State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Thursday, October 20, 2016

No. 182 Matter of ACME Bus Corp. v Orange County

In May 2013, the Orange County Department of General Services issued a request for proposals (RFP) to provide transportation for disabled preschool children in three separate zones. Pursuant to General Municipal Law § 104-b, the County's RFP established specifications that companies must meet and set up a scoring system for evaluating competing proposals, which awarded points in eight performance categories and one cost category. The cost category, worth 20 out of 100 possible points, provided that the company submitting the lowest-cost proposal would receive the full 20 points and that points would be awarded to its competitors based on a "percentage to points ratio," in which the percentage difference between the low offer and a competing proposal would be multiplied by 20 and the result subtracted from the maximum score of 20. Instead, when the proposals received from three companies were scored, the County awarded 20 points to the lowest-cost offer and deducted two points for each 4 percent increase over the low price for the other proposals, which gave greater weight to the cost factor.

ACME Bus Corp., which held the expiring transportation contract, submitted the highest-cost proposal in all three zones, an average of 27 percent higher than the lowest-cost proposals, and it was awarded eight points in the cost category for each zone. Under the system specified in the RFP, ACME's cost scores would have been 14, 13 and 11. The County awarded three-year contracts to Quality Bus Service, LLC for two zones and to VW Trans, LLC for the third zone, later saying the annual cost of the contracts was about $1.6 million less than ACME's proposals.

ACME brought this article 78 proceeding to annul the determination as arbitrary, capricious and in violation of law because, among other things, the County deviated from its own scoring system for the cost category and because it awarded 4.5 out of a possible 5 points in the financial stability category to VW, which had submitted detailed financial information, but did not submit audited financial statements as required by the RFP.

Supreme Court dismissed the suit. It said ACME failed to show the County's award of the contracts "lacked a rational basis or that an actual impropriety, unfair dealing or some other violation of statutory requirements occurred.... The court declines [ACME's] tacit invitation to redo the [County's] scoring of the proposals. The record indicates that the scorers had a rational basis for their determination and the court's inquiry there ends." The Appellate Division, Second Department affirmed, saying the determination "was not arbitrary and capricious or lacking a rational basis in the record...."

ACME argues the County was legally bound to follow the specifications and scoring provisions of its own RFP and it "acted arbitrarily and capriciously when it deviated" from them. It says, "The County cannot justify its intentional deviation from its own RFP evaluation criteria by claiming that it was in the 'best interests' of the County to save $1.6 million annually.... [T]he County is always free to reject all proposals, revise the RFP and start over if it is displeased with the submissions it received."

For appellant ACME: Richard Hamburger, Melville (631) 694-2400
For respondent Quality: David A. Donovan, Goshen (845) 294-9447
For respondent VW: Joseph P. Rones, Newburgh (800) 634-1212
For respondent Orange County: Carol C. Pierce, Goshen (845) 291-3150

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Thursday, October 20, 2016

No. 185 Kimmel v State of New York

In 1995, former State Trooper Betty Kimmel brought this action under New York's Human Rights Law against the State and the Division of State Police, alleging that she had been subjected to gender discrimination and to sexual harassment and retaliation throughout her 15-year career. In 2007, after 12 years of litigation and multiple appeals to the Appellate Division, Fourth Department, a jury awarded Kimmel $798,000 in compensatory damages. In 2008, Kimmel and her former counsel in the case, Emmelyn Logan-Baldwin, moved for attorneys' fees and expenses under CPLR article 86, the Equal Access to Justice Act (EAJA).

The EAJA provides that "a court shall award to a prevailing party ... fees and other expenses incurred by such party in any civil action brought against the state, unless the court finds that the position of the state was substantially justified or that special circumstances make an award unjust" (CPLR 8601[a]). The statute defines "action" as "any civil action or proceeding brought to seek judicial review of an action of the state as defined in subdivision (g) of [CPLR 8602], including an appellate proceeding, but does not include an action brought in the court of claims" (CPLR 8602[a]).

Supreme Court denied the motions for attorneys' fees, ruling that the EAJA "does not apply to a situation where a plaintiff has recovered compensatory damages for tortious acts of the State and its employees," but instead "permits recovery only in those cases where a party 'seeks judicial review of an action of the state.'"

The Appellate Division, Fourth Department reversed in a 3-2 decision and remanded the matter for a determination of the amount of fees and costs. The majority said that, "under a plain reading of the statute, the EAJA applies to this action. The EAJA unambiguously applies to 'any civil action brought against the state'.... [T]here is nothing in the text of the EAJA that limits recovery of attorneys' fees to CPLR article 78 proceedings or to declaratory judgment actions.... We conclude that the phrase 'any civil action' ... means just that -- any civil action, including this action seeking relief pursuant to the Human Rights Law." It said "the legislative history of the EAJA does not reveal a clear legislative intent to exclude the instant action...."

The dissenters argued that, "in drafting the EAJA, the Legislature intended that attorneys' fees and expenses be sought only in civil actions that involve the review of the actions of the State that are administrative in nature.... Our research has revealed more than 70 cases in which the EAJA was applied to award attorneys' fees in cases that involved administrative actions of the State, and none that did not." They said, "In our view, when construing the EAJA as a whole..., the 'spirit and purpose of the legislation'..., as gleaned from the statutory context and the legislative history, is to provide redress for litigants contesting the actions of the State in administrative matters...."

On remand, after four more years of litigation, Supreme Court awarded $498,000 in fees for Logan-Baldwin and $320,000 in fees for Kimmel's current counsel Harriet Zunno.

For appellant State: Mitchell J. Banas, Jr., Buffalo (716) 856-0600
For respondents Kimmel and Logan-Baldwin: A. Vincent Buzard, Pittsford (585) 419-8800

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Thursday, October 20, 2016

No. 183 Matter of Odunbaku v Odunbaku *(papers sealed)*

The parties here are the parents of a child born in 2004 and, in 2008, the father was ordered to pay $236.00 per week in child support to the mother. In 2009, the father filed a petition in Staten Island Family Court requesting a downward modification of his support obligation. Five months later, the mother filed a cross-petition accusing the father of violating the support order. Both parties were represented by counsel.

After a hearing, a support magistrate granted the father's petition and reduced his child support obligation from $236.00 per week to $25.00 per month. The magistrate dismissed the mother's petition in a separate order. Family Court mailed the orders and findings of fact to the parties, but not to their attorneys, on July 24, 2013. Both orders noted that any objections must be filed within 35 days after the mailing. On September 3, 2013 -- 41 days later -- the mother's attorney from Staten Island Legal Services filed objections to both orders.

Family Court denied the mother's objections as untimely under Family Court Act § 439(e), which provides that "objections to a final order of a support magistrate may be filed by either party with the court within ... thirty-five days after mailing of the order to such party or parties." The mother moved for reargument, contending the court misconstrued the service requirements of the statute and should have mailed the orders directly to her attorney.

Family Court adhered to its decision that her objections were untimely and "to its prior finding that the mailing of a copy of the order and findings of fact to a party of the proceedings satisfies the requirements of [Family Court Act] § 439(e) and 22 NYCRR 205.36(b)." It said, "[N]either the Family Court Act nor applicable court rules specifically requires that the Clerk of Court shall mail a copy of the Support Magistrate's order and decision to a party's attorney if a party is represented by counsel."

The Appellate Division, Second Department affirmed, ruling the Clerk of the Court was not required to mail the magistrate's orders to the mother's attorney. "Since there is no provision in Family Court Act § 439(e) that addresses the issue of whether the Clerk of the Court is mandated to mail copies of the findings of fact and orders of the Support Magistrate to a party's counsel when the party is represented, the procedure shall be in accord with 22 NYCRR 205.36(b), which provides ... that at the time of the entry of an order of support, the Clerk of the Court 'shall cause a copy of the findings of fact and order of support to be served either in person or by mail upon the parties to the proceeding or their attorneys,'" it said.

The mother argues the 35-day time limit for filing objections was not triggered because the orders were not mailed to her attorney. She relies on Bianca v Frank (43 NY2d 168 [1977]), which held that "once counsel has appeared in a matter a Statute of Limitations or time requirement cannot begin to run unless that counsel is served with the .. order or judgment sought to be reviewed.... [A]ny general requirement that notice must be served upon the party ... must be read in the accepted sense to require, at least, that notice be served upon the attorney the party has chosen to represent him." She argues that her case is indistinguishable from Bianca and that "important public-policy interests" support its application here.

For appellant mother: Joseph Palmore, Washington, DC (202) 887-1500
For respondent father: Cindy A. Singh, Manhattan (212) 297-0503