

SUPREME COURT OF ARKANSAS

Stromwall v. Van Hoose

371 Ark. 267 (2007) (Ark. 2007) · No. No. 06-1111 · Decided October 11, 2007

SUMMARY

The Arkansas Supreme Court affirmed orders dismissing and granting summary judgment against Linda Stromwall's illegal-exaction claims concerning municipal payments to the Arkansas Municipal League's Municipal Legal Defense Program and a related settlement. The court held that an illegal-exaction action under Arkansas Constitution article 16, section 13 is a class action as a matter of law, but the plaintiff failed to establish an adequate representative for a defendant class under Arkansas Rule of Civil Procedure 23.2. The court further held that the Municipal Legal Defense Program was a lawful municipal association and not a contract or dry-hole contract.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Donald L. Corbin
JURISDICTION	Arkansas
DECIDED	October 11, 2007
DOCKET	No. 06-1111
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from orders of the Washington County Circuit Court denying Stromwall's motion to proceed under Arkansas Rule of Civil Procedure 23.2, limiting her illegal-exaction claim under article 16, section 13 of the Arkansas Constitution, granting summary judgment to appellees, and dismissing the action.
STANDARD OF REVIEW	Constitutional interpretation and interpretation of rules and regulations are reviewed de novo. Summary judgment is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law; on appeal, the evidence is viewed in the light most favorable to the nonmoving party, with doubts and inferences resolved against the moving party.
PRECEDENTIAL VALUE	Published binding precedent of the Supreme Court of Arkansas
PARTIES	Linda Stromwall, on behalf of herself and all others similarly situated v. Jerre Van Hoose, individually and as mayor of the City of

Springdale, David Hinds, individually and as fire chief of the City of Springdale, The City of Springdale, Arkansas, The Arkansas Municipal League, Mark Hayes, general counsel of the Arkansas Municipal League, Don Zimmerman, executive director of the Arkansas Municipal League

TOPICS

municipal law class actions summary judgment statutory interpretation appellate procedure

PRACTICE AREAS

municipal law constitutional law civil procedure appellate procedure contracts

QUESTIONS PRESENTED

1. Whether an illegal-exaction action under article 16, section 13 of the Arkansas Constitution permits a taxpayer from one municipality to represent taxpayers in other municipalities.
2. Whether Stromwall could proceed against the Arkansas Municipal League and its municipal members as a defendant class under Arkansas Rule of Civil Procedure 23.2.
3. Whether the circuit court improperly considered the merits at the class-certification stage.
4. Whether summary judgment was proper on the claims that municipal payments to the Municipal Legal Defense Program and the Bitner settlement were illegal exactions.
5. Whether the Municipal Legal Defense Program was an unlawful or dry-hole contract.
6. Whether the circuit court erred by failing to enter findings of fact and conclusions of law under Rule 52.
7. Whether joinder of the Bitner plaintiff presented a nonmoot issue on appeal.

HOLDINGS

1. An illegal-exaction action under article 16, section 13 is a constitutionally created class action, and adequacy of representation under the ordinary class-action rules is not an issue for the plaintiff representative. A taxpayer may sue on behalf of all taxpayers affected by the alleged exaction.
2. A plaintiff seeking to proceed against members of an unincorporated association as a defendant class under Rule 23.2 bears the burden of showing that the proposed representative will fairly and adequately protect the interests of the association and its members.
3. Summary judgment was proper because municipal payments to participate in the Municipal Legal Defense Program and payments to settle the Bitner litigation were authorized by law and therefore were not illegal exactions.
4. The Municipal Legal Defense Program was not a contract or a dry-hole contract; it was a program within a constitutionally valid municipal association authorized by section 14-54-101.
5. The circuit court did not err by failing to enter findings of fact and conclusions of law under Rule 52 because Rule 23.2 is separate from Rule 23 and does not require class certification before proceeding

under that rule.

KEY QUOTATIONS

“Plainly speaking, all taxpayers who are wronged under the alleged illegal exaction are members of the class, and the class is not subject to the rules generally governing class actions.” (99)

“Upon our review, it is clear to this court that the MLDP is not a contract at all. Rather, it is a program within a constitutionally valid association.” (105)

FACTUAL BACKGROUND

The Arkansas Municipal League operated a Municipal Legal Defense Program in which Springdale and other Arkansas municipalities participated. Stromwall challenged payments into the program and payments made to settle *Bitner v. City of Springdale*, arguing that the expenditures constituted illegal exactions, including an unlawful payment of punitive damages and payments under a purported dry-hole contract. She sought to represent taxpayers statewide and to proceed against the Arkansas Municipal League and its municipal members as a defendant class.

PROCEDURAL HISTORY

Stromwall objected to a settlement in *Bitner v. City of Springdale* and then filed an illegal-exaction action challenging the settlement and municipal payments to the Arkansas Municipal League's Municipal Legal Defense Program. The circuit court allowed the claim to proceed only against Springdale, its officials, and the Arkansas Municipal League, denied Rule 23.2 treatment for the proposed defendant class, and later granted appellees summary judgment. The Supreme Court of Arkansas affirmed.

DISPOSITION

affirmed

CASES CITED

- *Weiss v. Maples*, 369 Ark. 282, 253 S.W.3d 907 (2007)
- *Price v. Thomas Built Buses, Inc.*, 370 Ark. 405, 260 S.W.3d 300 (2007)
- *Brewer v. Carter*, 365 Ark. 531, 231 S.W.3d 707 (2006)
- *McGhee v. Ark. State Bd. of Collection Agencies*, 360 Ark. 363, 201 S.W.3d 375 (2005)
- *Worth v. City of Rogers*, 351 Ark. 183, 89 S.W.3d 875 (2002)
- *Fausett & Co., Inc. v. Bogard*, 285 Ark. 124, 685 S.W.2d 153 (1985)
- *Thomas v. Avant*, 370 Ark. 377, 260 S.W.3d 266 (2007)
- *Ormond Enters., Inc. v. Point Remove Wetlands Reclamation & Irr. Dist.*, 369 Ark. 250, 253 S.W.3d 449 (2007)
- *Gallas v. Alexander*, 371 Ark. 106, 263 S.W.3d 494 (2007)
- *O'Brien v. City of Greers Ferry*, 873 F.2d 1115 (8th Cir. 1989)

- Douglas v. Adams Trucking Co., Inc., 345 Ark. 203, 46 S.W.3d 512 (2001)
- Stewart v. Combs, 368 Ark. 121, 243 S.W.3d 294 (2007)
- City of Marianna v. Arkansas Municipal League, 291 Ark. 74, 722 S.W.2d 578 (1987)
- Barnhart v. City of Fayetteville, 335 Ark. 57, 977 S.W.2d 225 (1998)
- Potter v. City of Tontitown, 371 Ark. 200, 264 S.W.3d 473 (2008)
- Allison v. Lee County Election Comm'n, 359 Ark. 388, 198 S.W.3d 113 (2004)
- BPS, Inc. v. Richardson, 341 Ark. 834, 20 S.W.3d 403 (2000)
- McKinney, 334 Ark. 582, 976 S.W.2d 945 (1998)
- Heinemann v. Hallum, 365 Ark. 600, 232 S.W.3d 420 (2006)
- Beverly Enters.-Ark., Inc. v. Thomas, 370 Ark. 310, 259 S.W.3d 445 (2007)
- Martin v. Pierce, 370 Ark. 53, 257 S.W.3d 82 (2007)
- Parker v. Johnson, 368 Ark. 190, 244 S.W.3d 1 (2006)
- Arkansas County Farm Bureau v. McKinney, 334 Ark. 582, 976 S.W.2d 945 (1998)
- McCoy v. Montgomery, 370 Ark. 333, 259 S.W.3d 430 (2007)