IN THE SUPREME COURT OF THE STATE OF WASHINGTON

PAUL LAWSON, Petitioner, v. CITY OF PASCO, a municipal corporation, Respondent.	)	No. 81636-1 En banc Filed April 15, 2010

C. JOHNSON, J.—This case involves a challenge to a Pasco ordinance, former Pasco Municipal Code (PMC) 25.40.060 (2005), which prohibits the placement of recreational vehicles within mobile home parks, on the ground that the ordinance is preempted by the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), chapter 59.20 RCW. The superior court concluded that the ordinance is preempted by the MHLTA, and the Court of Appeals reversed. *Lawson v. City of Pasco*, 144 Wn. App. 203, 181 P.3d 896 (2008). We affirm the Court of Appeals.[1]

[1] After we accepted review, the legislature passed Engrossed House Bill 1227, an amendment to RCW 35.21.684, RCW 35A.21.312, and RCW 36.01.225, all of which address discrimination in zoning. The effect of these changes is not before us, so we do not address it here.

FACTS

Petitioner Paul Lawson owns and operates a mobile home park in Pasco. One of his tenants, Tye Gimmell, permanently resided in a recreational vehicle (RV) on a lot in the park. On January 23, 2006, the city of Pasco issued a "correction notice" informing Lawson that he was in violation of former PMC 25.40.060, which states: "No recreational vehicle sites for occupancy purposes shall be permitted within any residential park." Clerk's Papers (CP) at 98. The notice directed Lawson to remove the RV from the park. Though Lawson acknowledged that he was in violation of the ordinance, he did not comply, arguing that the ordinance was preempted by the MHLTA.

On May 4, 2006, Pasco's Code Enforcement Board conducted a compliance hearing, ultimately upholding the correction notice and directing Lawson to evict from his park any tenants occupying RVs as primary residences. Pursuant to the Land Use Petition Act, chapter 36.70A RCW, Lawson appealed to the Franklin County Superior Court, which ruled that Pasco's ordinance is unconstitutional under article XI, section 11 of the Washington Constitution because it conflicts with the

MHLTA. The Court of Appeals, Division Three, reversed the superior court and reinstated the Code Enforcement Board's ruling on the correction notice. Lawson now asks us to reverse the Court of Appeals' decision.

ISSUE

Is Pasco's ordinance, former PMC 25.40.060, preempted by the MHLTA, either because the legislature intended to preempt the field of mobile home regulation or because the ordinance directly and irreconcilably conflicts with the MHLTA?

ANALYSIS

A. Standard of Review

The question before us is the preemptive effect of the MHLTA. The interpretation of a statute is a question of law subject to review de novo. *Parkland Light & Water Co. v. Tacoma-Pierce County Bd. of Health*, 151 Wn.2d 428, 433, 90 P.3d 37 (2004). When interpreting a statute, we must ascertain and fulfill legislative intent from the words of the statute. The statute at issue here is the MHLTA, chapter 59.20 RCW, and its preemptive effect on local government's

authority to regulate mobile/manufactured home landlord-tenant relationships.

B. Preemption

Article XI, section 11 of the Washington Constitution provides that a city "may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." The rule applicable to resolve a preemption issue provides that a state statute preempts an ordinance on the same subject if the statute occupies the field, leaving no room for concurrent jurisdiction, or if a conflict exists such that the statute and the ordinance may not be harmonized. *Brown v. City of Yakima*, 116 Wn.2d 556, 559, 807 P.2d 353 (1991).

1. Field Preemption

A statute preempts the field and invalidates a local ordinance if there is express legislative intent to preempt the field or if such intent is necessarily implied. *Brown*, 116 Wn.2d at 560. In the absence of express intent, we may infer field preemption from the purpose of the statute and the facts and circumstances under which it was intended to operate. *HJS Dev., Inc. v. Pierce County*, 148 Wn.2d 451, 477, 61 P.3d 1141 (2003). Lawson does not claim that the MHLTA expressly

preempts Pasco's ordinance, but rather that the legislature's intent to preempt the field is necessarily implied by the breadth of state involvement in mobile home regulation. The Court of Appeals, after examining the language of the MHLTA, concluded that Pasco's ordinance was not preempted because the legislature explicitly conferred on local governments concurrent jurisdiction over mobile home regulation. The Pasco ordinance, the court found, fell within this legislatively recognized concurrent jurisdiction.

Lawson argues that the Court of Appeals erred by confining its analysis to the MHLTA; he points to the State's wide "range of state activity in connection with mobile homes." Pet. for Review at 8. Among other things, he argues that the State maintains an office of manufactured housing (RCW 59.22.050); requires mobile home communities to register with the State (RCW 59.30.050); maintains a database of all mobile home parks (RCW 59.30.060); and prohibits discrimination in the placement of manufactured/mobile homes (RCW 35.21.684; RCW 35A.21.312; RCW 36.01.225). In addition, the State generally regulates mobile home tenancies. Ch. 59.20 RCW. From this broad regulation, Lawson contends we

should infer that the legislature intended to preempt the field of manufactured/mobile home regulation. He argues that the State's comprehensive regulation of the landlord-tenant relationship leaves no room for local regulation.

Such an inference, however, is inappropriate in this case. Though the State's range of regulatory activities would be instructive in the absence of other statutory provisions, the Court of Appeals correctly observed that certain provisions of the MHLTA expressly contemplate some local regulation of manufactured/mobile home tenancies. For example, RCW 59.20.080 and RCW 59.20.130 expressly reference local ordinances to which landlord and tenants may be subject in the context of mobile home parks.[2]

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[2] RCW 59.20.080(1) reads in pertinent part:

> A landlord shall not terminate or fail to renew a tenancy of a tenant or the occupancy of an occupant, of whatever duration except for one or more of the following reasons:
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> . . . .
>
> (d) Failure of the tenant to comply with local ordinances and state laws and regulations relating to mobile homes, manufactured homes, or park models . . .

"Park model" is defined in RCW 59.20.030(14) as a "recreational vehicle intended for permanent or semi-permanent installation and . . . used as a primary residence."

RCW 59.20.130(1) lists the landlord's duties under the MHLTA, which include the duty to "[c]omply with codes, statutes, ordinances, and administrative rules applicable to the mobile home park . . . ."

Lawson acknowledges that these statutes confer concurrent jurisdiction, but he argues that this local power extends only to matters concerning tenant misconduct and landlord compliance with public health and safety ordinances. Lawson reads these statutes too narrowly; the ordinances to which these statutes refer could be *any* local rule, the violation of which might justify termination of the tenancy by the landlord or a tenant. RCW 59.20.080(1)(d) supports a landlord's termination of the tenancy when the tenant fails to comply with any ordinance pertaining to mobile homes. Likewise, RCW 59.20.130(1) requires the landlord to comply with any ordinance applicable to mobile home parks, not just those explicitly related to health and safety. A full reading of that statute reveals a broad spectrum of landlord duties extending beyond repair, maintenance, and safety. Thus, the Court of Appeals correctly recognized that these statutes confer concurrent jurisdiction on local authorities.

This conclusion accords with the stated purpose underlying the MHLTA.

The legislature emphasized the importance of preserving mobile home communities for low-income households.[3] Lawson argues that Pasco's ordinance conflicts with this purpose because it prevents those who are confined to RVs from living in mobile home parks. The ordinance, however, also may be read to advance the legislature's stated purpose by preserving parks for mobile and manufactured homes, and funneling RVs to more appropriate venues such as RV parks.

The ordinance furthers the MHLTA's purpose in another way as well: by preserving mobile home parks for mobile and manufactured homes (and RV parks for RVs), the ordinance advances the safety and maintenance concerns unique to each type of residence. The city points to the differences between installation

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[3] For example, the legislature stated the following:

> (a) Manufactured/mobile home communities provide a significant source of homeownership opportunities for Washington residents. However, the increasing closure and conversion of manufactured/mobile home communities to other uses, combined with . . . low vacancy rates in existing . . . communities . . . increasingly make manufactured/mobile home community living insecure for manufactured/mobile home tenants.
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> . . . .
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> (c) The preservation of manufactured/mobile home communities:
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> . . . .
>
> (iv) Should be a goal of all housing authorities and local governments.

Laws of 2008, ch. 116, § 1(1).

requirements for manufactured/mobile homes and those for RVs. Manufactured and mobile homes are subject to both state and federal installation and safety standards, which do not apply to or regulate RVs. RCW 43.22.440; 42 U.S.C. §§ 5401-5426; 24 C.F.R. § 3282.8(g). As a result, mobile home lots must be specifically constructed to comport with these standards, while RV lots have different requirements. In contrast, RVs have unique needs of their own not met by mobile home parks: In addition to providing for electricity, water, and sewer service, PMC 25.69.070(11) requires RV parks to provide sanitary dumping stations. Mobile and manufactured homes, in contrast, must have a permanent sewer connection. In addition, "accessory uses" such as restrooms, shower, and laundry are permitted in RV parks. PMC 25.69.080(1).

Pasco has chosen through zoning to separate mobile home parks from RV parks. Under the ordinance at issue in this case, the landowner is restricted to mobile home tenancies in mobile home parks. Under chapter 25.69 PMC, RVs are permitted in separate RV parks. This choice is consistent with the statutory and local regulations that expressly treat the uses separately. We conclude that the state

legislature did not intend to preempt the field of mobile home tenancy regulation.

2. Conflict Preemption

The more nuanced question is whether an irreconcilable conflict exists between the MHLTA and former PMC 25.40.060. Such a conflict arises when an ordinance permits what state law forbids or forbids what state law permits. An ordinance is constitutionally invalid if it "'"directly and irreconcilably conflicts with the statute."'" *HJS Dev., Inc.*, 148 Wn.2d at 482 (quoting *Heinsma v. City of Vancouver,* 144 Wn.2d 556, 564, 29 P.3d 709 (2001) (quoting *Brown v. City of Yakima*, 116 Wn.2d 556, 561, 807 P.2d 353 (1991))). If the two may be harmonized, however, no conflict will be found.

Lawson argues that, under this analysis, Pasco's ordinance conflicts with the MHLTA because it prohibits what the MHLTA permits: the placement of RVs in mobile home parks. He reasons that because RCW 59.20.040 regulates rights and duties arising from mobile/manufactured home tenancies, which may include residential RVs, such RVs are thus affirmatively authorized on any mobile home lot in the state. But the language of RCW 59.20.040 does not support such a

conclusion:

> 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 . . . .

"Mobile home lot" describes "a portion of a mobile home park . . . designated as the location of one mobile home, manufactured home, or park model . . . and intended for the exclusive use as a primary residence . . . ." RCW 59.20.030(9). And a "park model" is a "recreational vehicle intended for permanent or semi-permanent installation and . . . used as a primary residence." RCW 59.20.030(14). This acknowledgement that park models could be present on mobile home lots is not equivalent to an affirmative authorization of their presence. The statute does not forbid recreational vehicles from being placed in the lots, nor does it create a right enabling their placement.

We faced a similar issue in *Weden v. San Juan County*, 135 Wn.2d 678, 958 P.2d 273 (1998). In that case, a state law required boats to be registered before they could operate in state waters. We rejected Weden's argument that the law implied a right to operate vessels in all waters in the state. We reasoned that

the law created no right; it merely imposed a condition on operation. In *State ex rel. Schillberg v. Everett District Justice Court*, 92 Wn.2d 106, 108, 594 P.2d 448 (1979), which addressed a conflict with another motor boat statute, we stated, "There being no express statement nor words from which it could be fairly inferred that motor boats are permitted on all waters of the state, no conflict exists . . . ." Similarly, the MHLTA contains no language creating a right to place RVs in mobile home parks anywhere in the state. The statute imposes no restrictions on local government's regulation of landlord-tenant relationships involving mobile/manufactured homes; it merely regulates such tenancies once they exist.

The statutory definitions in RCW 59.20.030 apply to any RV used as a permanent residence once a landlord-tenant relationship is established, but they do not require Mr. Lawson to lease a lot designed for a mobile home to the owner of such an RV. Nothing in the statute prevents landowners from choosing to whom they lease lots, and nothing in it prevents municipalities from regulating that choice. The statute simply regulates recreational vehicle tenancies, where such tenancies

exist. Because Pasco's ordinance, former PMC 25.40.060, may be harmonized with the MHLTA, the two laws do not conflict.

CONCLUSION

We conclude that the MHLTA neither preempts the field of mobile home regulation nor conflicts with Pasco's ordinance, and we affirm the Court of Appeals.

AUTHOR:
Justice Charles W. Johnson

WE CONCUR:
Chief Justice Barbara A. Madsen
Justice Susan Owens
William W. Baker, Justice Pro Tem.
Justice Tom Chambers