TOON CIRCUIT (FORMERLY THE NINTH CARTOON CIRCUIT)

No. 1955-TOON-1049

Sylvester v. Gonzales

12 F.C. App. 1 (Toon Cir. 1955)

On appeal from the Borderlands District · Decided June 24, 1955 · Jones, J., for the Court

Facts inspired by Speedy Gonzales (1955); law inspired by Commissioner v. Groetzinger (U.S. 1987).

FICTIONAL LEGAL SATIRE. NOT LEGAL AUTHORITY.

SYLLABUS

> Whether the sustained pursuit of prey by a predator, undertaken regularly, systematically and as a means of subsistence, is an occupation, trade or profession within the Cartoon Occupational Relations Act. Held: it is. A vocation does not cease to be a vocation because its practitioner is spectacularly unsuccessful at it. A predator need not receive a salary, have a conventional employer, or ever catch anything; continuous effort, specialized skill, substantial investment, vocational purpose and pursuit of subsistence make the activity work. Reversed and remanded. Whether rockets, dynamite and portable holes are ordinary and necessary business expenses is not decided.

HEADNOTES

> [1] 150GAG12(1) · **Occupations: Occupation without success.** Continuity and vocational purpose establish work despite persistent failure. Success is not the test.
>
> [2] 150GAG12(2) · **Occupations: Compensation in kind.** Room, board, cream and continued access to the premises are compensation. A salary is not required.
>
> [3] 150GAG12(6) · **Occupations: Status is not license.** Professional status describes the activity. It does not legalize every means employed in its performance.
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> [4] 240GAG162(1) · **Taxation: Reserved.** Whether the instrumentalities of pursuit are deductible is not before the Court. See Coyote v. Desert Revenue Service (pending).

OPINION · JONES, J., FOR THE COURT

¶ 1 JONES, J. This appeal presents a question which, though perhaps unusual in its facts, is neither novel in principle nor trivial in consequence: Whether the sustained pursuit of prey by a predator, undertaken regularly, systematically, and as a means of subsistence, constitutes an "occupation, trade, or profession" within the meaning of the Cartoon Occupational Relations Act. We hold that it does.

¶ 2 The District Court concluded otherwise, reasoning that appellant Sylvester J. Pussycat had "no employer, no salary, no demonstrated profit, and, in any meaningful sense of the word, no success." Sylvester v. Gonzales, No. 1955-TOON-1049, slip op. at 5 (Borderlands Dist. 1954). The latter observation is supported by an overwhelming evidentiary record. It is also legally irrelevant. A vocation does not cease to be a vocation merely because its practitioner is spectacularly unsuccessful at it. We reverse.

I. BACKGROUND

¶ 3 Sylvester is an adult domestic feline who for many years has engaged in the pursuit, capture, and intended consumption of small animals, principally mice and birds. The record reflects considerable specialization. Sylvester maintains and deploys cages, traps, nets, ropes, pulleys, ladders, spring-loaded devices, disguises, improvised firearms, explosives, mechanical contraptions, and substantial quantities of bait. He has pursued prey by foot, automobile, rail, aircraft, balloon, catapult, and, on at least one occasion, while disguised as a large block of cheese. Although the wisdom of several of these methods may fairly be questioned, their vocational character cannot.

¶ 4 Beginning in 1953, Sylvester was retained by the proprietor of the Guadalajara Cheese & Provision Warehouse to suppress an infestation of mice that had resulted in substantial losses of inventory. Compensation consisted principally of room, board, cream, and continued access to the premises, with an additional allotment of canned tuna upon successful removal of rodents.

¶ 5 Shortly thereafter, appellee Speedy Gonzales began making repeated incursions into the warehouse. Gonzales proved unusually difficult to apprehend. Trial testimony established that Gonzales could cross the warehouse floor, remove a wheel of Monterey Jack weighing approximately three times his own body mass, and return across the district line before Sylvester had completed the sentence "Sufferin' succotash."

¶ 6 Sylvester responded by substantially increasing his efforts. Over an eighteen-month period, he pursued Gonzales on no fewer than 147 documented occasions. His activities included surveillance of mouse holes; construction of barricades; preparation of cheese-based bait stations; procurement of specialized equipment; reconnaissance of Gonzales's known routes; and extensive physical pursuit. Sylvester testified that the endeavor occupied between forty and sixty hours per week. The record contains no evidence that he engaged

in any other meaningful economic activity during this period. There is likewise no evidence that he ever caught Gonzales.

II. PROCEEDINGS BELOW

¶ 7 The present action arose after Gonzales allegedly substituted a stick of dynamite for a wedge of cheddar being used as bait in one of Sylvester's traps. The resulting explosion propelled Sylvester through three floors of the warehouse, across an alley, and into the bell of the San Miguel mission, which thereafter rang continuously for approximately eleven minutes. Sylvester sued Gonzales for intentional interference with occupational activity, destruction of tools, and lost earning capacity.

¶ 8 Gonzales moved for partial summary judgment as to all occupational damages. He argued that Sylvester could not establish interference with an occupation because "chasing mice around is simply what cats do." The District Court agreed. It reasoned that an activity cannot constitute an occupation unless the plaintiff establishes: (1) monetary compensation; (2) an identifiable employer or clientele; and (3) a reasonable history of successful performance. Because Sylvester received little cash, was largely self-directed, and had failed to capture Gonzales despite hundreds of attempts, the court held as a matter of law that his activities constituted "instinctive predatory behavior rather than gainful employment." This appeal followed.

III. DISCUSSION

¶ 9 The Cartoon Occupational Relations Act defines an occupation as: "Any regular and substantial pursuit, vocation, trade, profession, calling, or undertaking performed for compensation, subsistence, livelihood, or other material benefit." C.O.R.A. § 101(b). Nothing in that language requires a paycheck. Nothing requires an employer. And certainly nothing requires success.

A. Compensation Need Not Take the Form of Wages

¶ 10 Our cases have long recognized that compensation may consist of something other than money. In Tom v. Jerry, 2 F.C. App. 441 (Toon Cir. 1947), we held that a domestic cat employed to control household rodents was engaged in compensable work even though his principal remuneration consisted of food, shelter, and "occasional expressions of approval from the lady of the house." We rejected the contention that the absence of cash wages deprived the activity of occupational status. "Milk," we observed, "is not rendered economically valueless merely because it arrives in a saucer." Id. at 446.

¶ 11 The same principle controls here. Sylvester received food, lodging, access to hunting grounds, and the prospect of obtaining prey itself. These are material benefits.

¶ 12 Indeed, for a predator, prey is not merely the object of the work. It may constitute its compensation. A commercial fisherman does not cease working when paid in a share of the catch. A farmer remains a farmer when he consumes a portion of his crop. We see no principled distinction merely because Sylvester's anticipated crop has unusually large ears and runs at extraordinary speed.

B. Self-Employment Is Employment

¶ 13 Gonzales next contends that Sylvester cannot have an occupation because no person controlled the manner in which he hunted. That argument confuses employment with occupation. The statutory term is intentionally broader. A proprietor may work. A tradesman may work. A hunter, trapper, prospector, fisherman, or independent contractor may work without punching a clock for another. See Fudd v. Bunny, 6 F.C. App. 12, 17 (Toon Cir. 1951) ("The hunter's status as a worker does not depend upon the rabbit's willingness to cooperate.").

¶ 14 Sylvester selected his own tools, hours, tactics, and methods. Those facts establish his independence. They do not establish his unemployment.

C. Persistent Failure Does Not Convert Work Into Recreation

¶ 15 Gonzales's principal argument—and apparently the basis for the District Court's decision—is Sylvester's record of failure. We reject it emphatically. The law does not condition recognition of a profession upon competence. See Duck v. The Animator, 7 F.C. App. 404, 409 (Toon Cir. 1952) ("Continued employment despite repeated humiliation, dismemberment, erasure, repainting, or replacement of one's beak remains employment.").

¶ 16 Many occupations involve uncertainty of result. Prospectors may never find gold. Authors may never sell books. Fishermen may return with empty nets. Trial lawyers may lose cases. None thereby become unemployed retroactively. The rule urged by Gonzales would produce the peculiar result that the harder an individual worked unsuccessfully, the less likely the law would be to recognize that he was working at all. That cannot be the statute's meaning.

¶ 17 Indeed, Sylvester's repeated failures strengthen rather than weaken the vocational nature of his activities. The record demonstrates preparation, specialization, capital investment, physical exertion, acceptance of substantial risk, and extraordinary persistence over a period of years. This is not an individual occasionally swatting at a mouse that crosses his kitchen. It is his life's work. That the mouse usually escapes does not alter the nature of the pursuit.

D. Predatory Instinct and Professional Activity Are Not Mutually Exclusive

¶ 18 Gonzales alternatively argues that hunting cannot constitute a profession because predation is instinctive behavior. The premise is doubtful, and the conclusion does not follow. Numerous occupations arise from basic impulses or natural abilities. A chef's hunger does not make cooking a hobby. A singer's natural inclination to sing does not prevent professional musicianship. Nor does a barrister cease practicing law because he possesses an instinctive desire to argue with everyone in the room. The relevant inquiry is not why the activity appeals to the worker, but whether the worker has organized that activity into a regular and substantial vocational pursuit.

¶ 19 Fudd is instructive. There, Elmer Fudd's almost obsessive pursuit of a particular rabbit was challenged as "a personal vendetta masquerading as hunting." 6 F.C. App. at 16. We nevertheless held that repeated planning, acquisition of specialized firearms, knowledge of hunting seasons, use of tracking techniques, and sustained pursuit were sufficient to establish occupational hunting. We cautioned, however, that classification of the undertaking as professional did not immunize the hunter from generally applicable laws concerning firearms, trespass, explosives, or the distinction between rabbit season and duck season. Id. at 19 n.8.

¶ 20 So too here. Recognition of predation as an occupation gives Sylvester no license to violate the rights of Gonzales or others. Professional status describes the activity. It does not legalize every means employed in its performance.

E. The Appropriate Test

¶ 21 We therefore hold that predatory pursuit constitutes an occupation or profession when it is undertaken with sufficient continuity, regularity, specialization, and vocational purpose that it constitutes a material part of the predator's livelihood or means of subsistence.

¶ 22 Relevant considerations include: 1. the frequency and continuity of the pursuit; 2. the time devoted to it; 3. the acquisition and use of specialized skills or equipment; 4. whether the activity is directed toward subsistence, compensation, protection of property, or another material benefit; 5. the degree to which the individual organizes his affairs around the activity; and 6. whether the pursuit is vocational rather than merely casual or recreational.

¶ 23 No single factor is controlling. Neither receipt of wages nor successful capture of prey is required. The last point bears emphasis. Success is not an element of employment.

¶ 24 Were the law otherwise, occupational status would fluctuate from day to day according to results. The salesman who closes no sale on Tuesday would become unemployed until Wednesday. The fisherman with an empty boat would cease to be a fisherman before reaching shore. And Sylvester, notwithstanding years spent thinking about, preparing for,

financing, and undertaking the capture of prey, would legally have been doing nothing at all. The statute does not compel so absurd a result.

IV. APPLICATION

¶ 25 Applying the foregoing standard is straightforward. Sylvester pursued prey almost daily. He devoted the bulk of his waking hours to the endeavor. He maintained specialized equipment. He developed traps, surveillance techniques, disguises, transportation systems, and capture strategies. He received food, shelter, and other material benefits in connection with his services. His activities were continuous rather than casual. They were directed toward both subsistence and the protection of property.

¶ 26 And perhaps most persuasively, when confronted with repeated crushing, explosion, electrocution, defenestration, incineration, and humiliation, Sylvester did what workers in recognized professions have done from time immemorial: he returned the next morning and went back to work. If this does not constitute an occupation, we are at a loss to say what does.

V. CONCLUSION

¶ 27 We therefore hold that the sustained pursuit of prey by a predator may constitute a lawful occupation, trade, or profession within the meaning of the Cartoon Occupational Relations Act. A predator need not receive a salary. He need not have a conventional employer. He need not even be particularly successful. Where, as here, the evidence demonstrates continuous effort, specialized skill, substantial investment, vocational purpose, and pursuit of material subsistence, the law recognizes the activity for what it is: work.

¶ 28 The judgment of the District Court is REVERSED, and the cause is REMANDED for further proceedings consistent with this opinion. So ordered.

¶ 29 NOTE. Our holding should not be read to suggest that every pursuit of another creature constitutes an occupation. The neighborhood dog that occasionally chases a squirrel does not thereby become a professional hunter. Nor do we decide whether the use of rockets, dynamite, enormous magnets, portable holes, dehydrated boulders, or mail-order catapults constitutes an ordinary and necessary business expense. Those questions are not before us. We observe only that, should such a case arise, the fact that the predator has never caught his intended prey would not, standing alone, defeat his claim to professional status. See Coyote v. Desert Revenue Service, No. 1956-TOON-0001 (Tax Div., Painted Desert Dist.) (pending).

EDITOR'S NOTE

Drafted by machine in the voice of Judge Jones. Edited and entered for the Court by O. Dinwiddie , a member of the bench and bar.

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