

1-1-2000

Rouse v. Georgia Dep't of Natural Resources, No. S99A1148, 1999 WL 1048241 (Ga. Nov. 22, 1999)

Kim Shropshire

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Kim Shropshire, Court Report, Rouse v. Georgia Dep't of Natural Resources, No. S99A1148, 1999 WL 1048241 (Ga. Nov. 22, 1999), 3 U. Denv. Water L. Rev. 462 (2000).

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mandate," and an abuse of discretion. Therefore, the court held the trial court had the discretion whether or not to require MLI to return the water flow onto the Goodes' property to pre-development levels.

Second, the Goodes contended the trial court erred in finding that no further reasonable remedies existed to limit the flow of water from MLI's property to the Goodes' property beyond the limit attained by the detention pond. Furthermore, the Goodes argued the trial court erred by ordering the ditch to be constructed on their property rather than MLI's property. The court stated that the trial court has broad discretion in fashioning equitable remedies based on the exigencies of the case. Moreover, the court would not disturb an injunction fashioned by the trial court unless it found a manifest abuse of discretion. In reviewing the record, the court could not conclude that requiring the parties to share the cost of constructing a drainage ditch across the Goodes' property constituted an abuse of discretion.

The dissent argued the trial court abused its discretion by refusing to fashion a remedy which addressed abatement of the nuisance, and by compelling the affected party to bear responsibility to clean up a nuisance it did not create. Furthermore, the dissent argued the majority overlooked expert testimony that presented evidence of further reasonable steps available for decreasing the water flow from MLI's property.

Ryan O. Reimers

Rouse v. Georgia Dep't of Natural Resources, No. S99A1148, 1999 WL 1048241 (Ga. Nov. 22, 1999) (holding that the Protection of Tidewaters Act was not unconstitutional for vagueness of terms and neither infringed on fundamental rights nor violated equal protection).

The Protection of Tidewaters Act ("Act"), passed in 1992, included provisions that allowed the Department of Natural Resources ("Department") to order the removal of any "structure" that was located in the "tidewaters" of the State. A grandfather provision allowed some structures predating the Act to remain for a maximum of five years. Rouse owned a houseboat and a river house on the tidal portion of the Altamaha River. The houseboat consisted of a styrofoam bottomed, six-sided wood frame bolted on top with a roof tied to a tree with four lines. The river house was on stilts and was embedded in the river bottom with concrete cylinders. The Department permitted Rouse's houseboat to remain until 1997, but denied a permit for the riverboat due to "sanitation and safety" concerns.

Rouse argued the Act was unconstitutional on a variety of grounds. The court addressed three central arguments: (1) the vagueness of the terms "structure" and "tidewaters;" (2) the denial of equal protection; and (3) an unconstitutional taking.

In addressing the first issue, the court noted that a statute would violate

due process when it was so vague that those of common intelligence must guess at the meaning and differ in its application. The Act defined “structure,” in part, as something constructed or built that was “capable of being used as a place of habitation . . . not being used [or] not capable of being used as a means of transportation.” The court declined to find the term “structure” as unconstitutionally vague merely because it failed, as Rouse argued, to define “means of transportation.” In addressing the term “tidewaters,” the court determined that the statute “plainly” indicated all public waters within the territory of the State of Georgia.

Rouse also contended the Act violated equal protection because it granted exceptions to commercial establishments. The court first noted that the Act did not affect a fundamental right of Rouse. As such, there needed only be a “reasonable relationship” between the legislative classification and the state purpose. The court determined it was reasonable for the legislature to exempt certain commercial establishments from the Act because those establishments benefited the public’s use of the tidewaters of the State.

Rouse’s final contention alleged the Act equated a taking of his property. The court stated that Rouse did not have any entitlement to maintain his property in the tidewaters since he did not have permits to be there before the passage of the Act. Further, Rouse did not fall into any exception within the Act, and therefore was entitled to no protection from the enforcement of the Act.

Kim Shropshire

IDAHO

United States v. City of Challis, 988 P.2d 1199 (Idaho 1999) (holding that the Multi-Use Sustained-Yield Act did not provide the basis for federal reserved rights for national forests).

The United States (“U.S.”) brought an action for general adjudication of water rights concerning thirty-seven water right claims located in Idaho’s Snake River basin. The U.S. originally filed these water right claims under the Multi-Use Sustained-Yield Act of 1960 (“MUSYA”) in 1993, claiming a priority date of June 12, 1960 (the date of MUSYA’s enactment) under MUSYA and Idaho water appropriation law. The U.S. claimed that the MUSYA provided the basis for non-consumptive instream flows to allow for water to remain in streams and lakes for the purpose of protecting recreational values, fish, and wildlife. Such water rights could potentially curtail upstream water rights, but would allow downstream users to divert water.

The State of Idaho (“State”) filed a motion for summary judgment, arguing that MUSYA did not establish a basis for implied federal reserved water rights. The U.S. also filed a motion for summary judgment asserting that no material facts were in dispute as to legitimate federal reserved