State of New York Court of Appeals

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To be argued Tuesday, March 19, 2013

No. 64 Matter of Bryan R. Hedges *(papers sealed)*

Bryan R. Hedges was a Family Court Judge in Onondaga County from 1985 to April 2012, when he resigned a week before he was served with a complaint by the State Commission on Judicial Conduct. The complaint alleged that in 1972, when Hedges was a 25-year-old law student, he engaged in a sexual act with a five-year-old girl while her family was visiting a home in Albany where he was staying overnight. Hedges admitted that the girl, who was deaf, walked into his bedroom while he was masturbating on the bed and touched his hand. He said he continued to masturbate for two to four seconds, with her hand on top of his hand, before he stopped and covered himself.

The Commission found Hedges had engaged in an act of moral turpitude and was unfit to hold judicial office, voting 7-2 to remove him. "The nature of [Hedges'] conduct involving an admitted sexual act with a defenseless child is abhorrent and not attenuated by the passage of time," the majority said. "It thus reflects adversely on his fitness to perform the duties of a judge and is prejudicial to the administration of justice notwithstanding that it predates his ascension to the bench.... Since [his] resignation from the bench leaves us with only two options -- closing the matter without action or issuing a determination of removal, which renders him ineligible for judicial office in the future ... -- we determine that the sanction of removal is warranted."

Two members concurred as to misconduct, but dissented as to sanction and voted to close the matter in view of Hedges' resignation. They argued that removal would serve no purpose as a deterrent. "Given ... the alacrity with which he resigned his judgeship when he was first apprised of the Commission investigation, it is inconceivable that he will allow himself to face any publicity over this sordid matter" by seeking a judgeship again, they said. "Since 'the purpose of judicial disciplinary proceedings is "not punishment but the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents"'..., we should be comforted by his prompt resignation... -- not further punish that resignation by basically rejecting it."

Hedges is asking the Court to overturn the Commission's determination in its entirety. "After a hearing and oral argument laden with prejudice, a divided Commission determined that Petitioner should be removed from an office he had already resigned, finding that the Petitioner had committed an act of moral turpitude based on his testimony alone," he says. "The finding is against the weight of the evidence.... [A]pplying the statutory standards for culpability as defined in Article 15 of the Penal Law, Petitioner's actions were not criminal and did not involve moral turpitude...." He also argues, "The procedures of the Commission violate due process, the hearing was prejudicially conducted, and the Commission was adversely impacted by the violations and prejudice."

For petitioner Hedges: Robert F. Julian, Utica (315) 797-5610
For respondent Commission: Robert H. Tembeckjian, Albany (518) 453- 4613

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To be argued Tuesday, March 19, 2013

No. 65 Matter of Bezio v Dorsey

State prison inmate Leroy Dorsey is appealing an order authorizing the Department of Corrections and Community Supervision (DOCCS) to force feed him and perform other involuntary medical treatment. Dorsey, who had engaged in two prior hunger strikes in 2010, began another hunger strike at Great Meadow Correctional Facility in October 2010 in order to call attention to his allegations of abuse by DOCCS personnel and obtain a transfer to another prison. He refused all solid food, drinking only juice, milk and water, and lost about 20 pounds over the first month. In November 2010, DOCCS brought this proceeding (through Great Meadow Superintendent Norman Bezio) for an order allowing involuntary feeding and treatment. DOCCS conceded that Dorsey was mentally competent to care for himself, but presented testimony of Great Meadow's medical director that his hunger strike was causing serious organ damage and, absent intervention, he would suffer organ failure and death. The medical director conceded that the nutritional supplement Ensure would alleviate Dorsey's health problems, but said he denied Dorsey's request for it based on a DOCCS policy that forbids giving Ensure to hunger striking inmates because it would enable them to prolong their strikes. Under the policy, DOCCS will allow an inmate to have Ensure only after it obtains a force-feeding order.

Supreme Court issued an order authorizing DOCCS to force feed Dorsey unless he consumed "available food" or nutritional supplements voluntarily. He initially chose nutritional supplements and, after his transfer to another facility in May 2011, he began eating solid food. The force-feeding order expired in November 2011.

The Appellate Division, Third Department invoked the mootness exception and affirmed. "Where ... an inmate's refusal to eat has placed that inmate at risk of serious injury and death, we hold ... that the State's interest in protecting the health and welfare of persons in its custody outweighs an individual inmate's right to make personal choices about what nourishment to accept...," it said. "[B]y candidly admitting that his hunger strike was designed to manipulate [DOCCS] and that he would eat if he got what he wanted, i.e., transfer to another facility, [Dorsey] undermines any argument that the hunger strike was the exercise of any fundamental right." The court said DOCCS's "legitimate interest in maintaining rational and orderly procedures in its facilities is implicated where, as here, an inmate is attempting to manipulate the penal system."

Dorsey argues that, because he had capacity to make his own medical decisions and the State did not prove its interests were superior to his privacy interest, the force-feeding order violated his common-law and constitutional right to refuse unwanted medical treatment. "While the State may have a compelling interest in preventing suicide, the record in this case does not support a finding that [Dorsey] was indeed suicidal," he says, but instead that he "engaged in his hunger strike to effect his transfer to another correctional facility in an effort to preserve his life." He says there was no proof his hunger strike affected "rational and orderly procedures" at Great Meadow or that the State's interest in preserving health and safety were superior to his own, since he "was not actually suicidal, but merely interested in having his day in court."

For appellant Dorsey: Shannon Stockwell, Albany (518) 451-8710
For respondent Bezio (DOCCS): Deputy Solicitor General Andrea Oser (518) 474-8352

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To be argued Tuesday, March 19, 2013

No. 66 Schlessinger v Valspar Corporation

Lori Schlessinger and Brenda Pianko separately purchased furniture from a Fortunoff department store and each bought a furniture protection plan offered by Valspar Corporation, under the trade name "Guardsman," that promised repair or replacement for certain kinds of damage. Each plan contained a clause that provides, "If the particular store location where you originally purchased your furniture ("Store") has closed, no longer carries Guardsman as a supplier, changed ownership, or has stopped selling new furniture since your purchase, Guardsman will give you a refund of the original purchase price of this Protection Plan." Fortunoff declared bankruptcy and ceased operation in 2009. When Pianko made a claim for furniture damage in April 2010, Valspar rejected it based on the store closure provision.

Pianko and Schlessinger brought this federal class action against Valspar in the Eastern District of New York, alleging the store closure provision violates General Business Law § 395-a, a New York statute that generally prohibits service providers from terminating maintenance agreements. They argued the store closure provision must be read out of the protection plan and claimed that Valspar would then be in breach of the remaining terms of the contract. They also claimed Valspar violated General Business Law § 349, which prohibits deceptive business practices aimed at consumers, by including the store closure provision in the plan and by denying Pianko's damage claim based on the provision. They argued that by including the provision in the contract, Valspar deceived them about their legal rights.

U.S. District Court dismissed the suit, ruling that section 395-a does not provide a private right of action. The statute authorizes the New York Attorney General to bring an enforcement action and provides that a violation "shall be punishable by a civil penalty of not more than three hundred dollars." While recognizing a private right of action "would seem to further the Legislature's purpose in protecting such buyers by providing a second means of enforcement," the court said, other sections of the General Business Law "explicitly provide for a private right of action where one is intended." It concluded that "reading an implied right of action into section 395-a would not comport with the Legislative scheme of that statute" and ruled the plaintiffs could not use breach of contract and section 349 claims to assert violations of the statute, which would be "an impermissible end run around section 395-a's lack of a private right of action."

The U.S. Court of Appeals for the Second Circuit, finding no clear New York precedent governing the availability of either claim, said the case raises a conflict between "the doctrine that courts will not enforce illegal contracts and the doctrine that courts should follow clearly expressed legislative intent." It is asking this Court to answer two certified questions: "1. May parties seek to have contractual provisions that run contrary to [section] 395-a declared void as against public policy? 2. May plaintiffs bring suit pursuant to [section] 349 on the theory that defendants deceived them by including a contractual provision that violates [section] 395-a and later enforcing this agreement?"

For appellants Schlessinger and Pianko: Lawrence Katz, Cedarhurst (516) 374-2118
For respondent Valspar: David Jacoby, Manhattan (212) 753-5000

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To be argued Tuesday, March 19, 2013

No. 67 People v Miguel Mejias
No. 68 People v Antonio Rodriguez

Miguel Mejias and Antonio Rodriguez were among the targets of an investigation by the New York Drug Enforcement Task Force of a conspiracy to transport a large shipment of cocaine from California to the Bronx in a tractor-trailer. In June 2008, members of the task force seized the truck in the parking lot of a Pathmark store on Leland Avenue in the Bronx, recovering about 400 pounds of cocaine. Mejias and Rodriguez were arrested at the scene with two other suspects.

Mejias and Rodriguez were tried jointly, along with co-defendant Junior Lantigua. After the close of evidence, but before summations, Juror No. 10 sent the judge a note that had been written by another juror. The note said, "We want to know how/when and under what pretext Junior met Miguel Mejias." Defense counsel asked the court to question Juror No. 10 individually to determine whether any jurors had disregarded its instructions by discussing the evidence before deliberations, but the court said it did not want to "isolate particular jurors." Addressing the entire jury, the court said, "So this juror handed me a note, but I assume even though the first word is 'We,' that everyone has been following my instructions and not discussing anything about the trial amongst yourselves, or with any third-party. If that's not the case, and there is anyone who has started discussing the evidence, could you please raise your hand?" There was no response. The court then said it would "disregard this note" and proceed with the trial. Mejias and Rodriguez were both convicted of criminal possession of a controlled substance in the first degree and conspiracy in the second degree.

The Appellate Division, First Department affirmed, saying the trial court responded properly to the jury note "that allegedly suggested the possibility of premature deliberations. The court did not abuse its discretion when it declined to conduct any individual inquiries, but instead addressed the problem by way of inquiries directed to the jury as a group, along with careful instructions.... Given the circumstances, there is no reason to believe there were actually any premature deliberations, and the court's actions were sufficient to avoid any prejudice."

The defendants argue the trial court committed reversible error when it refused to conduct an individual, in camera inquiry of a juror who sent a note "indicating that at least two jurors had prematurely discussed the evidence and formed conclusions," violating their constitutional right to trial by an impartial jury. They also argue the court erred in admitting testimony about the international drug trade and a map of South America, which were prejudicial and irrelevant to "the single drug transaction in this case."

For appellant Mejias: John R. Lewis, Sleepy Hollow (914) 332-8629
For appellant Rodriguez: David Touger, Manhattan (212) 608-1234
For respondent: Manhattan Assistant District Attorney Timothy C. Stone (212) 335-9000

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To be argued Tuesday, March 19, 2013

No. 69 Roman Catholic Diocese of Brooklyn v National Union Fire Insurance Company of Pittsburgh, PA

In a lawsuit filed against the Roman Catholic Diocese of Brooklyn and Reverend James Smith in 2003, the daughter of a church employee alleged that the priest had sexually molested and assaulted her over a period of seven years, beginning shortly after her tenth birthday in August 1996 and continuing until "in or about March to May 2002." The suit was settled in 2007 for $2 million and "additional consideration."

During the first six years of the period of alleged abuse, the Diocese had commercial general liability (CGL) insurance policies with a liability limit of $750,000 per occurrence, subject to a self-insured retention (SIR) of $250,000 per occurrence that the Diocese was required to absorb before coverage was provided. In the seventh year, the Diocese had only an umbrella policy covering losses in excess of $1 million. When its insurers disclaimed coverage, the Diocese brought this breach of contract action against National Union Fire Insurance Company of Pittsburgh, PA, seeking coverage solely under the two National Union CGL policies for 1995-96 and 1996-97, and against its umbrella insurer for the same two policy years.

Supreme Court denied National Union's motion for partial summary judgment, rejecting its arguments that the incidents of sexual abuse alleged in the underlying lawsuit constituted a separate occurrence in each of the seven policy periods and that the Diocese must allocate the $2 million settlement and other costs on a pro rata basis over all seven policy periods. Applying New York's "unfortunate event" test, the court found "... Smith's repeated acts of abuse ... over a sustained period of several years establishes the requisite temporal and spatial relationship which serves as a predicate for finding a single occurrence." It ruled the Diocese could allocate all of its settlement costs to just two policy periods, saying allocation to all seven policies was not required due to the "clear interrelationship" among the CGL policies, all but one of which were issued as renewal policies by National Union or related companies. The court also ruled the insurer had waived its right to assert that the Diocese must satisfy more than one $250,000 SIR because it did not raise that affirmative defense "until more than three years after its initial disclaimer letter."

The Appellate Division, Second Department reversed, declaring that the alleged acts of sexual abuse constitute multiple occurrences, that the settlement costs must be allocated over seven policy periods, and that the Diocese must exhaust a $250,000 SIR for each CGL policy implicated. "[T]he sexual abuse allegedly occurred over a seven-year period, at different times, and at multiple locations," it said. "Thus, it cannot be said that there was a close temporal and spatial relationship between the acts of sexual abuse," they therefore "constituted multiple occurrences" and the Diocese must exhaust a $250,000 SIR for each of the two CGL policies implicated. It found allocation over all seven policy periods was required because "it cannot be determined to what extent the bodily injury allegedly sustained occurred during a particular policy period." The court also reinstated the insurer's affirmative defenses.

For appellant Diocese: David B. Hamm, Manhattan (212) 471-8514
For respondent National Union: John D. Hughes, Manhattan (212) 308-4411