

Horne v. Haladay: Upholding The Pennsylvania Right to Farm Act *

Superior Court of Pennsylvania
Date of Decision: March 30, 1999 Pa. Super. 64, 728 A.2d 954 (1999)

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In 1982, Pennsylvania enacted the Pennsylvania Right to Farm Act. 3 PA. CONS. STAT. ANN. §§ 951 et. seq., as amended by Act No. 1998-58 (May 15, 1998). The act was the result of the Legislature's desire to protect farmland and farmers threatened by non-agricultural farm development and the peril of "public" nuisance suits.

Although the Right to Farm Act was clearly enacted to protect agricultural uses of land, those persons negatively affected by an agricultural operation are not absolutely prohibited from filing nuisance suits against their agricultural neighbors. Rather, they must file their nuisance action within one year of the inception of the agricultural operation or a substantial change in that operation, as provided by § 954(a) of the Right to Farm Act, or they must base their suit upon a violation of any Federal, State, or local statute or regulation, as provided by § 954(b) of the Act. In May of 1998, the Pennsylvania Legislature amended the Right to Farm Act. The amendment added immunization from nuisance suits for any new or expanded operation that has obtained approval of a nutrient management plan and is in compliance with the Pennsylvania Nutrient Management Act. 3 PA. CONS. STAT. ANN. §§ 1701 et. seq. (West 1998).

In the case of *Horne v. Haladay*, Donald Horne sued his neighbor, the Haladay Brothers, for operating a poultry business that interfered with the use and enjoyment of his

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property. In November of 1993 the Haladays had stocked their poultry house with 122,000 laying hens. The facility remained unchanged except for the construction of a decomposition building for chicken waste built in August 1994. Horne filed suit on November 21, 1995 (approximately two years after the Haladays had begun their operation). Horne alleged that the Haladay Brothers failed to take reasonable steps to control the flies, strong odor, excessive noise and chicken waste. He claimed that the harm caused substantial depreciation in the value of his home in the amount of \$60,000.

The Haladay Brothers raised the Right to Farm Act as a time bar to the action because their operation had remained substantially unchanged. The Columbia County Court of Common Pleas agreed with the Haladays that the Right to Farm Act barred the Horne private nuisance claim. On appeal to the Pennsylvania Superior Court, Horne argued that the Act covered: (1) only public nuisance suits; (2) the Act did not cover his action because he was a pre-existing neighbor and, (3) the poultry operation was not "lawful".

The Pennsylvania Superior Court ruled that the law's language does not limit the Right to Farm Act to protection against public nuisance suits only, but rather covers all types of nuisance suits, including private nuisances. The court disagreed with Horne that the Act did not cover pre-existing neighbors. The court also noted that there was no evidence that the farm had violated any federal, state or local laws or regulations. In fact, a report from a Pennsylvania Department of Agriculture veterinarian was introduced stating that the farm was taking an aggressive, pro-active management approach to controlling flies and farm odors.

The Superior Court upheld the lower court's dismissal of the case, ruling that Horne failed to file his lawsuit within the one-year period. Furthermore, the Superior Court held that "to avoid the application of the one year limitation period, [a landowner] must adduce evidence that [the agricultural] operation violated local, state or federal statutes." Without such evidence, the Common Pleas court may rule in favor of the agricultural enterprise if it shows that the operation has been in existence in a substantially unchanged condition for one year or more.¹ This case was not appealed to the Pennsylvania Supreme Court.

¹Christine Kellett, Memorandum to the Agricultural Law Center Board of Directors: Bormann v. Board of Supervisors in and for Kossuth County. April 29, 1999.