

RENDERED: March 27, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-2543-MR

SCOTT FISCAL COURT;
GEORGE LUSBY, Individually
and in his capacity as
Scott County Judge-Executive;
ROBERT RANKIN, CHARLES HOFFMAN,
and GARY PERRY, Individually
and in their respective
capacities as members of the
Scott County Fiscal Court

APPELLANTS

v.

APPEAL FROM SCOTT CIRCUIT COURT
HONORABLE DAVID L. KNOX, JUDGE
ACTION NO. 96-CI-0153

RANDY JOHNSON

APPELLEE

OPINION

REVERSING AND REMANDING

*** *** *** ***

BEFORE: GUIDUGLI, JOHNSON, and MILLER, Judges.

MILLER, JUDGE: The Scott Fiscal Court; George Lusby, individually
and in his capacity as Scott County Judge-Executive; and Robert
Rankin, Charles Hoffman, and Gary Perry, individually and in their
respective capacities as members of the Scott County Fiscal Court
(appellants) bring this appeal from an August 20, 1996 order of the

Scott Circuit Court. We reverse and remand.

The facts are these: In August 1995, Randy Jones (appellee) purchased a lion cub and lodged the animal at his home in Scott County, Kentucky. He was issued a permit by the Department of Fish and Wildlife Resources of the Commonwealth of Kentucky (DFWR) to possess the lion. In May 1996, the Scott Fiscal Court, responding to numerous complaints, enacted Ordinance No. 96-002, "An Ordinance Relating to Wild Animals" (sometimes referred to as "the ordinance"). The ordinance, in relevant part, provided as follows:

Whereas, the keeping of wild animals within Scott County could constitute an attractive nuisance detrimental to the health, safety and welfare of its inhabitants:

Whereas, the Scott Fiscal Court declares it the policy to prohibit the keeping of wild animals within Scott County and to enforce such prohibition and penalties;

. . .

(a) The keeping of wild animals within any area of the county is hereby prohibited and declared to be unlawful. . . .

. . .

(2) "Wild Animals" shall mean all bears, lions, tigers, cougars, leopards, cheetahs, jaguars, wolves and wolverines and other large (more than 35 lbs.) predacious (predatory) omnivore or carnivore, excluding canines.

Consequently, appellee instituted this action to have the ordinance declared invalid as: (1) it conflicts with this commonwealth's statutes and various DFWR regulations; (2) it

unconstitutionally violates appellee's due process rights; and (3) the ordinance was passed to abate a nuisance where, in fact, none exists.

On August 20, 1996, the Scott Circuit Court entered an order declaring Ordinance No. 96-002 invalid as it conflicts with state statutes and DFWR ordinances. The court did not address appellee's remaining contentions challenging the validity of the ordinance. This appeal followed.

Appellants contend that the circuit court committed reversible error by concluding that Ordinance No. 96-002 conflicts with state statutes and DFWR ordinances. We agree. It is a well-settled principle of law that a county ordinance is preempted and thus invalid if it conflicts with state statute(s). See Louisville & Nashville Railroad Company v. Commonwealth, Ky., 488 S.W.2d 329 (1972). In the case sub judice, we perceive no such conflict that would require avoidance of the ordinance. It is uncontroverted that Ordinance 96-002 prohibits the keeping of lions within the county. It is further uncontroverted that appellee was granted a permit by the DFWR to own and possess the lion. The permit was issued pursuant to 301 Ky. Admin. Regs. (KAR) 2:081. That regulation was authorized by Ky. Rev. Stat. (KRS) Chapter 150, titled "Fish and Wildlife Resources." At first blush, it would seem that the ordinance conflicts with DFWR's power to issue the permit for possession and ownership of the lion. Upon close scrutiny,

however, we think Ordinance No. 96-002, KRS Chapter 150, and 301 KAR 2:081 do not conflict, but rather can be viewed harmoniously.

The purpose of KRS Chapter 150 was articulated by our legislature in KRS 150.015. That purpose, in relevant part, is therein stated as follows:

The declared purpose of Acts 1952, ch. 200, and the policy of the Commonwealth of Kentucky, is to protect and conserve the wildlife of this Commonwealth so as to insure a permanent and continued supply of the wildlife resources of this state for the purpose of furnishing sport and recreation for the present and for the future residents of this state; to promote the general welfare of the Commonwealth; to provide for the prudent taking and disposition of wildlife within reasonable limits, based upon the adequacy of the supply thereof; to protect the food supply of this state, and to insure the continuation of an important part of the commerce of this state which depends upon the existence of its wildlife resources. . . .

Indeed, 301 Ky. Admin. Regs. (KAR) 2:081, promulgated by the DFWR pursuant to the authority of KRS Chapter 150, expressly enunciates the policy and objectives behind it as follows:

This administrative regulation is necessary to control the indiscriminate possession of wildlife and to insure that wildlife is humanely and properly cared for; to protect the public and native wildlife from wildlife-borne diseases and to prevent the introduction of wildlife that might be detrimental to native fauna and flora.

Thus, the legislature's objective in enacting KRS Chapter 150, and thus the DFWR's objective in promulgating 301 KAR 2:081,

was basically to protect wildlife. Conversely, the Scott Fiscal Court's objective in enacting Ordinance No. 96-002 was to protect the health and safety of its citizenry. We view this distinction as pivotal.

As neither KRS Chapter 150 nor 301 KAR 2:081 was enacted to address the specific issue of the public's health and safety in relation to the possession of wildlife, we view Ordinance No. 96-002 as simply complementing the state regulatory scheme. See Peoples Program for Endangered Species v. Sexton, 476 S.E.2d 477 (S.C. 1996). Hence, we are of the opinion that Ordinance No. 96-002, KRS Chapter 150, and 301 KAR 2:081 are not in conflict and that the circuit court committed reversible error by so concluding.

As the circuit court failed to address appellee's remaining contentions, we remand for the court's consideration thereof.

For the foregoing reasons, the order of the circuit court is reversed, and this cause is remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANTS:

J. Clay McKnight Jr.
Georgetown, KY

Gordon W. Moss

BRIEF FOR APPELLEE:

David C. Trimble
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