# STATE OF MICHIGAN

# COURT OF APPEALS

ROADWAY EXPRESS, INC.,

Plaintiff-Appellee,

v

DEPARTMENT OF TREASURY, DEPARTMENT OF LABOR AND ECONOMIC GROWTH and MPSC,

Defendants-Appellants.

UNPUBLISHED
June 17, 2008

No. 276348
Court of Claims
LC No. 05-000186-MK

Before: Gleicher, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Plaintiff brought suit alleging that the state had charged vehicle registration fees pursuant to MCL 478.7(4) for the years 2003 through 2006 in excess of that allowed by federal law. The Court of Claims granted plaintiff's motion for summary disposition on the issue of plaintiff's entitlement to a refund for registration fees, ordering defendants to refund plaintiff $109,180 and prohibiting the state from collecting such registration fees in the future. Defendants now appeal as of right. We reverse and remand to the trial court for entry of judgment for defendants.

I

The Intermodal Surface Transportation Efficiency Act (ISTEA) authorizes the states to require foreign carriers traveling within their borders to register with the state. See PL 102-240, § 4005, 105 Stat 1914, 49 USC 11506(c).[1] Congress granted the Interstate Commerce Commission (ICC)[2] the authority to implement the ISTEA and to establish a new system, the

[1] The ISTEA was amended and recodified at 49 USC 14504. These provisions remained in effect for the events pertinent to this litigation. However, Congress replaced the SSRS with another fee system that took effect January 1, 2008. See PL 109-59, § 4305(a), 119 Stat 1764; PL 110-53, § 1537, 121 Stat 266.

[2] The Federal Motor Carrier Safety Administration (FMCSA), under the Secretary of Transportation, now has the authority to administer the SSRS. See ICC Termination Act of 1995, PL 104-88, § 101, 109 Stat 803; 49 USC 113(f)(1). The FMCSA's regulations (continued…)

Single State Registration System (SSRS), for registration of vehicles traveling in interstate commerce. The ISTEA required the ICC to establish a fee structure that resulted "in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." 49 USC 11506(c)(2)(B)(iv). Only states that were a part of the previous system could participate in the SSRS, 49 USC 11506(c)(2)(D), and any fee not in accordance with the system is "deemed to be a burden on interstate commerce." 49 USC 11506(c)(2)(C). Michigan participated in the previous registration system and became a part of the SSRS pursuant to the ISTEA.

Because the ISTEA effectively froze fees at the level states collected as of November 15, 1991, an understanding of Michigan's previous fee structure is essential to the disposition of the issue in this case. The Michigan Motor Carrier Act, MCL 475.1 *et seq.*, requires foreign carriers traveling in interstate commerce to obtain registration with the state. MCL 478.7(4) levies a $10 annual fee on foreign vehicles traveling in interstate commerce. That provision also allows the MPSC to "enter into a reciprocal agreement with a state." In 1989, Michigan had entered into a reciprocity agreement with Illinois that remained in effect through the 1991 registration year. Under this agreement, Michigan did not assess a registration fee against vehicles base plated in Illinois and, accordingly, Illinois did not assess a registration fee against vehicles base plated in Michigan.

For the year prior to November 1991, plaintiff did not have any vehicles registered in Illinois and was not eligible to benefit from that reciprocity agreement. However, since 2006 plaintiff has base plated all vehicles that travel in interstate commerce in Illinois. Prior to this time, plaintiff base plated a portion of its vehicles in Tennessee and a portion in Illinois. Accordingly, for the years 2003 through 2006, plaintiff paid a SSRS registration fee to Michigan for its vehicles base plated in Illinois. It is plaintiff's belief, and the Court of Claims agreed, that it is entitled to a refund of these fees pursuant to the ISTEA and the Illinois-Michigan reciprocity agreement.

II

Defendants argue that the Court of Claims erred in determining that plaintiff was eligible for a fee waiver under the Illinois-Michigan reciprocity agreement. According to defendants, the ISTEA froze reciprocity agreements as they were as of November 15, 1991, and that carriers not eligible for reciprocal treatment at that time cannot now take part in these agreements. We agree.

This Court reviews a trial court's grant or denial of summary disposition de novo. *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 713; 706 NW2d 426 (2005). A reviewing court reviews the motion in the same manner that the lower court viewed the motion. *Scalise v Boy Scouts of America*, 265 Mich App 1, 10; 692 NW2d 858 (2005). Under MCR 2.116(C)(10), summary disposition is proper if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court views "the entire record in the light most favorable to the party opposing the motion, including

(…continued)

implementing the SSRS are currently codified at 49 CFR 367 (2007).

affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties." *Corely v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

The Court of Claims correctly found that no genuine issue of material fact exists on the record. Plaintiff provided evidence showing that for the years 2003 through 2006 certain quantities of SSRS registered vehicles base plated in Illinois operated in Michigan after paying the $10 registration fee. The supervisor of MSPC's Motor Carrier Section did not dispute this evidence in her deposition, and the parties do not now dispute the court's findings. Accordingly, the dispositive issue is whether plaintiff is entitled to judgment as a matter of law.

The provision of the ISTEA at issue on appeal provides that the ICC shall "establish a fee system . . . that . . . will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." 49 USC 11506(c)(2)(B)(iv). The ICC's regulations repeat the same phrase without further guidance. 49 CFR 367.4(c)(4)(ii) (1996).

The U.S. Supreme Court interpreted the language of this provision in *Yellow Transportation v Michigan*, 537 US 36; 123 S Ct 371; 154 L Ed 2d 377 (2002) [*Yellow IV*], which arose from extensive litigation in Michigan courts. The case involved a trucking company headquartered in Kansas. *Id*. at 42 For the years 1990 and 1991, Michigan did not charge the company a registration fee because the company base plated its trucks in Illinois, thereby taking advantage of the reciprocity Illinois-Michigan agreement in place at that time. *Id*. Effective February 1, 1992, however, the MPSC changed the reciprocity policy to grant favorable treatment based on the policies of the state in which a carrier had its principal place of business. *Id*. Kansas and Michigan had no reciprocal agreement and the carrier was assessed a $10 fee per vehicle. *Id*. at 43. The Michigan Court of Claims concluded that the carrier was entitled to the waiver on the basis of the ICC's interpretation of the statute, *Yellow Freight System, Inc v Michigan*, unpublished opinion of the Court of Claims, decided March 13, 1996 (Docket No 95-15706-CM), and this Court affirmed on similar grounds, *Yellow Freight System, Inc v Michigan*, 231 Mich App 194; 585 NW2d 762 (1998) [*Yellow II*]. The Michigan Supreme Court, however, reversed, concluding that the ISTEA is unambiguous and precludes the ICC's interpretation. *Yellow Freight System, Inc v Michigan*, 464 Mich 21, 29-31; 627 NW2d 236 (2001) [*Yellow III*].

The U.S. Supreme Court reversed and remanded. *Yellow IV, supra* at 36. The Court concluded that the language of the statute is ambiguous and that deference to the ICC's interpretation is appropriate. *Id.* at 46. Accordingly, the Court affirmed the ICC's position that the statute "requires States to preserve fees at the levels they actually collected or charged pursuant to reciprocity agreements in place as of November 15, 1991." *Id*. at 48. The Court also affirmed as reasonable the ICC's finding that it would be unlawful for a state to renounce or modify an agreement "as to alter any fee charged or collected as of November 15, 1991 under the previous registration system." *Id*. (citations omitted). Thus, in the Court's view, if the state waived a fee under a reciprocity agreement, the fee is zero and it must remain zero. *Id*. at 46.

Plaintiff argues that *Yellow IV* requires this Court to affirm the lower court's grant of summary disposition in its favor. However, the issues addressed in *Yellow IV*, although relevant to this litigation, are not directly on point. In *Yellow IV*, the issue was whether the states may charge registration fees in excess of those charged or collected under reciprocity agreements as of November 11, 1991. *Id*. at 44. The trucking company in those cases was part of the Illinois-

Michigan agreement as of November 15, 1991, and as a result of Michigan's modification of the agreement, the company no longer qualified and its fees increased. In this case, we must determine whether a motor carrier not eligible for such a reciprocity agreement as of November 15, 1991, may take advantage of that reciprocity agreement at a later date.

As the U.S. Supreme Court found, the language of 49 USC 11506(c)(2)(B)(iv) is ambiguous and deference to the ICC's interpretation of the statute is appropriate. The ICC addressed reciprocity agreements during informal rulemaking and also in a decision. It concluded that under the new system states cannot charge fees in excess of those charged or collected under any preexisting reciprocity arrangement. *Single-State Ins Registration*, 9 ICC 2d 610, 618-619 (1993). The ICC also found that it would be inconsistent with the ISTEA to allow states to alter their reciprocity agreements "if the result is that fees frozen as of November 15, 1991 will change." *American Trucking Ass'n*, 9 ICC 2d 1184, 1194 (1993). It follows that if a fee was illegal under state law as of November 15, 1991, it would also be illegal under the new system. See *Nat'l Ass'n of Regulatory Utility Comm'rs v ICC*, 41 F3d 721, 729 (1994). For example, if a carrier was party to a reciprocity agreement as of that date, the state would be required to charge that carrier the fee charged under the reciprocity agreement regardless of whether the state subsequently changed or modified the agreement. See *Yellow II, supra* at 201. It would also be illegal under state law, as of November 15, 1991, to allow a carrier whose vehicles are not base plated in Illinois, like plaintiff, to partake in the Illinois-Michigan reciprocity agreement. Contrary to the ISTEA, if the state were to allow plaintiff to partake in the agreement, it would change the fee level plaintiff paid under Michigan's existing law in 1991. Plaintiff did not qualify for the Illinois-Michigan agreement and was otherwise assessed a fee. If plaintiff were now allowed to partake, plaintiff's fee would be waived and the fee level would change. This is clearly a change in the fee charged contrary to what the ISTEA requires. See *American Trucking Ass'n, supra* at 1194. For this reason, the court erred when it granted plaintiff judgment as a matter of law and summary disposition for defendants is appropriate.

On appeal, plaintiff argues that this position is inconsistent with the U.S. Supreme Court's holding in *Yellow IV*. According to plaintiff the test should not focus on what a particular carrier paid as of November 15, 1991, but whether the state has preserved the level of fees being charged pursuant to the reciprocity agreement. See *Yellow IV, supra* at 48. The interpretation articulated above, however, is consistent with *Yellow IV*. Fees are not frozen at the aggregate level of what a particular carrier paid in the 1991 registration year. Rather, the focus still remains on what the state charged or collected pursuant to a reciprocity agreement or other generally applicable laws. See MCL 478.7(4). In no way are aggregate fee levels capped. See *Yellow IV, supra* at 48. The holding in *Yellow IV* does not preclude the conclusion announced here.

Nor is this conclusion contrary to the intent of the ISTEA, as plaintiff also claims. Specifically, plaintiff alleges that the scheme is unnecessarily complex and would place too great an administrative burden on the state. However, this simply is not the case. According to the ICC, the purpose of the ISTEA was to maintain states' revenues while at the same time reducing the administrative burden of registration on truckers. *Single-State Ins Registration, supra* at 618. During its informal rulemaking procedures, the ICC announced that its first proposal, which entirely eliminated states' reciprocity structures, was inconsistent with the ISTEA because it would result in windfalls to the states and raise fees above the level charged in 1991. *Id*. The

ICC ultimately found that states should maintain their reciprocity agreements because the administrative burdens on the states were greatly outweighed by the cost to the trucking companies if the ICC had adhered to its prior position. *Id.* In other words, the ICC specifically contemplated and sanctioned the possible cumbersome administrative burdens on states as a result of adhering to their reciprocity agreements in light of the carrier companies' savings on costs. The burden on defendants in this instance is exactly the type of burden that the ICC envisioned.

Plaintiff also points out that carriers that were a part of reciprocity agreements in 1991 would be allowed to transfer their entire fleet of vehicles to the reciprocity state in order to obtain fee exempt status. However, under plaintiff's interpretation of the ISTEA, all carriers, whether or not they were originally part of the reciprocity agreement, could base plate their vehicles in Illinois in order to achieve fee exempt status. This latter effect is clearly more inconsistent with the ISTEA's intent, which is to maintain state revenues. *Single-State Ins Registration, supra* at 618.

Lastly, we will not consider plaintiff's claim that it is entitled to a waiver of the registration fee because it was part of the California-Michigan reciprocity agreement in effect during 1991. Plaintiff raises this argument for the first time on appeal and this Court is not required to consider it. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents,* 444 Mich 211, 234; 507 NW2d 422 (1993).

III

Plaintiff's claim for injunctive relief is premised on its claim that the state unlawfully collected SSRS registration fees. Since we find that plaintiff's substantive claim fails, plaintiff's claim for injunctive relief must also fail. See *Blackwood v Van Vleet*, 11 Mich 252, 256 (1863).

Accordingly, we reverse the Court of Claims order granting summary disposition to plaintiff and remand to that court for entry of summary disposition for defendants. We also vacate the court's grant of injunctive relief. Jurisdiction is not retained.

/s/ Elizabeth L. Gleicher
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra