SUPREME COURT OF SOUTH CAROLINA

Layman v. State, 376 S.C. 434

658 S.E.2d 320 (2008) · No. No. 26427 · Decided March 10, 2008

SUMMARY

The Supreme Court of South Carolina reviewed an award of attorneys' fees arising from litigation over amendments to the TERI retirement program. The court held that the State and South Carolina Retirement System were not substantially justified in defending a breach of an unambiguous contract and that fees were available under South Carolina Code section 15-77-300. It further held that calculating fees as a percentage of the beneficiaries' recovery was improper under the fee-shifting statute and that the $8.66 million award was unreasonable.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Chief Justice Jean H. Toal; Justice James E. Moore; Justice Donald W. Beatty; Acting Justice E.C. Burnett, III; Acting Justice Thomas W. Cooper, Jr.
JURISDICTION	South Carolina
DECIDED	March 10, 2008
DOCKET	No. 26427
DISPOSITION	other
PROCEDURAL POSTURE	Appeal and cross-appeal from a circuit court award of $8,665,297.50 in statutory attorneys' fees following the court's prior decision awarding relief to TERI participants.
STANDARD OF REVIEW	The award or denial of fees under the state action statute and the amount of fees are reviewed for abuse of discretion; statutory interpretation is reviewed de novo. An abuse of discretion occurs when the trial court's conclusions are controlled by an error of law or based on unsupported factual conclusions.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	The State of South Carolina, The South Carolina Retirement System v. Nancy S. Layman, David M. Fitzgerald, Vicki K. Zelenko, Wyman M. Looney, Nancy Ahrens, James Haynes, Janice Franklin, TERI plaintiffs' counsel

TOPICS

remedies · statutory interpretation · contract interpretation · appellate procedure · damages

PRACTICE AREAS

attorneys' fees · state administrative law · contract law · appellate procedure · statutory interpretation

QUESTIONS PRESENTED

1. Whether the State and South Carolina Retirement System were entitled to avoid statutory attorneys' fees because they acted with substantial justification in defending the underlying litigation.
2. Whether the circuit court properly treated the Retirement System as merely a stakeholder and whether separation-of-powers principles barred an attorneys' fee award.
3. Whether attorneys' fees under the state action statute may be calculated as a percentage of the prevailing party's recovery.
4. What methodology and amount constitute reasonable attorneys' fees under the state action statute.

HOLDINGS

1. The State and Retirement System were not substantially justified in defending their breach of an unambiguous contract with pre-Act TERI participants, so TERI plaintiffs' counsel was entitled to attorneys' fees under S.C. Code Ann. section 15-77-300.
2. The State and Retirement System could both be liable for attorneys' fees under the state action statute, and assessing fees for defending the contract breach did not violate separation-of-powers principles.
3. Calculating attorneys' fees under the state action fee-shifting statute as a percentage of the TERI participants' recovery is improper.
4. The proper method for determining reasonable attorneys' fees under the state action statute is a lodestar calculation based on reasonable hours and rates, subject to an appropriate multiplier and recoverable expenses. The revised reasonable fee was $1,075,701.74.

KEY QUOTATIONS

> *"Accordingly, we hold that because the state action statute shifts the source of the prevailing party's attorneys' fees to the losing party, an award of fees based on a percentage of the prevailing party's recovery is improper."* (376 S.C. 454, 658 S.E.2d 332)

> *"We turn next to the method of calculating attorneys' fees in this case, and hold that a lodestar analysis is the proper method for determining an award of "reasonable" attorneys' fees under the state action statute."* (376 S.C. 458, 658 S.E.2d 333)

> *"Accordingly, we hold that an enhanced lodestar figure equaling $445,226.60 constitutes a reasonable award of attorneys' fees to counsel for TERI plaintiffs under the state action statute."* (376 S.C. 461, 658 S.E.2d 335)

FACTUAL BACKGROUND

Act 153 amended South Carolina's TERI and Working Retiree programs to require contributions that had not previously been required from participants who entered the programs before the Act's effective date. In the underlying litigation, the Supreme Court held that applying Act 153 to preexisting TERI participants breached an unambiguous contract and ordered the return of contributions. The Court's procedures substantially expedited the litigation, preserved the disputed funds in escrow, and ultimately produced a full recovery for the TERI participants.

PROCEDURAL HISTORY

In the underlying action, the Supreme Court of South Carolina held that Act 153 breached a legislatively created contract with certain pre-Act TERI participants and ordered the return of their contributions with interest. The Court denied fees under the common-fund doctrine and remanded the statutory-fee issue to a circuit judge. The circuit judge awarded expenses plus percentage-based fees totaling $8,665,297.50. The State and Retirement System appealed, and TERI plaintiffs' counsel cross-appealed regarding the amount. The Supreme Court affirmed entitlement to fees but vacated the percentage-based award and calculated an enhanced lodestar award, later modified by order dated March 10, 2008, to $1,075,701.74.

DISPOSITION

other

REMAND INSTRUCTIONS

The circuit court's percentage-based award was vacated and replaced with a lodestar-based award. The Court itself assessed the revised fee against the State and Retirement System; the March 10, 2008 order modified the award to include additional fees and costs incurred after the original opinion.

CASES CITED

- Layman v. The State of South Carolina and The South Carolina Retirement System, 368 S.C. 631, 630 S.E.2d 265 (2006)
- Heath v. County of Aiken, 302 S.C. 178, 394 S.E.2d 709 (1990)
- McDowell v. S.C. Department of Social Services, 304 S.C. 539, 405 S.E.2d 830 (1991)
- Video Gaming Consultants, Inc. v. S.C. Department of Revenue, 358 S.C. 647, 595 S.E.2d 890 (Ct. App. 2004)
- Blum v. Stenson, 465 U.S. 886, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984)
- Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 106 S. Ct. 3088, 92 L. Ed. 2d 439 (1986)
- Ex parte Condon, 354 S.C. 634, 583 S.E.2d 430 (2003)
- Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997)
- Keyserling v. Beasley, 322 S.C. 83, 470 S.E.2d 100 (1996)
- Petition of Cram. Johnson v. Williams, 196 S.C. 528, 14 S.E.2d 21 (1941)
- Burke v. Arizona State Retirement System, 206 Ariz. 269, 77 P.3d 444 (Ct. App. 2003)

- Dennis v. Columbia Colleton Medical Center, Inc., 290 F.3d 639 (4th Cir. 2002)
- Hyatt v. Apfel, 195 F.3d 188 (4th Cir. 1999)
- Hensley v. Eckerhart, 461 U.S. 424, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983)
- In re Chicken Antitrust Litigation, 560 F. Supp. 963 (N.D. Ga. 1981)
- Edmonds v. United States, 658 F. Supp. 1126 (D.S.C. 1987)
- McMillan v. S.C. Department of Agriculture, 364 S.C. 60, 611 S.E.2d 323 (Ct. App. 2005)
- Zabinski v. Bright Acres Associates, 346 S.C. 580, 553 S.E.2d 110 (2001)
- Pierce v. Underwood, 487 U.S. 552, 108 S. Ct. 2541, 101 L. Ed. 2d 490 (1988)
- Beaufort County Board of Education v. Lighthouse Charter School Committee, 335 S.C. 230, 516 S.E.2d 655 (1999)
- City of Birmingham v. Horn, 810 So. 2d 667 (Ala. 2001)
- Chun v. Board of Trustees of the Employees' Retirement System of the State of Hawaii, 92 Haw. 432, 992 P.2d 127 (2000)
