Summary of SC91741, Ricky B. Gurley v. Missouri Board of Private Investigator Examiners, et al.

Appeal from the Cole County circuit court, Judge Paul Wilson Argued and submitted Nov. 9, 2011; opinion issued March 6, 2012

Attorneys: Gurley was represented by Jay Barnes of Barnes & Associates in Jefferson City, (573) 634-8884; and the board was represented by Kevin Hall of the attorney general's office in Jefferson City, (573) 751-3321. The American Civil Liberties Union of Eastern Missouri, which submitted a brief as a friend of the Court, was represented by Anthony E. Rothert and Grant R. Doty of that ACLU organization in St. Louis, (314) 652-3114; and the American Civil Liberties Union Foundation of Kansas and Western Missouri, which submitted a brief as a friend of the Court, was represented by Stephen Douglas Bonney of that ACLU organization in Kansas City, (816) 756-3113.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man whose private investigator license application was denied by a statewide board appeals the circuit court's dismissal of his claims that the new statewide statutory scheme is unconstitutional and that the board violated his due process rights in denying his license. In a unanimous decision written by Judge William Ray Price Jr., the Supreme Court of Missouri affirms the circuit court's decision. The court correctly held that Missouri's private investigator licensure statutory scheme is constitutional because its restrictions are limited to those engaged in private investigations as a commercial business and correctly determined that the due process claims of the man, who since has received his statewide private investigator license, are moot.

Facts: Rickey Gurley has worked as a private investigator since at least 2003 and owns part of a private-investigation company that was incorporated in July 2002. In 2003, Gurley obtained a license to practice as a private investigator from the city of Columbia and maintained licensure that he believed would be valid through September 2010. In 2007, the state legislature enacted a bill to provide for the statewide regulation of the private investigator profession. It created an agency called the board of private investigator examiners to handle licensing and also made it a crime to engage in the private investigator business without a state license. Agency rules establishing the procedures for applying to the board became effective in early 2010. In March 2010, Gurley applied to the board for a state private investigator license and continued working in that capacity while his application was pending. At an April 2010 conference between the board and Gurley regarding his application, board members told Gurley his application would be denied because, members alleged, Gurley had violated the federal driver's privacy protection act by making blog postings in November and December 2009 containing personal information about other individuals that he had obtained from Missouri driver records, although he never has been charged with violating the federal act. Gurley sought review of the board's decision in the administrative hearing commission and also filed suit in circuit court seeking, among other things, a declaratory judgment that the board violated his procedural due process rights when it denied his license application and struck down the private investigator licensing scheme as a violation of state and federal free speech rights. The court ruled against Gurley on three counts,

including his procedural due process claim, but stayed judgment as to the remaining counts pending a decision by the commission. Gurley continued to operate his business, and the board did not seek to stop him from doing so. In July 2010, Columbia repealed its private investigator licensing scheme. In December 2010, the commission held that the board lacked cause to deny Gurley's license and ordered it to issue him a license. A few weeks later, the court dismissed the remaining counts of Gurley's petition, including his free speech claims. Gurley appeals.

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Court en banc holds: (1) The circuit court correctly held that Missouri's private investigator licensure statutory scheme is constitutional because the term "private investigator business," as defined in section 324.1100(9), and used in section 324.1104(1), RSMo Supp. 2009, is not unconstitutionally overbroad. Gurley does not argue the statutory scheme infringes on his own free speech rights but rather argues it is overbroad because it reaches further than private investigators, requiring ordinary citizens to obtain licensure before engaging in all manner of protected free speech activity. This Court must give meaning to every word or phrase of a legislative enactment. Here, the legislature's use of the word "business" limits the scope of private investigator-related activities listed in the definition, indicating the statutory scheme includes within its sweep only investigations conducted by commercial entities and not by ordinary citizens. Accordingly, as it appears in sections 324.1100 to 324.1148, RSMo Supp. 2009, "private investigator business" includes the furnishing of, making of or agreeing to make investigations elaborated in section 324.1100(9) only when done as part of a commercial enterprise carried on for profit or as part of a particular occupation habitually engaged in for livelihood or gain.

(2) The circuit court correctly held that Gurley's procedural due process claims are moot. Because professional licenses are considered "property" for the purposes of the Fourteenth Amendment, procedural due process is required before the government may deprive anyone of his or her professional license. But because no one has a property interest in a mere unilateral expectation, due process generally is not required before a new application for professional licensure is denied. Gurley admits that, because the commission ordered the board to issue him a license and the board has complied, his procedural due process claims are moot. The Court has no discretion to consider Gurley's due process claims because the issue fails the second prong of the "public interest" exception to the mootness doctrine – that the issue will recur. Regulations implementing the statewide private investigator licensure statutory scheme became effective two years ago, and there is no evidence to suggest that anyone engaged in the private investigator business before 2010 and who wishes to be licensed by the state has not yet worked his or her way through the licensure process.