

SUPREME COURT OF MICHIGAN

Mack v. City of Detroit

654 N.W.2d 563 (Mich. 2002) · No. 118468 · Decided November 19, 2002

SUMMARY

The Michigan Supreme Court denied Linda Mack's motion for rehearing in her action against the City of Detroit involving a claimed charter-based cause of action for sexual-orientation discrimination. Separate concurring and dissenting statements address governmental immunity under the Governmental Tort Liability Act, the overruling of *McCummings v. Hurley Medical Center*, and whether the Court violated procedural due process by deciding issues without prior briefing or argument. The dissent would have granted rehearing.

CASE DETAILS

COURT	Supreme Court of Michigan
WRITING FOR THE COURT	Per curiam; Chief Justice Corrigan; Justice Young; Justice Cavanagh; Justice Weaver; Justice Kelly
JURISDICTION	Michigan
DECIDED	November 19, 2002
DOCKET	118468
DISPOSITION	writ_denied
PROCEDURAL POSTURE	The Supreme Court of Michigan considered and denied the plaintiff's motion for rehearing following its decision reversing or otherwise disposing of portions of her claims against the City of Detroit.
PRECEDENTIAL VALUE	published
PARTIES	City of Detroit v. Linda Mack

TOPICS

- appellate procedure
- procedural due process
- civil procedure
- government liability
- municipal law

PRACTICE AREAS

- civil procedure
- appellate procedure
- constitutional law
- civil rights
- municipal law

QUESTIONS PRESENTED

1. Whether the motion for rehearing of the Supreme Court's prior decision should be granted.
2. Whether the Court violated procedural due process by deciding governmental-immunity and governmental-tort-liability issues without giving the plaintiff an additional opportunity to brief and argue them.
3. Whether the governmental tort liability act precluded the plaintiff's charter-based sexual-orientation-discrimination claim against the City of Detroit.

HOLDINGS

1. The motion for rehearing was denied.

KEY QUOTATIONS

"As long as we address the particular issue presented, the theories that our research uncovers in an attempt to decide the issue are properly before this Court." (563)

"When any court contemplates sua sponte summary disposition against a party, that party is entitled to unequivocal notice of the court's intention and a fair chance to prepare a response." (568)

FACTUAL BACKGROUND

Linda Mack alleged that the City of Detroit discriminated against her on the basis of sexual orientation in connection with employment-related actions, including job reassignment, vacation-time distribution, and decisions concerning police-department investigations. She relied in part on provisions of the Detroit city charter declaring a right to be free from discrimination based on sexual orientation. The Supreme Court's prior decision concluded that the governmental tort liability act precluded the asserted cause of action against the city.

PROCEDURAL HISTORY

The underlying appeal concerned whether the Detroit city charter created a private cause of action for sexual-orientation discrimination and whether governmental immunity barred the claim. The Supreme Court's prior decision, reported at 467 Mich. 186, 649 N.W.2d 47 (2002), applied the governmental tort liability act and overruled or rejected the prior approach in *McCummings* concerning pleading governmental immunity. On rehearing, Chief Justice Corrigan and Justice Young defended the prior decision, while Justices Cavanagh, Weaver, and Kelly would have granted rehearing based principally on procedural due process and lack-of-notice concerns.

DISPOSITION

writ_denied

CASES CITED

- Mack v. City of Detroit, 467 Mich. 186, 649 N.W.2d 47 (2002)
- Haji v. Prevention Insurance Agency, Inc., 196 Mich. App. 84, 492 N.W.2d 460 (1992)
- Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 50 S. Ct. 451, 74 L. Ed. 1107 (1930)

- Rice v. Ruddiman, 10 Mich. 125 (1862)
- Bradway v. Miller, 200 Mich. 648, 167 N.W. 15 (1918)
- In re Finlay Estate, 430 Mich. 590, 424 N.W.2d 272 (1988)
- Erie Railroad Co. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938)
- Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961)
- Kolstad v. American Dental Ass'n, 527 U.S. 526, 540, 119 S. Ct. 2118, 144 L. Ed. 2d 494 (1999)
- Federated Publications, Inc. v. Lansing, 467 Mich. 98, 649 N.W.2d 383 (2002)
- McCummings v. Hurley Medical Center, 433 Mich. 404, 446 N.W.2d 114 (1989)
- Hanson v. Board of County Road Commissioners of County of Mecosta, 465 Mich. 492, 638 N.W.2d 396 (2002)
- Nawrocki v. Macomb County Road Commission, 463 Mich. 143, 615 N.W.2d 702 (2000)
- Haliw v. Sterling Heights, 464 Mich. 297, 627 N.W.2d 581 (2001)
- Canon v. Thumudo, 430 Mich. 326, 422 N.W.2d 688 (1988)
- Klinke v. Mitsubishi Motors Corp., 458 Mich. 582, 581 N.W.2d 272 (1998)
- Ross v. Consumers Power Co. (On Rehearing), 420 Mich. 567, 363 N.W.2d 641 (1984)
- Davis v. Passman, 442 U.S. 228, 242, 99 S. Ct. 2264, 60 L. Ed. 2d 846 (1979)
- Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163, 2 L. Ed. 60 (1803)
- Scheurman v. Department of Transportation, 434 Mich. 619, 456 N.W.2d 66 (1990)
- Tryc v. Michigan Veterans' Facility, 451 Mich. 129, 545 N.W.2d 642 (1996)