

SUPREME COURT OF SOUTH CAROLINA

Home Builders Ass'n v. School District No. 2

405 S.C. 458 (2013) · Decided September 11, 2013

OPINION

PLEICONES, J.

Justice PLEICONES. This is an appeal from an order granting respondents' motion for a judgment on the pleadings under Rule 12(c), SCRCP, and dismissing appellants' complaint. Because we find issues of fact raised by the complaint that must be resolved before the constitutionality of 2009 Act No. 99(Act) can be determined, we reverse and remand for further proceedings.

The Act permits respondent School District to impose an impact fee to be paid by developers on "new residential dwelling units constructed within the school district." Respondent Trustees adopted the impact fee by resolution effective June 23, 2009. Appellants, each an organization of home builders, brought this declaratory judgment suit seeking injunctive relief against respondents challenging the constitutionality of the Act under provisions of the state constitution *460requiring statewide uniformity (S.C.

Const, art. VIII, § 14(6))¹ and limiting special legislation (S.C. Const, art. III, § 34). Respondents moved for a judgment on the pleadings under Rule 12(c). A judgment on the pleadings shall be granted "where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiffs favor." *Sapp v. Ford Motor Co.*, 386 S.C.

143, 687 S.E.2d 47 (2009) citing *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991). A judgment on the pleadings is "a drastic procedure." *Russell*, supra, cited in *Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350 (Ct.App.2000).

The circuit judge granted the motion.² South Carolina Const, art. III, § 34(IX), provides that "where a general law can be made applicable, no special law shall be enacted." Legislation regarding education is not exempt from this requirement even though art. XI, § 3, gives the General Assembly more discretion with respect to legislation impacting a school district than it has in other areas.

Charleston County School Dist. v. Harrell, 393 S.C. 552, 558, 713 S.E.2d 604, 607-608 (2011) (internal citation omitted). Charleston County holds that a constitutional challenge predicated on a special legislation claim is analogous to one based upon equal protection. Special legislation is not unconstitutional if there is "a substantial distinction having reference to *461the subject matter of the proposed legislation, between the objects or places embraced in such legislation and the objects and places excluded....

In other words, the General Assembly must have a logical basis and a sound reason for resorting to special legislation.” *Horry County v. Horry County Higher Educ. Comm’n*, 306 S.C. 416, 419, 412 S.E.2d 421, 423 (1991) (citations omitted) cited with approval in *Charleston County*, 393 S.C. at 558-559, 713 S.E.2d at 608.

The Act itself is silent on any unique or special funding needs of respondent School District.³ Further, the complaint alleges the Act applies only to respondent School District, and that the district’s funding needs are no different from many other districts in the state, that it does not have unique funding requirements, and that other similarly situated school districts are faced with the same issues.

It specifically alleges: The Act’s application to a single school district without any peculiar or unique conditions, resulting in special treatment, violates the provisions of the South Carolina Constitution, in particular art. III, § 34 (limiting “special legislation”) and art. VIII, § 14(6) (requiring statewide uniformity).

The complaint thus alleges facts which, if proven, would render the Act unconstitutional special legislation. The circuit court and respondents rely on a single sentence found in *Bradley v. Cherokee School Disk No. One*, 322 S.C. 181, 470 S.E.2d 570 (1996): “A law that is special only in the sense that it imposes a lawful tax limited in application and incidence to persons or property within a certain school district does not contravene the provisions of Article III, § 34(IX).” Here, we are concerned with an impact fee, not a tax, and one that is placed on only some persons and not others.⁴ Moreover, since *Bradley* was decided, we have clarified⁴⁶² that all challenges to education-related special legislation are subject to the test set forth in *Kizer v. Clark*, 360 S.C.

86, 600 S.E.2d 529 (2004). *Charleston County*, supra. We find the complaint alleges facts which, if resolved in appellants’ favor, would result in a declaration that the Act is unconstitutional. The order granting respondents’ Rule 12(c) motion is therefore REVERSED. BEATTY and HEARN, JJ., concur. KITTREDGE, J., concurring in result only. TOAL, C.J., dissenting in a separate opinion..

Appellants do not rely on this ground on appeal.. In fact, the court went further and actually declared the Act constitutional. The dissent falls prey to this same error, and in so doing far exceeds the scope of the matter before us. Among other things, the dissent recaps two publications primarily authored by Professor Ulbrich, cites other school district legislation, and improperly cites to York County ordinances.

See *Harkins v. Greenville County*, 340 S.C. 606, 533 S.E.2d 886 (2000) (reiterating well-settled rule that appellate court cannot take judicial notice of local ordinance). In its zeal to reach the merits of the Act, the dissent writes extensively on matters which are not in dispute, including the

General Assembly's authority and responsibility to enact special legislation to benefit public education.

In so doing, the dissent loses sight of the sole issue before the Court in this appeal: does the complaint raise any issue of fact which, if resolved in appellants' favor, would entitle them to a judgment. Neither the wisdom nor the constitutionality of the 2009 Act is at issue at this juncture..

The order finds the impact fee warranted by "The public education improvements necessitated by rapid population growth...." This finding is taken from the resolution, however, not the Act, and thus does not represent a basis or reason for the legislature to have resorted to the Act. Charleston County, *supra*..

We now overrule Bradley to the extent it relies upon Hay v. Leonard, 212 S.C. 81, 46 S.E.2d 653 (1948). Hay, like McElveen v. Stokes, 240 S.C. 1, 124 S.E.2d 592 (1962) and the other pre-1973 cases relied upon *462by the dissent, were decided under the pre-Home Rule state constitution. Prior to 1973, article XI of the constitution contained the education-related provisions.

Article XI, § 6 provided in its last sentence "Any school district may by the authority of the General Assembly levy an additional tax for the support of schools." In other words, at the time Hay was decided, it was impossible for a school district tax act to constitute an unlawful special law under art. III, § 34(IX) in light of the specific authorization of art. XI, § 6.

This article was repealed by 1973 Act No. 42, and § 6 was not reenacted elsewhere in the post-Home Rule constitution. Bradley erred in relying on Hay, decided under the pre-1973 version of S.C. Const, art. XI, § 6, and the dissent would perpetuate this error.