

SUPREME COURT OF ALABAMA

Morrow v. Bentley

261 So. 3d 278 (Ala. 2017) · Decided November 3, 2017

SUMMARY

The Alabama Supreme Court affirmed dismissal of a declaratory-judgment action challenging the use of funds for a Gulf State Park hotel and conference-center project. The court held that the plaintiffs lacked standing in their official capacities as State Auditor and legislator, and declined to consider their taxpayer-standing argument because it had been abandoned or not properly presented to the trial court.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Per curiam; Stuart, C.J.; Bolin, J.; Shaw, J.; Bryan, J.; Sellers, J.; Parker, J.; Wise, J.; Main, J.
JURISDICTION	Alabama
DECIDED	November 3, 2017
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of the Montgomery Circuit Court dismissing the plaintiffs' declaratory-judgment complaint for lack of standing.
STANDARD OF REVIEW	Standing is a pure question of law reviewed without deference to the trial court.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Johnny Mack Morrow, Jim Zeigler v. Robert Bentley, Gunter Guy, Luther Strange, William Newton, Cooper Shattuck

TOPICS

- standing
- subject matter jurisdiction
- motions to dismiss
- separation of powers
- appellate procedure

PRACTICE AREAS

- constitutional law
- civil procedure
- appellate procedure
- government powers

QUESTIONS PRESENTED

1. Whether the plaintiffs preserved and could assert standing in their individual capacities as taxpayers.
2. Whether Zeigler, as State Auditor, alleged an injury in fact sufficient to confer official-capacity standing.
3. Whether Morrow, as an individual legislator, had standing to challenge executive-branch expenditures allegedly inconsistent with previously enacted legislation and allegedly appropriating funds without legislative authorization.
4. Whether the trial court properly dismissed the declaratory-judgment action for lack of standing.

HOLDINGS

1. The plaintiffs' argument that they had standing in their individual capacities as taxpayers was not preserved because they failed to present it to the trial court and expressly abandoned that theory at the hearing.
2. Zeigler lacked standing because the complaint did not allege that the defendants' expenditures interfered with or usurped his statutory or constitutional authority as State Auditor or otherwise caused him a concrete and particularized injury.
3. Morrow lacked standing to challenge the executive branch's alleged failure to comply with previously enacted legislation or alleged usurpation of the Legislature's appropriation power because the alleged injury was institutional and belonged, if at all, to the Legislature as a whole.

KEY QUOTATIONS

“What can be gleaned from the caselaw discussed above is that a mere allegation that executive action is unlawful because it fails to comport with previously enacted legislation is simply too attenuated to establish an injury in fact to a single legislator and, thus, is an insufficient ground upon which the single legislator can establish standing to challenge the executive action.” (292)

“A single legislator, acting individually, does not have standing to prosecute an injury to the entire legislature.” (294)

FACTUAL BACKGROUND

The plaintiffs challenged the use of funds received from British Petroleum to finance a Gulf State Park hotel and conference-center project. They alleged that the funds were not National Resource Damage Assessment funds, Restore Act funds, or project revenues authorized by the Gulf State Park Projects Act, and that the expenditures usurped the Legislature's appropriation power. Morrow sued as a member of the Alabama House of Representatives and Zeigler sued as State Auditor, both individually and in their official capacities.

PROCEDURAL HISTORY

Morrow and Zeigler sued Alabama executive officials, alleging that funding for the Gulf State Park hotel and conference-center project violated the Gulf State Park Projects Act and usurped the Legislature's appropriation power. The defendants moved to dismiss for lack of standing. The Montgomery Circuit Court dismissed the complaint, and the Alabama Supreme Court affirmed, holding that the taxpayer-standing theory was not preserved and that neither plaintiff had standing in an official capacity.

DISPOSITION

affirmed

CASES CITED

- Town of Mountainboro v. Griffin, 26 So. 3d 407, 409 (Ala. 2009)
- Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949, 953 (Ala. 2004)
- Allsopp v. Bolding, 86 So. 3d 952, 962 (Ala. 2011)
- RLI Ins. Co. v. MLK Ave. Redevelopment Corp., 925 So. 2d 914, 918 (Ala. 2005)
- Bernal, Inc. v. Kessler-Greystone, LLC, 70 So. 3d 315, 319 (Ala. 2011)
- Ex parte Simpson, 36 So. 3d 15, 25 (Ala. 2009)
- Blevins v. Hillwood Office Ctr. Owners Ass'n, 51 So. 3d 317, 322-23 (Ala. 2010)
- Crutcher v. Williams, 12 So. 3d 631, 635 (Ala. 2008)
- City Council of Prichard v. Cooper, 358 So. 2d 440, 441 (Ala. 1978)
- City of Brundidge v. Alabama Department of Environmental Management, 218 So. 3d 798, 808 (Ala. Civ. App. 2016)
- Ex parte King, 50 So. 3d 1056, 1059 (Ala. 2010)
- Alabama Alcoholic Beverage Control Bd. v. Henri-Duval Winery, L.L.C., 890 So. 2d 70, 74 (Ala. 2003)
- Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)
- Riley v. Joint Fiscal Committee of Alabama Legislature, 26 So. 3d 1150 (Ala. 2009)
- American Civil Liberties Union of Tennessee v. Darnell, 195 S.W.3d 612, 625 (Tenn. 2006)
- Markham v. Wolf, 635 Pa. 288, 298, 305-06, 136 A.3d 134, 140, 145 (2016)
- Wilt v. Beal, 26 Pa. Cmwlth. 298, 305-06, 363 A.2d 876, 881 (1976)
- Turner v. Shumlin, 163 A.3d 1173, 1178-79 (Vt. 2017)
- McDermott v. Ige, 135 Haw. 275, 287, 349 P.3d 382, 394 (2015)
- Hanabusa v. Lingle, 119 Haw. 341, 348, 198 P.3d 604, 611 (2008)
- State ex rel. Ohio General Assembly v. Brunner, 114 Ohio St. 3d 386, 391, 872 N.E.2d 912, 919 (2007)
- Silver v. Pataki, 96 N.Y.2d 532, 536, 755 N.E.2d 842, 845, 730 N.Y.S.2d 482, 485 (2001)
- Fordice v. Bryan, 651 So. 2d 998, 1003 (Miss. 1995)
- Russell v. DeJongh, 491 F.3d 130, 134-35 (3d Cir. 2007)
- Alons v. Iowa District Court for Woodbury County, 698 N.W.2d 858, 872-74 (Iowa 2005)
- Chiles v. Thornburgh, 865 F.2d 1197, 1205 (11th Cir. 1989)
- Flast v. Cohen, 392 U.S. 83, 106 (1968)
- Commonwealth ex rel. Beshear v. Commonwealth Office of the Governor ex rel. Bevin, 498 S.W.3d 355, 367-68 (Ky. 2016)
- Mottl v. Miyahira, 95 Haw. 381, 392, 23 P.3d 716, 727 (2001)
- Arizona State Legislature v. Arizona Independent Redistricting Commission, 576 U.S. 787, 135 S. Ct. 2652, 2664 (2015)

- Biggs v. Cooper ex rel. County of Maricopa, 236 Ariz. 415, 418, 341 P.3d 457, 460 (2015)
- Kerr v. Hickenlooper, 824 F.3d 1207, 1215 (10th Cir. 2016)
- Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P., 603 N.W.2d 143, 150 (Minn. Ct. App. 1999)
- Harrington v. Schlesinger, 528 F.2d 455 (4th Cir. 1975)
- Bennett v. Napolitano, 206 Ariz. 520, 527, 81 P.3d 311, 318 (2003)
- Ex parte Riley, 11 So. 3d 801, 806, 810 (Ala. 2008)
- Creola Land Dev., Inc. v. Bentbrooke Hous., L.L.C., 828 So. 2d 285, 288 (Ala. 2002)
- Gulf South Conference v. Boyd, 369 So. 2d 553, 557 (Ala. 1979)
- Town of Warrior v. Blaylock, 275 Ala. 113, 114, 152 So. 2d 661, 662 (1963)

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