

SUPREME COURT OF OHIO

State ex rel. Food & Water Watch v. State, 153 Ohio St. 3d 1, 2018-Ohio-555

100 N.E.3d 391 (2018) · Decided January 24, 2018

SUMMARY

The Ohio Supreme Court affirmed summary judgment against Food and Water Watch and the FreshWater Accountability Project in their mandamus action seeking to compel Ohio Department of Natural Resources officials to promulgate rules governing oil-and-gas waste substances. The court held that the organizations lacked associational standing because their members had not established a concrete, redressable injury, and it rejected application of the public-right doctrine. The court also held that arguments concerning statutory beneficial-interest and taxpayer standing had been waived.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per curiam; Maureen O'Connor, Chief Justice; Judith L. French, Justice; William M. O'Neill, Justice; Terrence O'Donnell, Justice; Pat DeWine, Justice; Mary DeGenaro Kennedy, Justice; R. Patrick Fischer, Justice
JURISDICTION	Ohio
DECIDED	January 24, 2018
DISPOSITION	affirmed
PROCEDURAL POSTURE	Relators appealed from a Tenth District Court of Appeals judgment granting summary judgment to the respondents and intervenors and denying a writ of mandamus on the ground that relators lacked standing.
STANDARD OF REVIEW	Standing is a question of law reviewed de novo. Summary judgment is appropriate when the evidentiary materials show no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; precedential.
PARTIES	FreshWater Accountability Project, Food and Water Watch v. State of Ohio, John R. Kasich, Governor of Ohio, Rick Simmers, James

TOPICS

standing rulemaking judicial review of agency action administrative law summary judgment

PRACTICE AREAS

administrative law environmental law civil procedure remedies

QUESTIONS PRESENTED

1. Whether FreshWater Accountability Project and Food and Water Watch had traditional or associational standing to seek a writ of mandamus compelling ODNR officials to promulgate rules.
2. Whether relators waived arguments based on statutory standing under R.C. 2731.02 and taxpayer standing by failing to object to the magistrate's decision.
3. Whether the public-right doctrine permitted relators to pursue mandamus without establishing a personal injury.
4. Whether the requested rulemaking would likely redress the alleged injury.

HOLDINGS

1. Arguments concerning standing under R.C. 2731.02 and taxpayer standing were waived because relators did not specifically object to the magistrate's conclusions on those issues.
2. FreshWater Accountability Project failed to establish associational standing because none of the members identified in the affidavits demonstrated standing to sue in their own right.
3. The court declined to broaden or apply the public-right doctrine to permit relators to proceed without traditional standing.
4. Relators were not entitled to a writ of mandamus because they failed to establish standing, including that the requested rulemaking would likely redress the alleged injury.

KEY QUOTATIONS

"These three factors-injury, causation, and redressability-constitute 'the irreducible constitutional minimum of standing.'" (§ 19)

"Where the object of an action in mandamus and/or prohibition is to procure the enforcement or protection of a public right, the relator need not show any legal or special individual interest in the result, it being sufficient that the relator is an Ohio citizen and, as such, interested in the execution of the laws of this state." (§ 27)

"Judgment affirmed." (§ 32)

FACTUAL BACKGROUND

Ohio law required the chief of ODNR's oil-and-gas-resources-management division to promulgate rules governing oil-and-gas operations and the storage, recycling, treatment, processing, and disposal of brine and other drilling waste. Relators alleged that ODNR officials had not promulgated the required rules and instead allowed at least 23 facilities to operate under temporary authorization orders. Relators relied on member affidavits describing speculative health concerns and, in Cheryl Mshar's case, odors allegedly emanating from an authorized facility.

PROCEDURAL HISTORY

Food and Water Watch and FreshWater Accountability Project filed an original mandamus action in the Tenth District Court of Appeals seeking to compel Ohio Department of Natural Resources officials to promulgate rules governing oil-and-gas waste handling. The court of appeals adopted a magistrate's recommendation, overruled relators' objections, granted summary judgment to the respondents and intervenors based on lack of standing, and denied the requested writ. The Supreme Court of Ohio affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Sautter v. Grey, 117 Ohio St. 3d 465, 2008-Ohio-1444, 884 N.E.2d 1062, ¶ 11
- State ex rel. Ahmed v. Costine, 99 Ohio St. 3d 212, 2003-Ohio-3080, 790 N.E.2d 330, ¶ 5, fn. 1
- Gaskins v. Shiplevy, 74 Ohio St. 3d 149, 150, 656 N.E.2d 1282 (1995)
- State ex rel. Schmidt v. School Emps. Retirement Sys., 100 Ohio St. 3d 317, 2003-Ohio-6086, 798 N.E.2d 1088, ¶ 6
- ProgressOhio.org, Inc. v. JobsOhio, 139 Ohio St. 3d 520, 2014-Ohio-2382, 13 N.E.3d 1101, ¶¶ 9, 13, 16
- State ex rel. Taylor v. Indus. Comm., 10th Dist. Franklin No. 05AP-803, 2006-Ohio-4781, 2006 WL 2627557, ¶ 3
- Ohio Contrs. Assn. v. Bicking, 71 Ohio St. 3d 318, 320, 643 N.E.2d 1088 (1994)
- Moore v. Middletown, 133 Ohio St. 3d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶¶ 20, 22
- Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-562 (1992)
- State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St. 3d 451, 503-504, 715 N.E.2d 1062 (1999)
- State ex rel. Ohio AFL-CIO v. Ohio Bur. of Workers' Comp., 97 Ohio St. 3d 504, 2002-Ohio-6717, 780 N.E.2d 981, ¶ 62
- Fortner v. Thomas, 22 Ohio St. 2d 13, 14, 257 N.E.2d 371 (1970)
- N. Canton v. Hutchinson, 75 Ohio St. 3d 112, 114, 661 N.E.2d 1000 (1996)
- State ex rel. Keyes v. Ohio Pub. Emps. Retirement Sys., 123 Ohio St. 3d 29, 2009-Ohio-4052, 913 N.E.2d 972, ¶ 29
- Newark, Somerset & Straitsville RR. Co. v. Perry Cty. Commrs., 30 Ohio St. 120, 126 (1876)
- Clifton v. Blanchester, 131 Ohio St. 3d 287, 2012-Ohio-780, 964 N.E.2d 414, ¶ 16

- Banford v. Aldrich Chem. Co., Inc., 126 Ohio St. 3d 210, 2010-Ohio-2470, 932 N.E.2d 313, ¶ 26

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