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# Appellate Procedure--Jurisdictional Amount in Kentucky--Injunctions and Declaratory Judgments

Wendell Safriet Williams  
*University of Kentucky*

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However, the statute places in a court of justice final arbitration and leaves it to decide whether such applicant is a law-abiding citizen.

*Things Other Than the Morality of Applicants and Threatened  
Nuisance in the Absence of Zoning Regulations*

The decisive question here is whether, in the absence of zoning restrictions, the county court may consider other matters which could have a bearing on the granting of the permit. As previously stated, the court cannot flatly and arbitrarily decide that drive-ins are not a good thing for the community. On the other hand, it is clear that the court should take into consideration factors other than the morality of the applicant. This brings us to the crucial question of whether the court may refuse to grant the permit on consideration of conditions which would not amount to a nuisance per se or would not necessarily constitute a nuisance under the particular circumstances.

When the court comes to consider such a matter as the location of the particular business and decides the merits on such factors as location on a main highway or location on a street where traffic speed is low, or location apart from industrial and residential neighborhoods or similar areas, it is properly exercising its administrative or quasi-judicial function, and in doing so it has very broad discretion. The necessary conclusion, then, is that the court may consider such other circumstances which do not amount to a nuisance in arriving at a decision. It is suggested only that the court should weigh the evidence carefully and find on the basis of the location of the drive-in that it is dangerous to public safety or health before refusing to issue a permit. The court should have a genuine and valid reason for refusal and must not decide flatly, on the application of the people of the vicinity, that drive-ins are a bad thing for the community and should not be permitted to operate. It is submitted that such a denial is unconstitutional as an unreasonable regulation of the applicant's right to use his property as he sees fit, as well as grossly unfair to a prospective businessman who wishes to carry on a legitimate business which the public has sanctioned throughout the United States.

THOMAS A. MITCHELL

APPELLATE PROCEDURE—JURISDICTIONAL AMOUNT IN  
KENTUCKY—INJUNCTIONS AND DECLARATORY JUDGMENTS

Kentucky Revised Statutes, section 21.060, provides as follows:

- (1) Appeals may be taken to the Court of Appeals as a matter of right from all final orders and judgments of circuit courts in civil cases except:

- (a) Judgments where the value of the amount or thing in controversy is less than \$2500.00, exclusive of interest and costs;
  - (b) That portion of a judgment granting a divorce;
  - (c) Judgments punishing contempts;
  - (d) Bonds having the force of judgments.
- (2) If the value of the amount of thing in controversy, exclusive of interest and costs, is as much as two hundred dollars, the Court of Appeals may grant an appeal from the judgment or final order of a circuit court when:
- (a) It is satisfied from the record that the ends of justice require that the judgment appealed from be reversed; or
  - (b) The correct decision of a case cannot be had without construing a statute or section of the constitution put in issue in the case.
- (3) Unless otherwise authorized by statute or code, no appeal shall be taken to the Court of Appeals from any order or judgment of any county, quarterly, police, fiscal or justice's court. (1952, c. 24, Sec. 1; effective June 19, 1952)

In order that this discussion may be better understood, section 21.060, as it existed prior to its amendment in 1952, is set out below:

- (1) Appeals may be taken to the Court of Appeals as a matter of right from all final orders and judgments of circuit courts in cases directly involving the title to land, the right to an easement therein, or the right to enforce a statutory lien thereon, and from final orders and judgments in all other civil cases except:
- (a) Judgments for the recovery of money or personal property, or any interest therein, or to enforce any lien thereon, where the value in controversy is less than five hundred dollars, exclusive of interest and costs;
  - (b) That portion of a judgment granting a divorce;
  - (c) Judgments punishing contempts;
  - (d) Bonds having the force of judgments.
- (2) If the value of the amount or thing in controversy, exclusive of interest and costs, is as much as two hundred dollars, the Court of Appeals may grant an appeal from the judgment or final order of a circuit court when:
- (a) It is satisfied from the record that the ends of justice require that the judgment appealed from be reversed; or
  - (b) The correct decision of a case cannot be had without construing a statute or section of the constitution put in issue in the case.
- (3) Unless otherwise authorized by statute or code, no appeal shall be taken to the Court of Appeals from any order or judgment of any county, quarterly, police, fiscal or justice's court.

The Court of Appeals of Kentucky ever since its creation has been plagued with an excessive docket. To avoid this, various measures have been adopted. Effective January 1, 1895, the number of judges on the Court of Appeals was increased to seven. Three years later the \$100.00 minimum amount required for appellate review in cases involving the recovery of money or personal property was raised to \$200.00. In 1906, legislation authorizing the appointment of one commissioner was enacted. The crowded docket conditions still persisted, and in 1914 the appeals limits were again raised, this time to \$500.00,

with the provision that "... in cases involving as much as \$200.00 and less than \$500.00 an appeal might be prayed, and the courts should grant it when the ends of justice should require a reversal or a question involving the construction of a statute or section of the Constitution should be in issue."<sup>1</sup> In this same legislation appeals allowed as a matter of right in land cases were also restricted to those cases directly involving the title to land, the right to an easement therein, or the right to enforce a statutory lien thereon. Finally, in 1928, the number of commissioners authorized was increased to four, and in 1952, the appellate amount necessary for the Court of Appeals to review a case was again raised to the present amount of \$2500.00.<sup>2</sup>

The purpose of the 1952 amendment evidently was two-fold. In the first place, the Legislature increased the amount which must be involved to appeal certain actions to the Court of Appeals from \$500.00 to \$2500.00. Secondly, the General Assembly enlarged the classes of actions in which a jurisdictional amount must be shown in order to appeal. It is this second change in the law with which this discussion will be primarily concerned.

Prior to 1952, in order to appeal from a judgment of a circuit court, it was necessary to show the existence of a minimum jurisdictional amount only in actions involving the recovery of money or personal property and in actions asserting an interest in or a lien upon money or personalty. Under the statute as amended, it has seemingly become necessary to show a jurisdictional amount in all appeals to the Court of Appeals, except where expressly authorized as a matter of right by the statute.

The Court of Appeals will have no difficulty in interpreting this statute when called upon to decide the jurisdictional point in cases involving title to land, the right of an easement in land, or the right to enforce a statutory lien thereon, for these were specifically omitted from the wording of the statute. Nor will the court have any difficulty where the recovery of a money judgment or personal property is involved, for it is quite clear that the jurisdictional amount must be present in order to appeal to the court in these cases. The difficulty will arise in interpreting the words "*value of the amount or thing in controversy*,"<sup>3</sup> when the appeal before the court involves an injunction or declaratory judgment. Therefore the remainder of this discussion will be devoted to this problem.

Did the Legislature intend to eliminate from appellate review injunction or declaratory judgment cases where the "value of the amount

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<sup>1</sup> Eblen, *An Intolerable Burden*, 40 Ky. L.J. 78, at 79 (1951).

<sup>2</sup> *Ibid.*

<sup>3</sup> KY. REV. STAT. sec. 21.060 (1952).

or thing in controversy" cannot be established? The determination of one's "rights," in either a declaratory judgment or an injunctive proceeding, and the placing of a monetary value on these rights are two distinct things. In the determination of one's legal rights, the court is governed by certain accepted legal principles. On the other hand, what guide, standard or principle does the court have to measure the "value of the amount or thing in controversy" for purposes of appeal? True, the Legislature thought that this problem would be eliminated by Kentucky Revised Statute section 21.070,<sup>4</sup> which provides a means whereby any litigant may require a circuit court to state in its judgment "the actual value in controversy" which shall be conclusive of the amount in controversy for purposes of appeal. But here again, the circuit court would be presented with the same problem of determining what yardstick to use in determining the value of the amount or thing in controversy in an injunction or declaratory judgment proceeding. Furthermore, if the circuit court, through some fallacious reasoning or arbitrary judgment, placed a value on the "amount or thing" which was less than the jurisdictional amount required for the purposes of appeal, with what remedy would the injured party be left? In an effort to better understand the problem, it is convenient first to analyze it from the standpoint of injunctions, and, second, from the standpoint of declaratory judgments.

"It is axiomatic that injunctive relief will not be granted unless the plaintiff shows that he will suffer great and irreparable injury for which he has no adequate remedy at law."<sup>5</sup> Furthermore, an injunction cannot be granted if the injury can be adequately compensated in damages.<sup>6</sup> Thus, to seek an injunction seemingly negatives the possibility of placing a value on the amount or thing in controversy. Under the provisions of Kentucky Revised Statutes section 21.060 prior to 1952, the Court of Appeals held that an appeal would lie from a judgment granting an injunction regardless of the amount involved;<sup>7</sup> but this was for the reason that the statute at that time required a showing of a minimum jurisdictional amount for an appeal only in cases involving money, personal property or an interest therein.<sup>8</sup> Since the 1952

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<sup>4</sup> Ky. Rev. Stat. sec. 21.070 provides: "If a judgment does not, when construed in connection with the pleadings, certainly fix the value of the amount or thing in controversy, the court shall, upon the request of either party, state in the judgment the actual value in controversy, and the valuation shall be conclusive of the amount in controversy for the purpose of appeal."

<sup>5</sup> *Morrow v. Louisville*, 249 S.W. 2d 721 (Ky. 1952).

<sup>6</sup> *Newton v. Farris*, 183 Ky. 288, 209 S.W. 38 (1919).

<sup>7</sup> *McKim v. Smith*, 249 Ky. 835, 172 S.W. 2d 634 (1943); *Merchants Wholesale Grocery Company v. Frankfort*, 244 S.W. 2d 468 (Ky. 1951); *Kentucky Unemployment Compensation Commission v. Chenault & Orear*, 295 Ky. 562, 174 S.W. 2d 767 (1943); *Charos v. Jent*, 293 Ky. 50, 168 S.W. 2d 334 (1943).

<sup>8</sup> *Shackelford v. Phillips*, 112 Ky. 563, 66 S.W. 419 (1902).

amendment to section 21.060, the court has decided the case of *Brashear v. Payne*.<sup>9</sup> The court held that, due to a change in the language of the statute, a jurisdictional amount must be shown in order to appeal from an action involving an injunction. In the *Brashear* case, speaking of the 1952 amendment to section 21.060, the court said:

The amendment makes material changes; it narrows the scope of appealable cases, and places a higher limitation on the amount involved necessary to give appellate jurisdiction. It allows, as a matter of right, appeals in 'all civil cases,' except from judgments 'where the value of the amount or thing in controversy is less than twenty-five hundred dollars, exclusive of interests and costs,' and then classifies other non-appealable cases. The section eliminates the words 'money or personal property,' thus making it apply to *all* civil cases, save those specifically excepted. (Emphasis supplied by writer)<sup>10</sup>

Following this concise explanation of the effect of the 1952 amendment, the court dismissed the appeal from a judgment denying an injunction because the record failed to reveal the existence of the minimum jurisdictional amount.

If the Legislature did intend to eliminate from appellate review those cases where the "value of the amount or thing" cannot be established, other than by the arbitrary method of forcing the trial judge to place a value on it without the aid of a logical yardstick, then the words "*appeals may be taken . . . as a matter of right from all . . . civil cases. . .*" are completely meaningless. It would have been more logical, had this been the intent of the Legislature, for the statute to have read as follows:

Appeals may be taken to the Court of Appeals as a matter of right from all final orders and judgments of circuit courts in civil cases where the value of the amount or thing in controversy is \$2500.00 or more, exclusive of interest and costs, except from that portion of a judgment granting a divorce, judgment punishing contempts, and bonds having the force of a judgment. . . .

It is an elementary principle of statutory construction that a statute is to be construed so that all sections of it are to have a meaning. This being true, what meaning can be attached to the clause of the statute which says "appeals may be taken . . . as a matter of right from all . . . civil cases. . . ." Under the court's interpretation of the statute in the *Brashear* case, the clause "value of the amount or thing in controversy" is all embracing and covers all possible types of civil cases. So far, the Court of Appeals has had but one other opportunity to construe the phrase "thing in controversy," other than the *Brashear* case. The court, in the case of *Choctow O. & G. R. Co. v. Loper Brothers*,<sup>11</sup> had oc-

<sup>9</sup> 266 S.W. 2d 346 (Ky. 1954).

<sup>10</sup> *Id.* at 346.

<sup>11</sup> 6 Indian Territory Reports 432, 98 S.W. 150 (Ky. 1906).

casation to pass on the civil jurisdiction of the United States Commissioners appointed for the Indian Territory whose jurisdiction was exclusive. In construing the Act of Congress, the court said:

. . . the United States commissioners were given exclusive jurisdiction to try all cases of whatsoever nature in civil cases, whether on contract or tort, where the 'amount or value of the demand or of the property or thing in controversy does not exceed \$100.' We do not see how Congress could have used language broader or plainer to show that it was intended by the law to confer upon United States Commissioners full and ample jurisdiction to try all matters exclusive of the district court, where the demand of the plaintiff did not exceed \$100, whether the same originated in contract, grew out of personal injury, or arose from damage to real estate. The statute divides this extensive jurisdiction into three parts: First, where the amount or value of the demand does not exceed \$100; or, second, where the amount or value of the property does not exceed \$100; or, third, where the amount or value of the thing in controversy does not exceed \$100. . . . *This term "thing in controversy" certainly is broad language, and used by Congress to designate any and everything which may arise in dispute between two or more parties. . . .*<sup>12</sup> (Italics supplied by writer)

Applying the foregoing definition of the phrase "thing in controversy" to the present provisions of Kentucky Revised Statute section 21.060, it is seemingly apparent that regardless of the character of the suit or the subject-matter of the litigation, no one may now appeal as a matter of right from a final order or judgment of a circuit court unless the judgment shows that the "amount or thing in controversy" has a value of at least \$2500.00. Nor may the court as a matter of discretion grant an appeal unless the value in controversy amounts to at least \$200.00.

It would seem that perhaps an answer to this statutory problem could be arrived at by an interpretation of the words used in the statute. The word *thing* supplies the key to the answer for the proper construction of the statute. Thing is defined in Webster's dictionary as "whatever may be possessed or owned, or be the object of a right. . . ."<sup>13</sup> *Black's Law Dictionary* defines the word as "the objects of dominion or property as contra-distinguished from persons. The object of a right; *i.e.*, whatever is treated by the law as the object over which one person exercises a right, and with reference to which another person lies under a duty."<sup>14</sup> From these definitions it is readily seen that when the word thing is used in its most ordinary sense, it applies to something corporeal—in other words, a concrete or tangible object. Therefore, it seems highly improbable that the legislature intended to use this word in its most unusual sense and to have it apply

<sup>12</sup> *Id.* 98 S.W. at 151.

<sup>13</sup> WEBSTER'S NEW INTERNATIONAL DICTIONARY (2nd ed. 1944).

<sup>14</sup> BLACK'S LAW DICTIONARY (4th ed. 1951).

to incorporeal objects. Injunctions are prohibitory or constraining in nature, and, as such, are directed at man's intangible equitable rights, the object of which is incapable of valuation. Whereas in contract and tort actions the object of the right is the monetary sum sought to be collected, and thus, is the amount in controversy. By this interpretation, the word *thing*, as it appears in this statute, is not synonymous with the word *amount*. Neither is it without meaning, for those actions which concern themselves with title to land, easements, the recovery of chattels and the various liens thereon are clearly within the meaning of this word. By this interpretation of the word *thing*, in the statute, a more coherent pattern in judicial decisions will be allowed and far more just results will be attained.

Is the requirement of a showing of a jurisdictional amount applicable to a declaratory judgment action the same as it is to other types of litigation under the statute in question? Basically the same reasoning applies to declaratory judgments, in regard to the jurisdictional amount, as it does to injunctions. But under Kentucky law there is also a statute which provides for declaratory judgment and gives an absolute right of appeal regardless of the amount involved.<sup>15</sup> Seemingly, these two statutes are in conflict. In the case of *Steward v. City of Corbin*,<sup>16</sup> the court said in an attempt to clear up this problem:

And, though it be conceded (without deciding) that this is the character of controversy for which the Declaratory Judgment Act was intended to provide a remedy, that act was not intended either to enlarge or broaden the jurisdiction of this court or to affect procedure on appeals. In Borchard on Declaratory Judgments, 2 Ed. page 223, it is said: 'It is an axiom that the Declaratory Judgment Act has not enlarged the jurisdiction of the courts over subject matter and parties, although it manifestly has opened to prospective defendants—and to plaintiffs at an early stage of the controversy—a right to petition for relief not heretofore possessed. In that sense, it has decidedly extended the power of the courts to grant relief in cases otherwise within their jurisdiction to pass upon. As in all cases, the court may sua sponte raise the question of its jurisdiction over subject matter, and consent of the parties cannot confer it.' Though the construction of a statute is involved, the amount in controversy is less than \$500.00 and a motion for an appeal must be made to this court even if the action was properly under the Declaratory Judgment Act.<sup>16</sup>

It is pertinent to point out, however, that in the *Steward* case the declaratory judgment action was filed for the sole purpose of determining whether or not a sum of money should be paid. The fact that the suits were instituted under the Declaratory Judgment Act was immaterial since the primary purpose of the suit was recovery of a

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<sup>15</sup> KY. REV. STAT. sec. 418.060.

<sup>16</sup> 294 Ky. 284, 171 S.W. 2d 445 (1943).

<sup>17</sup> *Id.* at 285, 171 S.W. 2d at 446.

claimed indebtedness. Apparently the problem still remains as to the construction of these two statutes where the primary purpose of the litigation is to obtain a declaration of *rights* under Chapter 418 of the Kentucky Revised Statutes.

By the enactment of the amendment to Kentucky Revised Statute section 21.060 in 1952, the Legislature reduced to a great extent the number of cases which would appear on the Court of Appeals docket. There can be no doubt that this was the primary aim of the statute and a very commendable one. But it is submitted that if the "rights" of individual litigants in declaratory judgment suits and in injunctive proceedings, which from their very nature are not susceptible of having a monetary value placed upon them for purposes of appeal, are to be sacrificed in order that the court's docket may be lightened, then the statute should be repealed or amended in order that this situation may be remedied. If this is not done the court should overrule its previous decision in the *Brashear* case and adopt the interpretation of the statute presented by this note.

WENDELL SAFRIET WILLIAMS

[Editor's note—After this note had completed the editorial process, the Court of Appeals decided *McLean v. Thurman*, 273 S.W. 2d 825 (Ky., Dec. 17, 1954). The court held that the Legislature, in amending the statute, did not intend to deny appeals in those actions in which the amount or thing in controversy is not translatable into a monetary valuation. The court expressly overruled the case of *Brashear v. Payne*, in so far as it conflicted with the *McLean* decision.]

#### SEARCH AND SEIZURE UNDER THE FOURTH AMENDMENT

The purpose of this note is to examine two of the three basic problems arising under the Fourth Amendment, namely: (1) compulsory production of materials to be used solely as evidence; and (2) the extent to which a search and seizure can be made without a warrant. A third problem which often arises concerns the extent of a search and seizure as incidental to a valid arrest. This latter problem will not be covered in this note.

##### *(1) Compulsory Production of Materials To Be Used Solely As Evidence.*

The first important case in which the Supreme Court had occasion to interpret the Fourth Amendment was *Boyd v. United States*.<sup>1</sup> This was not technically a search and seizure case but the Court, nevertheless, applied the Fourth Amendment. To provide a more effective

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<sup>1</sup> 116 U. S. 616 (1885).