

SUPREME COURT OF NEW MEXICO

Whittington v. State Department of Public Safety

132 N.M. 169 (2002) · Decided March 27, 2002

SUMMARY

The New Mexico Supreme Court considered whether state police officers could pursue Fair Labor Standards Act overtime claims against the New Mexico Department of Public Safety. Relying on its concurrently issued decision in Cockrell, the court held that New Mexico had not waived its constitutional sovereign immunity from FLSA claims and affirmed dismissal of those claims. The court did not address the plaintiffs’ separate breach of contract claim because it was not part of the appeal.

CASE DETAILS

COURT	Supreme Court of New Mexico
WRITING FOR THE COURT	Serna, Chief Justice; Joseph F. Baca; Gene E. Franchini; Pamela B. Minzner; Petra Jimenez Maes
JURISDICTION	New Mexico
DECIDED	March 27, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	State police officers appealed the dismissal of their Fair Labor Standards Act overtime claims on sovereign-immunity grounds. The New Mexico Supreme Court granted certiorari after remand from the United States Supreme Court.
STANDARD OF REVIEW	De novo review of the dismissal of the FLSA claims on sovereign-immunity grounds.
PRECEDENTIAL VALUE	published precedential New Mexico Supreme Court opinion
PARTIES	Whittington and other state police officers v. State Department of Public Safety

TOPICS

- flsa
- wage and hour
- eleventh amendment immunity
- employment law
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether New Mexico state employees may bring direct FLSA claims against the State by establishing a waiver of sovereign immunity under NMSA 1978, Section 37-1-23, for claims based on written employment policies constituting a contract.
2. Whether the district court properly dismissed the plaintiffs' FLSA claims on sovereign-immunity grounds.

HOLDINGS

1. New Mexico has not waived its constitutional sovereign immunity from direct FLSA claims by enacting NMSA 1978, Section 37-1-23, even when the claims are based on written employment policies alleged to constitute a contract.
2. The district court properly dismissed the plaintiffs' FLSA claims on sovereign-immunity grounds.

KEY QUOTATIONS

“In Cockrell, which is filed concurrently with this opinion, we have concluded that the State of New Mexico has not waived its constitutional sovereign immunity from FLSA claims.” (§ 3)

“Amicus must accept the case on the issues as raised by the parties, and cannot assume the functions of a party.” (§ 3)

FACTUAL BACKGROUND

The plaintiffs were state police officers employed by the New Mexico Department of Public Safety. They sought overtime wages under the Fair Labor Standards Act and also asserted a state-law breach-of-contract claim based on written employment policies. The Department moved to dismiss only the FLSA claims, asserting sovereign immunity.

PROCEDURAL HISTORY

Plaintiffs sued the Department of Public Safety for overtime wages under the FLSA and asserted a state breach-of-contract claim. The district court dismissed the FLSA claims under Rule 1-054(B)(1) NMRA 2002. The Court of Appeals initially reversed, but the United States Supreme Court vacated that decision and remanded in light of *Alden v. Maine*. On remand, the Court of Appeals affirmed dismissal of the FLSA claims. The New Mexico Supreme Court granted certiorari to resolve the inconsistency between this case and *Cockrell v. Board of Regents of New Mexico State University* and affirmed.

DISPOSITION

affirmed

CASES CITED

- *Whittington v. State Dep't of Pub. Safety*, 1998-NMCA-156, ¶¶ 11-16, 126 N.M. 21, 966 P.2d 188
- *Alden v. Maine*, 527 U.S. 706, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999)
- *Whittington*, 527 U.S. at 1031, 119 S.Ct. 2388
- *Whittington v. State Dep't of Pub. Safety*, 2000-NMCA-055, ¶ 5, 129 N.M. 221, 4 P.3d 668
- *Cockrell v. Bd. of Regents of N.M. State Univ.*, 2002-NMSC-009, 132 N.M. 156, 45 P.3d 876
- *State ex rel. Castillo Corp. v. N.M. State Tax Comm'n*, 79 N.M. 357, 362, 443 P.2d 850, 855 (1968)

OPINION

Whittington v. State Department of Public Safety 132 N.M. 169

SERNA, J.

OPINION SERNA, Chief Justice. {1} Plaintiffs-Petitioners, a group of state police officers employed by the Department of Public Safety, filed an action against the Department seeking payment for overtime wages. Plaintiffs' amended complaint contains three counts seeking relief under the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. §§ 201-219 (1994 & Supp. II 1996), and one count alleging a state claim for breach of contract. The Department filed a motion to dismiss the FLSA claims on the basis of sovereign immunity but did not move to dismiss the breach of contract count. The district court granted the motion to dismiss the FLSA claims in a final order as provided in Rule 1-054(B)(1) NMRA 2002, and Plaintiffs sought an immediate appeal to the Court of Appeals. The Court of Appeals determined that the FLSA claims were not barred by the Eleventh Amendment or sovereign immunity and reversed the district court's dismissal of these claims. *Whittington v. State Dep't of Pub. Safety*, 1998-NMCA-156, ¶¶ 11-16, 126 N.M. 21, 966 P.2d 188, vacated, 527 U.S. 1031, 119 S.Ct. 2388, 144 L.Ed.2d 790 (1999). This Court denied the Department's petition for writ of certiorari, and the United States Supreme Court subsequently accepted discretionary review. Based on its opinion in *Alden v. Maine*, 527 U.S. 706, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999), the Supreme Court vacated the opinion of the Court of Appeals and remanded for further consideration. *Whittington*, 527 U.S. at 1031, 119 S.Ct. 2388. {2} On remand, the Court of Appeals determined based on *Alden* that the State is protected by sovereign immunity and therefore affirmed the district court's dismissal of the FLSA claims. *Whittington v. State Dep't of Pub. Safety*, 2000-NMCA-055, ¶ 5, 129 N.M. 221, 4 P.3d 668, cert. granted, No. 26,362, 129 N.M. 250, 4 P.3d 1241 (2000). We granted Plaintiffs' petition for writ of certiorari in order to resolve an inconsistency between the holding in this case and the Court of Appeals' holding in a case involving identical issues, *Cockrell v. Bd. of Regents of N.M. State Univ.*, 2002-NMSC-009, 132 N.M. 156, 45 P.3d 876. In contrast to the affirmance of the district court's dismissal of the FLSA claims in the present case, the Court of Appeals conditionally affirmed the district court's denial of a motion to dismiss FLSA claims in *Cockrell*. See *id.* ¶ 9. {3} In *Cockrell*, which is filed concurrently with this opinion, we have concluded that the State of New Mexico has not waived its constitutional sovereign immunity from FLSA claims. *Id.* ¶¶ 16-25. As a result, we affirm the Court of Appeals' determination in the present case that the district

court properly dismissed Plaintiffs' FLSA claims. As mentioned above, the Department did not move to dismiss Plaintiffs' breach of contract claim. Because this count of the complaint is not a part of the present appeal, we do not address it. We also do not address additional arguments raised for the first time by amicus curiae. The question presented for this Court's review in Plaintiffs' petition for writ of certiorari to the Court of Appeals is "[w]hether state employees may bring direct Fair Labor Standards Act claims by establishing a waiver of sovereign immunity under NMSA 1978, § 37-1-23 (1976) for claims upon written employment policies which constitute a contract." Having answered that question through our opinion in *Cockrell*, we will not reach additional issues. "Amicus must accept the case on the issues as raised by the parties, and cannot assume the functions of a party." *State ex rel. Castillo Corp. v. N.M. State Tax Comm'n*, 79 N.M. 357, 362, 443 P.2d 850, 855 (1968). We affirm the district court's dismissal of Plaintiffs' FLSA claims. {4} IT IS SO ORDERED. WE CONCUR: JOSEPH F. BACA, GENE E. FRANCHINI, PAMELA B. MINZNER, and PETRA JIMENEZ MAES, Justices.