SUPREME COURT OF OKLAHOMA

State ex rel. Henricksen v. State ex rel. Corporation Commission

37 P.3d 835 (Okla. 2001) · Decided October 16, 2001

SUMMARY

The Oklahoma Supreme Court affirmed dismissal of a taxpayer qui tam action challenging a settlement involving Southwestern Bell Telephone Company and the Oklahoma Corporation Commission. The court held that the qui tam statutes did not apply because no state money or property had been transferred, and that the action was also barred by the applicable two-year limitations period. The court further held that alleged fraudulent concealment concerning the settlement was intrinsic fraud within the exclusive jurisdiction of the Corporation Commission.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Watt, Vice Chief Justice; Hargrave, C.J.; Lavender, J.; Opala, J.; Kauger, J.; Summers, J.; Boudreau, J.; Winchester, J.
JURISDICTION	Oklahoma
DECIDED	October 16, 2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ten Oklahoma taxpayers brought a qui tam action challenging a settlement involving Southwestern Bell and the Oklahoma Corporation Commission. The trial court dismissed the amended petition, denied reconsideration, and the plaintiffs appealed.
STANDARD OF REVIEW	De novo review of the dismissal of the petition and interpretation of the qui tam statutes.
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion; precedential
PARTIES	State ex rel. Henricksen, Ten Oklahoma taxpayers v. State ex rel. Corporation Commission, Southwestern Bell Telephone Company

TOPICS

administrative law · judicial review of agency action · statutory interpretation · statute of limitations · remedies

PRACTICE AREAS

administrative law | statutory interpretation | civil procedure | remedies

QUESTIONS PRESENTED

1. Whether the settlement involved a transfer of state money or property sufficient to invoke Oklahoma's qui tam statutes.
2. Whether the taxpayers' qui tam action was barred by the two-year limitations period in 62 O.S. Supp. 1994 § 374.
3. Whether the alleged fraudulent concealment had to be raised before the Oklahoma Corporation Commission rather than in a qui tam action.
4. Whether treble damages could be pursued when recovery of actual damages was unavailable.

HOLDINGS

1. The qui tam statutes did not apply because the settlement did not involve a transfer of state money or property.
2. The action was barred because the plaintiffs failed to make the required written demand within two years of the transfer of the property.
3. Treble damages could not be recovered independently because recovery of actual damages is a prerequisite to recovery of the statutory penalty.
4. The alleged fraud had to be raised before the Oklahoma Corporation Commission because it concerned representations made in proceedings within the Commission's exclusive jurisdiction.

KEY QUOTATIONS

> *“In order for a qui tam action to lie, there must have been a transfer of money or property that "involves a change of ownership and possession."”* (37 P.3d at 838)

> *“We hold, however, that Schones is no longer good law.”* (37 P.3d at 839)

> *“We hold, therefore, that without the recovery of state property there can be no penalty.”* (37 P.3d at 840)

> *“Relief from intrinsic fraud must be made by direct attack in the same case in which the fraud was committed.”* (37 P.3d at 840)

FACTUAL BACKGROUND

In 1995, Southwestern Bell, the Oklahoma Attorney General, and the Oklahoma Corporation Commission entered into a settlement resolving appeals from rate cases. Southwestern Bell agreed to provide cash rebates and free or discounted services to qualifying customers and ex-customers, while the State released $500,000 held in escrow and exonerated Southwestern Bell's pledge of corporate assets. Ten Oklahoma taxpayers alleged that Southwestern Bell failed to provide all promised benefits and fraudulently concealed the breach.

PROCEDURAL HISTORY

The Corporation Commission approved the settlement agreement in 1995 and later entered a supplemental order. Plaintiffs filed a qui tam action in Oklahoma County in 1999, alleging that Southwestern Bell failed to provide required rebates and services and fraudulently concealed the alleged breach. After dismissing the original petition with leave to amend, the trial court dismissed the amended petition on three grounds: no transfer of state property or public money, expiration of the qui tam limitations period, and exclusive Corporation Commission jurisdiction over the alleged fraud. The Oklahoma Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Twist v. Bailey, 1956 OK 108, 295 P.2d 763
- State ex rel. Hettel v. Security National Bank & Trust Co. in Duncan, 1996 OK 53, 922 P.2d 600
- State ex rel. Higgs v. Muskogee Iron Works, 1940 OK 264, 103 P.2d 101
- State ex rel. Schones v. Town of Canute, 1993 OK 90, 858 P.2d 486
- City of Oklahoma City v. HTB, Inc., 1988 OK 149, 769 P.2d 181, 184
- Flowers v. Stamley, 1957 OK 287, 316 P.2d 840
- Leck v. Continental Oil Co., 1989 OK 178, 800 P.2d 224, 230
- State ex rel. Sweeney v. Oklahoma Natural Gas Corp., 1936 OK 357, 57 P.2d 626
- State ex rel. Sweeney v. Public Service Co., 1937 OK 98, 66 P.2d 926
- State ex rel. Trimble v. City of Moore, 1991 OK 97, 818 P.2d 889
- State ex rel. Burk v. Oklahoma City, 1973 OK 134, 522 P.2d 612