

Gulibert v. Borja, 16 ROP 7 (2008)

**DELEGATE MARIO S. GULIBERT, DELEGATE LUCIO NGIRAIWET, SPEAKER OF
THE HOUSE ANTONIO BELLS, and FLOOR LEADER SABINO ANASTACIO,
Appellants,**

v.

**SANTOS BORJA, CHAIRMAN OF PALAU ELECTION COMMISSION, GREGORIO
DECHERONG, BENJAMIN YOBECH, and SALLY TECHITONG SOALBLAI, in their
official capacity as Members of the Palau Election Commission and the PALAU
ELECTION COMMISSION, a public body,
Appellees.**

CIVIL APPEAL NO. 08-050
Civil Action No. 08-255

Supreme Court, Appellate Division
Republic of Palau

Decided: October 31, 2008¹

p.8

Counsel for Appellants: Rachel A. Dimitruk

Counsel for Appellees: Nelson J. Werner

BEFORE: KATHLEEN M. SALII, Associate Justice, LOURDES F. MATERNE, Associate
Justice, ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Trial Division, the Honorable ARTHUR NGIRAKLSONG, Chief Justice,
presiding.

PER CURIAM:

BACKGROUND

A. Factual Background

Appellants are delegates in the Olbiil Era Kelulau (“OEK”), each of whom have served at least three terms. In August 2008, each of the appellants filed nominating petitions with the Palau Election Commission (“PEC”), seeking to be placed on the ballot for the election to be held November 4, 2008. Appellants were informed by the PEC that, because of the term limit provision contained in the Fourth Amendment to the Constitution, they were ineligible to seek elected office. The Fourth Amendment, which was passed by citizen referendum in November 2004, states:

No person shall serve as a member of Olbiil Era Kelulau for more than three

¹Appeal considered on the briefs, pursuant to ROP R. App. Pro. 34(a).

Gulibert v. Borja, 16 ROP 7 (2008)

terms; provided, however, that any person elected as a member of the Olbiil Era Kelulau in the regular general election in which this amendment was adopted shall be entitled to serve the four years for which he or she was elected regardless of the number of previous terms served.

B. Procedural Background

On September 4, 2008, Appellants filed an expedited suit against the PEC. Appellants sought both declarative relief that the Fourth Amendment's term limit provision excluded terms served before the amendment was passed and injunctive relief forcing the PEC to place Appellants on the ballot for the 2008 general election. Appellants argued that the legal p.9 presumption of prospectivity requires that only terms begun after the amendment was passed count towards the three term limit.

The trial court rejected Appellants' argument, finding that the statutory language was unambiguous in including past terms in the term limit computation and granting summary judgment for the PEC.

STANDARD OF REVIEW

“We review the trial court's entry of summary judgment *de novo*, employing the same standards that govern the trial court and giving no deference to the trial court's findings of fact.” *Gibbons v. Seventh Koror State Legislature*, 13 ROP 156, 158 (2006) (quoting *ROP v. Reklai*, 11 ROP 18, 20-21 (2003)). “As part of this review, all evidence and inferences are viewed in the light most favorable to the nonmoving party, to determine whether the trial court correctly found that there was no genuine issue of material fact and that the moving party was entitled to judgment as a matter of law.” *Obeketang v. Sato*, 13 ROP 192, 194 (2006) (internal citation omitted.)

DISCUSSION

A. Appellants' Argument

Appellants argue that the trial court's grant of summary judgment should be overturned and summary judgment should be granted in their favor. They argue that the trial court failed to properly construe the Amendment's language as ambiguous. Appellants claim that the Amendment is ambiguous in several ways and this ambiguity should be resolved towards prospective application, in favor of candidate eligibility and voter choice.

B. Presumption towards Prospective Application of Statutes or Amendments

[1] The parties agree on the general interpretive principle that retrospective or retroactive legislation is disfavored. Legislation will only be interpreted as retrospective if the act, or amendment, clearly indicates through language or necessary contextual implication that the legislature intended a retroactive application. *See Noah v. ROP*, 11 ROP 227, 233 (2004); *Yano v. Kadoi*, 3 ROP Intrm. 174, 182 (1992) (noting that when “language is plain and admits of no more than one meaning, the duty of interpretation does not arise”) (internal citations omitted); *Ngerul v. ROP*, 8 ROP Intrm. 295, 297 (2001) (noting that if constitutional text does not have one unambiguous meaning, then the court should look beyond to text to determine the framer’s intent) (citing *Remeliik v. The Senate*, 1 ROP Intrm. 1, 5 (High Ct. 1981)).

[2] If statutory language is unambiguous, and supports only one reasonable interpretation, that retrospective application was intended, then the presumption of prospective application is rebutted. *See 73 Am. Jur. 2d Statutes* § 245; *Yano*, 3 ROP Intrm. at 182. However, if there is ambiguity within the statute, then the statute will be applied prospectively. “Ambiguity exists when a statute is capable of being understood by reasonably well-informed persons in two or more different senses.” *Palau Chamber of Commerce v. Uherbelau*, 12 ROP 183, 185 (Tr. Div. 2005) (quoting 2A Norman J. Singer, *Statutes and Statutory Construction*, § 45.02 at 11-12 (6th ed. 2000)).

P.10

C. Trial Court’s Treatment of Presumption

As noted above, Appellants claim that the trial court improperly disregarded the presumption towards prospective application. Specifically, they argue that the trial court erroneously relied on the absence of explicit *prospective* language to find that the Amendment applied retrospectively. This argument is not supported by a complete analysis of the trial court record.

Appellants point to specific sentences in the trial court opinion such as “[i]f the Amendment were only prospective in its application, it would have easily so stated in a clearly understood manner.” Trial Op. at p. 5. While this statement is misleading, an examination of the trial court opinion as a whole indicates that the basis for the decision in favor of PEC was the “clear wording” of the Fourth Amendment, not an omission of explicit prospectivity. *Id.* The trial court correctly identified the proper analysis when it stated “if language of the Fourth Amendment is clear and unambiguous, the Court must apply the Constitution according to its plain and obvious meaning.” *Id.* at 3. The trial court then determined that the Amendment’s language was clear, in counting terms prior to 2004 against legislators, with the exception that no legislators elected in 2004 would be barred until that term ended. Accordingly, despite a misleading statement in the trial court opinion, the trial court analyzed the Amendment’s language properly.

D. Ambiguity

The dispute currently before the Court turns on whether the language of the Fourth Amendment is ambiguous, as the presumption applies only to ambiguous language. The trial court determined that the language of the Fourth Amendment was clear in stating that all OEK members are eligible to serve at most three (3) terms, with the exception that legislators elected in 2004 were able to serve out that term, even if they had served three terms previously.

1. Ambiguity in the Amendment's Language

Appellants argue the Amendment's ambiguity in several ways. Firstly, Appellants argue that there is no clear meaning to the text of the Fourth Amendment. They assert that the text of the Fourth Amendment states only that there is a three term limit on legislators and that those elected to the Seventh OEK can serve regardless of prior service. Appellants' Reply at 8. They argue that the second phrase of the Amendment is intended merely "to reassure voters and candidates that it would not apply retrospectively." However, the Court does not interpret the text to have that meaning, or find such an interpretation reasonable, as required for the presumption of prospective application to apply. The second phrase of the amendment is a qualifier to the general three term limit; it prevents the term limits from acting to bar veteran legislators until 2008.

[3] "It is a cardinal rule of statutory construction that significance and effect should, if possible, be accorded to every word, phrase, sentence, and part of an act." 73 Am. Jur 2d *Statutes* §120. If the second phrase of the amendment did not specify "four years," then the phrase could be read to allow for OEK members to serve up to 12 years, regardless of the previous terms served. However, the inclusion of "four years" is a clear limit on the time that OEK p.11 members are exempted from application of the term limits. Additionally, if the amendment did not specify those legislators elected in the 2004 general election, there would be ambiguity as to how the Amendment was to be applied. However, the Court cannot interpret the Amendment so that certain qualifying phrases do not have meaning. As the Amendment is written, there is no ambiguity.

[4] It is a rule of statutory interpretation that if specific exceptions are made to a general prohibition, "additional exceptions are not to be implied in the absence of evidence of a contrary legislative intent." 73 Am.Jur.2d *Statutes* §215. In the case before the Court, the Amendment articulates that an exception to the blanket prohibition against serving more than three terms exists: that exception allows the legislators elected in 2004 to their fourth, or more, term of office to serve out the 2004-2008 term, before being barred from holding office. The Court cannot determine that the Amendment implies a further exception: that legislators can continue to serve out terms until 2012, or 2016, if the Amendment does not say so.

The Court finds *Maloney v. McCartney*, cited by both parties, to be informative in this case. 159 W. Va. 513, 223 S.E.2d 607 (1976). *Maloney* involves a gubernatorial term limit statute.² The question before the Supreme Court of Appeals of West Virginia was whether the

²Although there are factual distinctions between the *Maloney* case and the case before the Court, such as

Gulibert v. Borja, 16 ROP 7 (2008)

term limit amendment counted a governor's term prior to the amendment's passage. The amendment read, in part:

A person who has been elected or who has served as governor during all or any part of two consecutive terms shall be ineligible for the office of governor during any part of a the term immediately following the second of the two consecutive terms. *The person holding the office of governor when this section is ratified shall not be prevented from holding the office of governor during the term immediately following the term he is then serving.*

159 W. Va. at 515 (quoting W.Va. Const., Art. VII, s 4) (emphasis added).

The Governor argued that the amendment's language was ambiguous and thus, must be interpreted in favor of eligibility and against retroactive application. *Id.* at 520. The court determined that there was no ambiguity in the language: the amendment allowed the governor sitting when the amendment was passed to serve ONLY the term immediately following his current term. He was barred from running for the term after that.

p.12

The Court finds the language of the Fourth Amendment to be very similar to that of the amendment in *Maloney*. Both amendments describe a general limitation on terms served and provide a specific, detailed exception. Although the amendment in *Maloney* does not state explicitly that the governor is able to serve ONLY during the term after his current term, or that the governor's election prior to the passage of the amendment will count against him, the court found that meaning to be clear. Similarly, although the Fourth Amendment does not state explicitly that the term limits are retrospective, or that the described exception is the exclusive exception, this Court finds that to be the clear and plain meaning of the Fourth Amendment.

Although Appellants make excellent efforts in support of their position, their interpretation of the Fourth Amendment is just not convincing. A straightforward reading of the text contains a plain meaning; that terms served prior to 2004 count against every candidate, while the limitation will not be exercised against incumbents until 2008.

2. *Ambiguity in the Amendment's Silence on Retrospective Application*

Secondly, Appellants argue that because the Amendment does not explicitly refer to retrospective application, it must be determined to be ambiguous, and thus apply prospectively. However, this argument overstates the nature of the presumption of prospective application. As noted above, it is only when the language leaves a reasonable doubt as to the intended temporal application that the presumption comes into play. *See* 73 Am. Jur. 2d. *Statutes* § 245. However, statutory language can indicate retroactive application, with no reasonable doubt as to its meaning, without any explicit mention of retroactivity. The ambiguity or clarity of statutory language is not determined by omission of a specific term, but "by reference to the language

the fact that the amendment in *Maloney* dealt with gubernatorial term limits, rather than legislative, the similarity of the language of the statute makes the case relevant to an examination of how other courts gauge ambiguity and implicit meaning.

Gulibert v. Borja, 16 ROP 7 (2008)

itself, the specific context in which that language is used, and the broader context of the statute as a whole.” 73 Am. Jur. 2d *Statutes* § 114. A drafter’s intention that a statute or amendment apply retrospectively will not be disregarded, solely because that intention is seen through context or necessary implication, as opposed to explicit directive. Accordingly, Appellants’ argument that the Fourth Amendment is ambiguous because it lacks an explicit directive cannot succeed.

3. Ambiguity in the Amendment’s Lack of an Explicit Date

Thirdly, Appellants argue that the lack of a specific date when terms served begin to count against term limits, is inherently ambiguous. To support this argument, Appellants cite the term limit provisions of various American states and note that the majority of those provisions include a date from which terms are counted. However, language with a clear and plain meaning does not become ambiguous because it lacks a date. As seen in the *Maloney* decision, the West Virginia amendment was applied retroactively even though the amendment provided no specific date. *See supra*, Sect. III, D, 1; 159 W. Va. at 520.

The Fourth Amendment describes a four year term that begins with the election in which the Amendment was passed. There is no question but that the Fourth Amendment was passed in the 2004 election and that the four year term ends in 2008. As described in depth above, there is no ambiguity in the language of the p.13 Amendment as to whom is barred from office by term limits, when that bar takes effect, or which terms count against a candidate.

CONCLUSION

For the foregoing reasons, the decision of the trial court to grant summary judgment to PEC is **AFFIRMED**.