

ORAL ARGUMENT — 12/2/97
97-0229
HATLEY V. TEXAS A&M

LAWYER: The issue as the appellant sees it is fairly clean. It's whether or not Texas A&M University at its installation in Galveston, as a branch of the executive government, can claim to be irresponsible for the constitution of the State of Texas through the doctrine of sovereign immunity. Interestingly enough, a case against Texas A&M University on a state constitutional issues was litigated in the 11th DC of Harris County this past summer. So what we did there is may call by the way, or stand by the way, depending upon today.

The fact that this lawsuit arose in March, 1990 out of events that occurred in 1989, when a tenured professor in engineering, Dr. James Hatley, was resigned without his consent, and told to in effect vacate the premises.

HECHT: How is this a free speech case? What did he say or want to say?

LAWYER: The pleadings that we must take as true in this case, because it is a plea of the jurisdiction indicates that Hatley and Slotta were having academic disagreements. Slotta who's no longer there came in in the Fall of 1989 as the Director of Engineering. When Hatley then expressed to his president, vice president and the director of _____, that he had not resigned, and that his relationship with the institution had not been severed by his choice, or by his will. At that moment they shifted and said, "Well nevertheless, we're moving in one direction and you're moving in the other," and his was out the door.

HECHT: How is that a free speech?

LAWYER: In Texas, my view and it is fairly doctrinaire, I think, with the language. Any matter upon which a person expresses themselves is protected. And government can take no action against an individual because of their expression on any matter. That's the contrast with the federal standard which is more restrictive and says that only matters of general public concern are protected.

I think that Hatley had an opportunity to engage and protect an expression when he voiced his opinions and when he ventured into a discussion with Slotta, the subject of that has not been explored because we didn't get past the jurisdictional issue. He had an opportunity and he had a right to disagree with Slotta's conduct and action, and for _____ breaching the relationship or severing the relationship that he had with Texas A&M Univeristy.

HECHT: Could he have filed a 1983 action?

LAWYER: A 1983 action was filed. And the 1983 action still remains somewhere in the vestiges of this case. Whether it's an action that has meaning or not, probably not. Because 1983

perceives that the state was not a person within the context of that federal enactment.

BAKER: Where does that claim remain? In the framework of this particular suit?

LAWYER: Unaddressed by the TC.

BAKER: Still in the TC?

LAWYER: Yes. As a practical matter, the TC on July 28, 1993 when the TC dismissed all claims against Texas A&M University on the basis of sovereign immunity presumably dismissed that one as well. All is kind of an all inclusive word.

OWEN: What about the cases that suggest that if an agency through its officers acts outside the constitution, that you need to sue the officers directly and not the state. The state can never act.

LAWYER: That's based upon as I understand it, the presumption, which is a fiction I think, that the state will never do anything wrong. We work on that fiction through the presumption. And if you have an officer who's acting ultra vires, then that's not the action of the state. Here you have the action of the state. Here we're not asking for a restraining order. We're asking for a mandatory order. We're asking that the other contracting party to the relationship that Hatley enjoyed be ordered to reinstate Hatley.

OWEN: Why couldn't you sue Hatley's superiors and ask for mandatory relief against those superiors reinstating him as opposed to suing the university?

LAWYER: When you sue the box of the agency, you sue all the authority and the power within the box. If I were to sue the individuals, I would have to be asking that they individually put Hatley back to work. They couldn't do that. They don't have the authority of the state. So in order for them to be able to put Hatley back to work, I have to sue them in their official capacity. If I sue them in the official capacity, that's a suit against the state. If I sue the state, I dispense with the unnecessary nicety I think of bringing in individuals. I don't think that it's necessary to sue individuals in their official capacity to do the act of the agency when the agency itself can be addressed.

BAKER: You did sue them to start with didn't you?

LAWYER: They were sued originally.

BAKER: Were you counsel for Mr. Hatley then?

LAWYER: I was not originally counsel.

BAKER: But then they were nonsuited, is that right?

LAWYER: I nonsuited them.

BAKER: So what are you asking this court to do?

LAWYER: I am asking this court to declare that the TC of Texas has jurisdiction over the State of Texas through its agency and the executive branch at least, Texas A&M University at Galveston to deal with constitutional allegations. We believe here that we have a clear case throw down on whether or not Hatley had a protected property interest.

ABBOTT: Or injunctive relief only, right?

LAWYER: Injunctive relief only.

BAKER: Can we take it that you concede you don't have an action for monetary damages?

LAWYER: I concede that under *Beaumont v. Buillion*, we don't have an action for tort damages.

BAKER: So that gets us to the equitable relief. Did you preserve the equitable relief you're asking for in the CA, and if so, when and where?

LAWYER: We never got to the point of relief. The TC said it had no jurisdiction and it had no ability to exercise the right to speak over the party, Texas A&M University. Consequently, if it has no right to speak over any issue, it has no right to speak over a part of our claim, which would be the relief. So consequently, if there is no right to speak about the party, there can't be in my view any right to start saying, "Well but wait a minute. Let's start nit picking on what relief we might have available to us."

BAKER: Well would you agree it's clear from the *Bouillion* that you don't have voluntary relief by tort damages, but you do have at least in dicta assertion for equitable relief? So what more can you get in the context of any lawsuit?

LAWYER: What we have here is a case about principle, I suppose the way it boils down: Did they do right or did they do wrong? And all we can get under *Buillion* is the equitable relief.

BAKER: When and how did you preserve your complaint about equitable relief in the CA?

LAWYER: In the CA, we never got past go.

BAKER: Well they can only act on the points of error you bring to them, is that correct?

LAWYER: I don't think that they can consider what relief is available to a party that they don't have jurisdiction of.

BAKER: My question is, they can only act upon the points of error you bring to them, is that right?

LAWYER: That's right.

BAKER: Did you bring a point asking about equitable relief?

LAWYER: No. We filed this lawsuit...

BAKER: Then how can you raise that point for the first time here?

LAWYER: Of course, the case was submitted to the CA before *Buillion* was decided.

BAKER: How can you raise it here for the first time?

LAWYER: As I see, I don't get to Baltic Avenue unless I pass go.

BAKER: How have you passed Go as this court is concerned?

LAWYER: Because the TC has jurisdiction of the State of Texas...

BAKER: How does this court have jurisdiction of the assertion you're making before it today?

LAWYER: This court has the power I think to decide whether or not the State of Texas is sovereignly immuned to the constitution of the State of Texas. It has the right to decide whether the preacher is greater than the creation.

ABBOTT: Let's assume that for certain procedurally reasons, you are unable to proceed any further on your equitable claim, what claims do you have remaining?

LAWYER: None. If we take the two points that 1) that's been addressed, the TC said no jurisdictional. We said to the appellate court, "we do have jurisdiction." The TC did have jurisdiction. The appellant court said, No, it didn't have jurisdiction. Besides that you can't get damages anyway. You don't have jurisdiction over the parties. You don't have jurisdiction over the claim. Now the TC ignored, I think, the other aspects of relief. Now the question comes back, Does the TC have jurisdiction? And if we go back, can the TC give any type of equitable relief? Surely

