement with Paul Lawson, which lease runs for one year, but is renewable unless Paul Lawson has good cause to terminate the lease. CP 54.

The Code Enforcement Board upheld the correction notice and directed Lawson to remove the recreational vehicles, used as primary residences, from his mobile home park. CP 64, 65, 75. The Code Enforcement Board stayed its ruling until a decision, upon appeal, by the Franklin County Superior Court. CP 64, 65, 75.

III. ARGUMENT

A. A RECREATIONAL VEHICLE USED AS A RESIDENCE IS COVERED BY THE MANUFACTURED/MOBILE HOME LANDLORD TENANT ACT.

The Mobile Home Landlord Tenant Act controls the relationship between a mobile home park landlord and his tenants. RCW 59.20.040. The state Act requires that recreational vehicles, constituting the occupant's "primary residence," be treated as mobile homes under the Act. See RCW 59.20.030(4), (10), (11), and (12). Stated differently, recreational vehicles used as residences are not treated as recreational vehicles under state law. Because of the Mobile Home Landlord Tenant Act, tenants living in a recreational vehicle hold a virtual lifetime tenancy and can be evicted only for cause. RCW 59.20.080.

Contrary to the terms of RCW 59.20, Pasco contends that a "recreational vehicle" is not defined as a "mobile home" under the Residential Mobile Home Landlord Tenant Act, and thus not subject to the terms of the RMHLTA. In so arguing, Pasco fails to read the entire Act and ignores the comprehensive scope of the Residential Mobile Home Landlord Tenant Act. More importantly, Pasco ignores the language of RCW 59.20.080(3), which expressly declares recreational vehicles used as residences to fall within the purview of the Act.

The Residential Mobile Home Landlord Tenant Act is not even called by such name anymore, but is now titled the *Manufactured/Mobile*

Home Landlord Tenant Act. Italics added. RCW 59.20.010 reads:

This chapter shall be known and may be cited as the
“Manufactured/Mobile Home Landlord-Tenant Act.”

This title shows a legislative intent to cover more than the standard
mobile home under the Act.

The Manufactured/Mobile Home Landlord Tenant Act applies to
the rental of lots not only for mobile homes, but other manufactured
homes, including recreational vehicles. RCW 59.20.040 reads, in relevant
part:

This chapter shall regulate and determine legal rights,
remedies, and obligations arising from any rental
agreement between a landlord and a tenant regarding
a *mobile home lot* and including specified amenities
within the mobile home park, mobile home park
cooperative, or mobile home park subdivision, where
the tenant has no ownership interest in the property or
in the association which owns the property, whose
uses are referred to as a part of the rent structure paid
by the tenant.

Italics added. In turn, a “mobile home lot” is defined as a lot, on which a
tenant places his mobile home or “manufactured home.” RCW 59.20.030
provides:

(5) “Mobile home lot” means a portion of a mobile
home park or manufactured housing community
designated as the location of one mobile home,
manufactured home, or park model and its accessory

buildings, and *intended for the exclusive use as a primary residence* by the occupants of that mobile home, *manufactured home*, or park model;

Italics added.

Pasco places the definitions of “mobile home” and “park model” in its brief, but fails to note the more important definition of a “manufactured home.” RCW 59.20.030(3) reads:

“Manufactured home” means a single-family dwelling built according to the United States department of housing and urban development manufactured home construction and safety standards act, which is a national preemptive building code. A manufactured home also: (a) includes plumbing, heating, air conditioning, and electrical systems; (b) is built on a permanent chassis; and (c) can be transported in one or more sections with each section at least eight feet wide and forty feet long when transported, or when installed on the site is three hundred twenty square feet or greater;

To confirm that the Manufactured/Mobile Home Residential Landlord Tenant Act applies to not only mobile homes, but also other manufactured homes, RCW 59.20.030(6) prescribes:

“Mobile home park” or “manufactured housing community” means any real property which is rented or held out for rent to others for the placement of two or more mobile homes, *manufactured homes*, or park models for the primary purpose of production of

income, except where such real property is rented or held out for rent for seasonal recreational purpose only and *is not intended for year-round occupancy*;

Italics added.

The legislature must have desired the Act to apply to more than traditional “mobile homes,” by the statute’s distinction between a “mobile home” and a “manufactured home.” In turn, the renting of a lot for a “recreational vehicle” is excluded from the Manufactured/Mobile Home Residential Landlord Tenant Act, only if the owner of the vehicle does not permanently reside in the vehicle. RCW 59.20.030 reads:

(10) “Recreational vehicle” means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, *is not occupied as a primary residence*, and is not immobilized or permanently affixed to a mobile home lot;

Italics added.

The legislature’s narrow definition of a “recreational vehicle” as a vehicle “not occupied as a primary residence” must serve a purpose. The only discernible purpose is to declare that recreational vehicles used as a primary residence fall under the Manufactured/Mobile Home Residential Landlord Tenant Act. In fact, RCW 59.20.080(3) specifically declares that

a recreational vehicle, used as the primary residence, is covered by the Act.

The subsection reads:

(3) Chapters 59.12 and 59.18 RCW [the Residential Landlord Tenant Act] govern the eviction of recreational vehicles, as defined in RCW 59.20.030, from mobile home parks. This chapter [the Manufactured/Mobile Home Residential Landlord Tenant Act] governs the eviction of mobile homes, manufactured homes, park models, and recreational vehicles used as a primary residence from a mobile home park.

The Manufactured/Mobile Home Residential Landlord Tenant Act allows the eviction of a manufactured home only upon a limited list of grounds. RCW 59.20.080(1). Thus, a recreational vehicle can be removed from the park only for cause, and that cause cannot be the fact alone that the home is a recreational vehicle. For Paul Lawson to evict a tenant, simply because the tenant lives in a recreational vehicle instead of the standard mobile home, would violate the Act. The legislature palpably wants recreational vehicles, used as residences, to be treated as mobile homes.

Case law recognizes mobile homes as being in the nature of vehicles, thereby further blurring any distinction between a mobile home and a recreational vehicle used as a permanent residence. **U.S. v. 19.7**

Acres of Land More or Less in Okanogan County, 103 Wn.2d 296, 692 P.2d 809 (1984); **Gillette v. Zakarison**, 68 Wn.App. 838, 841, 846 P.2d 574 (1993). By treating recreational vehicles, used as residences, as manufactured housing, the legislature does not seek to sanction unsafe housing. The recreational vehicle must meet the same safety codes required of mobile homes.

B. PASCO CANNOT DEFEAT THE SUPREMACY OF STATE LAW BY CREATING AN ORDINANCE PROHIBITING RECREATIONAL VEHICLES IN A MANUFACTURED HOUSING COMMUNITY.

A local ordinance should not conflict with this treatment of recreational vehicles.

Washington Constitution, Article 11, Section 11, reads:

Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.

The “general laws” mentioned in this constitutional prohibition are the laws of the State of Washington. **City of Tacoma v. Luvane**, 118 Wn.2d 826, 833, 827 P.2d 1374 (1992). This constitutional section is known as the State Supremacy Clause. **King County v. Taxpayers of**

King County, 133 Wn.2d 584, 611 949 P.2d 1260 (1997).

A city ordinance that conflicts with a state law is void. **Parkland Light & Water Co. v. Tacoma-Pierce County Bd. of Health**, 151 Wn.2d 428, 434, 90 P.3d 37 (2004); **City of Tacoma v. Luvene**, 118 Wn.2d 826, 833, 827 P.2d 1374 (1992). In other words, state law trumps local law. An ordinance is invalid if the ordinance directly conflicts with a statute. **Housing Authority of City of Pasco and Franklin County v. City of Pasco**, 120 Wn.App. 839, 843, 86 P.3d 1217 (2004). Stated differently, an unconstitutional conflict occurs between a local ordinance and state law if the ordinance permits what is forbidden by state law or prohibits what state law permits. **HJS Development, Inc. v. Pierce County ex rel. Dept. of Planning and Land Services**, 148 Wn.2d 451, 482, 61 P.3d 1141 (2003).

The Pasco ordinance allows, if not demands, a mobile home park owner to evict a recreational vehicle, used as a principal residence. Nevertheless, a park owner, under state law, cannot evict a recreational vehicle, on the ground that the home is a recreational vehicle. Conversely, state law allows, if not demands, that a recreational vehicle be placed in a mobile home park; whereas, the Pasco ordinance precludes a recreational

vehicle from resting in a mobile home park.

When determining if a local ordinance conflicts with a state law, the court may look to the intent behind the state legislative enactment.

City of Tacoma v. Luvone, 118 Wn.2d 826, 833, 827 P.2d 1374 (1992).

The legislative intent behind the Mobile Home Landlord Tenant Act is to prevent a mobile home park from discriminating against a recreational

vehicle, when the recreational vehicle is used as a residence. The mobile home park owner must treat the recreational vehicle like a mobile home.

The Pasco ordinance allows the mobile home park to discriminate against

recreational vehicles. Thus, the Pasco ordinance conflicts with the Mobile

Home Landlord Tenant Act. Pasco cannot force Paul Lawson to remove the recreational vehicles from the park.

Pasco forwards the clever argument that, since a manufactured housing community owner can, under the Manufactured/Mobile Home Residential Landlord Tenant Act, evict a tenant for violating a city ordinance, Pasco's ordinance prohibiting recreational vehicles in a community must survive challenge. Nevertheless, Pasco's sophistry employs circular reasoning. Pasco's position would destroy the express terms of RCW 59.20.080(3), which demand the inclusion of recreational

vehicles, used as homes, under the Manufactured/Mobile Home Residential Landlord Tenant Act. RCW 59.20.080(3) precludes the eviction of a recreational vehicle from a mobile home park, simply on the ground that the recreational vehicle is a recreational vehicle, if the vehicle is used as a residence.

Under Pasco's argument, Pasco could enact an endless number of ordinances which conflict with the Manufactured/Mobile Home Residential Landlord Tenant Act and thereby defeat the primacy of the Manufactured/Mobile Home Residential Landlord Tenant Act and overcome the dominance of state law over city ordinances. For example, the Washington legislature, in order to end sectarian strife between Protestants and Catholics, could declare that a mobile home park owner can not preclude the admittance of either a green or an orange mobile home. A Protestant majority of Pasco city councilmembers could adopt an ordinance prohibiting green mobile homes. According to Pasco, it could then avoid the Washington statute, because a manufactured housing community owner can evict a mobile home for failure to comply with a local ordinance under RCW 59.20.080(1)(d).

Pasco relies upon **Guimont v. Seattle**, 77 Wn.App. 74, 896, P.2d 70 (1995). **Guimont** involves a “taking” and due process challenge to a recreational vehicle city ordinance. The ordinance was not challenged under Washington Constitution, Article 11, Section 11, the preemption clause. The reader of the opinion does not know whether recreational vehicles in the manufactured home park were used as permanent residences. The court did not address the sections of the Residential Manufactured/Mobile Home Landlord Tenant Act demanding placement of recreational vehicles, used as residences. In short, **Guimont v. Seattle** does not address the question before this court.

**C. THE COURT SHOULD NOT DEFER TO THE
DECISION OF THE PASCO CODE ENFORCEMENT BOARD.**

When rendering its decision, the Pasco Code Enforcement Board did not weigh any facts. To the contrary, the facts before the board and this court are undisputed. Paul Lawson challenges the “pure” legal decision of the Code Enforcement Board. Therefore, just as the Superior Court did not defer to the decision of the Code Enforcement Board, this court should not defer to that decision.

The appeal from the Pasco Code Enforcement Board to the Superior Court was governed, in part, by the Land Use Petition Act (LUPA). Under LUPA, the Superior Court must reverse a land use agency's decision if the decision is based upon an erroneous interpretation of law. RCW 36.70C.130 reads, in part:

(1) ... The court may grant relief only if the party seeking relief has carried the burden of establishing that one of the standards set forth in (a) through (f) of this subsection has been met. The standards are:

...

(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

...

(e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or

...

(2) In order to grant relief under this chapter, it is not necessary for the court to find that the local jurisdiction engaged in arbitrary and capricious conduct....

The Pasco Code Enforcement Board decision did not necessitate a construction of the Pasco ordinance. Therefore, no deference is due to the

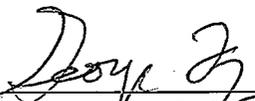
board's decision. Along these lines, questions of law are reviewed *de novo*, under LUPA. **HJS Development, Inc. v. Pierce County ex rel. Dept. of Planning and Land Services**, 148 Wn.2d 451, 61 P.3d 1141 (2003).

IV. CONCLUSION

The Manufactured/Mobile Home Residential Landlord Tenant Act requires the admittance, into a mobile home park, of recreational vehicles used as permanent residences. Pasco cannot adopt an ordinance conflicting with this state imperative. Thus, this court should affirm the Superior Court's order.

DATED this 10th day of July, 2007.

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CERTIFICATE OF SERVICE

I, hereby certify that on the 11th day of July, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

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