

1999

Utah v. Topanotes : Supplemental Submission

Utah Court of Appeals

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Utah
v.
Topanotes

990708-CA

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FILED
Utah Court of Appeals

OCT 15 2002

Paulette Stagg
Clerk of the Court

TRENTON K. RICKS

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October 11, 2002

Ms. Paulette Stagg
Utah Court of Appeals Clerk
P.O. Box 140230
Salt Lake City, UT 84114

Re: South Salt Lake v. Terkelson, et al.,
Appeal No. 20010760-CA

Dear Ms. Stagg:

This is a letter of supplemental authority pursuant to Rule 24(i) of the Utah Rules of Appellant Procedure. During Oral Arguments in this matter, I stated to the court that I believed the City of South Salt Lake had acted from improper motives in citing the Defendants in this case. They set these clients up in order to use the convictions against their employers in subsequent litigation over business licenses and regulations. Attached hereto are pages 18 and 19 of Appellee's Brief in the matter of Heideman v. South Salt Lake, 10th Cir. Court No. 02-4030. That case involves a challenge to unreasonable regulations. The City justifies those regulations by claiming that they are seeking to fight "negative secondary effects" resulting from the operation of adult entertainment businesses. In its brief to the Tenth Circuit Court of Appeals, the City states:

In this case, the City also relies on local proof of problems with its own establishments, including recent

convictions of nude dancers for violating the City's
previous rules against illicit physical contact with patrons

This reference reveals this cynicism behind the City's
prosecution of these cases, as a somewhat desperate attempt to
obtain evidence of "problems with its own establishments" when
such evidence could not be obtained legitimately.

Thank you for your consideration in this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Andrew McCullough" followed by "for". The signature is stylized and cursive.

Andrew McCullough

WAM: av

Enclosure

CC: Janice Frost, Esq.
Clients

Broadcasting System, Inc. v. FCC, 520 U.S. 180, 211 (1997), and is “irrelevant to the question of whether there is some evidence” that supports the regulation.

DiMa Corp. v. Town of Hallie, 185 F.3d 823, 831 (7th Cir. 1999).

b. The City’s legislative record is more than substantial.

There can be no doubt that the City meets these standards. Appellants admit that the City spent approximately a year preparing the new ordinance. BOA at 10. The City spent much of that time researching relevant cases, compiling secondary effects data, correcting defects in its previous ordinance, and drafting its updated regulations. The City staff compiled a wealth of relevant information, including cases, police reports, testimony from former sex industry workers, and 21 secondary effects reports that document the crime, blight, and public health problems associated with these businesses in general and nude clubs in particular. *See, e.g.*, Ordinance Findings at Section 1.A. and 1.B. (Aplt. App. 52-56); Affidavit of Karen Rynearson (Aplt. App. 196-197); Index of Sexually Oriented Business Studies and Materials (Aplt. App. 288-289). In this case, the City also relies on local proof of problems with its own establishments, including recent convictions of nude dancers for violating the City’s previous rules against illicit physical contact with patrons. (Doc. No. 15, Memorandum in Opposition filed 2/11/01 at 2; Aplt. App. at 169) (citing *City v. Payne*, So.S.L. Justice Ct. 99-

12522; *City v. Terkelson*, So.S.L. Justice Ct. 99-12146; *City v. Morris*, So.S.L. Justice Ct. 99-12583; *City v. Stone*, So.S.L. Justice Ct. 99-12145).

The City also relied on secondary effects reports from other jurisdictions – 10 of which were compiled *after* 1990 – that provide more than enough evidence of the adverse impacts which the City seeks to prevent now and in the future. *Renton*, 475 U.S. at 50-51. Included within the City’s preamble and legislative record are all of the studies cited with approval in this Court’s previous decision in *Z.J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683, 687 n.1 (citing findings of land use impact reports from Garden Grove, CA; Austin, TX; Oklahoma City, OK; Indianapolis, IN; Minneapolis, MN; Whittier, CA; and Amarillo, TX); *see also* Ordinance Section 1.B., (Aplt. App. 52-53).

Above and beyond this extensive legislative record, the City specifically relied upon cases from both the U.S. Supreme Court and this Court that establish unequivocally that the City has an “undeniably important” interest in combating secondary effects. *City of Erie*, 529 U.S. at 296; *see* Ordinance Section 1.B. (Aplt. App. 52). This alone should end the reasonableness inquiry:

Because the nude dancing at Kandyland is *of the same character* as the adult entertainment at issue in *Renton*, *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 49 L. Ed. 2d 310, 96 S. Ct. 2440 (1976), and *California v. LaRue*, 409 U.S. 109, 34 L. Ed. 2d 342, 93 S. Ct. 390 (1972), it was reasonable for Erie to conclude that such nude dancing was likely to produce the same secondary effects. And Erie could reasonably rely on the evidentiary foundation set forth in *Renton* and *American Mini Theatres* to the effect that secondary