SUPREME COURT OF RHODE ISLAND

Verizon New England Inc. v. Neena S. Savage, in her capacity as Tax Administrator for the State of Rhode Island

Supreme Court No. 2020-40-M.P. (A.A. 18-187) · No. Supreme Court No. 2020-40-M.P. (A.A. 18-187) · Decided February 9, 2022

SUMMARY

The Rhode Island Supreme Court reviewed the denial of motions by Pawtucket and Cranston to intervene in Verizon New England's administrative appeal concerning tangible personal property tax assessments. The Court held that the municipalities' interests were adequately represented by Providence, which had been permitted to intervene, and affirmed the District Court's order denying intervention. The opinion also discusses the standards for intervention as of right and the administration of any potential tax refund or credit.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Associate Justice Maureen McKenna Goldberg; Chief Justice Suttell; Justice Goldberg; Justice Robinson; Justice Lynch Prata; Justice Long
JURISDICTION	Rhode Island
DECIDED	February 9, 2022
DOCKET	Supreme Court No. 2020-40-M.P. (A.A. 18-187)
DISPOSITION	affirmed
PROCEDURAL POSTURE	The City of Pawtucket and the City of Cranston petitioned for a writ of certiorari seeking review of the Sixth Division District Court's denial of their motions to intervene as of right in Verizon's administrative appeal challenging the State Tax Administrator's tangible personal property tax assessment.
STANDARD OF REVIEW	On certiorari, the Supreme Court examines the record for legal error and for legally competent evidence supporting the lower court's findings. Findings are not disturbed unless the trial justice misconceived or overlooked material evidence or was clearly wrong. A decision on a motion to intervene is reviewed for abuse of discretion, with reversal only if the trial justice failed to apply Rule 24(a)(2) standards or committed clear error.

PRECEDENTIAL VALUE	Published Rhode Island Supreme Court opinion; precedential status is identified as published in the supplied metadata.
PARTIES	City of Pawtucket, City of Cranston v. Verizon New England Inc., Neena S. Savage, in her capacity as Tax Administrator for the State of Rhode Island

TOPICS

intervention · property tax · writ of certiorari · appellate procedure · administrative law

PRACTICE AREAS

taxation · civil procedure · administrative law · municipal law · appellate procedure

QUESTIONS PRESENTED

1. Whether Pawtucket and Cranston satisfied the requirements for intervention as of right under Rule 24(a)(2) of the District Court Civil Rules.
2. Whether the cities overcame the presumption that Providence adequately represented their interests when their litigation goals were aligned and their asserted fiscal and budgetary concerns were indirect and contingent.
3. Whether the District Court abused its discretion or committed clear error by denying the cities' motions to intervene.

HOLDINGS

1. Applicants whose litigation goals are aligned with an existing intervenor and whose interests are presumed to be adequately represented must provide a tangible basis for intervention and an adequate explanation why the existing party's representation is inadequate. Pawtucket and Cranston failed to meet that burden.
2. The possibility that a future refund or settlement might affect the cities' budgets does not constitute a tangible basis for intervention or establish inadequate representation.

KEY QUOTATIONS

> *"Typically, the proponent of intervention need only establish "'some tangible basis to support a claim of purported inadequacy' of representation by the current [parties,]""* (at 12)

> *"The proper standard lies in the middle."* (at 13)

> *"The proffer of a generalized grievance—common to all municipalities—that movants' fiscal and budgetary concerns are uniquely different from those of Providence, without an adequate explanation as to how those concerns are different in kind or adverse to Providence, is conclusory and insufficient to overcome the underlying presumption."* (at 18)

> *“Because Pawtucket and Cranston failed to overcome the presumption of adequate representation, we are of the opinion that the trial judge did not err or abuse his discretion in concluding that the movants failed to demonstrate that their interests were not adequately represented by Providence.”* (at 20)

FACTUAL BACKGROUND

Verizon challenged a 2018 final decision of the Rhode Island Tax Administrator upholding an assessment of Verizon's tangible personal property tax and denying a request for a lower assessment and partial refund for taxes paid from 2010 through 2014. Verizon alleged that the Tax Administrator used an improper depreciation approach, resulting in excessive assessments and overpayments of approximately $21,358,152. Providence was permitted to intervene, while Pawtucket and Cranston sought intervention based on their municipal interests in distributions of tangible personal property tax revenue.

PROCEDURAL HISTORY

Verizon appealed the Tax Administrator's 2018 final decision to the District Court under G.L. 1956 § 8-8-24. The District Court denied the Tax Administrator's motions concerning joinder, granted Providence's motion to intervene as of right, and denied Pawtucket's and Cranston's motions because Providence adequately represented their interests. The Supreme Court initially granted certiorari and remanded for the cities to identify their individual interests and explain why Providence could not adequately represent them. On remand, the District Court again denied intervention, and the Supreme Court affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The record may be remanded to the District Court with the Supreme Court's decision endorsed thereon.

CASES CITED

- State v. Poulin, 66 A.3d 419, 423 (R.I. 2013)
- State v. Greenberg, 951 A.2d 481, 489 (R.I. 2008)
- Brown v. State, 841 A.2d 1116, 1121 (R.I. 2004)
- WMS Gaming, Inc. v. Sullivan, 6 A.3d 1104, 1111 (R.I. 2010)
- New England Telephone and Telegraph Co. v. Clark, 624 A.2d 298, 300 (R.I. 1993)
- Town of Coventry v. Baird Properties, LLC, 13 A.3d 614, 619-20 (R.I. 2011)
- Marteg Corporation v. Zoning Board of Review of City of Warwick, 425 A.2d 1240, 1242 (R.I. 1981)
- Tonetti Enterprises, LLC v. Mendon Road Leasing Corp., 943 A.2d 1063, 1071-73 (R.I. 2008)
- Retirement Board of Employees’ Retirement System of City of Providence v. Corrente, 174 A.3d 1221, 1229-30 (R.I. 2017)
- Trbovich v. United Mine Workers of America, 404 U.S. 528, 538 n.10 (1972)
- United Nuclear Corporation v. Cannon, 696 F.2d 141, 144 (1st Cir. 1982)

- Moosehead Sanitary District v. S.G. Phillips Corporation, 610 F.2d 49, 54 (1st Cir. 1979)
- Daggett v. Commission on Governmental Ethics and Election Practices, 172 F.3d 104, 111-12 (1st Cir. 1999)
- B. Fernández & Hnos., Inc. v. Kellogg USA, Inc., 440 F.3d 541, 546 (1st Cir. 2006)
- Maine v. Director, United States Fish and Wildlife Service, 262 F.3d 13, 19-20 (1st Cir. 2001)
- Town of Coventry v. Hickory Ridge Campground, Inc., 111 R.I. 716, 722-24, 306 A.2d 824, 828 (1973)
- City of Pawtucket v. Sundlun, 662 A.2d 40, 58 (R.I. 1995)
- Conley v. Crown Realty, LLC, 223 A.3d 768, 772 (R.I. 2020)
- Hines Road, LLC v. Hall, 113 A.3d 924, 930 (R.I. 2015)
- Conservation Law Foundation of New England, Inc. v. Mosbacher, 966 F.2d 39, 42 (1st Cir. 1992)
- Credit Union Central Falls v. Groff, 871 A.2d 364, 368 (R.I. 2005)
- West Warwick School Committee v. Souliere, 626 A.2d 1280, 1284 (R.I. 1993)
- T-Mobile Northeast LLC v. Town of Barnstable, 969 F.3d 33, 40 (1st Cir. 2020)