

MICHIGAN SUPREME COURT

Beatrice Boler v. Governor

924 N.W.2d 250 (Mich. 2019) · No. SC: 158147; COA: 337383; Court of Claims: 16-000126-MK · Decided
March 29, 2019

SUMMARY

The Michigan Supreme Court denied leave to appeal from the Michigan Court of Appeals' decision concerning whether a municipality operating a waterworks plant and operating under emergency management qualifies as an arm of the state for Court of Claims jurisdiction. The order also addressed amici curiae's concerns regarding statements about whether municipal waterworks operations constitute governmental or proprietary functions under Michigan's governmental tort liability act.

CASE DETAILS

COURT	Michigan Supreme Court
WRITING FOR THE COURT	Per curiam; Bridget M. McCormack; David F. Viviano; Stephen J. Markman; Brian K. Zahra; Richard H. Bernstein; Megan K. Cavanagh; Elizabeth T. Clement
JURISDICTION	Michigan
DECIDED	March 29, 2019
DOCKET	SC: 158147; COA: 337383; Court of Claims: 16-000126-MK
DISPOSITION	writ_denied
PROCEDURAL POSTURE	The Michigan Supreme Court considered an application for leave to appeal the Michigan Court of Appeals' June 14, 2018 judgment and denied review.
STANDARD OF REVIEW	Leave to appeal was denied because the Court was not persuaded that the questions presented should be reviewed.
PRECEDENTIAL VALUE	Published order denying leave to appeal; the order and concurrence provide limited substantive precedent because the Court did not grant merits review.
PARTIES	Dayne Walling, Howard Croft, Michael Glasgow, Daugherty Johnson III, City of Flint v. Beatrice Boler, Edwin Anderson, Alline Anderson, EPCO Sales, LLC, Governor, State of Michigan, Michigan Department of Environmental Quality, Michigan Department of Health and Human Services

TOPICS

appellate procedure

appellate jurisdiction

municipal law

administrative law

civil procedure

PRACTICE AREAS

appellate procedure

civil procedure

municipal law

administrative law

QUESTIONS PRESENTED

1. Whether the Michigan Supreme Court should grant leave to appeal the Court of Appeals' determination that a municipality operating a waterworks plant, and a municipality and its employees operating under emergency management, are not arms of the state for purposes of Court of Claims jurisdiction.
2. Whether the Court of Appeals' statements regarding the governmental or proprietary character of municipal waterworks operations warranted vacatur or rejection.

HOLDINGS

1. The Michigan Supreme Court denied the application for leave to appeal because it was not persuaded that the questions presented should be reviewed.
2. The Court declined to vacate any portion of the Court of Appeals' decision because that decision did not directly affect whether operation and maintenance of a municipal waterworks constitutes an exercise or discharge of a governmental function under the governmental tort liability act.

KEY QUOTATIONS

“the application for leave to appeal the June 14, 2018 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.”

“there is no basis for this Court to vacate any portion of the Court of Appeals decision suggesting otherwise.”

FACTUAL BACKGROUND

The litigation concerned whether a municipality operating a waterworks plant and a municipality and its employees operating under emergency management were arms of the state for purposes of Court of Claims jurisdiction. Amici representing major water-treatment and water-service entities argued that language in the Court of Appeals' opinion could characterize municipal waterworks operations as proprietary rather than governmental functions, potentially affecting governmental immunity under Michigan's governmental tort liability act. The Court of Appeals had not directly decided whether operating and maintaining a municipal waterworks is a governmental or proprietary function under the governmental tort liability act.

PROCEDURAL HISTORY

The Court of Claims case was assigned case number 16-000126-MK, and the Michigan Court of Appeals decided the appeal in docket number 337383. The Michigan Supreme Court denied the application for leave to appeal because it was not persuaded that the questions presented should be reviewed. Justice Zahra concurred separately regarding concerns raised by amici curiae.

DISPOSITION

writ_denied

CASES CITED

- Boler v. Governor, 324 Mich. App. 614 (2018)

OPINION

Beatrice Boler v. Governor 924 N.W.2d 250

PER CURIAM.

Order Michigan Supreme Court Lansing, Michigan March 29, 2019 Bridget M. McCormack, Chief Justice 158147 David F. Viviano, Chief Justice Pro Tem BEATRICE BOLER, EDWIN ANDERSON, Stephen J. Markman ALLINE ANDERSON and EPCO SALES, LLC, Brian K. Zahra Plaintiffs-Appellees, Richard H. Bernstein Elizabeth T. Clement v SC: 158147 Megan K. Cavanagh, Justices

COA: 337383

GOVERNOR, STATE OF MICHIGAN, Court of Claims: 16-000126-MK

DEPARTMENT OF ENVIRONMENTAL

QUALITY, and DEPARTMENT OF HEALTH

AND HUMAN SERVICES,

Defendants-Appellees, and

DANIEL WYANT, LIANE SHEKTER-SMITH,

ADAM ROSENTHAL, STEPHEN BUSCH,

PATRICK COOK, MICHAEL PRYSBY,

BRADLEY WURFEL, ED KURTZ, DARNELL

EARLEY, GERALD AMBROSE, LOCKWOOD,

ANDREWS & NEWMAN, P.C., and

LOCKWOOD, ANDREWS & NEWMAN, INC.,

Defendants, and

DAYNE WALLING, HOWARD CROFT,

MICHAEL GLASGOW, DAUGHERTY

JOHNSON III, and CITY OF FLINT,

Defendants-Appellants. _____/ On order of the

Court, the application for leave to appeal the June 14, 2018 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court. ZAHRA, J. (concurring). I concur in the Court's denial of leave to appeal in this case, but write separately to address and clarify amicus curiae's concerns. This Court granted the motion of the Great Lakes Water Authority, the Detroit Water and Sewerage

Department, and the Oakland County Water Resources Commissioner to participate as amici curiae. They are entities that treat and provide drinking water for a vast portion of communities in this state and that rely on the status of such services as a “governmental function” to afford them governmental immunity from tort liability under the governmental tort liability act (GTLA), MCL 691.1401 et seq., 2 specifically under § 1407. In this case, the Court of Appeals held that, for purposes of Court of Claims jurisdiction: (1) “a municipality is not an arm of the state when it operates a waterworks plant,” and (2) a municipality and its employees operating under emergency management pursuant to the Local Financial Stability and Choice Act, MCL 141.1541 et seq., are similarly not arms of the state. *Boler v Governor*, 324 Mich App 614, 619 (2018); see MCL 600.6419(1)(a) (vesting the Court of Claims with exclusive jurisdiction “[t]o hear and determine any claim . . . against the state or any of its departments or officers”) and MCL 600.6419(7) (providing that “ ‘the state or any of its departments or officers’ ” includes an “arm, or agency of this state”). Amici’s narrow interest in this case pertains not directly to the Court of Appeals’ holdings, but to statements in its decision that tend to characterize the operation and maintenance of municipal waterworks generally as proprietary rather than governmental functions. See, e.g., *Boler*, 324 Mich App at 624 (stating that “[t]he operation and maintenance of waterworks is generally found to be a proprietary or private function of a municipality as opposed to a governmental function”). Accordingly, amici have requested that this Court expressly reject any portions of the Court of Appeals opinion that might support the proposition that the operation of a municipal waterworks is not a governmental function, because those statements could have adverse effects on amici. The Court of Appeals opinion does not address whether operating a water supply and distribution system is a governmental or proprietary function for purposes of the GTLA. In fact, the Court of Appeals decision only mentions the GTLA once, in discussing potential consequences of reaching a contrary holding—i.e., if it had determined that whenever a state employee assists in the management of a private entity, and that entity then becomes an arm of the state, the state may be subject to liabilities never contemplated in the GTLA. *Id.* at 630. Amici’s concerns are noted, but because the Court of Appeals decision in this case does not directly affect whether the operation and maintenance of a municipal waterworks is an “exercise or discharge of a governmental function” under MCL 691.1407(1) and (2)(b), there is no basis for this Court to vacate any portion of the Court of Appeals decision suggesting otherwise. CLEMENT, J., did not participate due to her prior involvement as chief legal counsel for the Governor. I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court. March 29, 2019 a0326 Clerk