

SUPREME COURT OF WASHINGTON

In re the Recall of Feetham

149 Wash. 2d 860 (2003) · Decided July 17, 2003

SUMMARY

The Washington Supreme Court reviewed the factual and legal sufficiency of three recall charges against Robin Feetham, mayor of Concrete, Washington. The court affirmed the sufficiency of charges involving alleged interference with building-code enforcement and removal of a municipal permit file, but held a third charge involving an alleged misuse of police authority insufficient. The court also denied Feetham’s motions to dismiss and admit additional evidence, granted attorney fees to the recall petitioner, and granted a motion to strike portions of Feetham’s brief.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Washington
DECIDED	July 17, 2003
DISPOSITION	reversed
PROCEDURAL POSTURE	Feetham petitioned the Washington Supreme Court for direct review of the superior court's determination that three recall charges were factually and legally sufficient under RCW 29.82.023.
STANDARD OF REVIEW	The Supreme Court directly reviews the superior court's decision using the same criteria as the superior court. The court determines only whether the recall charges are factually and legally sufficient, not whether the allegations are true. Recall statutes are construed in favor of the voters.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential.
PARTIES	Robin Feetham v. Elizabeth Bergsma

TOPICS

- recall elections
- election law
- appellate procedure
- attorney fees
- sanctions

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the first recall charge, alleging that Feetham directed a building official not to enforce building codes and thereby benefited private parties, was factually and legally sufficient.
2. Whether the second recall charge, alleging that Feetham removed and retained a municipal permit file for personal purposes and suppressed reporting of its disappearance, was factually and legally sufficient.
3. Whether the third recall charge, alleging that Feetham ordered police to arrest a resident for trespassing, was factually and legally sufficient.
4. Whether alleged misconduct by opposing counsel warranted counsel removal or dismissal of the recall petition.
5. Whether Bergsma was entitled to attorney fees for defending Feetham's frivolous motion to dismiss.
6. Whether Feetham could introduce additional evidence on review and whether portions of his brief relying on evidence not before the superior court should be stricken.

HOLDINGS

1. The first charge was factually and legally sufficient because it identified the time, place, and conduct alleged and presented a prima facie case of misfeasance or malfeasance based on directing a building official not to enforce building codes, as well as a prima facie violation of RCW 42.23.070(1).
2. The second charge was factually and legally sufficient because it identified the time, place, and conduct and presented a prima facie case of malfeasance and violations of statutes concerning special privileges, municipal records, and theft.
3. The third charge was insufficient because, although specific as to time and place, it did not provide facts supporting the conclusions that Feetham sought a special privilege for himself, acted with official misconduct, or knowingly gave false or misleading information to a public servant.
4. The motion to remove opposing counsel and dismiss the recall petition was denied because Feetham cited no authority permitting removal of opposing counsel or dismissal on the alleged grounds, and the alleged public statements did not prejudice the court's limited sufficiency review.
5. Bergsma was entitled to attorney fees under RAP 18.9(a) because Feetham's motion to dismiss was frivolous and presented no debatable issue or authority supporting dismissal.
6. Feetham's motion to admit additional evidence was denied, and portions of his brief relying on evidence not before the superior court were stricken because he did not satisfy the requirements of RAP 9.11(a), and evidence addressing the truth of the charges was irrelevant to facial sufficiency review.

KEY QUOTATIONS

“The statute specifies that the superior court is not to evaluate the truth of the charges, only their sufficiency, and must construe the recall statutes in favor of the voters.” (864-865)

“To be factually sufficient, the petition must follow the specificity requirements of RCW 29.82.010.” (865)

“The third charge is insufficient because it does not provide specific facts to support its conclusions that Feetham was attempting to secure a special privilege to himself rather than making a request that could have been made by any citizen who believed the law was being violated.” (870)

FACTUAL BACKGROUND

Bergsma sought to recall Concrete Mayor Robin Feetham based on alleged misuse of his office. The first charge alleged that Feetham directed a building official not to enforce building codes for the Mount Baker Café and Hotel. The second alleged that Feetham removed and retained the town's permit file concerning his property and directed the town clerk not to report the missing file. The third alleged that Feetham ordered police to arrest a resident for trespassing even though the resident was on a public right of way.

PROCEDURAL HISTORY

Elizabeth Bergsma initiated recall proceedings against Concrete Mayor Robin Feetham and presented eight charges. The Skagit County Prosecuting Attorney's Office filed a petition in superior court to determine the adequacy of the ballot synopsis and the factual and legal sufficiency of the charges. The superior court approved three charges, and Feetham sought review in the Washington Supreme Court. The Supreme Court affirmed approval of charges one and two, reversed as to charge three, denied Feetham's motion to dismiss and motion to admit additional evidence, granted Bergsma attorney fees, and granted her motion to strike portions of Feetham's brief.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The superior court's approval of charges one and two remains affirmed, while approval of charge three is reversed for lack of a prima facie case. The court also denied the motion to dismiss and motion to admit additional evidence, granted attorney fees, and granted the motion to strike.

CASES CITED

- In re Recall of East, 144 Wn.2d 807, 812, 31 P.3d 677 (2001)
- Kast, 144 Wn.2d at 813-814
- Chandler v. Otto, 103 Wn.2d 268, 274, 693 P.2d 71 (1984)
- In re Recall of Ackerson, 143 Wn.2d 366, 371-372, 20 P.3d 930 (2001)
- Millers Cas. Ins. Co. of Texas v. Briggs, 100 Wn.2d 9, 15, 665 P.2d 887 (1983)
- Streater v. White, 26 Wn. App. 430, 435, 613 P.2d 187 (1980)