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Rivers Unlimited, Inc. v. Schregardus, 685 N.E.2d 603 (Ohio Misc. 1997)

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proposed taking to facilitate use of water is for public use. Consistent with North Dakota law, the North Dakota Supreme Court concluded that irrigation of farmland satisfied the public use requirement so long as it is under a perfected water permit issued by the State Engineer.

The supreme court also found that the easement identified the parties' ownership rights with respect to the irrigation equipment. Thus, the trial court was correct in partitioning the irrigation system pursuant to the parties' intent.

As for Mougey's reformation claim, the supreme court found that Mougey's payments to the Kasparis' bank were for the actual cost of the irrigation system. The actual cost of the irrigation system was less than the actual loan taken out by the Kasparis to buy the equipment. The court upheld the use of extrinsic evidence to establish the reformation claim and held that the claim was not barred by the statute of limitations because Mougey had no reason to know he was being overcharged until 1993. Therefore, Mougey's eminent domain claim was remanded and the remainder of the trial court's judgment was affirmed.

Anna Litaker

OHIO

Rivers Unlimited, Inc. v. Schregardus, 685 N.E.2d 603 (Ohio Misc. 1997) (holding that Ohio's antidegradation statute did not violate the Ohio Constitution's one-subject rule, but did violate the U.S. Constitution's supremacy and commerce clauses).

Plaintiff and Defendant both filed cross-motions for summary judgment in the Ohio Court of Common Pleas. Plaintiff, Rivers Unlimited, Inc., sought judgment declaring that Ohio's antidegradation statute violated the Ohio Constitution's "one-subject rule" and the Federal Constitution's commerce and supremacy clauses. Defendant, Schregardus, sought to uphold Ohio's antidegradation statute. The court granted the Defendant's motion holding that the state antidegradation statute did not violate the "one-subject rule." Conversely, the court granted the Plaintiff's motion holding that the antidegradation statute conflicted with the Clean Water Act ("CWA"); thus, the statute violated the Federal Constitution's supremacy and commerce clauses.

The Ohio Constitution's one-subject rule precludes political minorities from combining their provisions into a single bill to obtain a majority vote required for the bill's passage, and precludes a person from attaching a provision to a bill anticipated to pass so that the provision will also pass. In order to attach a provision, the bill and the provision must share a common purpose or relationship. However, if the court finds that semantic and contextual analysis of the documents constituted a manifestly gross and fraudulent violation of the rule, the

legislative enactment will be invalidated. In this case, the antidegradation provision was attached to an appropriations bill for the operation of the Ohio Environmental Protection Agency. Hence, the court held that, as a matter of law, the two provisions, the appropriations and the substantive portion, were not so unrelated as to constitute a "manifestly gross and fraudulent violation" of the Ohio Constitution's one-subject rule.

Conversely, Congress drafted a comprehensive and far-reaching federal statute, the CWA, that the court held preempted state legislation. If a state law frustrates the CWA's purpose then the courts will find the state law invalid. The Clean Water Act's purpose is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. The United States Environmental Protection Agency ("USEPA") requires states to further this purpose by establishing an antidegradation policy that maintains high water quality.

Ohio created an antidegradation statute pursuant to the USEPA requirement. However, Ohio's statute allowed the state environmental protection director to degrade high quality waters when the director found that the water body lacked exceptional recreational or ecological value. The statute enabled the director to allocate eighty percent of the water's pollutant assimilative capacity to existing sources without a required CWA degradation review. Under the CWA's degradation review, a state may only degrade waters after the director has complied with the public notice and intergovernmental coordination requirements, conducted a public hearing to consider the social and economic impacts, and chosen to lower the stream's water quality based on the result of the public hearing.

Based on the conflict between these two statutes, the court held that Ohio's antidegradation statute failed to comport with the federal requirements. Because the statute allowed the director to lower a stream's water quality by assigning the stream's pollutant assimilative capacity without a degradation review, Ohio's antidegradation statute frustrated the CWA's purpose. By frustrating the purpose, the state statute conflicted with the federal statute. Therefore, the court found the state antidegradation statute violated the U.S. Constitution's supremacy and commerce clauses.

Madoline Wallace

OREGON

Russell-Smith v. Water Resources Department, 952 P.2d 104 (Or. Ct. App. 1998) (holding that there is no statutory forfeiture for nonuse of water, even though the water user obtained water from an unauthorized point of diversion and did not follow the statutory requirements to apply for a change in point of diversion, provided that the water user obtained the water from a source designated from the water right certificate for the designated use in the designated amount).