

Judgment rendered October 6, 2004.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 38,955-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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CLADDIE SAVAGE d/b/a
PINEY WOODS GAME CLUB and
ARK-LA-TEX GAME CLUB, INC.

Plaintiffs-Appellees

versus

STEVE PRATOR, SHERIFF OF
CADDO PARISH and THE CADDO
PARISH COMMISSION

Defendants-Appellants

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Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 481,892

Honorable Charles R. Scott, Judge

* * * * *

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Counsel for
Appellants

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Counsel for
Appellees

* * * * *

Before BROWN, STEWART, and GASKINS, JJ.

STEWART, J., dissents with written reasons.

BROWN, C.J.,

Plaintiffs, Claddie Savage d/b/a Piney Woods Game Club, and Ark-La-Tex Game Club, Inc., filed this action in January 2004 against the Caddo Parish Commission and the Caddo Parish Sheriff's Office after being informed by the sheriff that an existing parish ordinance against cockfighting would be enforced. Savage purchased Piney Woods Game Club in September 2003, however, cockfighting tournaments had been held on its premises since 1991. Ark-La-Tex Game Club had been conducting similar tournaments since 1997. The trial court granted plaintiffs' request for a preliminary injunction, finding that plaintiffs had made a prima facie showing that the parish had usurped or improperly invaded the police power reserved to the state under the Louisiana Constitution. Plaintiffs' requests for a declaratory judgment and permanent injunction were deferred until trial on the merits. The Caddo Parish Commission has appealed. Finding no error, we affirm.

Discussion

La. Const. art. VI, § 9(A) and (B) provides:

(A) Limitations. No local governmental subdivision shall (1) define and provide for the punishment of a felony; or (2) except as provided by law, enact an ordinance governing private or civil relationships.

(B) Police Power Not Abridged. Notwithstanding any provision of this Article, the police power of the state shall never be abridged.

La. R.S. 14:102.1 is a state statute prohibiting cruelty to animals. In 1983, amid a controversy about cockfighting, the legislature amended this statute to add the following language:

For purposes of this Section, fowl shall not be defined as animals . . .

La. R.S. 14:102.1D.

A Caddo Parish Ordinance prohibiting cruelty to animals was amended in 1987, with a January 1, 1988, effective date, to state that:

Animals shall mean any living vertebrate creature except human beings, including but not limited to . . . birds, fowl, . . .

A violation of this ordinance is punishable as a misdemeanor. Caddo Parish Code of Ordinances, Sections 4-1, 4-3, 4-14(B).

In its written reasons for judgment, the trial court clearly set forth the issue:

When citizens of this state and those visiting from outside this state cannot rely on state law to govern their conduct but must instead be fearful of criminal penalties from a parish ordinance which is in conflict with state law, the residual police power of the state has been abridged by the conflicting ordinance

We emphasize that the Caddo Parish ordinance prohibited cockfighting as opposed to an attempt to regulate its operation. *See Robertson v. Bossier Parish Police Jury*, 535 So. 2d 1199 (La. App. 2d Cir. 1988).

The 1974 constitution creates two classes of home rule governments with different levels of immunity from control by the state legislature: (1) preexisting home rule municipalities may exercise within their boundaries any legislative powers not in conflict with the 1974 state constitution; and (2) those charters enacted after the 1974 constitution may exercise home rule powers consistent with the constitution except when the exercise of such power is denied by general law. *City of Baton Rouge v. Williams*, 95-0308 (La. 10/16/95), 661 So. 2d 445.

Caddo Parish adopted a home rule charter in 1984 and is governed by La. Const. Art. VI, § 5(E) and thus, may pass ordinances consistent with the 1974 Constitution unless denied by general law.

In *Francis v. Morial*, 455 So. 2d 1168, 1171 (La. 1984), the supreme court concluded: "[A] home rule charter government possesses, in affairs of local concern, powers which within its jurisdiction are as broad as that of the state, except when limited by the constitution, laws permitted by the constitution, or its own home rule charter."

Because this case concerns a misdemeanor, the limitation provided in La. Const. art. VI, § 9(A) on defining and providing for felonies need not be considered. Therefore, we must look to whether this statute conflicts with state law in such a way as to abridge the state's police power. It is a general principle of constitutional law that a state cannot surrender, abdicate, or abridge its police power. La. Constitution art. VI, § 9(B); *City of New Orleans v. Board of Commissioners of Orleans Levee Dist.*, 93-0690 (La. 07/05/94), 640 So.2d 237. In *City of New Orleans*, the supreme court, while observing that La. Const. art. VI, § 9(B) was ambiguous, found that it was adopted as ". . . a principle of harmonizing the replete home rule powers granted local governments with a basic residuum of the state's power to initiate legislation and regulation necessary to protect and promote the vital interests of its people as a whole." *Id.* at 249.

The supreme court enunciated a method of analyzing possible abridgments of the state's police power:

[A] litigant claiming that a home rule municipality's local law abridges the police power of the state must show that the local

law conflicts with an act of the state legislature that is necessary to protect the vital interest of the state as a whole. To establish that the conflict actually exists, the litigant must show that the state statute and the ordinance are incompatible and cannot be effectuated in harmony. Further, to demonstrate that the state statute is "necessary" it must be shown that the protection of such state interest cannot be achieved through alternate means significantly less detrimental to home rule powers and rights. (Citations omitted).

City of New Orleans, supra at 252.

Here, the parish ordinance makes illegal what the state has deemed to be legal. Clearly, the parish ordinance conflicts with an act of the state legislature. Although the ordinance took effect in 1988, plaintiffs or their predecessors had openly put on cockfights since 1991 and 1997.

La. Const. art. VI, § 9 recognizes the state's vital interest to define and provide for the punishment of felonies but fails to make such a provision concerning misdemeanors. Implicitly, state law misdemeanors may be duplicated by local governments with penalties within the maximum range allowed for misdemeanors. *City of Baton Rouge, supra*. However, the Caddo Parish Commission did not duplicate but contravened a state statute.¹

In *Knights of Columbus, Chapter No. 2409 v. Louisiana DPS, Division of State Police*, 548 So. 2d 936, ___ (La. 1989), the supreme court explained:

The general rule is well settled. As in most jurisdictions, see H. McClintock, Handbook of the Principles of Equity § 173 (2d ed. 1948), Louisiana courts hesitate to interfere via injunction with the legitimate enforcement of criminal laws. To ensure that such interference does not lightly occur, this Court has set forth

¹An act of the legislature will be necessary if opponents of cockfighting wish to make it a criminal act. In the 2004 regular session of the legislature, a bill to prohibit cockfighting failed. The threatened enforcement, at issue in the instant case, occurred shortly after the proposed bill's failure. H.B. 681 of 2004.

three requirements that must be met to justify enjoining pending or threatened criminal proceedings. A court should not grant such an injunction unless the plaintiff shows with reasonable certainty that (1) the statute is manifestly unconstitutional, (2) irreparable injury is threatened, and (3) existing property rights will be destroyed by enforcement.

The trial court correctly found that: with reasonable certainty the parish ordinance implicated in this case abridges the police power of the state; the threatened prosecution under an unconstitutional ordinance presumes irreparable injury; and impairs an existing property right. Thus, we affirm the judgment of the trial court.

AFFIRMED.

STEWART, J., dissenting.

The majority opinion concludes that Section 4-14 of the Caddo Parish Code of Ordinances conflicts with state law. However, in my view, there is no conflict between Section 4-14 and La. R.S. 14:102.1 which supports injunctive relief. I respectfully dissent from the majority opinion.

Because cockfighting is not defined as a felony under state law, the parish ordinance is not prohibited by La. R.S. 14:143, which provides that “no governing authority of a political subdivision shall enact an ordinance defining as an offense conduct that is defined and punishable as a felony under state law.” Moreover, La. R.S. 14:102.1 is silent as to cockfighting. The legislature simply chose not to define fowl as animals in the provision criminalizing cruelty to animals. State law neither expressly authorizes, prohibits, nor attempts to regulate cockfighting. In the absence of state law on the matter, the parish ordinance is not invalid on its face. It does not contravene state law.

The majority finds that the standards for injunctive relief set forth in *Knights of Columbus, Chapter No. 2409 v. Louisiana DPS, Division of State Police*, 548 So. 2d 936 (La. 1989), have been met by plaintiffs. I disagree. Plaintiffs have not shown, and the trial court has not declared, that the ordinance is manifestly unconstitutional. The ordinance has not been shown to abridge the police power of the state.

The trial court made no finding that plaintiffs would suffer irreparable injury as a result of enforcement of the ordinance; rather, the trial court’s ruling was based entirely upon the propriety of the ordinance vis-a-vis state

law. The economic harm that would be suffered by plaintiffs as a result of enforcement of the ordinance is not the type of irreparable injury which justifies injunctive relief. See *Terrebonne Parish Police Jury v. Matherne*, 405 So. 2d 314, 319 (La. 1981), *cert. denied* 456 U.S. 972, 102 S. Ct. 2234, 72 L. Ed. 2d 845 (1982), defining irreparable harm as a loss which “cannot be adequately compensated in money damages or for which such damages cannot be measured by a pecuniary standard.”

Finally, plaintiffs have not shown that existing property rights will be destroyed by enforcement of the ordinance. They may continue to operate their clubs pending the final outcome of this matter so long as they pursue other business activities that do not include cockfighting.

For these reasons, I would reverse the judgment of the trial court and remand for further proceedings.