White v. Martz

First Judicial District Court of Montana, Lewis and Clark County

January 25, 2006, Decided

Docket No. CDV-2002-133

Reporter
2006 Mont. Dist. LEXIS 136

LARRY WHITE, CANDACE BERGMAN, DAVID CHASE, MICHAEL SHI ELDS, KENN ETH INGRAHA M, GARY ACKERMANN, and DANI EL F INLEY, Plain tiffs, vs. GOVERNOR JUDY M ARTZ; SUPREME COURT ADMINISTRATOR JA MES OPPEDAH L; APPELLATE DEFENDER CO MMISSIONERS TODD HILLI ER, DOROTHY Mc CARTER, BEV ERLY KOLAR, MI CHAEL SHERWOOD, and RAND I HOOD ; DISTRICT COURT COUNCIL MEMBERS CHIEF JUSTICE KARLA G RAY, DISTRICT COU RT JUDGE KATHERINE R. CU RTIS, DISTRICT COU RT JUDGE THO MAS McKI TTRICK, DISTRICT COURT JUDGE JOHN McKEON and DISTRICT COURT JUDGE ED McLEAN ; THE BOA RD OF COMMISSIONERS O F MISSOULA COUNTY ; MISSOULA COUNTY CO MMISSIONERS BA RBARA EVANS, BILL CAREY, and JEAN CURTISS; Defendants.

Prior History: *White v. Martz, 2005 Mont. Dist. LEXIS 1871 (2005)*
White v. Martz, 2004 Mont. Dist. LEXIS 2005 (2004)

Judges: **[*1]** Thomas C. Honzel, District Court Judge.

Opinion by: Thomas C. Honzel

Opinion

MEMORANDUM AND ORD ER ON MOTIONS TO DISMISS

P1. Befor e the Cour t ar e th e Plain tiffs' m otion for order of dismissal w ith cond itions pursu ant to MRCP 41(a)(2); 23(e), and Defendants' Ru le 12(b)(1) m otion to d ismiss f or lack of subject m atter ju risdiction on grounds of mootness. The motions w ere h eard January 11, 2006, and are r eady for decision. For the reasons stated herein, the Court concludes that the case is moot a nd, t herefore, t he Defendants' m otion t o dismiss should be granted.

Background

P2. Plaintiffs filed t his act ion Febru ary 14, 2002, alleg ing, among other th ings, th at th e D efendants in th eir official capacities had failed to provide the public defender programs in Montana countie s with the ad ministrative and financial resources necessary to ensure that lawyers employed by those programs were capab le of providing statutorily and constitutionally ad equate l egal r epresentation to th eir in digent clients. On May 7, 2004, the parties entered into a Sti pulation and Order of Postponement of Trial to allow the 2005 Montana legislature t o en act leg islation th at would adequately address the indigent **[*2]** defense system.

P3. On Ap ril 16, 2005, the Montana legislature passed Senate Bill 146 (SB 146), known as the Montana Public Defender Act. Governor Schweitzer signed it into law on April 28, 2005. The Act significantly changes the manner in which public defender services are delivered to all c ourts in the state. It establishes a statewide public defender system which, effective July 1, 2006, will completely rep lace the system the Plaintiffs challenged in this case.

P4. In making their motion Defendants acknowledge that if the action is d ismissed as m oot, the Court st ill wou ld have jurisdiction t o enforce t he M ay 7, 2004, stipulation, and t o award Plaintiffs their attorney fees if applicable.

Discussion

P5. Plaintiffs have c onceded that , wit h t he exce ption of funding, SB 146 addresses the substan tive con cerns t hat grounded the co mplaints about the fo rmer pub lic d efender system. Plaintiffs' contention that this case will not be rendered "moot" until SB 146 is properly implemented is misplaced.

P6. The M ontana Suprem e Court has held t hat " [a] m oot question is one which existed once but because of an event or happening, it has ceased to exist and no longer presents an actual **[*3]** controversy." ***Miller v. Murray****, 183 Mont. 499, 503, 600 P.2d 1174, 1176 (1979)*. More recently, the

court cited its holding in ***Miller*** and went on to state that it normally does not address moot questions but that it "will consider the merits of moot issues when faced with constitutional questions which are capable of repetition yet could avoid review." ***Skinner Enterprises, Inc. v. Lewis and Clark County***, *1999 MT 106, P12, 294 Mont. 310, P12, 980 P.2d 1049, P12*.

P7. In Miller, Miller was the chairperson of the Tax Relief Association, a group organized to expand the state's gambling laws by constitutional initiative. When the secretary of state determined the petition drive fell 2,904 signatures short of the 31,672 necessary, Miller requested a declaratory judgment or writ of mandate on signature certification. The district court denied Miller's request for declaratory relief because "the controversy would become moot before a factual determination could be made and that it is the function of the legislature and not the judiciary to resolve the question of petition signature qualifications." *Miller, at 502, 600 P.2d at 1176.* **[* 4]** In holding the issue was moot, the supreme court noted that the forty-sixth Montana legislature significantly modified the statute on which Miller relied and that "[t]he controversy cannot be repeated because the law has been decisively changed." *Miller, at 503, 600 P.2d at 1176*.

P8. Similarly, Skinner wanted to develop a subdivision in the Helena valley. Skinner asserted there was a discrepancy between the 1993 county wastewater regulations and the state's regulations. The county reviewed its regulations, conducted public hearings and adopted several amendments in 1995. Skinner then filed a petition alleging constitutional and statutory notice requirement violations. In 1998, the county again amended its wastewater treatment regulations. As a result, "the District Court found that Skinner's objections to the process for the adoption of the 1995 amendments were moot and it dismissed the case." *Skinner, at P8*. In affirming the district court, the court stated: "[t]he adoption of the 1995 amendments which formed the basis for Skinner's claim were superseded by the 1998 amendments, prior to trial. As a result, the legality of the 1995 amendments was no longer of any **[*5]** practical consequence to the parties . . ." *Skinner, at P16*.

P9. In determining whether the exception to mootness applies, the supreme court has established a two-part test: First, the challenged action must be too short in duration to be fully litigated prior to cessation; and second, there must be a reasonable expectation that the same complaining party would be subject to the same action again.

P10. *Skinner, at P18* (citing *Heisler v. Hines Motor Co., 282 Mont. 270, 275-76, 937 P.2d 45, 48 (1997)*.

P11. Here, Plaintiffs acknowledge that the framework of SB 146 meets their objections to the old system. In their reply brief they state that "the only disagreement between the parties is the procedural mechanism by which the case should be brought to a close." They also express concern about the adequacy of the funding to implement SB 146.

P12. There is, of course, no way of knowing at this time whether the new system is adequately funded or will be adequately funded in the future. Nevertheless, any challenge to SB 146 would be a completely different lawsuit and there is no reason to believe that a new claim could evade review.

P13. Because the Court has determined **[*6]** that the case should be dismissed as moot, it is not necessary to address the Plaintiffs' motion to dismiss with conditions.

P14. NOW, THEREFORE, IT IS ORDERED:

P15. 1. Defendants' motion to dismiss IS GRANTED.

P16. 2. Plaintiffs' motion to dismiss with conditions IS DENIED.

DATED this 25th day of January, 2006.

Thomas C. Honzel, District Court Judge