

INDIANA SUPREME COURT

Suzanne E. Esserman v. Indiana Department of Environmental Management

84 N.E.3d 1185 (Ind. 2017) · No. 49S02-1704-PL-00189 · Decided November 2, 2017

SUMMARY

The Indiana Supreme Court held that Indiana’s False Claims and Whistleblower Protection Act did not clearly waive the State’s sovereign immunity for a statutory retaliatory-discharge claim brought by a former Indiana Department of Environmental Management employee. The court affirmed dismissal under Indiana Trial Rule 12(B)(6), but remanded with instructions to permit the plaintiff to file an amended complaint. Justice David dissented, concluding that the statute’s use of the term “employer” plainly included the State.

CASE DETAILS

COURT	Indiana Supreme Court
WRITING FOR THE COURT	Slaughter; Rush; Massa; Goff; David
JURISDICTION	Indiana
DECIDED	November 2, 2017
DOCKET	49S02-1704-PL-00189
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from dismissal of complaint; transfer from Court of Appeals.
STANDARD OF REVIEW	De novo review of 12(B)(6) dismissal; accept all facts alleged as true.
PRECEDENTIAL VALUE	Published
PARTIES	Suzanne E. Esserman v. Indiana Department of Environmental Management

TOPICS

- whistleblower
- retaliation
- wrongful termination
- statutory interpretation
- civil procedure
- administrative law

PRACTICE AREAS

- Employment Law
- Administrative Law
- Environmental Law
- Statutory Interpretation
- Civil Procedure

QUESTIONS PRESENTED

1. Whether the Indiana False Claims and Whistleblower Protection Act clearly evinces legislative intent to waive sovereign immunity for whistleblower claims against the State.
2. Whether the trial court properly dismissed the complaint under Trial Rule 12(B)(6).

HOLDINGS

1. The State has not waived sovereign immunity because the Act does not clearly evince legislative intent to subject the State to suit; the term 'employer' is not defined to include the State.

KEY QUOTATIONS

“As the United States are not suable of common right, the party who institutes such suit must bring his case within the authority of some act of congress, or the court cannot exercise jurisdiction over it.” (at 3)

“[T]he States' immunity from suit is a fundamental aspect of the sovereignty which the States enjoyed before the ratification of the Constitution, and which they retain today[.]” (at 3)

“Provision may be made, by general law, for bringing suit against the State, as to all liabilities originating after the adoption of this Constitution; but no special act authorizing such suit to be brought, or making compensation to any person claiming damages against the State, shall ever be passed.” (at 4)

“Sec. 8. (a) An employee who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against in the terms and conditions of employment by the employee's employer because the employee: (1) objected to an act or omission described in section 2 of this chapter; or (2) initiated, testified, assisted, or participated in an investigation, an action, or a hearing under this chapter; is entitled to all relief necessary to make the employee whole.” (at 8)

FACTUAL BACKGROUND

Esserman worked at the Indiana Department of Environmental Management for nearly twenty-five years, most recently overseeing claims for disbursements from the Department's excess-liability trust fund. She alleged that certain Department employees approved disbursements without proper documentation and that many applicants received payments to which they were not entitled. The Department fired her, and she believed it was in retaliation for objecting to the improper disbursements.

PROCEDURAL HISTORY

Esserman filed a wrongful-termination complaint in Marion Superior Court alleging violation of the whistleblower provision of the Indiana False Claims and Whistleblower Protection Act. The Department moved to dismiss under Trial Rules 12(B)(1) and 12(B)(6). The trial court dismissed. The Court of Appeals reversed and remanded. The Indiana Supreme Court granted transfer, vacating the Court of Appeals opinion, and affirmed the trial court's dismissal with instructions to permit an amended complaint.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The trial court should permit Esserman to file an amended complaint.

CASES CITED

- Price v. Indiana Dep't of Child Services, 80 N.E.3d 170 (Ind. 2017)
- United States v. Clarke, 33 U.S. (8 Pet.) 436 (1834)
- Alden v. Maine, 527 U.S. 706 (1999)
- Chisholm v. Georgia, 2 U.S. (2 Dall.) 419 (1793)
- Hans v. Louisiana, 134 U.S. 1 (1890)
- State v. Home Brewing Co. of Indianapolis, 182 Ind. 75, 105 N.E. 909 (1914)
- Perkins v. State, 252 Ind. 549, 251 N.E.2d 30 (1969)
- State v. Rendleman, 603 N.E.2d 1333 (Ind. 1992)
- State v. Trustees of the Vincennes Univ., 5 Ind. 77 (1854)
- State v. Mutual Life Ins. Co. of New York, 175 Ind. 59, 93 N.E. 213 (1910)
- City of Indianapolis v. Indianapolis Water Co., 185 Ind. 277, 113 N.E. 369 (1916)
- State ex rel. Indiana Dept. of Conservation v. Pulaski Circuit Court, 231 Ind. 245, 108 N.E.2d 185 (1952)
- Flowers v. Board of Comm'rs of County of Vanderburgh, 240 Ind. 668, 168 N.E.2d 224 (1960)
- Brinkman v. City of Indianapolis, 141 Ind. App. 662, 231 N.E.2d 169 (1967)
- Klepinger v. Board of Comm'rs of County of Miami, 143 Ind. App. 178, 239 N.E.2d 160 (1968)
- Campbell v. State, 259 Ind. 55, 284 N.E.2d 733 (1972)
- Veolia Water Indianapolis, LLC v. National Trust Ins. Co., 3 N.E.3d 1 (Ind. 2014)
- F.D. v. Indiana Dept. of Child Services, 1 N.E.3d 131 (Ind. 2013)
- Lane v. Pena, 518 U.S. 187 (1996)
- Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89 (1984)
- Atascadero State Hosp. v. Scanlon, 473 U.S. 234 (1985)
- Sossamon v. Texas, 563 U.S. 277 (2011)
- College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666 (1999)
- Esserman v. Indiana Dep't. of Env'tl. Mgmt., 66 N.E.3d 993 (Ind. Ct. App. 2016)
- Shoemaker v. Indiana State Police Dep't., 62 N.E.3d 1242 (Ind. Ct. App. 2016)
- Sees v. Bank One, Indiana, N.A., 839 N.E.2d 154 (Ind. 2005)
- Young v. Hood's Gardens, Inc., 24 N.E.3d 421 (Ind. 2015)
- State v. Evans, 810 N.E.2d 335 (Ind. 2004)

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