7-2-2012

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

IN THE SUPREME COURT OF THE STATE OF IDAHO

DAVID ESTES, Plaintiff/Appellant, vs. LEWISTON INDEPENDENT SCHOOL DISTRICT NO. 1; JOY RAPP, in her capacity as Superintendent of Lewiston School District No. 1; SHERI ALLEN, BRAD RICE, DAN RUDOLPH, BRENDA FORGE, BILL DAVIS, collectively as the Board of Trustees of the Lewiston School District No. 1, Defendants/Respondents.	)	Supreme Court No. 39469-2011

RESPONDENTS' BRIEF

Appeal from the District Court of the Second
Judicial District in and for the County of Nez Perce

The Honorable Carl B. Kerrick, District Judge, Presiding

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Appellant-Plaintiff

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III.

STATEMENT OF THE CASE

A. Nature of the Case.

Plaintiff, David M. Estes ("Estes"), filed a *pro se* Complaint against Lewiston Independent School District No.1, its Superintendent and its Board of Trustees (collectively, "the District") arising out of the District's alleged failure to timely swear-in a newly elected Trustee. The Complaint sought a declaration that that the District had not complied with Idaho law and an order directing the District to comply with the law. After the Complaint was filed, the District promptly swore-in the newly elected Trustee, and then moved for summary judgment on standing and mootness grounds. The district court granted the District's motion, and this appeal followed.

B. Statement of Facts.

On May 17, 2011, the District held an election for a soon to be open School District Trustee position. (R., p. 5). Dale D. Yochum ran for the position and won. (Id.). Estes was Mr. Yochum's campaign manager. (Id.).

On or about June 14, 2011, Estes asked the District Superintendent when Mr. Yochum would be sworn in, and was told that he would be sworn in on July 13, 2011. (Id., p. 7).

On June 17, 2011, Estes filed a lawsuit alleging that the proposed July 13, 2001 swearing-in date was not as soon as it should be under Idaho law, and that as a consequence, he was being disenfranchised, his constitutional rights were being threatened and diminished,

and diminished, and he was being denied a voice on the school board through his duly elected representative. (Id., pp. 4-9). The Complaint sought an order "declaring that defendants have improperly applied State of Idaho election laws and procedures" and "a Writ and/or order compelling defendants to promptly comply with the laws of the State of Idaho." (Id., p. 8).

On June 27, 2011 – ten days after the Complaint was filed – the District swore-in Mr. Yochum as a Trustee. (Id., p. 222).

C. Course of the Proceedings.

On July 6, 201, the District filed an Answer to Estes' Complaint which raised standing and mootness as defenses.

On July 26, 2011, Estes filed a Motion for Summary Judgment. (Id., pp. 31-207). In the Motion, Estes argued that he had standing and that the matter was not moot. He also claimed that the State's election laws regarding the time for swearing-in Trustees conflicted with the District's Charter, and he sought an Order directing the District to comply with its Charter instead of the State's election laws. ((Id., p. 47).

On August 16, 2011, the District filed a Motion for Summary Judgment and supporting Memorandum arguing that Estes lacked standing to bring the lawsuit and that the lawsuit was moot. (Id., pp. 208-220).

A hearing was held on September 27, 2011. At the hearing, the parties agreed that Estes' summary judgment motion could not be heard until the court ruled on the District's motion. (Tr., pp. 8-9).

On October 21, 2011, the district court issued a Memorandum Opinion and Order granting the District's motion on both standing and mootness grounds, and on the additional ground that Estes' claim that the District's Charter rather than the State's election laws applied to the swearing-in of Trustees was not ripe because no one was seeking to be sworn in at that time. (Id., pp. 224-233).

A Judgment dismissing the Complaint was filed on November 1, 2011. (Id., pp. 234-235).

On December 8, 2011, Estes filed a timely Notice of Appeal, which was later amended to correct technical deficiencies. (Id., pp. 236-237 and 239-241).

IV.

ISSUES PRESENTED ON APPEAL

1. Did the district court correctly conclude that Estes lacked standing to bring the lawsuit?

2. Did the district court correctly conclude that the lawsuit was moot?

3. Did the district court correctly conclude that the lawsuit was not ripe?

V.

ARGUMENT

A. Standard Of Review.

Summary judgment is to be granted when the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. I.R.P.C. 56(c). In an appeal from an order granting summary judgment, the appellate court applies the same standard used by the district court in ruling on a motion for summary judgment. *East Lizard Butte Water Corp. v. Howell,* 122 Idaho 679, 681, 837 P.2d 805, 807 (1992); *Farm Credit Bank of Spokane v. Stevenson,* 125 Idaho 270, 272, 869 P.2d 1365, 1367 (1994); and *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 529, 887 P.2d 1034, 1036 (1994). If the evidence reveals no disputed material facts, what remains is a question of law, over which the appellate court exercises free review. *Robison v. Bateman-Hall, Inc.*, 139 Idaho 207, 209, 76 P.3d 951, 953 (2003).

B. The District Court Correctly Concluded That Estes Lacked Standing To Bring The Lawsuit.

"It is a fundamental tenet of American jurisprudence that a person wishing to invoke a court's jurisdiction must have standing." *Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 124, 15 P.3d 1129, 1132 (2000). If a plaintiff lacks standing, the case is not justiciable. *Noh v. Cenarrusa*, 137 Idaho 798, 800, 53 P.3d 1217, 1219 (2002). Accordingly, a court must resolve the issue of whether a plaintiff has standing before it can

consider the merits of a claim. *Martin v. Camas County,* 150 Idaho 508, 248 P.3d 1243, 1248 (2011). Summary judgment is a proper procedural method for dismissing a claim based on lack of standing. *Thomson v. City of Lewiston,* 137 Idaho 473, 476, 50 P.3d 488, 491 (2002); and *Zingiber Investment, LLC, v. Hagerman Highway District*, 150 Idaho 675, 249 P.3d 868, 873 (2011)

As stated in *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002):

> Standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated. To satisfy the case or controversy requirement of standing, a litigant must allege or demonstrate an injury in fact and a substantial likelihood the relief requested will prevent or redress the claimed injury. This requires a showing of a distinct palpable injury and fairly traceable causal connection between the claimed injury and the challenged conduct. But even if a showing can be made of an injury in fact, standing may be denied when the asserted harm is a generalized grievance shared by all or a large class of citizens.

137 Idaho at 104, 44 P.3d at 1159 (internal citations, quotations and footnote omitted). Thus, standing requires a "distinct, palpable injury" which is not "a generalized grievance shared by all or a large class of citizens."

A "palpable injury" is an injury which is "'[e]asily perceptible, plain, obvious, readily visible, noticeable, patent, distinct, manifest.'" *Martin v. Camas County Board of Commissioners,* 150 Idaho 508, 248 P. 3d 1243, 1248 (2011) (fn. 3), *quoting,* Black's Law Dictionary, 1110 (6th ed. 1990).

Here, Estes did not demonstrate that he sustained a "distinct palpable injury". That is, he did not show that the alleged erroneous delay in swearing in Mr. Yochum and the

alleged error in setting the swearing-in date caused him some individualized harm. At most, Estes speculated that if Mr. Yochum had been sworn in earlier, Mr. Yochum would have persuaded the other four members of the Board to act in some other, unspecified way. However, injuries which are speculative are not distinct and palpable and therefore do not create standing. *Martin*, 248 P. 3d at 1248.

Furthermore, the alleged delay Estes complains of and the alleged error in setting the swearing-in date would constitute generalized grievances shared by the District's patrons as a whole, and the Idaho Supreme Court has consistently held that citizens who have a general grievance shared by a large class of citizens have not suffered a distinct palpable injury for standing purposes. *Troutner v. Kempthorne*, 142 Idaho 389, 392, 128 P.3d 926, 929 (2006); *Gallagher v. State,* 141 Idaho 665, 668, 115 P.3d 756, 759 (2005); *Young,* 137 Idaho at 104, 44 P.3d at 1159; and *Selkirk-Priest Basin Association, Inc. v. State ex rel. Batt,* 128 Idaho 831, 833-834, 919 P.2d 1032, 1034-1035 (1996).

Estes claims that his status as a concerned citizen gave him standing to sue, and he cites *Miles v. Idaho Power, Co.,* 116 Idaho 635, 639, 778 P.2d 757, 761 (1989), *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 715 N.E.2d 1062 (1999), and *Waste Management of Alameda County, Inc. v. County of Alameda*, 79 Cal.App.4th 1223, 94 Cal.Rptr.2d 740 (2000) in support of his position. However, the Court in *Miles* did not find standing based on the plaintiffs' status as concerned citizens. Instead, the Court found standing based on the distinct, palpable injury the Idaho Power Company rate payers were claiming they would suffer. *Miles*, 116 Idaho at 642, 778 P.2d at 764. Furthermore, the

Sheward and *Waste Management* cases are contrary to controlling Idaho precedent establishing that in Idaho, an interest as a concerned citizen in seeing that the government abides by the law does not confer standing. *Student Loan Fund v. Payette County,* 125 Idaho 824, 828, 875 P.2d 236, 240 (Ct.App. 1994); *Young,* 137 Idaho at 105, 44 P.3d at 1160; and *Troutner,* 142 Idaho at 392, 128 P.3d at 929.

Estes also claimed that his status as a District taxpayer, resident and elector gave him standing to pursue the lawsuit. However, Idaho's appellate courts have held that absent a distinct, palpable, non-generalized injury, such status does not establish standing. *Gallagher v. State*, 141 Idaho 665, 668 (2005); *Student Loan Fund.* 125 Idaho at 828, 875 P.3d at 240; and *Ameritel Inns, Inc. v. Greater Boise Auditorium District*, 141 Idaho 849, 852, 119 P.3d 624, 627 (2005).

In short, Estes did not show that he sustained a "distinct, palpable injury" which was not "a generalized grievance shared by all or a large class of citizens" due to the alleged delay in swearing-in Mr. Yochum and the alleged error in setting the swearing-in date. Accordingly, he lacked standing to pursue this lawsuit, and the district court correctly granted the District's Motion for Summary Judgment.

C. The District Court Correctly Concluded That The Lawsuit Is Moot.

In *Wylie v. State of Idaho et al.,* 151 Idaho 26, 253 P.3d 700 (2011), the Idaho Supreme Court summarized the law of mootness as follows:

> "Justiciability is generally divided into subcategories—advisory opinions, feigned and collusive cases, standing, ripeness, mootness, political questions, and administrative questions." *Miles v. Idaho Power, Co.,* 116 Idaho 635, 639,

778 P.2d 757, 761 (1989). The elements of a justiciable controversy include the following:

> A "controversy" in this sense must be one that is appropriate for judicial determination. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of the parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.

Idaho Schools for Equal Educ. Opportunity v. Idaho State Bd. of Educ., 128 Idaho 276, 281-82, 912 P.2d 644, 649-50 (1996).

Therefore, courts will not rule on declaratory judgment actions which present questions that are moot or abstract. *Id,* at 282, 912 P.2d at 650. "An action for declaratory judgment is moot where the judgment, if granted, would have no effect either directly or collaterally on the plaintiff, the plaintiff would be unable to obtain further relief based on the judgment and no other relief is sought in the action." *Id.* Whether an issue is moot is to be determined at the time of the court's trial or hearing, and not at the time of commencing the action. *Id.* However,

> [t]he Court may nonetheless rule on a moot issue (1) when there is the possibility of collateral legal consequences imposed on the person raising the issue; (2) when the challenged conduct is likely to evade judicial review and thus is capable of repetition; and (3) when an otherwise moot issue raises concerns of substantial public interest.

Stephen v. Sallaz & Gatewood, Chtd. 150 Idaho 521, 528, 248 P.3d 1256, 1263 (2011)(internal quotation omitted).

253 P.3d at 705-706. Further, as stated in *Fenn v. Noah*, 142 Idaho 775, 779, 133 P.3d 1240, 1244 (2006): "Mootness . . . applies when a favorable judicial decision would not result in any relief."

Here, Estes' Complaint seeks an order "declaring that defendants have improperly applied State of Idaho election laws and procedures" and "a Writ and/or order compelling defendants to promptly comply with the laws of the State of Idaho." (R., p. 8). However, it is undisputed that the District swore-in Mr. Yochum in as a Trustee on June 27, 2011. Thus, neither the Writ nor the declaration Estes sought would have had any effect on Estes either directly or collaterally and would not provide him with any specific relief.

Furthermore, none of the grounds which justify ruling on a moot issue are present in this case. There is no possibility of collateral legal consequences being imposed on Estes if this Court agrees that the case is moot. The challenged conduct is not likely to evade judicial review because if the conduct ever occurs again, it can be challenged at that time by an individual with standing and in a context where the court would not be impermissibly "advising what the law would be upon a hypothetical state of facts." *Idaho Schools for Equal Educ. Opportunity v. Idaho State Bd. of Educ.*, 128 Idaho 276, 281-82, 912 P.2d 644, 649-50 (1996). And given that the issues in this case can be raised if necessary in the future by an individual with standing, this case does not involve matters of such substantial public interest that ruling on a moot issue is justified.

In short, this lawsuit is moot and the district court properly granted the District's Motion for Summary Judgment.

D. The District Court Correctly Concluded That The Lawsuit Is Not Ripe.

Although neither Estes nor the District directly addressed ripeness in their summary judgment briefing, ripeness is a justiciability issue which the district court was obligated to address *sua sponte* because it is jurisdictional. See, *Miles,* 116 Idaho at 639, 778 P.2d at 761 (ripeness is a justiciability issue); and *Webb v. Webb*, 143 Idaho 521, 524, 148 P.3d 1267, 1270 (2006)(courts are obligated to raise justiciability issues *sua sponte* because they are jurisdictional).

Ripeness asks whether court action is necessary at the present time. *Boundary Backpackers v. Boundary County,* 128 Idaho 371, 376, 913 P.2d 1141, 1146 (1996). As the district court correctly noted:

> In the case at hand, there is no indication that court action is necessary at the present time, especially in light of the fact that Mr. Yochum is sworn in and functioning as a trustee on the school board. The Court understands the Plaintiff's concern that there may be a conflict between the school charter and the election laws; however, it is not an issue that is properly resolved before this Court at this time because there is no person waiting to be sworn in as a member of the board.[4] This is a matter that is best considered by the legislative branch of the government. Should an individual be voted in as trustee and this matter arise again, this matter would become ripe for review at that time.
>
> [4]Addressing Plaintiff's concerns regarding the possible conflict of law would result in an advisory opinion on this issue, which is not the appropriate function of this Court. "This Court is not empowered to issue purely advisory opinions." *MDS Investments, L.L.C. v. State*, 138 Idaho 456, 464-465, 65 P.3d 197, 205-206 (2003).

(R., pp. 231-232).

In short, because there was no person waiting to be sworn-in at the time, Estes claim that the State election law conflicts with the District's Charter was not ripe for review. And, as pointed out above, if the issue ever arises again, it can be addressed at that time by an individual with standing and in a context where the court would not be impermissibly "advising what the law would be upon a hypothetical state of facts." *Idaho Schools for Equal Educ. Opportunity,* 128 Idaho at 281-82, 912 P.2d at 649-50 (1996).

VI.

CONCLUSION

For the foregoing reasons, the District Court's Order granting the District's Motion for Summary Judgment should be affirmed.

RESPECTFULLY SUBMITTED this 29th day of June, 2012.

CLEMENTS, BROWN & McNICHOLS, P.A.

By _____
BENTLEY G. STROMBERG
Attorney for Defendant/Respondent

VII.

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of June, 2012, I caused to be served two (2) true and correct copies of the foregoing by the method indicated below, and addressed to the following:

David M. Estes
1308 10th Avenue
Lewiston, ID 83501

_X_ U.S. MAIL
___ HAND DELIVERED
___ OVERNIGHT MAIL
___ TELECOPY (FAX)

Bentley G. Stromberg