

SUPREME COURT OF MICHIGAN

Duverney v. Big Creek-Mentor Utility Authority

677 N.W.2d 836 (Mich. 2004) · No. 123163 · Decided April 15, 2004

SUMMARY

The Michigan Supreme Court vacated the Court of Appeals' order and remanded the case for further proceedings, allowing the plaintiffs 28 days to amend their complaint to more specifically allege a violation of the Headlee Amendment. The concurrence discussed the requirements for pleading a Headlee Amendment violation involving mandatory sewer connection charges and concluded that the amendment would likely be futile under existing precedent.

CASE DETAILS

COURT	Supreme Court of Michigan
JURISDICTION	Michigan
DECIDED	April 15, 2004
DOCKET	123163
DISPOSITION	vacated
PROCEDURAL POSTURE	The Michigan Supreme Court heard oral argument on plaintiffs' application for leave to appeal from a Court of Appeals order and, in lieu of granting leave, vacated that order and remanded for further proceedings.
STANDARD OF REVIEW	The opinion states that a plaintiff alleging a Headlee Amendment violation must plead sufficient facts to survive a motion for summary disposition; the Supreme Court did not expressly identify a separate standard of appellate review.
PRECEDENTIAL VALUE	Published Michigan Supreme Court opinion
PARTIES	Dale L. Duverney, Mary J. Duverney, Linda Marie Smith, Cammie Pennington, Charlotte F. Avery, Lyle Richard Ellis, Dorothy E. Owen, Dale E. Neff, Toni Owen Anderson, Elmer M. Shepard, Craig Robin Crandell, Karen Sue Smith, Elizabeth Jean Seaton, Sharon Barnett, Jay P. Barnett, Cletis J. Bishop, Walter H. Brusch, Jr., Gene Raymond Hoy, Jody Manuel Shepard, Sarah Y. Watson, Edwin A. Brown, Jill Ann Laney, Glenn McDaniel, Roger Allan Ott II, Etta Nash, Harold Sprowl, Cora Gordan, Township of Mentor, Michigan, Township of

Big Creek, Michigan v. Big Creek-Mentor Utility Authority, Township of Mentor, Michigan, Township of Big Creek, Michigan

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QUESTIONS PRESENTED

1. Whether the Court of Appeals order dismissing plaintiffs' complaint should be vacated and the case remanded to permit amendment alleging a Headlee Amendment violation.
2. What facts a plaintiff must plead to survive summary disposition on a claim that a municipal charge is an unconstitutional tax under the Headlee Amendment.

HOLDINGS

1. The Court of Appeals order was vacated, and the case was remanded for further proceedings with plaintiffs granted 28 days to amend their complaint to more specifically allege a violation of Michigan Constitution article 9, section 31.
2. According to the concurrence's statement of the governing rule, a plaintiff challenging a fee as a Headlee Amendment violation must plead facts supporting all three Bolt elements: the charge serves a revenue-raising purpose, bears no reasonable relationship to the benefit conferred, and is involuntary.

KEY QUOTATIONS

"we VACATE the January 10, 2003 Court of Appeals order and we REMAND this case to the Court of Appeals for further proceedings." (836-837)

"To survive a motion for summary disposition, a plaintiff who alleges a Headlee Amendment violation must plead sufficient facts to support a conclusion that the disputed fee meets every prong of the test announced in Bolt v. City of Lansing, 459 Mich. 152, 587 N.W.2d 264 (1998)" (837)

FACTUAL BACKGROUND

A municipal defendant constructed a sewer system and required plaintiffs to connect to it. Plaintiffs claimed that the resulting connection charges were taxes that had not been submitted to a public vote, allegedly violating Michigan's Headlee Amendment. The record, as described in the concurrence, reflected that the statutory procedures for requiring mandatory sanitary sewer hookups had been followed.

PROCEDURAL HISTORY

Plaintiffs alleged that mandatory sewer connection charges constituted an unvoted tax violating the Headlee Amendment. The Court of Appeals dismissed the complaint after reviewing defendants' answer because the

complaint did not plead facts addressing the first two elements of the Bolt test. The Michigan Supreme Court vacated the Court of Appeals order and remanded, allowing plaintiffs 28 days to amend their complaint to more specifically allege a constitutional violation.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The case was remanded to the Michigan Court of Appeals for further proceedings. Plaintiffs were given 28 days from April 15, 2004, to amend their complaint to more specifically allege a violation of Michigan Constitution article 9, section 31. The Supreme Court did not retain jurisdiction.

CASES CITED

- Bolt v. City of Lansing, 459 Mich. 152, 587 N.W.2d 264 (1998)
- American Axle & Mfg., Inc. v. Hamtramck, 461 Mich. 352, 604 N.W.2d 330 (2000)