Community for Creative Non-Violence v. Reid

490 U.S. 730 (1989)

In the fall of 1985, petitioners -- the Community for Creative Non-Violence (CCNV), a Washington, D.C. organization dedicated to eliminating homelessness, and one of its trustees -- entered into an oral agreement with respondent Reid, a sculptor, to produce a statue dramatizing the plight of the homeless for display at a 1985 Christmas pageant in Washington. While Reid worked on the statue in his Baltimore, Md. studio, CCNV members visited him on a number of occasions to check on his progress and to coordinate CCNV's construction of the sculpture's base in accordance with the parties' agreement. Reid accepted most of CCNV's suggestions and directions as to the sculpture's configuration and appearance. After the completed work was delivered to Washington, CCNV paid Reid the final installment of the agreed-upon price, joined the sculpture to its base, and displayed it. The parties, who had never discussed copyright in the sculpture, then filed competing copyright registration certificates. The District Court ruled for CCNV in its subsequent suit seeking, inter alia, a determination of copyright ownership, holding that the statue was a "work made for hire" as defined in the Copyright Act of 1976, 17 U.S.C. § 101, and was therefore owned exclusively by CCNV under § 201(b), which vests copyright ownership of works for hire in the employer or other person for whom the work is prepared, unless there is a written agreement to the contrary. The Court of Appeals reversed, holding that the sculpture was not a "work made for hire" under the first subsection of the § 101 definition (hereinafter § 101(1)), since it was not "prepared by an employee within the scope of his or her employment" in light of Reid's status as an independent contractor under agency law. The court also ruled that the statue did not satisfy the second subsection of the § 101 definition (hereinafter § 101(2)), since sculpture is not one of the nine categories of "specially ordered or commissioned" works enumerated therein, and the parties had not agreed in writing that the sculpture would be a work for hire. However, the court remanded for a determination whether the statue was jointly authored by CCNV and Reid, such that they were co-owners of the copyright under § 201(a).

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Held:

1. To determine whether a work is a "work made for hire" within the § 101 definition, a court should first apply general common law of agency principles to ascertain whether the work was prepared by an employee or an independent contractor, and, depending upon the outcome, should then apply either § 101(1) or § 101(2). Although the Act nowhere defines "employee," "employment," or related terms, it must be inferred that Congress meant them in their settled, common law sense, since nothing in the text of the work for hire provisions indicates that those terms are used to describe anything other than the conventional relation of employer and employee. On the contrary, Congress' intent to incorporate agency law definitions is suggested

by § 101(1)'s use of the term "scope of employment," a widely used agency law term of art. Moreover, the general common law of agency must be relied on, rather than the law of any particular State, since the Act is expressly intended to create a federal law of uniform, nationwide application by broadly preempting state statutory and common law copyright regulation. Petitioners' argument that a work is "prepared by an employee within the scope of his or her employment" whenever the hiring party retains the right to control, or actually controls, the work is inconsistent with the language and legislative history of the work for hire provisions, and would distort the provisions' structure, which views works by employees and commissioned works by independent contractors as mutually exclusive entities. Pp. 490 U. S. 737-751.

2. The sculpture in question is not a "work made for hire" within the meaning of § 101. Reid was an independent contractor, rather than a § 101(1) "employee," since, although CCNV members directed enough of the work to ensure that the statue met their specifications, all other relevant circumstances weigh heavily against finding an employment relationship. Reid engages in a skilled occupation; supplied his own tools; worked in Baltimore without daily supervision from Washington; was retained for a relatively short period of time; had absolute freedom to decide when and how long to work in order to meet his deadline; and had total discretion in hiring and paying assistants. Moreover, CCNV had no right to assign additional projects to Reid; paid him in a manner in which independent contractors are often compensated; did not engage regularly in the business of creating sculpture or, in fact, in any business; and did not pay payroll or Social Security taxes, provide any employee benefits, or contribute to unemployment insurance or workers' compensation funds. Furthermore, as petitioners concede, the work in question does not satisfy the terms of § 101(2). Pp. 490 U. S. 751-753.

3. However, CCNV nevertheless may be a joint author of the sculpture and, thus, a co-owner of the copyright under § 201(a), if, on remand, the District Court determines that the parties prepared the work with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole. P. 490 U. S. 753.

270 U.S.App.D.C. 26, 846 F.2d 1485, affirmed.

MARSHALL, J., delivered the opinion for a unanimous Court.