

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 1828

DUSON DEVELOPMENT, L.L.C. d/b/a
FROG CITY RV PARK

VERSUS

STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

JUDGMENT RENDERED: MARCH 26, 2008

ON APPEAL FROM THE
NINETEENTH JUDICIAL DISTRICT COURT
DOCKET NUMBER 553,546, DIVISION "M"
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

HONORABLE KAY BATES, JUDGE

STEPHEN M. IRVING
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FROG CITY RV PARK

SUSAN STAFFORD
BATON ROUGE, LA

COUNSEL FOR DEFENDANT/APPELLANT
LOUISIANA DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT

GAIDRY, McDONALD, AND McCLENDON, JJ.

EGS Gaidry, IS CONCURS WITH REASONS
QMC McCleendon, J. concurs with the result reached by the majority.

McDONALD, J.

In this case, the defendant, Louisiana Department of Transportation and Development (DOTD), appeals a trial court judgment granting the plaintiff's petition for declaratory and injunctive relief. The sole issue for our review is whether the trial court correctly found that plaintiff's sign advertising its business qualified as an "on-premise" sign, thus excluding it from DOTD regulation pursuant to LSA-R.S. 48:461.2(A)(2).

After a thorough review of the entire record, we find no error in the trial court's judgment. Accordingly, we affirm the judgment of the trial court, finding that the trial court's findings of fact and written reasons for judgment, which are attached hereto as Exhibit A, adequately explain the decision. All costs of this appeal in the amount of \$1,597.50 are assessed against the defendant-appellant, Louisiana Department of Transportation and Development.¹

AFFIRMED.

¹ This summary opinion is issued in compliance with Uniform Rules-Courts of Appeal Rule 2-16.2(A)(5),(6), and (8).

DUSON DEVELOPMENT, LLC
D/B/A FROG CITY RV PARK

SUIT NO. 553,546; DIV. M

VERSUS

POSTED

19TH JUDICIAL DISTRICT COURT

JUN 07 2007

EAST BATON ROUGE PARISH

LA STATE DOTD

STATE OF LOUISIANA

**FINDINGS OF FACT AND
WRITTEN REASONS FOR JUDGEMENT**

This matter concerns a dispute over a sign installed by Petitioner to advertise its business, the Frog City RV Park. The sign is installed on Petitioner's property and is visible from Interstate 10. The sign reads "New! RV Park Exit Now / Frog City RV Park / Second Phase Coming Soon". On November 13, 2006, the Louisiana State Department of Transportation and Development ("DOTD") advised Petitioner that this sign was in violation of its outdoor advertising regulations and must be removed. DOTD further advised Petitioner that it will also remove the "Frog City RV Park" LOGO sign that is currently included on an informational sign on Interstate 10 if Petitioner does not comply with the order to remove the sign at issue.

The property at issue is an "L" shaped piece of land adjacent to Interstate 10 in Acadia Parish, approximately 30 acres in area. The entire plot of land is used by Petitioner for commercial use. The land is divided by a drainage ditch, across which there is a bridge for vehicle and foot traffic. On the east side of the ditch, there are hookups for RV campers, along with separate buildings containing offices and showers/restrooms. On the west side of the ditch, a larger section of the property runs up to Interstate 10, and currently contains fewer capital improvements. There are sites for tent camping on the west side of the ditch. The west side of the ditch is undergoing significant capital improvements to serve more customers who wish to engage in tent camping. The sign at issue is located on this west side of the property.

Because the property is divided by the ditch, DOTD ruled that the sign was not an "on premise" sign, as DOTD found that the sign was on a separate piece of land as the main business of the company. DOTD ruled that the sign must be removed, as it did not have a permit, was not exempt from regulation, and was located less than 1000 feet from other signs along Interstate 10. Under applicable outdoor advertising regulations, the sign cannot be permitted and can only remain standing if it is exempt from regulation.

REC'D C.P.

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19TH JUDICIAL DISTRICT COURT

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Any sign is exempt if it is an "on premise" sign. DOTD found that the sign at issue was not "on premise" because it found that the improvements on the west side of the ditch were insufficient to consider the land part of the RV Park business. DOTD informed Petitioners that the sign must be removed because it did not advertise a business that was located on the same property as the sign.

A hearing was held on this matter on April 19, 2007, and this Court heard testimony from Manish Sthanki and Daulat Sthanki, owners of the Frog City RV Park, and from Wanda Boudreaux, an official from DOTD. The Court then continued the matter until May 9, 2007. On May 9, 2007, this Court again heard testimony from Manish Sthanki, Daulat Sthanki, Wanda Boudreaux, and from Marion Mayeaux, another DOTD official. This Court listened to testimony and viewed photographic evidence in order to determine if Petitioner's improvements brought the sign into compliance with DOTD regulations.

Petitioner asked this Court for relief in the form of a preliminary injunction and permanent injunction against DOTD, to prevent it from removing the sign. Petitioner argues that the sign at issue is not subject to the outdoor advertising regulations, as it is an "on premise" sign, and so DOTD does not have the authority to order its removal. Petitioner asks this Court for injunctive relief because it argues that the removal of the sign would cause irreparable harm to its business. In testimony before this Court, Manish Sthanki stated that removal of the sign would be "crippling" to the business of the Frog City RV Park. Mr. Sthanki testified that the sign was the only way that passing motorists would know that the RV Park was open for business. Petitioner argues that the damage caused by the removal of the sign would be especially harmful to its business because the business was recently established and is not yet well known among the community that would use its services. Petitioner also presented testimony and evidence regarding a planned pavilion for the tenting area, a project on which a significant amount of money has been spent and which has been delayed due to problems caused by the 2005 hurricanes.

DOTD presented testimony from Wanda Boudreaux, the District 03 Outdoor Advertising Specialist. Ms. Boudreaux performed multiple site inspections of the Frog City RV Park and determined that the sign was illegal and not covered by the "on

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premise" exception. Ms. Boudreaux testified in the April 19 hearing and told this Court that the current state of the property did not meet the "on premise" exception. At the April 19 hearing, Ms. Boudreaux opined that if certain improvements were made to the property, then the sign would be allowed. At the May 9 hearing, Ms. Boudreaux told this court that the improvements were not satisfactory. Marion Mayeaux, a member of the DOTD committee that reviewed the District 03 decision, agreed with Ms. Boudreaux's decision and testified that it represented the official position of DOTD.

Testimony was also presented regarding the LOGO program, in which the Frog City RV Park is a participant. The business is listed on official highway signs, directing motorists to areas for camping. In order for an RV Park to participate in the LOGO program, there must be a tenting area on the same premises for tent camping. Manish Sthanki explained that the addition of the tent camping area was prompted by the inclusion in the LOGO program, and that tent camping was a good compliment to the existing RV facilities. Manish Sthanki further testified about the specific improvements planned for the tent camping area, and ongoing projects to improve the grounds. This Court finds this testimony credible, and believes that tent camping will be an integral part of the larger business at the Frog City RV Park.

DOTD has the authority to enforce regulations and restrictions on outdoor advertising as provided for by law. As part of the federal highway program, DOTD has a duty to regulate signs posted on federal roads in order to ensure that Louisiana receives its full share of federal highway money. DOTD employs specialists who investigate roadways and determine if certain signs are in compliance with applicable rules and regulations. DOTD follows regulations set forth in the Louisiana Administrative Code to determine whether a sign should be ordered to be taken down. Regarding the specific situation of this case, Louisiana Revised Statutes 48:461.2 exempts from regulation "signs, displays and devices advertising activities conducted on the property upon which they are located." Louisiana Administrative Code, Title 70, Section 139, sets forth the DOTD regulations to determine whether or not a sign falls within the "on-premise" exception to regulation. DOTD states that it relied on Section 139 in reaching its decision concerning Duson's sign.

From the testimony of Ms. Boudreaux and Ms. Mayeux, officials from DOTD, and from an examination of the relevant statutes and regulations, this Court was not able to determine any rigid standards that are applied in the regulation of outdoor advertising by DOTD. In fact, one of the DOTD officials testified that if the sign stated "tented area coming soon", it would be in compliance. Accordingly, this Court looks to the physical evidence provided in photographs of the property to determine the status of Petitioner's sign.

The photographic evidence convinces this Court that Petitioners have made substantial improvements to the property, including the tenting areas, the picnic tables, fire rings, barbeque pits, and volleyball court. The testimony presented regarding the proposed pavilion, and the engineering plans submitted into evidence, convince this Court that the property owners are sincere in their efforts to grow and expand their business. At present, the improvements are sufficient to show that tent camping is an integral part of the business of the Frog City RV Park, as Petitioners introduced into evidence receipts from daily and monthly tent campers. This Court rejects the contention of DOTD that the tent camping area is simply an inexpensive and insincere undertaking solely for the purpose of establishing a sham basis for an "on premise" sign.

From testimony and photographs of the property, this Court finds that the improvements made to the land in the time between the two appearances in this Court are sufficient to make the sign an "on premise" sign. The business of Petitioners is an RV Park and Campground, as evidenced by the improvements to the land on the west side of the ditch for tent camping. The capital improvements shown in the photographs are on the same side of the ditch as the sign, and so the sign is "on premise" for purposes of DOTD regulations. In Petitioner's exhibit "J-1", a photograph taken from the shoulder of Interstate 10, a tent camping area is visible, with a picnic table, on the land on the west side of the ditch. In Petitioner's exhibit "F-1", a photograph taken from the shoulder of Interstate 10, the sign (although covered by order of this Court) is visible in the same frame as two picnic tables and two tents that are occupied by paying customers of the Frog City RV Park. Based on these exhibits, this Court finds that the sign is on the same property as the business that it advertises, and so the sign is an "on premise" sign.

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This Court finds that the sign qualifies as an "on-premise" sign for the purposes of the DOTD regulations, and therefore the sign may remain on the property. This Court will grant the injunctive relief prayed for by Petitioners. DOTD is not permitted to remove the sign at issue. This Court finds that the sign can remain standing, and that the Frog City RV Park sign in the LOGO program should also remain intact.

Judgment to be signed accordingly.


Baton Rouge, Louisiana, this / day of June, 2007.



Kay Bates, Judge
Nineteenth Judicial District Court

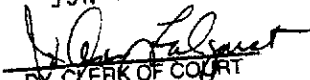
I hereby certify that on this day a copy of the written reasons for Judgment was mailed by me, with sufficient postage affixed to: S. Stevens,

S. Stafford
Done and signed on June 4, 2007


Deputy Clerk of Court

FILED

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CLERK OF COURT

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STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2007 CA 1828

DUSON DEVELOPMENT, L.L.C. d/b/a
FROG CITY RV PARK

VERSUS

STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

 GAIDRY, J., concurs.

I concur to point out that the trial court's reasons, which we adopt, make no specific reference to the applicable standard of review. See Delta Bank & Trust Co. v. Lassiter, 383 So.2d 330 (La. 1980); Moity v. Firefighters' Retirement System, 06-0775 (La. App. 1 Cir. 3/23/07), 960 So.2d 158, writ denied, 07-0829 (La. 6/1/07), 957 So.2d 183. However, the majority reaches the correct result under the applicable standard. I agree, because the record supports a finding that the department's action was arbitrary and capricious under the facts and circumstances of this case.