

Miami-Dade County v. Miami Gardens Square One, Inc., No. 3D20-1512, 2020 WL 6472542 (Fla. 3d DCA Nov. 4, 2020)

Third DCA Holds Florida Executive Order 20-244 Does Not Expressly Preempt Local Governments from Establishing Curfews in Response to COVID-19

In response to COVID-19, Miami-Dade County (“County”) enacted several emergency orders seeking to slow the spread of COVID-19. The emergency orders included a late-night curfew and a “complete shutdown of non-essential businesses.” After Governor DeSantis issued Florida Executive Order 20-244 (“EO 20-244”), which requires local governments to allow individuals to work and operate businesses, the County issued an updated emergency order that allowed businesses to open if they met certain requirements, but preserved the County’s late-night curfew running from 12 a.m. to 6 a.m.

Miami Gardens Square One, Inc. (“Tootsie’s”), an entertainment venue, filed suit raising, among other things, that EO 20-244 expressly and impliedly preempted and conflicted with the County’s curfew. Tootsie’s sought an injunction that prevented law enforcement from enforcing the curfew. The trial court granted the temporary injunction. The trial court reasoned that the injunction was appropriate because EO 20-244 explicitly forbid curfews, and thus Tootsie’s was likely to succeed on the merits.

The Third DCA reversed the trial court and vacated the temporary injunction, holding that “EO 20-244 does not expressly preempt curfews by local government[s].” Additionally, the Third DCA held that “[n]either implied preemption nor conflict precluded the County’s curfew orders.” The court reasoned that EO 20-244 did not expressly address curfews, but instead broadly stated that no local government emergency measures could “prevent an individual from working or from operating a business.” Thus, the issue before the court was whether the County’s curfew was included in this prohibition. In analyzing EO 20-244, the court noted that the word “prevent” was dispositive. EO 20-244’s preamble suggested that the Governor’s intent was to prohibit laws that altogether close businesses. Thus, the court concluded that “the County’s curfew, which concededly allows Tootsie’s to operate from six a.m. to midnight daily, does not fall within this express limitation.”

The Third DCA additionally reasoned that EO 20-244’s language did not suggest that the Governor intended to preempt all COVID-19 emergency orders. Rather, the plain language only preempted emergency orders that “prevent[ed] an individual from working or from operating a business.” The court found that EO 20-244 and the County orders did not conflict because compliance with one did not create a violation of the other. Therefore, the Third DCA reversed the trial court’s order and vacated the temporary injunction.