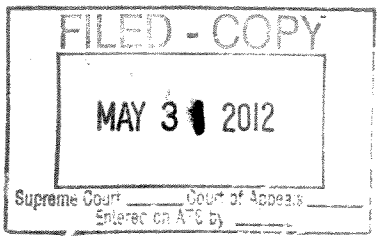
5-31-2012

Estes v. Lewiston Independent School Dist. No. 1 Appellant's Brief Dckt. 39469

IN THE SUPREME COURT OF THE STATE OF IDAHO

David M. Estes Plaintiff / Appellant v. LEWISTON INDEPENDENT SCHOOL DISTRICT NO.1, JOY RAPP, in her capacity as Superintendent of Lewiston School District No. 1, Sherri Allen, Brad Rice, Dan Rudolph, Brenda Forge, Bill Davis, collectively as the Board of Trustees of the Lewiston independent School District No. 1 Defendants / Respondents	)	SUPREME COURT NO. 39469-2011



BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

HONORABLE CARL B. KERRICK, DISTRICT JUDGE

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STATEMENT OF THE CASE

This dispute involves the plaintiff and the Lewiston Independent School District No. 1, which was organized on December 30th 1880 by the 11th Territorial Legislature. At issue is when should a school board election be held and when should a winning candidate be sworn in to the board of trustees of the Lewiston Independent School District No. 1.

The appellant, David Estes, filed suit when the school district held an election and failed

to seat a candidate under the charter granted to the Lewiston Independent School District No. 1 as amended in 1959 or under a current state election law.

The appellant, David Estes, filed for summary judgment on the issue on June 17th 2011 in the Nez Perce County District Court. The issue was heard by the Honorable Carl B. Kerrick.

On 21 October 2011, Judge Kerrick, issued a memorandum of opinion and order on the Defendant's motion for summary judgment in which the Judge denied the appellants motion for Summary judgment based on a lack of standing and mootness. This appeal results from that ruling.

ISSUES

1. Did the court err by ruling that the appellant did not have standing to bring suit?
2. Did the court err by ruling that the case was moot:

ARGUMENT

Did the court err by ruling that the appellant did not have standing to bring this suit?

In 2011 the Lewiston Independent School District No. 1, put a bond on the March 8th election cycle. A group of Lewiston citizens formed a group called Taxpayers Against Unfair Taxation to fight the school bond. At an election held on March 8th 2011 the school bond was defeated.

The appellant, David Estes, was the campaign manager during the first election. One Dale D. Yochum was the chairman of TAUT.

Following the March 2011 election, TAUT, decided to run Dale D. Yochum for the School board. That election was held on the 17th day of May 2011. Mr. Yochum was elected to the school board. (CP 5) During the Yochum campaign, David Estes, was again the campaign manager. (CP 5)

After the May 2011 election, Dale Yochum was not immediately seated on the School Board. David Estes questioned the Lewiston Independent School District No. 1 Superintendent Joy Rapp on when Mr. Yochum would be seated. He was told by Superintendent Rapp that Yochum would be seated on or about the 13th Day of July 2011. (CP 7)

In examining the state statutes, the Lewiston Independent School District Charter (1937) and the Lewiston Independent School District Local Rules it was plain that the statutes and rules conflicted. (CP 6-7) As far as seating Mr. Yochum on the School Board on the 13th Day of July 2011 that date was well past the date to seat Mr. Yochum. (CP 7) under any of the statutes or rules.

After the election, the Lewiston Independent School District No. 1 began to pass Resolutions without the input of Mr. Yochum, The school district hired an assistant superintendent, renewed the contract for Dr. Joy Rapp and dealt with the resignation of Five teachers.

In the case of the renewal of the contract of the school superintendent, the board held a meeting at a private residence belonging to a board member in violation of the Open Meetings Act to discuss the renewal of the contract. (CP 5)

It became obvious that the School District was using the time between the date Yochum

Was to be sworn in to further the board's agenda without opposition. There was no way to stop The board from their actions but it was felt that any future such actions could be mitigated if the School Board was compelled to follow the proper election procedure as set forth in its charter. A suit was filed to resolve the issue of which law should be followed to seat an incumbent school board trustee. (CP 4-26)

Following the service of the complaint and answer received, the appellant moved for summary judgment. (CP 31-207) The defendants filed their own summary judgment asking the court to dismiss the case based on standing and mootness. (CP 208-209)

On October 21st 2011, Judge Carl Kerrick issued a Memorandum Opinion and Order on Defendants Motion for Summary Judgment (CP 224-233)

In the October 21st 2011 order, Judge Kerrick addressed two main questions. (CP 224-233) One was the issue of standing and the second was the issue of mootness.

The court based its ruling on whether the appellant had suffered any personal harm as Opposed to harm to the public in general. (CP at 228) Though the appellant argued that the Standing issue did not apply to him because he was not a part of the general population but part of an elected class of individuals that is he was a resident and elector within the school district boundaries and not a part of the general population as a whole that still did not preclude his rights under the public rights doctrine. In fact the argument presented by the appellant was a reflection of that legal concept. (CP 35)

Both Ohio and California courts have addressed the issue of the public rights doctrine.

In Ohio, the Supreme Court held in State ex rel. Ohio Academy of Trial Lawyers v. Sheward 86 Ohio St. 3rd 451:

> "...Ordinarily a person is not authorized to attack the constitutionality of a stature, where his private rights have suffered no interference or impairment, but as a matter of public policy a citizen does have such an interest in his government as to give him capacity to maintain a proper action to enforce the performance of a public duty affecting himself and citizens generally.
>
> The court explained that "[w] here a public right, as distinguished from a purely private right, is involved, a citizen need not show any special interest therein, but he may maintain a proper action predicated on his citizenship relation to such public right. This doctrine has been steadily adhered to by this court over the years." (Citation omitted)

The court in Sheward supra went on to rule:

> '..We hold therefore, that where the object of an action in mandamus and/or prohibition is to procure the enforcement or protection a public right, the relator need not show any legal or special individual interest in the result, it being sufficient that relator is an Ohio citizen and, as such, interested in the execution of the laws of this state."

California courts have observed the public rights doctrine as well. In Waste Management v. County of Alameda, 93 Cal Rptr. 2d 740, 79 Cal. App. 4th 1223 the court ruled:

"The matter of a citizen's action is a long established exception to the requirement of a personal beneficial interest. The exception applies where the question is one of public right and the object of the action is to enforce a public duty – in which case it is sufficient that the plaintiff be interested as a citizen in having the laws executed and the public duty enforce. (Citations omitted)

In Idaho the courts have recognized the public right doctrine. In Miles v. Idaho Power Company, 116 Idaho 635, 778 Pacific 2d 757 (1979) the court wrote:

> "...To deny standing to persons who are in fact injured simply because many others are also injured, would mean that the most injurious and widespread government actions could be questioned by nobody. Quoting United States v

. SCRAP, 412 US 669, 687-688, 93 S.Ct. 2405,2416." (CP 35)

This is not a case where there is some tangible economic interest at stake. It is a case of the right to take part in the electorial process and to have your voice heard in matters of government. It is a mandamus and declaratory action asking the court to rule on which election law applies to the Lewiston Independent School District No. 1 and directing the Lewiston Independent School District No.1 to comply with the appropriate statute. As such, the appellant has the right to bring suit under the public right doctrine and the court should recognize that right.

Did the court err by ruling that the case was moot?

The court in its memorandum opinion ruled on the issue of whether the suit was moot since Dale Yochum had been seated by the school board. At CP 229, the memorandum opinion read, "The plaintiff asserts the pending lawsuit seeks two avenues of relief: a writ requiring the school district to swear Mr. Yochum in as a trustee, and an order declaring that the board improperly applied state election laws and procedures." That is not an accurate statement.

No where in the pleadings can you find any request to seat Mr. Yochum. In his motion for summary judgment the appellant plainly wrote that the purpose of the suit was to settle the issue of when a school board candidate should be seated. (CP 31-32) Nor did the appellant's verified complaint mention any such relief asking that Mr. Yochum be seated. (CP 8)

Before the court, the appellant brought to the attention of the court that he did not make any such request to have Mr. Yochum seated and challenged the defendant's attorney to show in

the pleadings where such a request was made.(TR 13-14)

Mr. Stromberg, Attorney for the defendants, acknowledged in the end that the issue was about a declaratory relief and plainly stated it was not about anything else. (TR 18-19) Yet the court persisted in ruling that the issue was moot because Mr. Yochum was sworn in. (CP229)

It appears the court took the summary judgment (CP 208-209, 221-223) submitted by Mr. Stromberg and made a ruling based on that pleading and ignored the arguments and pleadings submitted to the court. The appellant cannot submit any pleading on the mootness issue because there is no legal theory to defend. The issue doesn't exist.

CONCLUSION

The District Court erred in its ruling on two counts. First it ruled that the appellant did not have standing to bring this suit. The Public Rights Doctrine plainly reads that a person who is a citizen and is not directly affected by a government action or inaction can still bring suit under a mandamus action to compel the government to perform a duty or not perform a duty. That is the purpose of the suit before the court. As such, the appellant has standing to bring the suit.

In addition, the District Court ruled on a claim of mootness that does not exist. The Appellant never asked that a candidate named Yochum be seated. The failure to seat Yochum was the set of facts that gave rise to the suit. There was nothing more to the factual evidence. That ruling of mootness should be overturned by the Appellate Court.

ATTORNEY FEES FOR APPELLANT

Attorney fees do not apply to the appellant. He is pro se. Nor does the appellant seek any reimbursement fees.

Dated this 24th Day of May 2011.

DAVID M. ESTES.

David M. Estes, Appellant pro se