

SUPREME COURT OF SOUTH DAKOTA

Duerre v. Hepler

2017 S.D. 8 · No. #27885 · Decided March 15, 2017

SUMMARY

The South Dakota Supreme Court reviewed a defendant-class action concerning the public's recreational use of non-meandered waters overlying privately owned land in Day County. The Court affirmed the certification of the defendant class and held that, under *Parks v. Cooper* and absent legislative authorization, the public could not use the waters or ice for recreational purposes without the landowners' permission. The decision affirmed in part, reversed in part, and remanded the circuit court's judgment.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Wilbur, Justice; Gilbertson, Chief Justice; Zinter, Justice; Severson, Justice; Kern, Justice
JURISDICTION	South Dakota
DECIDED	March 15, 2017
DOCKET	#27885
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Landowners sought declaratory and injunctive relief concerning public recreational use of non-meandered waters overlying their private property. The circuit court certified a defendant class, granted partial declaratory and permanent injunctive relief, and denied the State's cross-motion for summary judgment. The State appealed.
STANDARD OF REVIEW	Class certification and declaratory judgments were reviewed de novo. Whether an injunction was statutorily authorized was reviewed de novo; the subsequent decision to grant or deny an injunction was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Kelly R. Hepler, in his official capacity as Secretary of the South Dakota Game, Fish and Parks Department, South Dakota Department of Game, Fish and Parks, State of South Dakota, A class of individuals similarly situated who have used or intend to use the bodies of water

described in the complaint without the permission of the property owners v. Thad Duerre, Clint Duerre, Robert Duerre, Laron Herr

TOPICS

class actions injunctions declaratory judgment civil procedure statutory interpretation

PRACTICE AREAS

civil procedure class actions water rights public trust doctrine injunctive and declaratory relief
statutory interpretation

QUESTIONS PRESENTED

1. Whether the circuit court properly certified a defendant class that included possible nonresident defendants.
2. Whether the landowners satisfied the requirements for defendant-class certification under SDCL 15-6-23(a) and (b)(1).
3. Whether, absent legislative authorization, the public may use non-meandered waters overlying private property for recreational purposes under the public-trust doctrine and existing South Dakota law.
4. Whether the circuit court properly issued an injunction restricting recreational access to the waters and ice overlying the landowners' property.

HOLDINGS

1. A defendant class may include possible nonresident members even when the circuit court may not have personal jurisdiction over every unnamed class member, provided the court has jurisdiction over the named defendants and class representative and the due-process interests of absent members are adequately protected. The landowners also satisfied the applicable class-certification requirements.
2. Under *Parks v. Cooper* and SDCL 46-1-2, the Legislature must determine whether the public may enter or use non-meandered waters or ice overlying the landowners' private property for recreational purposes. At the time of the decision, no legislative authorization existed.
3. The circuit court had authority under SDCL 21-8-14 to enjoin the Department of Game, Fish and Parks and other defendants from facilitating public recreational access to the waters or ice overlying the landowners' property in the absence of legislative authorization. However, the court could not enjoin the public or class defendants from using those waters without landowner permission because neither the landowners nor the public had a superior enforceable right to recreational use before legislative action.

KEY QUOTATIONS

“To conclude otherwise and require “personal jurisdiction over all of the class members would in effect destroy the class action concept[.]”” (¶ 14)

“It is ultimately up to the Legislature to decide how these waters are to be beneficially used in the public interest.” (¶ 33)

“Ultimately, until the Legislature acts, neither the Landowners nor the general public have an “obligation [i.e. a right] existing in [their] favor” that is superior and enforceable by injunction under SDCL 21-8-14.” (¶ 42)

FACTUAL BACKGROUND

The landowners owned land in Day County that had been submerged by excessive rainfall in 1993, forming Jesse Slough and Duerre Slough. The sloughs were non-meandered when originally surveyed, so the landowners owned the lakebeds, although South Dakota law treated all waters as public property held in trust. Beginning in approximately 2001, members of the public used the waters and ice for boating, fishing, hunting, ice fishing, camping, and related recreational activities, and the landowners alleged substantial activity and disturbance. The Department of Game, Fish and Parks informed the landowners that the public could use the waters if it accessed them legally.

PROCEDURAL HISTORY

The landowners filed suit in the Fifth Judicial Circuit Court of Day County against state defendants and a proposed class of persons who had used or intended to use the waters overlying the landowners' property. The circuit court certified the defendant class, designated Secretary Hepler as class representative, and entered declaratory and injunctive relief after considering cross-motions for summary judgment. The South Dakota Supreme Court affirmed class certification and the declaratory ruling in part, reversed the injunction in part, and remanded for modification of the relief.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court must modify the declaratory relief to state that, pursuant to Parks v. Cooper and SDCL 46-1-2, the Legislature must determine whether the public may use the waters or ice overlying the landowners' property for recreational purposes and that no such legislative authorization currently exists. The court must strike the injunction's subsection prohibiting the public and class defendants from using the waters without landowner permission and modify the remaining injunction to prohibit the Department of Game, Fish and Parks and other defendants from facilitating public recreational access absent legislative authorization.

CASES CITED

- Parks v. Cooper, 2004 S.D. 27, 676 N.W.2d 823
- Trapp v. Madera Pacific, Inc., 390 N.W.2d 558 (S.D. 1986)
- Thurman v. CUNA Mutual Insurance Society, 2013 S.D. 63, 836 N.W.2d 611
- McNeil v. Superior Siding, Inc., 2009 S.D. 68, 771 N.W.2d 345

- In re Integra Realty Resources, Inc., 354 F.3d 1246 (10th Cir. 2004)
- In re Integra Realty Resources, Inc., 262 F.3d 1089 (10th Cir. 2001)
- Bakalar v. Vavra, 237 F.R.D. 59 (S.D.N.Y. 2006)
- Marchwinski v. Oliver Tyrone Corp., 81 F.R.D. 487 (W.D. Pa. 1979)
- United States v. Trucking Employers, Inc., 72 F.R.D. 101 (D.C. Cir. 1976)
- Major League Baseball Properties, Inc. v. Price, 105 F. Supp. 2d 46 (E.D.N.Y. 2000)
- Calagaz v. Calhoon, 309 F.2d 248 (5th Cir. 1962)
- National Fair Housing Alliance v. A.G. Spanos Construction, Inc., 542 F. Supp. 2d 1054 (N.D. Cal. 2008)
- Sherman v. Township High School District 214, 540 F. Supp. 2d 985 (N.D. Ill. 2008)
- Funliner of Alabama, L.L.C. v. Pickard, 873 So. 2d 198 (Ala. 2003)
- Shangreaux v. Westby, 281 N.W.2d 590 (S.D. 1979)
- Robidoux v. Celani, 987 F.2d 931 (2d Cir. 1993)
- Rice v. Philadelphia, 66 F.R.D. 17 (E.D. Pa. 1974)
- Parsons v. Ryan, 754 F.3d 657 (9th Cir. 2014)
- Savino v. Computer Credit, Inc., 173 F.R.D. 346 (E.D.N.Y. 1997)
- Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011)
- General Telephone Co. v. Falcon, 457 U.S. 147 (1982)
- In re Pooled Advocate Trust, 2012 S.D. 24, 813 N.W.2d 130
- Fraternal Order Eagles No. 2421 v. Hasse, 2000 S.D. 139, 618 N.W.2d 735
- St. Germain Irrigating Co. v. Hawthorn Ditch Co., 32 S.D. 260, 143 N.W. 124 (1913)
- Belle Fourche Irrigation District v. Smiley, 84 S.D. 701, 176 N.W.2d 239 (1970)
- Knight v. Grimes, 80 S.D. 517, 127 N.W.2d 708 (1964)
- Magner v. Brinkman, 2016 S.D. 50, 883 N.W.2d 74
- Strong v. Atlas Hydraulics, Inc., 2014 S.D. 69, 855 N.W.2d 133
- New Leaf, LLC v. FD Development of Black Hawk, LLC, 2010 S.D. 100, 793 N.W.2d 32
- Daily v. City of Sioux Falls, 2011 S.D. 48, 802 N.W.2d 905
- Centrol, Inc. v. Morrow, 489 N.W.2d 890 (S.D. 1992)