SUPREME COURT OF TEXAS

Dallas County Community College District v. William H. Bolton II

Bolton · No. 02-1110 · Decided December 2, 2005

SUMMARY

This document is a dissenting opinion by Justice Scott Brister in the Supreme Court of Texas case concerning student-services and technology fees charged by the Dallas County Community College District. The dissent argues that students who paid unauthorized fees were not voluntary payers because payment was effectively compelled by consequences for nonpayment, and that reimbursement issues should be resolved on a student-by-student basis. It further contends that equitable considerations could limit recovery for students who received direct benefits from the fees.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Scott Brister; Chief Justice Jefferson; Justice O'Neill; Justice Brister
JURISDICTION	Texas
DECIDED	December 2, 2005
DOCKET	02-1110
DISPOSITION	other
PROCEDURAL POSTURE	Petition for review from the Court of Appeals for the Fifth District of Texas concerning the legality and reimbursement of student-services and technology fees charged by a community college district.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether the record establishes the absence of a genuine issue of material fact and entitlement to judgment as a matter of law.
PRECEDENTIAL VALUE	The provided text is a dissenting opinion; its reasoning is not binding.
PARTIES	Dallas County Community College District, et al. v. William H. Bolton II, et al.

TOPICS

restitution · remedies · due process · tax · administrative law

PRACTICE AREAS

remedies | constitutional law | tax | administrative law

QUESTIONS PRESENTED

1. Whether students who paid allegedly unauthorized student-services fees were volunteers for purposes of the voluntary-payment defense.
2. Whether the District could invoke implied duress principles when students faced registration and academic consequences for nonpayment.
3. Whether the summary-judgment record established that all students were entitled to reimbursement or that no students were entitled to reimbursement.
4. Whether equitable principles barred reimbursement to students who had already received direct benefits funded by the challenged fees.

KEY QUOTATIONS

> *"The Court rejects all refunds based on voluntary payment, an equitable defense arising from the rule that "equity will not aid a volunteer.""*

> *"When a government demands a tax or fee, and could unilaterally assess penalties for noncompliance, those who comply cannot be called volunteers."*

> *"The summary judgment record here does not address which students enjoyed such direct benefits."*

> *"The Texas rule is not, and never has been, that any payment once made cannot be recovered."*

FACTUAL BACKGROUND

The District charged students increased student-services fees, although the Texas Education Code required student-body or student-government approval for imposing or increasing the fee. Approval occurred at only one of seven campuses, there was no evidence of approval at four campuses, and a jury found no approval at the remaining two. Students who failed to pay could be prohibited from registering for classes or denied credit for semester work, while hardship waivers were limited to students meeting an undue-financial-hardship standard and capped at ten percent of the student body.

PROCEDURAL HISTORY

Students brought a class action challenging fees charged by the District. The trial court granted summary judgment for the class, while the Supreme Court's majority rejected reimbursement based on the voluntary-payment doctrine. Justice Brister dissented, arguing that the record did not support summary judgment for either side and that the case should be remanded for further factual proceedings.

DISPOSITION

other

REMAND INSTRUCTIONS

The dissent would remand for further proceedings requiring the class to establish that students did not already possess or receive direct benefits equivalent to the fees paid, while also denying summary judgment to the District because the voluntary-payment defense and implied-duress issue could not be resolved as a matter of law.

CASES CITED

- Corsicana Cotton Mills v. Sheppard, 71 S.W.2d 247 (Tex. 1934)
- Houston v. Feizer, 13 S.W. 266 (Tex. 1890)
- Crow v. City of Corpus Christi, 209 S.W.2d 922 (Tex. 1948)
- Metropolitan Life Insurance Co. of New York v. Mann, 168 S.W.2d 212 (Tex. 1943)
- Union Central Life Insurance Co. v. Mann, 158 S.W.2d 477 (Tex. 1941)
- National Biscuit Co. v. State, 135 S.W.2d 687 (Tex. 1940)
- Highland Church of Christ v. Powell, 640 S.W.2d 235 (Tex. 1982)
- State v. Akin Products Co., 286 S.W.2d 110 (Tex. 1956)
- Carrollton-Farmers Branch Independent School District v. Edgewood Independent School District, 826 S.W.2d 489 (Tex. 1992)
- Lowenberg v. City of Dallas, 168 S.W.3d 800 (Tex. 2005)
- Lubbock County v. Trammel's Lubbock Bail Bonds, 80 S.W.3d 580 (Tex. 2002)
- Essenburg v. Dallas County, 988 S.W.2d 188 (Tex. 1998)
- In re Long, 984 S.W.2d 623 (Tex. 1999)
- Camacho v. Samaniego, 831 S.W.2d 804 (Tex. 1992)
- Upson v. Fitzgerald, 103 S.W.2d 147 (Tex. 1937)
- BMG Direct Marketing, Inc. v. Peake, ___ S.W.3d ___
- Truly v. Austin, 744 S.W.2d 934 (Tex. 1988)
- Miga v. Jensen, 96 S.W.3d 207 (Tex. 2002)

OPINION

PER CURIAM.

Footnotes in HTML versions of opinions are designated by superscript “balloons” or boxes (click on either for the footnote text) and are not numbered. For an exact copy of the opinion, retrieve the Adobe PDF version. IN THE SUPREME COURT OF TEXAS No. 02-1110 Dallas County Community College District, et al., Petitioners, v. William H. Bolton II, et al., Respondents On Petition for Review from the Court of Appeals for the Fifth District of Texas

Argued on January 7, 2004 Justice Brister, joined by Chief Justice Jefferson and Justice O’Neill, dissenting.

For the first time in more than a century, this Court says the government need not return illegal fees it has demanded — because all who paid them were volunteers. In modern times we have always held otherwise, requiring public agencies to reimburse taxes and fees they demanded but had no right to collect.

As the technology fees at issue in this litigation were proper, I join the Court's opinion and judgment to that extent. But as the remaining fees were not, I respectfully dissent. The Texas Education Code authorizes colleges to charge a student-services fee for nonacademic activities such as intramural athletics, lecture series, student publications, and student government.

Tex. Educ. Code § 54.503. But the fee cannot be imposed, nor increased more than 10 percent, without approval by the student body or student government. Id. § 54.503(f). The fee increase here was approved at only one of the District's seven campuses; there was no evidence of approval at four others, and a jury found there was no approval at the remaining two.

This was no oversight — the District knew about the statute, tried to get approval, failed, imposed it anyway, and now (the Court holds) may keep the proceeds. The class here represents almost a quarter-of-a-million students. There was no evidence in the summary judgment record about their particular circumstances, and no reason to assume all were the same.

On this record, it is impossible to say as a matter of law that no student should get a refund (as the Court does), or that every student should (as the trial court did). The Court rejects all refunds based on voluntary payment, an equitable defense arising from the rule that "equity will not aid a volunteer." Neither the rule nor the defense is intended to penalize the public-spirited; it is only those who volunteer to suffer injury that equity refuses to reward.

It is only against such volunteers that government entities have successfully invoked the voluntary-payment defense. In both Corsicana Cotton Mills v. Sheppard, 71 S.W.2d 247, 248 (Tex. 1934) and Houston v. Feizer, 13 S.W. 266, 268 (Tex. 1890), the taxpayers simply volunteered to pay fees they mistakenly thought they owed, without any assessment or demand from the government.

But as the Court describes in sufficient detail, we have repeatedly rejected any voluntary-payment defense when taxpayers were not volunteers. When a government demands a tax or fee, and could unilaterally assess penalties for noncompliance, those who comply cannot be called volunteers.

For them, we have routinely required reimbursement of illegal taxes or fees when a government unit could: • cancel their right to do business, see, e.g., Crow v. City of Corpus Christi, 209 S.W.2d 922, 924-25 (Tex. 1948) (finding fee payment involuntary as city ordinance allowed cancellation of taxi company's franchise); Metro. Life Ins. Co. of N.Y. v. Mann, 168 S.W.2d 212, 215 (Tex.

1943) (finding tax payment involuntary as statute allowed cancellation of authority to do business); Union Cent. Life Ins. Co. v. Mann, 158 S.W.2d 477, 479 (Tex. 1941) (same); Nat’l Biscuit Co. v. State, 135 S.W.2d 687, 691 (Tex. 1940) (finding tax payments involuntary as statute provided for automatic forfeiture of right to do business, sue, or defend in Texas); or • assess penalties or interest, see, e.g., Highland Church of Christ v. Powell, 640 S.W.2d 235, 237 (Tex.

1982) (finding property tax payment involuntary as statute provided for penalties and interest); State v. Akin Prods. Co., 286 S.W.2d 110, 111–12 (Tex. 1956) (same); Nat’l Biscuit Co., 135 S.W.2d at 691 (same). We implied duress in all of these cases, treating each payment as involuntary without requiring particularized proof of interference with any individual taxpayer’s free will or judgment.

As governments usually have coercive powers, they cannot generally invoke the voluntary-payment rule, or at least have not in recent centuries. Indeed, our cases in which they have successfully done so not only “extend into the nineteenth century” (as the Court says), but appear to be almost entirely limited to it.

The Court says we have allowed governments to demand and keep illegal fees in modern times, citing four cases. In two (as noted above), there was no demand and the taxpayers were complete volunteers; one other counts only if “modern times” includes the presidency of Chester A. Arthur.

In the last, Edgewood III, we took the unusual step of applying our decision prospectively to avoid “inestimable damage” to the schoolchildren of Texas. See Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist., 826 S.W.2d 489, 520-21 (Tex. 1992).

Accordingly, schools were allowed to keep past taxes because they were legal (unaffected by a prospective ruling), not because they were illegal but voluntarily paid. No one suggests today’s decision meets the standards for prospective application; by suggesting instead that Edgewood III was a case of voluntary payment, the Court makes the same mistake Justices Doggett and Mauzy did back then.

See id., 826 S.W.2d at 538 (Doggett, J., dissenting). There is no more evidence in this record that reimbursing students for these illegal fees would “disrupt government functioning” than there has been in any of our other recent cases involving illegal taxes and fees, including: • an $80 fire-registration fee in Lowenberg v. City of Dallas, 168 S.W.3d 800, 800-01 (Tex.

2005) (reversing dismissal based on limitations, and remanding for further proceedings); • a $10 bail-bond service charge in Lubbock County v. Trammel's Lubbock Bail Bonds, 80 S.W.3d 580, 585-86 (Tex. 2002) (finding fee illegal and remanding for reimbursement); • a $71 filing fee in divorce cases in Essenburg v. Dallas County, 988 S.W.2d 188, 189 (Tex. 1998) (reversing dismissal based on lack of jurisdiction and remanding for further proceedings); • a $31 filing fee in In re Long, 984 S.W.2d 623, 626 (Tex.

1999) (affirming modified contempt order for continued collection of unauthorized fees); and • an $18 bail-bond filing fee in Camacho v. Samaniego, 831 S.W.2d 804, 815 (Tex. 1992) (finding fee illegal and remanding for reimbursement). These recent cases all have one thing in common — there is no mention in any of them of voluntary payment as a defense. That governments have not even raised the voluntary-payment defense in any recent cases shows how far back in time the Court reaches to resurrect the defense today.

While we have never addressed voluntary payment or implied duress in the context of college fees, it is hard to see why students should have less protection from illegal fees than bail bondsmen. The Due Process Clause bars a voluntary-payment defense against reimbursement of an illegal business tax; the same Clause ought to bar the same defense against reimbursement of an illegal student fee.

Here, state law provided that students who failed to pay these fees “may be prohibited from registering for classes” and “may be denied credit for the work done that semester.” Tex. Educ. Code § 54.007(d). As the students faced a choice between paying the illegal fees or losing one or more semesters of higher education, the rules of implied duress ought to apply.

The Court rejects implied duress here because students could have chosen to take fewer hours or enroll elsewhere. But nothing in the record establishes how many students could afford to prolong their higher education or enroll at other colleges, or how many credits or other opportunities they might lose if they did. More important, implied duress has never required business taxpayers to prove they could not pursue other occupations; these students should not have to do so either.

The Court also says that every student could have requested a waiver of the fees. But waivers were available only for “undue financial hardship,” and were capped at 10 percent of the student body. See Tex. Educ. Code § 54.503(e).

As a matter of law, at least 90 percent of the students could not have obtained a waiver. Further, equity would never demand that taxpayers file a request for exemption from an illegal fee, as “equity follows the law.” See Upson v. Fitzgerald, 103 S.W.2d 147, 150 (Tex. 1937).

Although equity should bar summary judgment for the District, it should also bar summary judgment in favor of the class. See BMG Direct Mktg. v. Peake, ___ S.W.3d ___, ___ (noting that voluntary payment and restitution are both equitable claims). Equity would hardly allow students to enjoy direct benefits from these fees, and then get their fees back too. See Feizer, 13 S.W. at 268 (holding voluntary-payment rule barred recovery by butcher who had passed on illegal license fee to his customers); cf. Akin Prods., 286 S.W.2d at 112 (requiring reimbursement as any benefits taxpayers received from illegal fee were indirect).

In Lubbock County v. Trammel's Lubbock Bail Bonds, we held a $10 bail-bond fee was illegal except to the extent it paid for copies and print-outs the refund claimants actually received. 80

S.W.3d at 583. By comparison, in State v. Akin Products Co., we ordered a full refund when a citrus tax was used to benefit the industry generally rather than the claimant specifically.

286 S.W.2d at 112. Applying those same standards here, students who enjoyed expanded recreational or cultural offerings would not be barred from a refund by receiving such indirect benefits, but those who obtained free textbooks or other direct grants would not be entitled to a refund of what they have, in effect, already received.

The summary judgment record here does not address which students enjoyed such direct benefits. The class representatives claimed not to know which services they used, but almost all of them were involved in student governments that had access to these fees.

We should remand and require the class to show they do not already hold these fees in their own hands. See Truly v. Austin, 744 S.W.2d 934, 938 (Tex. 1988) ("[A] party seeking an equitable remedy must do equity and come to court with clean hands.").

The Texas rule is not, and never has been, that any payment once made cannot be recovered. See Miga v. Jensen, 96 S.W.3d 207, 211 (Tex. 2002). When the District invoiced students for the increased student-services fee, those who dutifully paid were not volunteers.

As the Court concludes otherwise, to that extent I respectfully dissent. ________________________________ Scott Brister Justice OPINION DELIVERED: December 2, 2005