ORAL ARGUMENT – 02/20/02
01-0406
LUBBOCK CO V. TRAMMEL'S LUBBOCK BAIL BONDS

BINGHAM: This case involves the application of the statute of limitations to causes of action which are brought against a county, and the effect of the presentment statute, which is at the local Gov't Code §89.004, and what effect the presentment statute may have on the statute of limitations and the accrual of a cause of action against a county.

The plaintiffs have sued Lubbock County alleging that they were required to pay certain bail bond fees. And I think this court has visited the issue of bail bond fees in the past in the Comacho(?) v. _____ case. The plaintiffs claim that they had to pay bail bond fees for a period of over 7 years until this court issued its opinion in Comacho(?) in 1992. Shortly after the court issued its opinion in Comacho(?), Lubbock County discontinued its bail bond fees provision and the plaintiffs filed a lawsuit approximately 1 year later claiming that they were entitled to recover their fees going all the way back to 1985.

The plaintiffs in this case did not present their claim until June 1993. There are 3 bail bond companies involved in this. The first plaintiff presented their claim in June 1993 saying that if you don't return our fees within 30 days, we are going to file suit against you. In August, the plaintiffs Trammels did file suit and sought recovery of bail bond fees going all the way back to 1992. Then approximately 1 year later, two other bail bond companies Allstate and Gomez Bail Bond companies joined the lawsuit. They had not however presented their claim to the commissioner's court prior to joining the lawsuit. And in fact, did not present a claim to the commissioner's court until 1997, which was approximately 3 years after they had filed suit.

Lubbock County filed a motion for summary judgment stating that the statute of limitations barred the recovery of the fees going back anymore than 2 years prior to the filing of the suit. And they also filed a motion for summary judgment with regard to the second and third plaintiffs claiming that they had never presented their claim prior to filing suit, and that therefore all of their claims were barred.

The DC granted Lubbock County's motion for summary judgment on the basis of the statute of limitations and said that Trammel's could not recover their fees for more than two years back.

HANKINSON: Was that based on limitations or was it based on latches?

BINGHAM: The summary judgment opinion stated statute of limitations.

HANKINSON: Is it your view since the court granted summary judgment based on limitations that doing so is inconsistent with this court's opinion in City of Taylor v. Hodges in that the City of

Taylor v. Hodges must be overruled in order for the TC's decision to have been correctly made on a limitations defense?

BINGHAM: No. I think that you can do one of two things. I think that you can certainly distinguish what happened in the City of Taylor v. Hodges from the facts in this case. And I think I can give you a number of reasons why the City of Taylor v. Hodges can be distinguished. First of all, the City of Taylor v. Hodges involves two public entities. And what happened in that case was there was a registrar for birth and death certificates and the registrar apparently had to make certain payments to the state. But in any event, the City of Taylor paid this registrar, Mr. Doak, for a certain number of birth and death certificates that got filed. After approximately 2 years of the city paying this registrar the fees, they discovered that actually the county was responsible for payment of those fees. And so the city asked the county to reimburse them for the fees and the county declined to do that. The DC, I don't think even looked at the issue of the presentment statute. I can't remember what the basis for the CA's opinion. But in any event in a one paragraph line, the Texas SC said that the cause of action didn't accrue until the claim was presented and rejected by the commissioner's court.

HANKINSON: See that's my problem, because I don't understand why it makes a difference who the parties were in giving that holding. The holding seems to be directly on point was the issue that's presented in this case.

BINGHAM: For one, I think you can distinguish because there are two public entities, and they make a specific point in there. If you look at their language, they make a specific point that this would not be the result if the registrar had brought the suit. There is specific language in there where they state: if the period of limitations began to run when the payments were make, and if this were a suit by Doak(?) against the county, then a portion of the recovery would appear to have been barred when the suit was filed. So I can't tell you why they make that distinction, but they very specifically make that point, that the registrar himself could not have brought that suit. And so I think for one reason, that's the first reason that this case is distinguishable. Because what we're talking about here is a private entity. We are not talking about the public funds. We're talking about a private entity attempting to recover private funds that they paid to the county. So that's the first distinction I think that you can make with the City of Taylor v. Hodges.

The second distinction that I think you could make with the City of Taylor v. Hodges is that they specifically say that no question of latches in filing this claim is presented. And I think that if you go back and you look at both the cases that are before and the cases that are after The City of Taylor v. Hodges, the courts have consistently said that if there is some sort of delay in presenting your claim that that is going to bar the application of this rule...

HANKINSON: But latches is a separate affirmative defense. What I read Hodges as saying is here is the rule for limitation, that merely because we would apply this rule for limitations does not preclude a defendant from urging latches as an affirmative defense. And as I understand the later CA decisions that come after Hodges that's why we see latches so frequently discussed because

that's a way of dealing with the accrual rule that is stated in Hodges.

BINGHAM: For one, I think that perhaps latches has not been used in its technical - the word latches has not been used in its technical sense as an affirmative defense. I think that it's just being used frequently as synonymous for delay. And I think that you see that in the second CA opinion in Comacho(?).

HANKINSON: That's still a separate issue from limitations and the determination of accrual for purposes of deciding if limitations has run.

BINGHAM: I agree with you. I think that one of the main issues in this case is the effect that the plaintiffs interpretation of the presentment statute will have on this court's case law on the issue of accrual. Because the presentment statute at 89.004 does not say anything about changing the rules for the accrual of a cause of action. And I think that this court has consistently stated and the plaintiff cites the same cases that we do that say a cause of action accrues on the date that the injury occurs. There are numerous cases cited in my brief that state that the cause of action that someone has against a county for the return of money accrues at the time that you pay the money.

O'NEILL: So you're drawing its distinction between accrual for jurisdictional purposes and accrual for limitations purposes?

BINGHAM: No. I think that accrual for jurisdictional purposes and accrual for limitation purposes are exactly the same. I think that...

O'NEILL: But they wouldn't have to be would they? I mean we could say that in order to bring suit in court, you have to have presented your claim before as a prerequisite as a procedural matter to filing a lawsuit. You have to have presented. But that's a separate question from whether the lawsuit is barred by limitations. Couldn't we distinguish Hodges on that ground?

BINGHAM: I think you could distinguish that. I think however that one thing that the presentment statute does not address at all, the presentment statute doesn't say anything about this statute is going to toll limitations...

O'NEILL: No. I'm agreeing with you now. Those are two different concepts.

BINGHAM: Exactly. And I think that what the plaintiff is asking you to do is say that the presentment statute does in fact toll the statute of limitation. And I think that stands on its head, the whole purpose of a statute of limitations, which is that we have a societal interest in repose, and a societal interest in seeing that claims are adjudicated or brought forward. And that also is completely at odds with the whole purpose of the presentment statute.

HANKINSON: But if presentment is a condition precedent to filing suit, then why isn't it just like the requirement under the DTPA that a plaintiff give pre-suit notice, or under the medical

malpractice statute that a plaintiff give pre-suit notice, and under both of those statutes and under the cases that this court has decided in interpreting those statutes a failure to meet the condition precedent stops the litigation, abates litigation. It also has a tolling effect for limitations purposes.

BINGHAM: I'm not sure that I agree with you on that. I don't believe that the failure to meet a condition precedent stops the statute of limitations for money. I think that the appropriate solution...

HANKINSON: It does under the medical malpractice statute.

BINGHAM: I believe that the appropriate solution is that if you haven't met a condition precedent such as under the DTPA or under 45.90(a) is to abate the litigation so that the presentment requirement can be met. But I don't think that affects the date that the statute of limitations accrues and begins to run.

HANKINSON: I agree with you on that. The question then becomes what happens if in fact there is no presentment as is the case with two of the plaintiffs in this case, and they go ahead and file the lawsuit before presenting their claim. And you're position is is that they are just out. That's the end of the line.

BINGHAM: I have a little bit of a problem with that, because I think that's somewhat inconsistent with my argument that it's not a jurisdictional prerequisite. And so I think that this could also be resolved simply by saying that this matter was tolled until after they presented their claim and that then they would still only - those two plaintiffs would only be allowed to go back to two years from the date in which they filed their suit. So I recognize that there is an inconsistency in those positions.

HANKINSON: And it's your position that the presentment statute is not a jurisdictional statute?

BINGHAM: Absolutely. And I think that's completely consistent with this court's opinion in Essenberg(?), which is just a few years old and it very specifically stated that this is a presentment statute, the purpose of which is to provide notice and an opportunity to resolve litigation as opposed to a jurisdictional prerequisite to filing suit. Such as you have in the employment discrimination type of statute.

HANKINSON: Just as a matter of practice is that generally the way county government has moved the presentment statute in practice?

BINGHAM: I think that this has not been - as I think you can tell from the sort of the dearth of cases in here, that hasn't really been an issue. I think it's always been the position in county gov't that you have to bring your claim within two years of the date that your cause of action accrues.

HANKINSON: Has it generally been the practice of county gov't to treat the presentment statute as a notice and a condition precedent to suit type of statute as opposed to a jurisdictional statute?

BINGHAM: I would say that it's been treated differently in different counties. Because I think that if you look at some of the cases that came out of Dallas county, there is either Boles v. Cliff or Boles v. Wade, where the Dallas CA did treat it as jurisdictional and said you didn't present you claim first. You are out. But this court specifically overruled Boles in the Essenberg case. So I think that that issue has probably been treated differently by different counties, and I can't tell you that it's been handled in a consistent manner.

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RESPONDENT

KNISELY: It is our position on behalf of the bail bond companies in this case that the CA decided correctly in following this court's construction of the presentment statute in the City of Taylor case. The only place where we say the CA went awry is in failing to grant summary judgment for the bail bond companies for the full amount of the bond service fees that were illegally taken from them.

HANKINSON: The TC granted summary judgment awarding one bail bond company the fees for a 2-year period of time that it determined was not barred. And that isn't(?) contained in the TC's judgment?

KNISELY: That is correct.

HANKINSON: And they gave nothing to the other two.

KNISELY: Correct. They said that they were out completely on limitations by virtue of its construction of the presentment statute as not being a limitations accrual statute.

HANKINSON: If the accrual rule goes to the ordinary accrual rule as opposed to the resentment as of the date of accrual, then do you agree that both of those other bail bond companies would lose any attempt to recover fees outside 2 years?

KNISELY: If you strictly apply the 2-year limitation at the time that the fees were imposed on them that would be correct. But this court very clearly decided in the City of Taylor case that the presentment statute does constitute a definition of the accrual date for claims against counties, because the statute specifically says you may not sue prior to the time of presentment and rejection or neglect by the county of your claim.

OWEN: So you can wait 10 years and then present it to the county and say well limitations doesn't run until after the county rules - it could be barred by limitations before you ever

go to the county, but until the county says no, limitations doesn't run.

KNISELY: That is the way that this court interpreted the statute in City of Taylor that there is no pre-presentment limitations running, that the accrual of the claim for the purposes of limitations occurs when the county has had an opportunity and has either rejected or neglected to address the claim. And that is a specific holding for limitations purposes in suits against counties that this court made very clear in the City of Taylor. In fact made clear in a writ refused case back in 1928, Jones County v. Moore, when there was actually more specific analysis of why that was the case, because the facts that gave rise to the right to bring that case did not exist until the county had been given the opportunity to address the claim. That's what the presentment statute is for. And so this court adopted the Jones County v. Moore decision, cited it with approval again in the City of Taylor case, and specifically held that that statute creates a date of accrual for claims against counties. It does create some variance because it does allow the plaintiff in some circumstances to wait.

HANKINSON: Why doesn't it allow the plaintiff in all circumstances to wait?

KNISELY: Because there are other doctrines that come into place, such as latches. And that's why we say that the other CAs that have tried to get around the City of Taylor case by using latches as a doctrine have misapplied that doctrine.

HANKINSON: They've misapplied latches?

KNISELY: Yes.

HANKINSON: In what way?

KNISELY: If you look at the opinions in those cases very carefully, what they say is the limitations period does not accrue until later. But just as a matter of latches, we're going to say that if you are the plaintiff and you become aware of facts that would allow you otherwise beyond the presentment statute to present a claim, to have a claim in court, that you must therefore bring it within the period of limitations.

HANKINSON: And I understand that the CA have used latches as a way, and grabbed onto the language in Hodges about latches in order to deal with the issue. But I thought you just said that latches would be available to prevent a plaintiff on waiting the same ordinate amount of time?

KNISELY; Yes. Latches is certainly a viable affirmative defense. Unfortunately for the county in this case they didn't present any evidence to support the latches thing other than the passage of time. There is no detrimental reliance aspect presented.

HANKINSON: Give us an example of the kinds of evidence that a county would have to show in order to satisfy the detrimental reliance piece of latches.

KNISELY: I think they would have to show things like witnesses have died, witnesses are unavailable, records have been destroyed, money has been spent, there is nothing left. There are a variety of ways that one could show that one has relied on the receipt of those funds to the detriment of the county, and that a delay in bringing the claim to get those back has caused them to be unable to defend themselves appropriately. That's not the case here. The amounts of monies are fixed. There is testimony that they still have that money. This is money that was illegally taken pursuant to an imposition of a fee that was illegal and never should have been the county's money.

RODRIGUEZ: Well there was evidence in the record though that it was for copying, and the statute does provide for copying and does provide for _____ associated with copying. What facts did you present to the contrary?

KNISELY: There really isn't any evidence of any probative value in that regard. First of all, the fee imposition resolution by Lubbock county says nothing about the use of the fees. It just says we're going to collect $10 service fee on every bail bond. It doesn't say, and we're going to use that copying this, and that, or the other thing. There is no direction that that's the way it's to be sued. There is testimony that these funds were deposited in the general funds of the county, used for general purposes. There is some testimony that they did perform some services and they made some copies. It's a very weak attempt frankly to try to muddy up the record in that regard, but there is no correlation between the resolution that requires the payment of the bond service fee and this very squishy evidence about the fact that they make copies occasionally. There is no evidence of any relationship between those two. There is no evidence of any calculation of how those two relate. They are simply saying, well gee we provided these services for _____ people. Shouldn't we be allowed to use the fee for that purpose. That's not what the fee was created for.

JEFFERSON: Under your theory when would pre-judgment interest begin to run? Can a plaintiff delay 20 years and get prejudgment interest from the time the fee was collected before final judgment?

KNISELY: I hadn't thought about that directly. Off the top of my head the answer would be, it would be governed by whatever the provision of the prejudgment interest statute says.

JEFFERSON: Even though the defendant would have no ability to hurry up to go to trial because they are waiting for the plaintiff to present the claim.

KNISELY: There are some strategic advantages to the counties as well. They can sit on a claim. They can do things to delay themselves. Sure. But I don't think that changes what this court determined as the accrual date for bringing the claim to court.

HANKINSON: Assume with me that you don't have the City of Taylor to rely upon nor do you have Jones County. What argument would you make to get us in a case of first impression to adopt the accrual rule that you advance?

KNISELY: That the language of the presentment statute itself suggests that it's not appropriate to go to court until you give a county the opportunity to address the claim. And that therefore because the statute says you may not go to court before then that that should be interpreted just as it was in the City of Taylor to mean what it says.

HANKINSON: Well why shouldn't it be interpreted as our other provisions in other statutes like the DTPA in art. 45.90(i), that in fact that is a condition precedent to sue, and in fact is no way tied to determining when a cause of action accrues?

KNISELY: I don't know that I have any answer to that other than what the presentment statute itself has mandated with respect to when it should be brought. The DTPA for instance has its own statute of limitations built into the statute. There are other situations where there are limitations periods that are not fixed because of various circumstances: from discovery rule to litigation...

HANKINSON: But at the same time they are separate considerations from the consideration of what may be a condition precedent to suit. They are not one of the same.

KNISELY: That's correct. They are not necessarily one of the same. And I think that you express a valid concern.

HANKINSON: Is it your view that 89.004 is not a jurisdictional statute?

KNISELY: Yes. It is not a jurisdictional statute. And I agree with this court in the Essenberg(?) so declared when they tried to dismiss a case for lack of jurisdiction because of the failure to present. The court said no. The appropriate remedy is to abate the case, not dismiss the case for lack of jurisdiction. And that's consistent also with other decisions. What we're arguing that the case on behalf of the Gomez Bail Bond company and the Allstate Bail Bond company who joined in the lawsuit did not make a presentment until while the lawsuit was pending. But the motion for summary judgment by the county was not filed until after that was done.

HANKINSON: Going back to my question that we're pretending like this is a case of first impression that we've never come anywhere near this issue. And you're arguing that we should treat the presentment statute as an accrual statute. What policy reasons would support interpreting the statute as an accrual statute for purposes of limitations as opposed to a condition preceding to suit?

KNISELY: Well one, I think it legitimately and appropriately give a county the opportunity to review and address a claim before it's brought in court saving everybody hopefully time and expense.

HANKINSON: I want you to give me the policy reasons that would favor the interpretation that you would put on the _____ that in fact it is an accrual statute. In other words, we're going to delay accrual until presentment as opposed to applying the usual accrual rule that would apply

under the statutes of limitations?

KNISELY: I really was trying to address that by saying that the policy reason is to allow the counties to have that so you don't go to court, put the cart before the horse, let the county have a chance to address the claim. Secondly, I would just simply point out statutes of limitations are in derogation of the substantive rights of the parties. In this case, the right of our clients to recover illegally obtained monies by the county. And to the extent that limitations periods - there may be some benefit by having certainty. There is also a loss to the people whose substantive rights are being affected. And unless there is an absolutely mandated reason by the legislature why a limitations period should preclude a substantive claim, then that should not be something that the court would impose on the parties. And in this case the court has already decided otherwise under the City of Taylor case.

On our cross claim, the dollars and cents were absolutely clear. The illegality of the collection fee was absolutely clear and there should be a summary judgment for the amount of the bond fees that were illegally obtained in favor of our claim.

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REBUTTAL

BINGHAM: I would just like to point out that first of all Mr. Knisley indicated that none of the courts either before or after actually addressed the issue of when the statute of limitations began to run. And I think that there are a number of cases that are cited in my brief that do in fact say that, in spite of the Hodges case that CA's following the Hodges case where it felt like they could distinguish their facts from Hodges, and said that the statute of limitations in claims against a county begin to run at the time that these are paid. That was both said in the Comacho v. _____ case, the 2nd CA opinion in that case, and in either Wade v. Jackson County, or Jackson v. Tom Green County. And they both specifically stated that the statute of limitations begins to run when you pay your money, and that you have not only a right to file your suit at the time that you pay your money, but a duty if you want to seek to recover those funds to go ahead and file your suit and that time.

And I think that one of the most important things, and there's language that goes back 100 years and is used all the way up through the present, that deals with this exact situation. I'm quoting from Smith v. Wise County: "It certainly was never contemplated that one having a claim against a county could delay its presentation to the commissioners court indefinitely and thereby preclude the running of the statute of limitation. There is nothing in the presentment statute that would indicate that you can just hold off and not present your claim for 10, 15, 20 years, and then...

HECHT: Why would you do that?

BINGHAM: I don't know why you would do that.

HECHT: It looks like you would want the money.

BINGHAM: I think that that goes against public policy to allow somebody to do that. Because one of the things that we did mention in our brief is that the counties do have current obligations that they have to meet and certain budgetary requirements and things that they have to do, and that's why it's important for a county to know about the claims that are going to be pending against it in the period of time say within 1 or 2 years of them formulating their budget so that they can therefore be in compliance with all of the state laws that they have to be in compliance with about what's in the budget, and what obligations we have to pay, so that they can pay their bills.

I also think that you can find on the issue of latches and is there any sort of detriment to the county, that you could find that there would be a detriment as a matter of law because of the uncertainty of the county in not knowing what its obligations would be and then in the county being unable to fulfill its own obligations in terms of what it has to do with regard to its budget.

HANKINSON: If we agree with you on limitations defense but disagree with you on the pass-on theory that you assert, then was the TC judgment correct in awarding Trammel two years of its fees and nothing to the other two bail bond companies?

BINGHAM: If you disagree with those, yes. And I would point out just one point about the pass-on defense. The pass-on defense is actually sort of acknowledged in the Hodges case. The CA said that the real party in interest there was not Doke(?) who actually paid the fee, but was actually the City of Taylor who was the one who really paid the fee, which is what the bail bond company's clients would be in this case. So just as a point of interest, I think that without actually saying we're going to apply the pass-on defense, the Hodges court did in fact do that.

RODRIGUEZ: If we disagree with you on a latches defense, Ms. Gomez and Allstate get March through June 1992?

BINGHAM: I believe they do. I think that if you disagree with us on the latches defense, that there are from - it's just several months that Gomez and Allstate would be entitled to recover fees for.