

--- S.E.2d ----

--- S.E.2d ----, 2007 WL 1166132 (Va.)

(Cite as: --- S.E.2d ----)

John C. Holland Enterprises, Inc. v. Southeastern
Public Service Authority of Virginia
Va.,2007.

Only the Westlaw citation is currently available.

Supreme Court of Virginia.

JOHN C. HOLLAND ENTERPRISES, INC.

v.

SOUTHEASTERN PUBLIC SERVICE AUTHOR-
ITY OF VIRGINIA, et al.

Record No. 061085.

April 20, 2007.

Background: Private operator of a construction, de-
molition, and debris waste (CDD) landfill brought ac-
tion to enjoin municipally created waste authority
from providing CDD services until the authority and
its member localities made certain statutory findings.
The Circuit Court, City of Suffolk, Rodham T. Delk,
Jr., J., sustained the authority's demurrer. Private
landfill operator appealed.

Holding: Addressing an issue of first impression, the
Supreme Court, Roscoe B. Stephenson, Jr., Senior
Justice, held that statute requiring municipally cre-
ated waste authority to make certain findings before
operating a "refuse collection and disposal system"
did not apply to the authority's expansion of its ser-
vices.

Affirmed.

[1] Appeal and Error 30 ☞893(1)

30 Appeal and Error

30XVI Review

30XVI(F) Trial De Novo

30k892 Trial De Novo

30k893 Cases Triable in Appellate Court

30k893(1) k. In General. Most Cited

Cases

Interpretation of a statute is a pure question of law
subject to de novo review by the Supreme Court.

[2] Statutes 361 ☞181(1)

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k180 Intention of Legislature

361k181 In General

361k181(1) k. In General. Most Cited

Cases

Statutes 361 ☞181(2)

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k180 Intention of Legislature

361k181 In General

361k181(2) k. Effect and Con-

sequences. Most Cited Cases

Statutes 361 ☞190

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k187 Meaning of Language

361k190 k. Existence of Ambiguity.

Most Cited Cases

When interpreting a statute, the court must determine
the General Assembly's intent from the words used in
the statute, unless the language of the statute is am-
biguous or would lead to an absurd result.

[3] Constitutional Law 92 ☞70.3(4)

92 Constitutional Law

92III Distribution of Governmental Powers and
Functions

92III(B) Judicial Powers and Functions

92k70 Encroachment on Legislature

92k70.3 Inquiry Into Motive, Policy,

Wisdom, or Justice of Legislation

92k70.3(4) k. Wisdom. Most Cited

Cases

When interpreting a statute, the court does not ques-
tion whether legislation is wise.

[4] Appeal and Error 30 ☞893(1)

30 Appeal and Error

30XVI Review

30XVI(F) Trial De Novo

30k892 Trial De Novo

30k893 Cases Triable in Appellate Court

30k893(1) k. In General. Most Cited

Cases

When a trial court grants a demurrer, appellate court reviews the court's action de novo.

[5] Appeal and Error 30 ⚡863

30 Appeal and Error

30XVI Review

30XVI(A) Scope, Standards, and Extent, in General

30k862 Extent of Review Dependent on Nature of Decision Appealed from

30k863 k. In General. Most Cited Cases

Pleading 302 ⚡193(5)

302 Pleading

302V Demurrer or Exception

302k193 Grounds for Demurrer to Declaration, Complaint, Petition, or Statement

302k193(5) k. Insufficiency of Facts to Constitute Cause of Action. Most Cited Cases

In reviewing trial court's grant of a demurrer, appellate court applies the same standard the trial court applied, i.e., whether the facts pleaded, implied, and fairly and justly inferred are legally sufficient to state a cause of action.

In reviewing trial court's grant of a demurrer, appellate court applies the same standard the trial court applied, i.e., whether the facts pleaded, implied, and fairly and justly inferred are legally sufficient to state a cause of action.

[6] Municipal Corporations 268 ⚡607

268 Municipal Corporations

268X Police Power and Regulations

268X(A) Delegation, Extent, and Exercise of Power

268k607 k. Removal and Disposition of Garbage, Refuse, and Filth. Most Cited Cases

Provision of the Virginia Water and Waste Authorit-

ies Act requiring municipally created waste authority to make certain findings regarding, among other things, the private availability of refuse collection and disposal services before operating a "refuse collection and disposal system" applied only to the authority's initial undertaking to operate its system and not to the authority's expansion of its services, and thus the statute did not require municipally created waste authority to make any findings before expanding its services to include construction, demolition, and debris waste (CDD). West's V.C.A. § 15.2-5121(A).

Gary H. Baise, Washington, DC (Jefferson B. Brown, Portsmouth; Anson M. Keller, Stewart D. Fried, Kilpatrick Stockton, Washington, DC, on briefs), for appellant.

Michael R. Katchmark (Gary A. Bryant, Brett A. Spain, Willcox & Savage, on brief), Norfolk, for appellee.No brief filed for appellee Bay Disposal, Inc.

Present: HASSELL, C.J., KEENAN, KOONTZ, KINSER, LEMONS, and AGEE, JJ., and STEPHENSON, Senior Justice.

OPINION BY Senior Justice ROSCOE B. STEPHENSON, JR.

*1 In this appeal, which presents a case of first impression, we determine whether the trial court erred in determining that Code § 15.2-5121(A) does not apply to a municipally created waste authority that enters into a new service.

I

This matter was decided on demurrer; therefore, the facts are as alleged in the bill of complaint as follows. Since 1979, the plaintiff, John C. Holland Enterprises, Inc. (Holland), has owned and operated a construction, demolition, and debris waste (CDD) landfill in the City of Suffolk. The landfill is operated pursuant to a permit issued by the Commonwealth of Virginia. The defendant, Southeastern Public Service Authority (SPSA), is a refuse collection and disposal authority created under the provisions of the Virginia Water and Waste Authorities Act, Code § 15.2-5100, *et seq.*

In 1985, SPSA opened its regional municipal solid

waste (MSW) landfill for the purpose of providing MSW services to its member cities and counties and to the public. MSW consists of household garbage and other household refuse of the type normally collected by cities and sent to a MSW landfill.

A different type of landfill handles CDD. CDD is generally comprised of concrete, bricks, wood, dry-wall, wires, electrical fixtures, shingles, and similar materials.

In 2003, SPSA made an unannounced entry into the arena of CDD services by offering CDD services to one private company, defendant Bay Disposal, Inc. SPSA did not offer CDD services to the general public, and it did not put CDD services on the public service charge list. When this unannounced activity became known, Holland complained. Ultimately, SPSA extended the CDD services to the general public over Holland's objections. SPSA did not make any of the findings mandated by Code § 15.2-5121(A) before offering this new service.

II

On April 22, 2005, Holland filed its bill of complaint, asking the trial court to enjoin SPSA's CDD services until it and its member localities made the requisite findings mandated by Code § 15.2-5121(A). Code § 15.2-5121(A), in pertinent part, provides the following:

No authority shall operate ... a refuse collection and disposal system for any political subdivision ... unless the authority, and subsequently the locality's governing body find: (i) that privately owned and operated refuse collection and disposal services are not available on a voluntary basis by contract or otherwise, (ii) that the use of such privately owned services has substantially endangered the public health or has resulted in substantial public nuisance, (iii) that the privately owned refuse collection and disposal service is not able to perform the service in a reasonable and cost-efficient manner, or (iv) that operation by such authority ..., in spite of any potential anticompetitive effect, is important in order to provide for the development and/or operation of a regional system of refuse collection and disposal for two or more units.

*2 SPSA filed a demurrer, contending that Holland “fails to state a cause of action because [Code § 15.2-5121 is not implicated or violated under the facts alleged.” The trial court sustained SPSA's demurrer, stating the following:

It is clear to the Court from a reading of the statute that the CDD waste program operated by SPSA is a *service*, and not a *system* as provided for in the statute. Otherwise, the inclusion of both terms, “*service*” and “*system*” in [Code] § 15.2-5136 would be unnecessarily redundant and meaningless.^[FN1] I consider this plain language as evincing a legislative intent to treat the separate terms, “*systems*” and “*services*”, as describing different functions. Specifically, therefore, I hold that the term “*service*” is an included component of, and thus part and parcel of, a “*system*.”

Accordingly, I hold that the extension of SPSA's waste disposal operation to include CDD waste was not a new *system* requiring the [Code] § 15.2-5121 statutory findings. It was simply a new *service*. SPSA was therefore free to institute the new service without making the [Code] § 15.2-5121 findings.

We awarded Holland this appeal, limited to one assignment of error, which reads as follows:

The trial court erred in determining that Va.Code § 15.2-5121(A) does not apply to a municipally-created waste authority and its member communities that operate a landfill and then later enter into a new service, without making any of the findings required by the statute.

III

[1][2][3] “Interpretation of a statute is a pure question of law subject to de novo review by this Court.” *Virginia Polytechnic Inst. & State Univ. v. Interactive Return Serv.*, 271 Va. 304, 309, 626 S.E.2d 436, 438 (2006); *accord Renkey v. County Bd. of Arlington County*, 272 Va. 369, 373, 634 S.E.2d 352, 355 (2006); *Ainslie v. Inman*, 265 Va. 347, 352, 577 S.E.2d 246, 248 (2003). When we interpret a statute, we must determine the General Assembly's intent from the words used in the statute, unless the language of the statute is ambiguous or would lead to an absurd result. *Cummings v. Fulghum*, 261 Va. 73, 77,

540 S.E.2d 494, 496 (2001). We also do not question whether legislation is wise. *Horner v. Department of Mental Health*, 268 Va. 187, 193, 597 S.E.2d 202, 205 (2004); *City of Portsmouth v. City of Chesapeake*, 232 Va. 158, 163, 349 S.E.2d 351, 353 (1986).

[4][5] Additionally, when a trial court grants a demurrer, we likewise review the court's action de novo. In so doing, we apply the same standard the trial court applied, *i.e.*, "whether the facts ... pleaded, implied, and fairly and justly inferred are legally sufficient to state a cause of action" against SPSA. *See Thompson v. Skate America, Inc.*, 261 Va. 121, 128, 540 S.E.2d 123, 126-27 (2001).

IV

Holland contends that the purpose of Code § 15.2-5121(A) is to protect the private sector and to require a waste authority like SPSA to make the requisite findings before entering into a new service. Holland further contends that, if the General Assembly did not intend to require that such findings be made, then "there would have been no reason for" Code § 15.2-5121(E), which, it asserts, provides for the grandfathering of services existing as of July 1, 1983.^{FN2}

*3 SPSA contends that Code § 15.2-5121(A) applies only to the initial decision to operate a system, and it points out that nowhere in the statute does the term "new service" appear. SPSA further contends that Holland's argument regarding Code § 15.2-5121(E) "rest[s] on its assumed meaning of [Code] § 15.2-5121(A)" and that this Court need only interpret Code § 15.2-5121(A).

V

[6] We agree with SPSA and reject Holland's contentions. Code § 15.2-5121(A) provides, in pertinent part, that no authority shall "operate ... a refuse collection and disposal system" unless certain findings are made regarding, among other things, the private availability of "refuse collection and disposal services." Code § 15.2-5101 defines a "[r]efuse collection and disposal system" as a "system, plant or facility designed to collect, manage, dispose of, or recover

and use energy from refuse," or solid waste. Therefore, no authority can operate a solid waste collection and disposal landfill unless the authority determines, among other things, that the collection and disposal services are not privately available. Neither Code § 15.2-5121(A) nor Code § 15.2-5101, however, distinguishes between types of services or refuse. All Code § 15.2-5121(A) requires is that an authority makes the findings before undertaking to operate its system.FN3

In the present case, SPSA had long been operating its landfill when it expanded its services to include CDD. Nothing in Code § 15.2-5121(A) required SPSA to make any findings before doing so. Therefore, upon our de novo review, we determine that Holland cannot state a cause of action against SPSA.

Accordingly, the trial court's judgment will be affirmed.

Affirmed.

FN1. Code § 15.2-5136 governs the fixing and revising of rates, fees, and other charges for the services furnished or to be furnished by various systems. Subsection F thereof permits an authority to establish rates and charges "for the services and facilities of ... a refuse collection and disposal system."

FN2. Code § 15.2-5121(E) provides that the requirements and restrictions of Code § 15.2-5121 "shall not apply in any political subdivision wherein refuse collection and disposal services are being operated or contracted for by any sanitary district located therein, as of July 1, 1983."

FN3. Our interpretation of Code § 15.2-5121(A) is not inconsistent with Code § 15.2-5121(E). Thus, we reject Holland's "grandfathering" argument.

Va.,2007.

John C. Holland Enterprises, Inc. v. Southeastern Public Service Authority of Virginia

--- S.E.2d ---, 2007 WL 1166132 (Va.)

END OF DOCUMENT