10-27-2017

City of ID Falls v. H-K Contractors, Inc. Appellant's Reply Brief Dckt. 44886

IN THE SUPREME COURT OF THE STATE OF IDAHO

CITY OF IDAHO FALLS, an Idaho municipal corporation, Plaintiff-Appellant, vs. H-K CONTRACTORS, INC., an Idaho Corporation, Defendant-Respondent.	)	No. 44886-2017 Bonneville County District Court No. CV-2016-6339

APPELLANT'S REPLY BRIEF

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

HONORABLE JOEL E. TINGEY
District Judge

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II. INTRODUCTION

The issue on this appeal is the meaning of the general uncapitalized term "state" in Chapter 2, of Title 5 of the Idaho Code. Either the general term has a consistent meaning—defined by this Court in 1901—that is distinct from the Legislature's use of specific terms in other sections of Chapter 2, or the general capitalized term "state" has different meanings, depending on which section of Chapter 2 of Title 5 is considered. To preserve a harmonious reading across all of Chapter 2 of Title 5, this Court should reaffirm its holding in *Bannock County v. Bell* and hold that the general uncapitalized term "state," as it appears in § 5-216 and § 5-225, is a general reference to all of Idaho's governmental entities.

III. REPLY ARGUMENT

1. The cannons of construction applicable to this case weigh towards harmonizing the general term "state" across Chapter 2 of Title 5.

HK and the District Court assert that there is a cannon of construction that requires courts to interpret exceptions from statutes of limitations strictly. However, this is not the only cannon of construction applicable to this case. No cannon of construction is wholly dispositive and conflicting maxims can often point to two different interpretations. *POM Wonderful LLC v. Coca-Coal Co.*, 573 U.S. ___, 134 S.Ct. 2228, 2237 (2014). The cannons of construction weigh heavily towards harmonizing the general term "state" across § 5-216 and § 5-225. There are at least

three other cannons that support exempting Idaho's governmental subdivisions from the statute of limitation in this case.

First, there is a long standing principle of statutory construction that the same word will have a consistent meanings within a single chapter of the Idaho Code. *See State v. Yager*, 139 Idaho 680, 689–90 (2003) (statutes are construed *in pari materia*). This Court explained the principle well in *St. Luke's Magic Valley Regional Medical Center v. Gooding County*. 149 Idaho 584, 589 (2010). In that case, this Court explored two sections that both used the term "resources." *Id.* In harmonizing the two sections this court stated, "[w]e do not view the Legislature as having intended the word "resources" to have different meanings within Chapter 35, Title 31." *Id.* This Court should apply the same principle to § 5-216 and § 5-225, and hold that the Legislature did not intend the general term "state" to have different meanings within Chapter 2 of Title 5.

When a different definition is applied the same term that also appears in a different related section, absurd results follow. *Yager*, 139 Idaho at 689–90. The District Court's erroneous interpretation in this case resulted in an absurd result. In essence, the District Court held that § 5-216 applies to the City because the City is the "state," but § 5-216's exemption does not apply because the City is not the "state." This Court should correct this erroneous application of § 5-216 and § 5-225.

A second applicable cannon states that statutes are to be construed on the presumption that the Legislature had a full knowledge of existing judicial decisions that give some terms and phrases specific meanings when the Legislature amends a statute. *St. Luke's Reg. Med. Cntr. Ltd. v. Bd. Of Com'rs of Ada Cnty.*, 146 Idaho 753, 758 (2009). This Court had consistently upheld its holding in *Bannock County v. Bell* (which defined the general term "state" to include all of Idaho's subdivisions) several times before the Legislature amended § 5-216 in 1939. *See Blaine County v. Butte County*, 45 Idaho 193 (1927); *Little v. Emmett Irr. Dist.*, 45 Idaho 486 (1928); *Lemhi Cnty v. Boise Live Stock Loan Co.*, 47 Idaho 712 (1929). The Legislature was therefore aware of this Court's consistent application of the general term "state" as a term that <u>included</u> Idaho's governmental subdivisions when it amended § 5-216 to read that "[t]he limitations prescribed by this section shall never apply to actions <u>in the name or for the benefit of the state.</u>" The Legislature could have added the words "of Idaho" to limit § 5-216's exception. The Legislature did not. As a result, this Court should look to the only word that the Legislature actually wrote. That word was the general uncapitalized term "state," which had consistently been interpreted by this Court as a general reference to all of Idaho's governmental entities.

A third cannon of statutory construction that supports harmonizing the term "state" is that statutes of limitation, when applied to bar the rights of the

government, must receive a strict construction in favor of the government. *E. I. Du Point De Nemours & Co. v. Davis*, 264 U.S. 456, 460 (1924). While this Court has never had occasion to recognize this longstanding principle, the United States Supreme Court, the lower federal courts, and other state courts have. *E.g., id.*; *State of California v. Montrose Chemical Corp. of Cal.*, 104 F.3d 1507, 1512 (9th Cir. 1997) ("statutes of limitations are to be strictly construed in favor of the government."); *see also Anderson v. Security Mills*, 133 S.W.2d 478, 480 (Tenn. 1939); *Kansas Pub. Emps. Ret. Sys. v. Reimer & Koger Assocs., Inc.*, 941 P.2d 1321, 1333 (Kan. 1997) (stating that all doubts as to whether a statute of limitations runs against the government to be resolved in favor of the government); *Oklahoma City Municipal Improvement Auth. v. HTB, Inc.*, 769 P.2d 131, 134 (Okla. 1998) (stating that public policy requires every reasonable presumption favor governmental immunity from statutes of limitations.); *South Carolina Mental Health Comm'n v. May*, 83 S.E.2d 713, 717 (S.C. 1954) (stating that statues of limitations in proper cases will run against the government but such limitations must be strictly construed in favor of the government); *Des Moines Cnty. v. Harker*, 34 Iowa 84, 86 (1871) (stating doubts about statute of limitations should be resolved in favor of the government). HK is seeking to enforce § 5-216's limitation against the City-a governmental entity. This Court should construe the question of whether the general term "state" applies to the City in favor of all Idaho's governmental entities.

While there are competing cannons of construction that bear on the meaning of the general term "state," this Court should apply the cannons of construction that will result in harmony. *Ashely v. Dept. of Health and Welfare*, 108 Idaho 1, 2 (1985). Not only a harmony between § 5-216 and § 5-225's use of the exact same language, but also a result that will harmonize this Court's decision in this case with this Court's previous decisions.

2. The District Court erred by adding words to the statute when it held that the general term "state" in § 5-216 was synonymous with the specific term "state of Idaho" that appears in other sections of the Idaho Code, including § 5-218.

The District Court erred by added the words "of Idaho" to modify Idaho Code § 5-216's use of the general term "state." By doing so, the District Court did not give the plain language meaning of the uncapitalized general term "state." HK argues that the City is trying to add the words "political subdivisions" to circumvent the statute's express exemption for only the "State of Idaho." The City would agree with HK if Chapter 2 of Title 5 had a definition section that specifically defined the uncapitalized term "state." But the Legislature never defined the general uncapitalized term "state." The City would also concede if the Legislature had added words of limitation, like "of Idaho," as the Legislature did in § 5-218. But the Legislature did not add the words "of Idaho," as it did in other sections of the Idaho Code.

The only definition for the uncapitalized term "state," as it appears in Chapter 5 of Title 2, was provided by this Court in *Bannock County v. Bell*. In that case, this Court held the general uncapitalized term "state" included all Idaho's cities, counties, and other governmental subdivisions. 8 Idaho 1 (1901). There are only two sections of Chapter 2 of Title 5 that use the general uncapitalized term "state," § 5-216 and § 5-225. In fact, these two section use virtually identical language[1]. All other sections in Chapter 2 of Title 5 use specific terms, like "state of Idaho or any political subdivision" in § 5-218, or the extensively defined "governmental unit" in § 5-247[2]. The fact that the Legislature used different specific terms in other sections of the Idaho Code but the exact same general term in § 5-216 and § 5-225 should not be dismissed. As this Court recently instructed, when the Legislature uses the same word in a two different sections of the same chapter of the Idaho Code, the Legislature intended that word to have a consistent

[1] Idaho Code § 5-225 reads "The limitations prescribed in this chapter apply to actions brought in the name of the state, or for the benefit of the state, in the same manner as to actions by private parties." (emphasis added)

The relevant portion of § 5-216 reads "The limitations prescribed by this section shall never apply to actions in the name or for the benefit of the state and shall never be asserted nor interposed as a defense to any action in the name or for the benefit of the state . . . .

[2] The relevant portion of § 5-247 reads, "(1) In this section, "governmental unit" means:
(a) A political subdivision of the state, including a municipality or county; and
(b) Any other agency of government whose authority is derived from the laws or constitution of this state."

meaning across the chapter. *St. Luke's Magic Valley Reg. Med. Cntr. Ltd. v. Bd. Of Cnty. Com'rs of Gooding Cnty.*, 149 Idaho at 588.

There is only one authoritative interpretation of the term "state." The interpretation announced by this Court in *Bannock County v. Bell*[3] and then affirmed in *Blain County v. Butte County*[4], which includes all Idaho's government subdivions as part of the "state." In order to apply § 5-216 harmoniously, in context with this Court's prior decisions, the general uncapitalized term "state" must include all of Idaho's governmental subdivions, including the City of Idaho Falls.

The City does not ask this Court to read any additional words into § 5-216's general uncapitalized term "state." Instead the City asks that the Court read only what the Legislature has actually written and follow the principles of *stare decisis*. By holding that the general uncapitalized term "state" was synonymous with the specific term "State of Idaho," the District Court erred by adding words to § 5-216 that were not included by the Legislature. In an effort to justify ignoring this

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[3] "The statute of limitations of this state is expressly made applicable to the state. It is, therefore, applicable to the counties of the state." *Bannock Cnty. v. Bell*, 8 Idaho 1, 65 P. 710, 712 (1901). "It is held in the majority opinion that, as the statute of limitations runs against the state and every subdivision of it." *Id.* at 712 (Quarles, C.J., dissenting).

[4] "[B]eing applicable to the state, it is applicable to the counties of the state." *Blaine County v. Butte County*, 45 Idaho 193, 261 P. 338, 340 (1927) (citing to *Bannock Cnty v. Bell*, 8 Idaho 1, 65 P. 710, 712 (1901).

Court's definition of the general term "state," the District Court went so far as to rely on the Idaho Administrative Code.

At its most basic level, the Administrative Code is collection of the Executive Branch's interpretations of specific parts of the Idaho Code. *See J.R Simplot Co., Inc.*, *v. Idaho State Tax Com'n*, 120 Idaho 849, 862–63 (1991). After the Legislature assigns an Executive agency to enforce and administer a section of the Idaho Code, Idaho courts typically defer to that agency's interpretations of the statute it was tasked with enforcing. *Id.* However, no deference is due to an Executive agency's interpretation of a statute the agency has no authority to administer. *Id.* In this case, no Executive agency of the State of Idaho has been tasked with interpreting or enforcing the provisions of Chapter 2 of Title 5. For that reason, the terms and interpretations of the Idaho Administrative Code have no relevance to the interpretation of the general term "state" in Chapter 2 of Title 5 of the Idaho Code. *See Mulder v. Liberty Northwest Ins. Co.*, 135 Idaho 52, 57 (2000) (stating that the Idaho Supreme Court "has the ultimate responsibly to construe legislative language").

The District Court should have looked first to this Court's judicial opinions that dealt with Chapter 2 of Title 5 before exploring the Executive Branch's interpretations of other, unrelated, sections of the Idaho Code. *See Yager*, 139 Idaho at 689–90 ("It is a fundamental law of statutory construction that statutes that are

in *pari materia* are to be construed together."). As a result, the City respectfully requests that this Court to reverse the District Court's decision, and instruct the District Court to apply this Court's definition of the general term "state," as adopted in *Bannock County v. Bell*.

3. HK's reliance on *Bevis v.Wright* does not shed any light on the meaning "for the benefit of the state" (as it appears in § 5-216 and § 5-225) because *Bevis v. Wright* did not interpret any statutory language.

Bevis v. Wright, mentions the phrase "benefit of the state" only once, and does not address judicial interpretation of a statute, let alone any section of Chapter 2 of Title 5. 31 Idaho 676, 175 P. 815, 816 (1918). This appeal focuses primarily on the correct application of statutory construction. HK seems to suggest that *Bevins v. Wright* essentially stands for the position that those programs, contracts, and taxes pursued by Idaho's governmental subdivisions, which only sometimes benefit the State of Idaho, are invalid. However, this Court upheld the exhibition tax in *Bevins* that HK suggests was improper due to the "tenuous" connection to the State of Idaho at large. *Id.*, 175 P. at 816. In part because the Court found that the purpose of the tax was "the promotion of the general welfare," which included some benefit to the State of Idaho at large.[5] *Id.*, 175 P. at 816.

[5] The "for the benefit of the state" discussion in *Bevis v. Wright* consists of two (2) sentences and a total of 58 words. By comparison, this paragraph is 179 words, just over three times as long.

The City's Agreement with HK has a direct benefit to the State of Idaho. The Agreement allows the City to obtain a groundwater recharge site. Water, in the State of Idaho, is a finite and precious resource that is owned by the State of Idaho. Idaho Code § 42-101. The Stormwater Drainage Agreement will be used to recharge the State of Idaho's groundwater. Water was of such paramount concern to the framers that an entire article of the Idaho Constitution is devoted to protecting this resource. IDAHO CONST. art XV. The benefits from groundwater recharge will not be solely enjoyed by the people within the geographic boundaries of the City. It will be enjoyed by all downstream water users, which all reside in the State of Idaho. For these reasons, the City respectfully requests that this Court reverse the District Court's Order and remand this case on the ground that the Stormwater Drainage Agreement is for the promotion of the public's general welfare, which includes a direct benefit to the State of Idaho.

IV. CONCLUSION

The District Court erred in holding that the general term "state" referred only to the State of Idaho in § 5-216 and that the District Court was not required to review the general term "state" in context of this Court's prior decisions. The City of Idaho Falls respectfully requests that this Court reverse the District Court's order, hold that § 5-216's exemption applies to all of Idaho's governmental subdivisions, and remand this case for additional proceedings.

Dated this 23 day of October, 2017.

s/ Michael Kirkham
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I hereby certify that two copied of the foregoing document were mailed, postage pre-paid, to the following:

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Dated this 23 day of October, 2017.