



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**MAYER UNIFIED SCHOOL DISTRICT AND GADSDEN
ELEMENTARY SCHOOL DISTRICT v. MARK WINKLEMAN et al.,
CV-08-0225-PR**

PARTIES AND COUNSEL:

Petitioners/Cross-Respondents: Mayer Unified School District and Gadsden Elementary School District (“the Districts”), represented by Timothy M. Hogan and Joy Herr-Cardillo, Arizona Center for Law in the Public Interest.

Respondents/Cross-Petitioners: State of Arizona, Arizona State Land Department (“Department”) and State Land Commissioner Mark Winkleman (“State Defendants”), by Assistant Attorneys General Kenneth D. Nyman, William Richards and Patrick Sigl. Arizona Department of Transportation (“ADOT”), by Mark A. Fuller, Kevin E. O’Malley, Kiersten A. Murphy and C. Lincoln Combs, Gallagher & Kennedy, P.A. City of Carefree, Town of Gila Bend, City of Globe, City of Flagstaff, City of Glendale, Town of Marana, City of Phoenix, City of Sierra Vista and City of Tempe (“Municipal Defendants”), by C. Brad Woodford, Jeffrey T. Murray and Rebecca N. Lumley, Moyes Sellers & Sims Ltd. The City of Scottsdale, represented by Bruce Washburn, Office of the Scottsdale City Attorney.

FACTS: The Arizona-New Mexico Enabling Act of 1910 conveyed ten million acres of federal land to Arizona upon its admission to the Union. Public Law No. 219, chapter 310, 36 Stat. 557. The Act provided the land was to be held in trust for the benefit of Arizona’s public schools, universities and other public institutions. In 1929, the State Land Department began issuing perpetual easements on state trust lands to governmental entities, mostly for road construction. This practice continued until 1967, when the U.S. Supreme Court held that “Arizona must actually compensate the trust in money for full appraised value of any material sites or rights-of-way which it obtains on or over trust lands.” *Lassen v. Arizona ex rel. Ariz. Hwy. Dept.*, 385 U.S. 458, 470 (1967).

The Enabling Act § 28 sought to prevent Arizona from engaging in the abuses other states had in disposing of their federal land grants. *Lassen*. It prohibits disposition of trust land except to “the highest and best bidder at public auction” for consideration no less than its value and appraisal of that value before disposition. Any disposition not made in “substantial conformity” with the Act “shall be null and void,” notwithstanding contrary state law.

In 2004 parents of public school students, joined by the Districts, sued State Defendants alleging failure to get compensation, in violation of the Enabling Act, from many easement holders across state school trust lands from 1929 to 1967. Plaintiffs claimed the so-called “09 easements” were void and Defendants breached their fiduciary duty to obtain compensation; they sought compensation to the trust, an accounting and declaratory relief.

State Defendants moved to dismiss under Arizona Rules of Civil Procedure Rule 12(b)(6), arguing that the plaintiffs had no standing, had failed to file a notice of claim, and had failed to file their case within the statute of limitations. The trial court denied the motion to dismiss, finding the action had been filed within the limitations period and the notice of claim statute did not apply to these claims. It dismissed the parents for lack of standing and joined easement holders as defendants.

Plaintiffs filed a second amended complaint to include county and municipal defendants, who moved to dismiss. The trial court dismissed the complaint based on laches. The court of appeals affirmed in a published opinion.

ISSUES:

Petition

“1. The Court of Appeals did precisely what the United States Supreme Court has said that state courts may not do: it used a state law doctrine to limit the application of a federal decision interpreting federal law. By applying Arizona’s retroactivity test – a test that has been disapproved by the United States Supreme Court for federal court decisions – the Court of Appeals refused to enforce a fundamental provision of the Enabling Act, thereby depriving Arizona’s public schools of millions of dollars in compensation that they are guaranteed by that Act.”

Cross-Petition (State Defendants)

“2. Should the court of appeals have upheld the dismissal of this case on nonjusticiability grounds, including lack of standing?

“3. Should the court of appeals have upheld the dismissal of this case on laches, or statute of limitations grounds?”

Definitions:

Consideration: In a contract, a thing of value that is exchanged for what a party gets.

Declaratory relief: Official statement by a court judgment that a position is legally correct.

Easement: Use of land, either by permission or by operation of law, in which the party granted the easement may pass over the land freely or use it, for example, to string power lines or lay down an access road to other property.

Laches: Doctrine under which a party claims the other party did not pursue the claim

quickly enough under the circumstances, requiring dismissal for the sake of fairness.

Notice of claim: Notice to alert the government of a claim against it, listing the basis of the claim and a proposed settlement amount, filed before a claimant may file suit in court.

Statute of limitations: Time period established by the legislature, at the end of which a party may no longer sue another, or in the criminal context, the state may not charge a defendant with having committed an offense.

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