

[J-117-2003]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

JAMES J. GORY MECHANICAL CONTRACTING, INC.,	:	No. 13 EAP 2003
	:	
Appellee	:	Appeal from the Order of the Superior Court entered on May 6, 2002, at No. 2659 EDA 2001, affirming the Order of the Court of Common Pleas of Philadelphia County, Civil Division, entered on August 2, 2001
v.	:	
	:	
PHILADELPHIA HOUSING AUTHORITY,	:	
	:	
Appellant	:	ARGUED: October 20, 2003

DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: August 17, 2004

This Court has no authority to ignore the plain meaning of a statute in favor of tailoring an interpretation inconsistent with that language. The General Assembly enacts the laws, and if clear and unambiguous, this Court is bound to enforce those laws accordingly. There is nothing ambiguous about the Philadelphia Housing Authority's enabling statute - it is designated as "an agency of the Commonwealth." 35 P.S. § 1550. As such, (because it qualifies under one of the exceptions to the Commonwealth Court's original jurisdiction), jurisdiction lies in the Board of Claims. See 42 Pa.C.S. § 761(a)(1)(iv);¹ 62 Pa.C.S. § 1724.

¹ The Board of Claims Act was in effect at the commencement of this litigation and should have controlled the outcome. However, the General Assembly on December 3, 2002, repealed the Act and replaced it with a series of statutes further clarifying its exclusive jurisdiction and enumerating the requirements for resolving contract controversies involving a Commonwealth party. See Dec. 3, P.L. 1147, No. 142.

In T & R Painting Co. v. Philadelphia Housing Authority, 353 A.2d 800 (Pa. 1976), the issue was whether the PHA is an agency of the Commonwealth or a local agency. The court held that since the enabling statute allowed for local government involvement in PHA affairs, the statute was ambiguous and the court could ignore the specific language in favor of envisioning the General Assembly's true meaning. T & R Painting, at 802. The court reasoned that to be an agency of the Commonwealth, the body must have statewide impact; absent this influence, an entity, even if delineated "an agency of the Commonwealth" by the General Assembly, was merely a local agency. Because the PHA dealt largely with Philadelphia concerns, the court stated it would be "absurd and unreasonable" to require an almost exclusive Philadelphia pool of litigants to travel and litigate its cases in Harrisburg's Commonwealth Court; "[t]he General Assembly, of course, could not have intended such a result." Id. (citation omitted).

This reasoning was later rejected by this Court in Marshall v. Port Auth. of Allegheny County, 568 A.2d 931 (Pa. 1990). The Marshall decision reviewed the enabling statute of the Port Authority of Allegheny County (PAT) and determined the "[e]xpress statutory language contained in the legislation which created PAT makes it eminently clear that PAT is an agency of the Commonwealth." Id., at 933. "In view of this plain statutory language, it would be impossible to conclude that PAT is anything other than an agency of the Commonwealth." Id., at 934. PAT's enabling statute is virtually identical to the PHA's:

There are hereby created bodies corporate and politic in counties of second class, to be known as Port Authority of (insert name of county), which shall constitute public bodies corporate and politic; exercising the public powers of the Commonwealth as an agency thereof.

55 P.S. § 553(a) (PAT) (emphasis added).

An Authority shall constitute a public body, corporate and politic,
exercising public powers of the Commonwealth as an agency thereof[.]

Cf., 35 P.S. § 1550 (PHA) (emphasis added). Why would the language of the Port Authority statute be so compelling as to make it “impossible” to conclude it was anything but an “agency of the Commonwealth,” and the almost identical language not compel the same result for the Housing Authority? PAT has no more statewide impact than PHA.

The Majority argues Marshall is irrelevant because the court was deciding whether PAT was entitled to sovereign immunity, from being a Commonwealth agency, or governmental immunity, which protects local agencies; we did not comment on PAT’s status for jurisdictional purposes. However, this Court framed the issue in Marshall as: “The question presented, therefore, is whether PAT is an ‘agency of the Commonwealth,’ rather than one of the types of local agencies excluded from the definition of ‘Commonwealth government.’” Marshall, at 933. The court abandoned T & R Painting’s agency impact analysis and determined that if the General Assembly designates an entity an appendage of the state government, it is just that.

In my judgment, this is the proper result. It is not necessary for courts to analyze whether something walks or quacks like a duck - the legislature has said “this is a duck,” and even if it looks and sounds like a goose, the legislature has the exclusive power to do so. We should not be saying “they said it’s a duck, but they really meant it’s a goose,” nor should we hold “this is a duck for some purposes and a goose for other purposes.” How does anyone know which fowl it’s going to be for purposes of whatever issue is raised the next time?

The Pennsylvania Constitution, Article V, § 4, states the Commonwealth Court's jurisdiction "shall be provided by law." Pa. Const. art. V, § 4. The General Assembly established its jurisdiction in 42 Pa.C.S. § 761; nowhere does the General Assembly provide for the judiciary to graft chameleon-like properties onto agencies, making them one type of agency for one purpose and another type for different purposes.

Once the "Commonwealth government" is sued, § 761 is mandatory; this Court has no authority to recast a statutorily-defined state agency into a local agency by critiquing its functions. We may not change the jurisdiction of our courts, whether more practical or located closer to the cause of action. The General Assembly earmarked the PHA an agency of the Commonwealth; we are bound to give effect to this directive.

The Third Circuit addressed the issue of the PHA's status as either an agency of the Commonwealth or local agency and concluded that Marshall implicitly overruled T & R Painting. City of Philadelphia v. Lead Industries Assoc., Inc., 994 F.2d 112, 119 (1993). Applying Pennsylvania law, the federal court analyzed T & R Painting in light of Marshall and determined:

Marshall is controlling[, because t]he enabling statutes considered in Marshall and T & R Painting Co. contained virtually identical language...and because, as a federal court sitting in diversity, we are bound to follow the pronouncement of a state's highest court on an issue of state law, we hold that PHA is an agency of the Commonwealth...."

Id. The court rejected the argument that Marshall was inapplicable, noting: "the legislature's designation of which entities are Commonwealth parties is dispositive for all governmental privileges." Id.

In City of Philadelphia v. Philadelphia Parking Authority, 798 A.2d 161 (Pa. 2002), we reversed an order of the Commonwealth Court which concluded the

Philadelphia Parking Authority was not an agency of the Commonwealth subject to the Commonwealth Court's original jurisdiction; we remanded the case "for disposition on the merits[,] [i]n light of our disposition of the jurisdictional issue...." Id., at 162. Then Chief Justice Zappala offered a vigorous 14-page dissent in which he acknowledged: "In reversing the Commonwealth Court's order, the majority has implicitly overruled longstanding precedent [T & R Painting] and generated great uncertainty as to the basis for its analysis." Id., at 183 (Zappala, CJ. dissenting).

The uncertainty surrounding T & R Painting should be put to rest. This Court's subsequent decisions have abandoned its holding in favor of the more prudent course of giving effect to the expressed words of the PHA statute. It is time to formally overrule that case and hold that when the General Assembly calls a body an "agency of the Commonwealth," we must give meaning to that designation.

I would reverse the order of the Superior Court and remand this case to the Board of Claims for disposition on the merits.

Madame Justice Newman joins this dissenting opinion.