

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002765-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM ESTILL CIRCUIT COURT
HONORABLE WILLIAM W. TRUDE, JUDGE
ACTION NO. 98-CR-00035

STEVE PLOWMAN

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, JOHNSON, AND TACKETT, JUDGES.

BUCKINGHAM, JUDGE. The Commonwealth of Kentucky appeals from an order of the Estill Circuit Court dismissing a criminal indictment charging Steve Plowman with arson in the second degree. The circuit court held that the bulldozer involved in the charge was not a "vehicle" covered by the arson statute, KRS¹ 513.030. We agree with the circuit court's interpretation of the statute and thus affirm.

¹ Kentucky Revised Statutes.

The Commonwealth alleged that Plowman borrowed six bottom automatic reset plows from Rodney Horn to use on his farm. Despite repeated requests by Horn, Plowman failed to return the plows. Horn subsequently discovered that Plowman had sold the plows to another person. Horn went to the county attorney about the situation, and Plowman was charged with theft. A short time later, Plowman set fire to Horn's 1450 Case bulldozer, which resulted in its being declared a total loss. Plowman made statements to the police implicating himself in the incident.

In November 1998, the Estill County grand jury indicted Plowman on one felony count of arson in the second degree (KRS 513.030) "by starting a fire with the intent to destroy or damage a bulldozer owned by Rodney Horn" In July 1999, Plowman filed a motion to dismiss the indictment. He asserted that because a bulldozer was not included within the meaning of the arson statute, the Commonwealth could not establish an element of the offense. Rather than file a response, the parties argued the motion orally before the circuit court at a pretrial conference. On September 19, 1999, the circuit court entered an order dismissing the indictment stating that because a bulldozer was not a "vehicle" within the ordinary meaning of the word, it was not covered by the arson statute. The Commonwealth filed this appeal.

The Commonwealth contends that the circuit court misconstrued the arson statute when it found that a bulldozer did not fall within the definition of "vehicle". While it does not take issue with the court's general approach, the Commonwealth

argues that a bulldozer falls within the plain meaning of the statute.

First, we note that because the interpretation of a statute is a question of law subject to de novo review, an appellate court is not required to give deference to the trial court's decision on that issue. Commonwealth v. Montague, Ky., 23 S.W.3d 629, 631 (2000) (quoting Floyd County Bd. of Educ. v. Ratliff, Ky., 955 S.W.2d 921, 925 (1997)); Commonwealth v. Garnett, Ky. App., 8 S.W.3d 573, 575 (2000). The seminal duty of a court in construing a statute is to effectuate the intent of the legislature. Commonwealth v. Harrelson, Ky., 14 S.W.3d 541, 546 (2000); Magic Coal Co. v. Fox, Ky., 19 S.W.3d 88, 94 (2000); Commonwealth v. Kash, Ky. App., 967 S.W.2d 37, 43 (1997). Generally, a statute should be interpreted according to the plain meaning of the language, and a court is not free to add or subtract words. Harrelson, 14 S.W.3d at 546; Commonwealth v. Frodge, Ky., 962 S.W.2d 864, 866 (1998); Commonwealth v. Allen, Ky., 980 S.W.2d 278, 280 (1998). Where there is a specific definition provided in the statute, the courts are required to apply the definition; otherwise, the words of a statute are construed according to their common and ordinary usage. See KRS 446.015; Griffin v. City of Robards, Ky., 990 S.W.2d 634, 638 (1999) (courts not permitted to redefine meaning of word already defined in the statute); Baker v. Commonwealth, Ky., 677 S.W.2d 876, 879 (1984) (courts must use definition prescribed by statute), overruled in part on other grounds, Shannon v. Commonwealth, Ky., 767 S.W.2d 548 (1988); Lynch v. Commonwealth,

Ky., 902 S.W.2d 813, 814 (1995) (words in statute should be given their ordinary meaning); Marcinek v. Commonwealth ex rel. Marcum, Ky. App., 999 S.W.2d 721, 723 (1999).

At the same time, a statute must be read in light of the mischief to be corrected, the evil intended to be remedied, and the policy and purpose of the statute. Springer v. Commonwealth, Ky., 998 S.W.2d 439, 448 (1999); Sisters of Charity Health Sys., Inc., v. Raikes, Ky., 984 S.W.2d 464, 469 (1998); Kash, 967 S.W.2d at 43. In addition, under the doctrine of ejusdem generis, in construing an ambiguous statute, where general words follow or precede a designation of particular subjects or class of items, the meaning of the general words ordinarily will be presumed to be restricted to the same kind, class, or nature of the specific subjects absent a clear manifestation of a contrary purpose. See Steinfeld v. Jefferson County Fiscal Court, 312 Ky. 614, 229 S.W.2d 319, 320 (1950); Hill v. Baker, 309 Ky. 514, 218 S.W.2d 24 (1949); ACSR, Inc., v. Cabinet for Health Services, Ky. App., 32 S.W.3d 96 (2000). Consistent with the doctrine of ejusdem generis, "'broad and comprehensive expressions in an act such as, 'and all others,' or 'any others,' are usually to be restricted to persons or things of the same kind or class with those specifically named in the preceding words.'" City of Lexington v. Edgerton, 289 Ky. 815, 159 S.W.2d 1015, 1017 (1941) (quoting Vansant v. Commonwealth, 189 Ky. 1, 224 S.W. 367, 371 (1920) (emphasis in original)).

KRS 513.030, the second-degree arson statute, states:

- (1) A person is guilty of arson in the second degree when he starts a fire or

causes an explosion with intent to destroy or damage a building:

- (a) Of another; or
 - (b) Of his own or of another, to collect or facilitate the collection of insurance proceeds for such loss.
- (2) In any prosecution under this section, it is a defense that:
- (a) No person other than the defendant had a possessory or proprietary interest in the building, or, if other persons had such an interest, all of them consented to the defendant's conduct; and
 - (b) The defendant's sole intent was to destroy or damage the building for a lawful purpose.

For purposes of Chapter 513, KRS 513.010 defines "building" as follows:

"Building", in addition to its ordinary meaning, specifically includes any dwelling, hotel, commercial structure, automobile, truck, watercraft, aircraft, trailer, sleeping car, railroad car, or other structure or vehicle, or any structure with a valid certificate of occupancy. (Emphasis added.)

The Commonwealth argues that a bulldozer falls within the statutory definition of a building because the statute refers to "any . . . vehicle." The Commonwealth's assertion that no interpretation is needed because the statutory definition is clear and unambiguous is flawed. Because "vehicle" is not further defined in the statute, we will construe the statute according to its plain and ordinary meaning, the policy and purpose of the arson statute as a whole, and the doctrine of ejusdem generis.

First, as the circuit court noted, "vehicle" is defined by Webster's Dictionary as, inter alia, "[a] device, as a motor vehicle or a piece of mechanized equipment, for transporting passengers, goods, or apparatus[.]" Webster's II New Riverside University Dictionary (1984). "Bulldozer" is defined as "[a] tractor with a horizontal blade in front used esp. for clearing or grading land." Id. In addition, Black's Law Dictionary defines "vehicle" as "[s]omething used as an instrument of conveyance; any conveyance used in transporting passengers or merchandise by land, water, or air." Black's Law Dictionary, Seventh Edition (1999). While a bulldozer is a piece of mechanized equipment, it is used for grading rather than conveyance of persons or objects.

Furthermore, the definition of "building", in addition to fixed structures, includes a list of movable items whose primary function is the transportation of people. This is consistent with one purpose of the arson statute to protect or reduce the risk of harm to persons, in addition to preserving property. As stated in the introductory Commentary to Chapter 513:

At common law, the offense of arson was defined as a "willful and malicious burning of another's dwelling or adjacent structures" Like burglary, this offense was designed to protect the habitation (i.e., a structure in which people ordinarily sleep). By judicial interpretation and legislative enactment, it has been extended to cover other types of buildings. In redefining the category of crime known as arson, this chapter maintains as a frame of reference the one characteristic of this offense that distinguishes it from other offenses involving damage to property, namely, the

objective of proscribing conduct that endangers human life.

See KRS 500.100 (commentary may be used as aid in construing Penal Code); Stark v. Commonwealth, Ky., 828 S.W.2d 603 (1991) (same), overruled in part on other grounds, Thomas v. Commonwealth, Ky., 931 S.W.2d 446 (1996). A bulldozer does not fit within the policy and purposes of the arson statute to cover objects associated with the protection of persons.

Third, the scope of the word "vehicle" should be construed in light of the preceding items listed in the definition of a building under KRS 513.010. As noted above, the list involves containers or motorized items whose principle use is conveying or transporting persons and objects; whereas, the principle function of a bulldozer is for grading and the redistribution of earth. Under the doctrine of ejusdem generis, "vehicle" should be construed consistent with the kind, class, and nature of the items preceding it in the list. While a bulldozer has some similar characteristics with the other items, it simply is not of the same type or class as the other items, which are used for transportation or conveyance.

In conclusion, we hold that as a matter of law, a bulldozer is not a "vehicle" within the definition of a "building" under KRS 513.010 for purposes of the arson statutes. Consequently, because the circuit court did not err in dismissing the indictment for second-degree arson for failure to charge an offense, we affirm.²

² Plowman may remain subject to indictment for criminal
(continued...)

ALL CONCUR.

BRIEF FOR APPELLANT:

A.B. Chandler III
Attorney General

Vickie L. Wise
Assistant Attorney General
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Elizabeth Shaw
Richmond, Kentucky

²(...continued)
mischief. See KRS 512.020-040.