

SUPREME COURT OF PENNSYLVANIA

Tribune-Review Publishing Co. v. Westmoreland County Housing Authority, 574 Pa. 661

833 A.2d 112 (2003) · Decided October 1, 2003

SUMMARY

The Supreme Court of Pennsylvania held that a confidential settlement agreement resolving a federal civil rights action against a public housing authority was a public record subject to disclosure under the Pennsylvania Right-to-Know Act. The court concluded that the insurer acted as the housing authority’s agent, that the authority had control over the agreement despite lacking physical possession, and that the confidentiality clause was unenforceable insofar as it conflicted with the Act. The court affirmed the Commonwealth Court’s order requiring disclosure.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Newman; Chief Justice Cappy; Justice Castille; Justice Nigro; Justice Saylor; Justice Eakin; Justice Lamb
JURISDICTION	Pennsylvania
DECIDED	October 1, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal by the Westmoreland County Housing Authority from a Commonwealth Court order requiring disclosure under Pennsylvania's former Right-to-Know Act of a confidential settlement agreement negotiated by the Authority's insurer in a federal civil-rights action.
STANDARD OF REVIEW	Legal interpretation and application of the former Right-to-Know Act to undisputed facts; the court reviewed whether the settlement agreement was a public record and whether an applicable statutory or court-ordered exemption barred disclosure.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Pennsylvania
PARTIES	Westmoreland County Housing Authority v. Tribune-Review Publishing Company

TOPICS

public records

open government

municipal law

statutory interpretation

civil rights

PRACTICE AREAS

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civil rights

QUESTIONS PRESENTED

1. Whether a settlement agreement negotiated by a public agency's insurer in resolving a federal civil-rights action involving the agency is a public record under Pennsylvania's former Right-to-Know Act.
2. Whether the agreement remains subject to disclosure when the public agency does not physically possess or sign it.
3. Whether a confidentiality provision in the settlement agreement prevents disclosure under the Right-to-Know Act.
4. Whether the insurer's relationship with the Housing Authority was materially different from the independent bookstore relationship considered in *Dynamic Student Services v. State System of Higher Education*.

HOLDINGS

1. A settlement agreement negotiated on behalf of a public agency by its insurer-agent to resolve litigation arising from the agency's official conduct is a public record under the former Right-to-Know Act.
2. A public agency's lack of physical possession of a record does not defeat its disclosure obligation when the record is subject to the agency's control.
3. An insurer that undertakes to defend and resolve litigation for a public agency acts as the agency's agent for purposes of determining whether the resulting settlement document is a public record.
4. A confidentiality clause in a public-agency settlement agreement is unenforceable to the extent it conflicts with the Right-to-Know Act and public policy favoring disclosure of public records.

KEY QUOTATIONS

"Today we hold that a settlement agreement negotiated on behalf of an agency by its agent is a public document." (at 121)

"We further conclude that a confidentiality clause contained in that agreement conflicts with public policy and the Right to Know Act and that, where a confidentiality clause subverts public policy, it cannot be enforced." (at 121)

"A writing is within the ambit of the Act if it is subject to the control of the agency." (at 118)

FACTUAL BACKGROUND

A Housing Authority employee brought a federal civil-rights action alleging gender discrimination and a hostile work environment by the Authority's Executive Director. The Authority's insurer, HARIE, defended and indemnified the Authority, retained exclusive control of the defense, and negotiated a settlement containing a

confidentiality provision. Although the Authority did not possess or sign the agreement, it had a legal right to obtain it from HARIE, and Tribune-Review requested disclosure after the federal action was dismissed.

PROCEDURAL HISTORY

An employee sued the Housing Authority and its Executive Director in the United States District Court for the Western District of Pennsylvania. The Authority's insurer negotiated a confidential settlement, after which Tribune-Review requested related records under the Right-to-Know Act. The Westmoreland County Court of Common Pleas and the Commonwealth Court held that the settlement agreement was a public record subject to disclosure. The Pennsylvania Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Morning Call, Inc. v. Lower Saucon Township, 156 Pa. Cmwlth. 397, 627 A.2d 297 (1993)
- Dynamic Student Servs. v. State Sys. of Higher Educ., 548 Pa. 347, 697 A.2d 239 (1997)
- Morning Call, Inc. v. Housing Auth. of the City of Allentown, 769 A.2d 1246 (Pa. Cmwlth. 2001)
- State ex rel. Cincinnati Enquirer v. Dupuis, 98 Ohio St. 3d 126, 781 N.E.2d 163 (2002)
- Guy Gannett Publ'g Co. v. Univ. of Maine, 555 A.2d 470 (Me. 1989)
- Daily Gazette Co. v. Withrow, 177 W. Va. 110, 350 S.E.2d 738 (1986)
- Daily Gazette v. West Va. Dev. Office, 206 W. Va. 51, 521 S.E.2d 543 (1999)
- News & Observer Publ'g Co. v. Wake County Hosp. Sys., Inc., 55 N.C. App. 1, 284 S.E.2d 542 (1981), cert. denied, 459 U.S. 803 (1982)
- Yakima Newspapers, Inc. v. City of Yakima, 77 Wash. App. 319, 890 P.2d 544 (1995)
- Miami Herald Publ'g Co. v. Collazo, 329 So. 2d 333, 338 (Fla. Dist. Ct. App. 1976), cert. denied, 342 So. 2d 1100 (Fla. 1976)
- Carbondale Township v. Murray, 64 Pa. Cmwlth. 465, 440 A.2d 1273 (1982)
- Kissinger v. Reporters Committee, 445 U.S. 136 (1980)
- Basile v. H & R Block, Inc., 563 Pa. 359, 761 A.2d 1115 (2000)
- State ex rel. Findlay Publ'g Co. v. Hancock County Bd. of Comm'rs, 80 Ohio St. 3d 134, 684 N.E.2d 1222 (1997)
- Des Moines Indep. Cmty. Sch. Dist. Pub. Records v. Des Moines Register & Tribune Co., 487 N.W.2d 666 (Iowa 1992)
- Anchorage Sch. Dist. v. Anchorage Daily News, 779 P.2d 1191 (Alaska 1989)
- Neel v. Crittenden, 353 Pa. 201, 44 A.2d 558 (1945)
- Wiley v. Woods, 393 Pa. 341, 141 A.2d 844 (1958)
- North Hills News Record v. Town of McCandless, 555 Pa. 51, 722 A.2d 1037 (1999)
- Sapp Roofing Co. v. Sheet Metal Workers' International Association, 552 Pa. 105, 713 A.2d 627 (1998)

- *Pennsylvania State University v. Derry Township School District*, 557 Pa. 91, 731 A.2d 1272 (1999)
- *Community College of Philadelphia v. Brown*, 544 Pa. 31, 674 A.2d 670 (1996)

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