

Christmas v. Bureau of Admin. Adjudication

Philadelphia Parking Authority — Enforcement action — Underlying ordinance

Petitioner correctly argued that a sign prohibiting motor vehicle parking on Friday and Saturday nights at certain locations in the City of Philadelphia after 10 p.m. was a nullity because it was not supported by a city ordinance or regulation. The court reversed a decision by the City of Philadelphia Bureau of Administrative Adjudication.

Petitioner John Christmas parked his car on the north side of 2nd Street between Market and Chestnuts Streets in Philadelphia on July 11, 2015, at about 7p.m. He paid for three hours of parking, believing that any parking regulation at that site ended at 10 p.m. When he returned shortly after 10 p.m., Christmas found that he had received a parking citation for \$76 and that his car had been towed for \$175. He re-read the posted sign and realized that while pay-parking ended at 10 p.m., parking was prohibited altogether after that time. Christmas challenged the citation, asserting that the parking sign was unlawful and unenforceable because there was no ordinance, statute or regulation prohibiting parking at that time and location. The City of Bureau of Administrative Adjudication (BAA) found Christmas liable for the citation. On appeal, Christmas again argued that the parking sign was unlawful and unenforceable in the absence of an ordinance, statute or regulation prohibiting parking at the location and time. The court noted that Article V, Chapter 5-500(d) of the Philadelphia Home Rule Charter empowers the Department of Streets to make regulations governing parking on city streets as shall be authorized by statute or ordinance. Pursuant to the Pennsylvania Motor Vehicle Code, the Philadelphia Parking Authority (PPA) is tasked with regulating on-street parking in Philadelphia. However, nothing in the code immunizes the PPA from complying with Section 8-407 of the Philadelphia Home Rule Charter, the court observed. To enact regulations, an agency must follow a procedure that requires approval by the City Law Department, public notice, an opportunity to be heard and filing with the Records Department. The annotations to Section 8-407 state that “administrative agencies may not legislate,” the court observed. These same annotations raised due process concerns that arise when regulations are enforced without having gone through a proper promulgation procedure. In this instance, the PPA made no attempt to promulgate a regulation prohibiting parking at the location where Christmas was cited. According to the BAA, the PPA was acting within the powers granted it by ordinance when it erected a sign banning

weekend parking after 10 p.m. on Friday and Saturday nights. However, the very ordinance on which BAA relied merely conveyed the authority to “establish and revise limited time parking regulations” in the Center City area. The BAA failed to identify any ordinance or regulation that prohibited parking on North 2nd between Market and Chestnut Streets after 10 p.m. on Saturday night. Thus, the court found that the sign relied upon by the PPA was a nullity and that Christmas was entitled to relief.

C.P. of Philadelphia, No. 151200991

FLETMAN, *J.*, Nov. 10, 2016—This appeal presents the issue whether the Philadelphia Parking Authority (“PPA”) may lawfully post and enforce a sign prohibiting on-street parking without a City Council ordinance or properly promulgated regulation that specifically identifies the street, days and times that parking is prohibited. For the reasons explained below, the Court holds that the adjudication of the City of Philadelphia Bureau of Administrative Adjudication Appeal Panel upholding a parking ticket unsupported by ordinance or regulation is not in accordance with law and is therefore reversed.

Facts

On July 11, 2015, at approximately 7 p.m., appellant John D. Christmas parked his car on the north side of 2nd Street between Market and Chestnut Streets in Old City. Mr. Christmas paid for three hours of parking until 10 p.m., the time he understood parking regulation ended according to the posted sign. Mr. Christmas returned shortly after 10 p.m. to find his car had been issued parking violation Citation #719423402 for \$76 (Citation found at Certified Record of the City of Philadelphia (“R.”) at 1, Christmas v. City of Philadelphia (March 23, 2016)), and had been

towed at a fee of \$175. Upon re-reading the posted sign, Mr. Christmas realized that while pay-parking ended at 10 p.m., parking was prohibited altogether after that time.

On July 25, 2016, Mr. Christmas appealed the Citation, arguing that the sign was unlawful and unenforceable because no ordinance, statute or regulation prohibited parking at that time and location. By letter dated September 3, 2015, the City of Philadelphia Bureau of Administrative Adjudication (“BAA”) informed Mr. Christmas that the hearing officer had found him liable for the Citation. R. at 2. Mr. Christmas timely appealed the September 3 decision. R-3. On November 9, 2015, Mr. Christmas appeared before a hearing examiner and again argued that parking regulation was illegal unless supported by an underlying ordinance, statute or regulation. R. at 19.

Mr. Christmas’s appeal was denied by a Notice of Decision dated November 12, 2015. R. at 22-23. Mr. Christmas timely appealed that decision to this Court. The BAA timely filed the certified record, after which the Court received briefs and heard argument on August 18, 2016.

Standard of Review

This Court may reverse a final order of a local agency only if it finds the adjudication “is in violation of the constitutional rights of the appellant, or is not in accordance with law, or that the provisions of Subchapter B of Chapter 5 (relating to practice and procedure of local agencies) have been violated in the proceedings before the agency, or that any finding of fact made by the agency

and necessary to support its adjudication is not supported by substantial evidence.” 2 Pa.C.S. § 754 (West 2016); *Colville v. Allegheny County Retirement Board*, 926 A.2d 426, 443 (Pa. 2007).

Discussion

Article V, Chapter 5-500(d) of the Philadelphia Home Rule Charter empowers the Department of Streets to “make such regulations governing. . . parking on City streets. . . as shall be authorized by statute or ordinance. . . .” Philadelphia, Pa. Home Charter Art. V Ch. 5, § 5-500(d) (2011). Pursuant to the Pennsylvania Motor Vehicle Code, the PPA has been tasked with regulating on-street parking in the City of Philadelphia. 75 Pa.C.S.A. § 6109(g)(1) (West 2016). (“[T]he parking authority of a city of the first class shall enforce and administer the system of on-street parking regulation in a city of the first class on behalf of the city.”)

Nothing in the Motor Vehicle Code immunizes the PPA, acting on behalf of the Streets Department, from complying with Section 8-407 of the Home Rule Charter, which empowers the PPA to promulgate regulations governing parking. Philadelphia, Pa. Home Charter Art. VIII Ch. 4, § 8-407. To enact regulations, an agency must follow a procedure that requires approval by the City Law Department, public notice, an opportunity to be heard and filing with the Records Department. The Annotations to Section 8-407 explicitly state that “[a]dministrative agencies may not legislate.” Phil., Pa. Home Charter Art. VIII, Ch. 4, § 8-407 annot. § 2. To the contrary, “they

may when appropriately authorized by th[e] Charter, or by statute or ordinance, define and apply through administrative regulations standards established by th[e] Charter or by legislation.” *Id.*

The Annotations further appropriately raise due process concerns that arise when regulations are enforced without having gone through a proper promulgation procedure. As the commentators stated:

Since members of the public will be the ones who will be affected by regulations, fairness to them prompts the requirement that they be afforded, as a rule, an opportunity to be heard on proposed regulations. Such hearings are intended to protect persons who will be affected from arbitrary administrative action.

Id. at §3.

There is no dispute that the PPA made no attempt to promulgate a regulation prohibiting parking on the north side of 2nd Street between Market and Chestnut Streets after 10 p.m. on Saturday nights, and that no such regulation exists. Instead, the BAA argues that the PPA was acting within the powers granted it by an ordinance when it erected a sign banning weekend parking on 2nd Street after 10 p.m. on Friday and Saturday nights. Appellee’s Brief at 6. The BAA ignores, however, that the very ordinance on which it relies merely conveys the authority “to establish and revise limited time parking *regulations* in the Center City area....” *Id.* (citing Bill No. 1280 passed by Philadelphia City Council and approved by the Mayor on June 30, 1982, a copy of which was filed

as Ex. A to Appellee's Brief) (emphasis added.)

The Commonwealth Court recognized the need for the PPA to follow regulatory procedure in *Germantown Cab Co. v. Philadelphia Parking Authority*, 993 A.2d 933 (Pa. Commw. Ct. . 2010), *aff'd*, 36 A.3d 105 (Pa. 2012). In that case, Germantown Cab Company objected to citations issued pursuant to regulations it contended had not been properly promulgated. A hearing officer sustained the citations. 993 A.2d at 936. On appeal, the Commonwealth Court reversed the adjudication because the regulations were procedurally improper. *Id.* at 934. The Court stated:

Germantown Cab challenges the adjudication as invalid as a matter of law because the regulation in question had not been promulgated in accordance with the Commonwealth Documents Law and as such, was unenforceable. It follows, according to Germantown Cab that the Authority's adjudication is also a nullity. We agree and reverse the adjudication.

Id. at 934.

In this matter, the BAA identified no ordinance or regulation that prohibited parking on north 2nd Street between Market and Chestnut Streets after 10 pm on Saturday night. The sign it erected was therefore a nullity.

CONCLUSION

For all the reasons stated above, the decision of the City of Philadelphia Bureau of Administrative Adjudication is reversed because no valid regulation existed for the Philadelphia Parking Authority to enforce.