

STATE OF MICHIGAN
COURT OF APPEALS

BURDA BROTHERS, INC. and AMERICAN
FIREWORKS USERS ASSOCIATION,

UNPUBLISHED
July 1, 1997

Plaintiffs-Appellees,

v

No. 195051
Wayne Circuit Court
LC No. 94-420168-CZ

CANTON TOWNSHIP,

Defendant-Appellant,

and

WAYNE COUNTY PROSECUTOR,

Intervening Appellant.

Before: Markey, P.J., and Jansen and White, JJ.

PER CURIAM.

Defendant Canton Township appeals as of right from a May 6, 1996 declaratory judgment of the Wayne Circuit Court ruling that Michigan's fireworks statutes, MCL 750.243a-d; MSA 28.440(1)-(4), were preempted by federal law. We reverse.

Plaintiff Burda Brothers, Inc. operates a store in Canton Township which sells fireworks. The fireworks sold are both restricted and unrestricted by state law. In order to sell the restricted fireworks, Burda Brothers assists consumers in becoming members of the American Fireworks Users Association, which allows consumers to circumvent state laws that normally prohibit sales to the general public. In conducting this business, Burda Brothers was subject to Canton Township's attempts to enforce Michigan's fireworks regulations through law enforcement activities such as the seizure of allegedly illegal fireworks, fines, and refusal to grant the necessary permits to sell fireworks.

On June 30, 1994, Burda Brothers filed an ex parte complaint against Canton Township seeking injunctive relief. On March 11, 1996, plaintiffs filed a motion for declaratory relief. They

requested an order declaring that their business practices were legal under Michigan statutes, that the Michigan fireworks classification scheme was preempted by federal regulations concerning fireworks classification, that the Michigan classification scheme was unconstitutionally vague, that defendant was estopped from determining that plaintiffs' business was illegal with respect to zoning ordinances, and that plaintiffs are entitled to issuance of fireworks display permits from defendant.

On May 6, 1996, the circuit court issued an opinion and order granting plaintiffs' motion for declaratory relief. Specifically, the court found that the fireworks statutes were preempted by the Hazardous Materials Transportation Act (HMTA), 49 USC 5101 *et seq.* The court ordered that defendant process plaintiffs' pending applications for permits to sell fireworks for the 1996 season.

On appeal, defendant contends that the trial court erred in ruling that Michigan's fireworks statutes were preempted by federal law. This issue is largely controlled by this Court's recent decision in *Stajos v Lansing*, 221 Mich App 234; ___ NW2d ___ (1997).

In *Stajos*, the plaintiff argued that Michigan's fireworks statutes were preempted by various federal regulations. This Court held that there was no preemption because the federal regulations cited by the plaintiff addressed only the packaging and classification of fireworks for interstate shipment and did not address the sale or use of fireworks within a state. This Court further noted that 18 USC 836, which imposes criminal penalties on a person who knowingly transports fireworks "in a manner or for a use prohibited by the laws of such State specifically prohibiting or regulating the use of fireworks," indicates that the definition of fireworks contained in the laws of the respective states shall be applied.

The trial court in the present case focused on 49 USC 5125(b)(1)(A), which provides:

(b) Substantive differences.-(1) Except as provided in subsection (c) of this section and unless authorized by another law of the United States, a law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe about any of the following subjects, that is not substantively the same as a provision of this chapter or a regulation prescribed under this chapter, is preempted:

(A) the designation, description, and classification of hazardous material.

Contrary to the trial court's ruling, we do not find that the HMTA preempts the Michigan fireworks statutes. Here, as in *Stajos*, the federal statute does not address the sale or use of fireworks within a state. The purpose of the HMTA, on the other hand, is "to provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce by improving the regulatory and enforcement authority of the Secretary of Transportation." 49 USC 5101. Accordingly, the HMTA does not preempt this state from regulating the intrastate sale, use and storage of fireworks. See *Stajos, supra*, pp 235-236; *Colorado Pyrotechnic Ass'n v Meyer*, 740 F Supp 792 (D Colo, 1990) (a state fireworks law was found not to be preempted by the HMTA or regulations promulgated under the HMTA.)

Accordingly, the trial court erred in ruling that MCL 750.243a-d; MSA 28.440(1)-(4) is preempted by the HMTA. The HMTA does not preempt the Michigan fireworks statutes.

Reversed. No taxable costs pursuant to MCR 7.219, a question of public policy involved.

/s/ Jane E. Markey

/s/ Kathleen Jansen

/s/ Helene N. White