

DANE v. CITY OF SANTA ROSA

S221341

Supreme Court of California

September 19, 2014

Reporter

2014 CA S. Ct. Briefs LEXIS 1079

TAYLOR DANE, Plaintiff/Appellant/Petitioner, vs. CITY OF SANTA ROSA, et al., Defendants/Respondents.

Type: Petition for Appeal

Prior History: On Review of the Unpublished Decision of the California Court of Appeal, First District, Division Two, Issued August 14, 2014 Court of Appeal Case No. No. A138355.

On Appeal from the Judgement of Dismissal on Demurrer by the Superior Court of the State of California, County of Sonoma. The Honorable Nancy Case Shaffer, Presiding. Superior Court Case No. SCV-253003.

Counsel

[*1] Mark T. Clausen (Calif. SB# 196721), Attorney at Law, Santa Rosa, California, Attorney for Plaintiff/Appellant/Petitioner, Taylor Dane.

Title

Appellant's Petition For Review

Text

TO: THE HONORABLE CHIEF JUSTICE CANTIL SAKAUYE AND THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

PLEASE TAKE NOTICE that in accordance with [Rule 8.500 of the California Rules of Court](#), plaintiff and appellant Taylor Dane hereby respectfully petitions the Court for review of the unpublished opinion of the First District Court of Appeal, Division Two, issued August 14, 2014 (Kline, J., joined by Richman, J., and Brick, J.* (*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.) A true copy of the opinion is attached as Exhibit 1.

Petitioner respectfully requests review be granted as a companion case to, or on a grant and hold basis pending finality of, *Wheatherford v. City of San Rafael*, S219567, review unanimously granted September 10, 2014, formerly at [Wheatherford v. City of San Rafael \(May 22, 2014\) 226 Cal.App.4th 460](#), A138949, also [*2] prosecuted by plaintiff's counsel at bar and arising in the same procedural context (judgment of dismissal on demurrer), presenting the identical question whether the taxpayer standing statute, [Code of Civil Procedure section 526a](#) (section 526a), is limited to taxpayers who have paid real property and retail business taxes, or extends more broadly to other forms of tax payments such as income, sales and gasoline tax. Relying on and quoting extensively from *Wheatherford*, the Court of Appeal here found section 526a is limited to taxpayers who have paid real property and retail business taxes. This Court having unanimously granted review in *Wheatherford*, it would be appropriate to do the same here.

The important question presented for review is what type of taxes a plaintiff must pay to have standing under section 526a and, ultimately, whether plaintiff at bar and millions of other California residents like her may be denied taxpayer standing because they do not own and cannot afford to buy real property or a business and pay taxes assessed thereon,

but do pay other forms of taxes used to fund state and local government action, such as income, [*3] sales and gasoline taxes.¹

INTRODUCTION & SUMMARY OF GROUNDS FOR REVIEW

Proceeding as a taxpayer pursuant to section 526a, plaintiff seeks to challenge the vehicle impoundment practices of the defendants City of Santa Rosa (the City) and County of Sonoma (the County) under [Vehicle Code section 14602.6](#), which authorizes the 30-day impoundment of vehicles operated by a [*4] person without a valid driver's license. Plaintiff is primarily concerned about the significant impact of [Vehicle Code section 14602.6](#) on undocumented immigrants, who under the existing state of the law cannot obtain California driver's licenses and as a result frequently suffer the harsh penalty of vehicle impoundment.

The proper construction and application of the vehicle impoundment statute, and its facial constitutionality, have been addressed by the Court of Appeal in three previous published cases brought by plaintiff's counsel at bar, two of which were based on the plaintiffs' taxpayer standing, and each of which was decided on its substantive merits.² This Court has also previously decided a taxpayer case brought by plaintiff's counsel at bar successfully challenging the legality of a municipal ordinance authorizing forfeiture of vehicles used to commit various crimes.³ Given this litigation history, one might expect this taxpayer case would provide another opportunity for a court of review to consider the substantive merits of another legal challenge to the vehicle impoundment statute. The Court of Appeal, however, did not reach the merits of [*5] plaintiff's claims because it concluded she lacks taxpayer under section 526a as she has not paid real property or retail business taxes, only income, sales and gasoline taxes-which the Court of Appeal found do not satisfy section 526a. The specifics and merits of plaintiff's legal challenge to the vehicle impoundment statute were thereby rendered irrelevant, for the appellate court's ruling forecloses *any* legal challenge by plaintiff under the taxpayer standing statute, section 526a - be it a challenge to vehicle impoundment or any other form of government action claimed to be unlawful.

[*6]

As support for its holding, the Court of Appeal cited and quoted extensively from the recent decision of the First District Court of Appeal in [Wheatherford v. City of San Rafael \(May 22, 2014\) 226 Cal.App.4th 460](#), A138949, which involves the identical issue of taxpayer standing arising from an identical legal challenge to the vehicle impoundment practices of the City of San Rafael and County of Marin, and also arises from a judgment of dismissal on demurrer based on lack of taxpayer standing. Just a few days [*7] ago, on September 10, 2014, this Court unanimously granted review in *Wheatherford v. City of San Rafael*, S219567. Plaintiff at bar now asks the Court to do the same in this case, either as a companion case to *Wheatherford* or on a grant and hold basis pending finality in this Court.

¹ Because review has been granted in *Wheatherford* and this case presents the exact same legal question in the exact same procedural context, petitioner will keep her arguments to a minimum and thus submits a petition for review which is much shorter than that presented in *Weatherford*. This should not be taken as a signal that this case is less important or less deserving of review than *Weatherford*. The two cases are on equal footing and it is only by fortuitous circumstances that the *Wheatherford* case was decided first in the Court of Appeal though it arrived there later than this case.

² See [Alviso v. Sonoma County Sheriff's Dept. \(1st Dist., Div. 3, 2010\) 186 Cal.App.4th 198](#) [plaintiff was a vehicle owner who had suffered impoundment based on a DUI license suspension and who was a taxpayer proceeding under section 526a]; [Samples v. Brown \(1st Dist., Div. 2, 2007\) 146 Cal.App.4th 787](#) [taxpayer who had not suffered impoundment]; [Smith v. Santa Rosa Police Department \(1st Dist., Div. 2, 2002\) 97 Cal.App.4th 546](#) [non-taxpayer case by vehicle owner who had suffered impoundment because, unbeknownst to him, his grandson who was driving the vehicle had a suspended license]; and *see Thompson v. City of Petaluma*, No. A137981 (1st Dist., Div. 4) [cause argued 8/12/2014] [taxpayer who has not suffered impoundment].

³ [O'Connell v. City of Stockton \(2007\) 41 Cal.4th 1061](#), affirming *O'Connell v. City of Stockton, formerly* (3rd Dist. 2005) [128 Cal.App.4th 831](#), and affirming, *sub nom*, and dismissing review in *Hernandez v. City of Sacramento, formerly* (3rd Dist. 2007) [54 Cal.Rptr.3d 98](#) [taxpayer standing case], and retransferring to Court of Appeal for ultimate *affirmance*, [City of Los Angeles v. 2000 Jeep Cherokee \(2008\) 159 Cal.App.4th 1272](#) [forfeiture cases successfully defended by plaintiff's counsel at bar].

ISSUES PRESENTED FOR REVIEW

1. What type of taxes must a plaintiff pay, or be liable to pay, to have taxpayer standing under section 526a? If the answer is limited to real property and retail business taxes, does that limitation violate equal protection and due process guarantees based on wealth-based discrimination?

2. Did the trial court err in dismissing plaintiff's complaint for lack of taxpayer standing? **A FEW WORD ABOUT PLAINTIFF**

The face of the complaint in this case does not tell us much about plaintiff, other than that she resides in Santa Rosa and pays income, sales and gasoline taxes but does not pay real property or retail business taxes because she cannot afford to buy real property or start a business in the Bay Area. Looking beyond the face of the complaint, we find plaintiff is a 20-year old college student who works part-time to help support herself with financial [*8] assistance from her parents and grandparents. Like many young people her age, she is idealistic, energetic and sincere in the belief that she can make a significant difference in the world, and can do so *now!!* - not at some indefinite point in the future when she is older, wiser, and wealthier.

Plaintiff leans hard-left politically and socially often finds herself at odds with her more conservative parents and grandparents in matters of politics, religion, social change and the proper and fair application of the laws of this state and this nation. Plaintiff respects her parents and grandparent's opinions, as she does the opinions of most other people who disagree with her on issues she believes important, but she believes that her opinion deserve to be heard as well and that ultimately the "marketplace of ideas" will decide who has the stronger argument on those important issues. Plaintiff finds it offensive to notions of equality and due process that her parents and grandparents can seek to effect significant changes in government action - that, is that their voices can be heard - through the court system by way of the taxpayer standing statute, section 526a, because they bought [*9] homes in California many decades ago when prices were lower and thus have taxpayer standing under the existing state of the appellate case law; whereas plaintiff is excluded from taxpayer standing and thus her voice cannot be heard in court under section 526a because, like millions of other hardworking California taxpayers, particularly those her age, plaintiff does not own and cannot afford to buy real property or start a business in this state - particularly in the Bay Area, one of the most expensive real estate markets in the world.

Dispelling the rationale of the Court of Appeal decisions in this case and *Wheatherford*, which appears detached from real-world realities, plaintiff is not old enough to have purchased a home decades ago when prices were lower - and she finds it silly that the Court of Appeal suggested that decade-old home purchases could alleviate the unequal affects of granting taxpayer standing only to homeowners, considering she is just 20-years old and thus had no ability to buy a home decades ago, and in speaking with her parents and grandparents she has come to conclude that home prices have never been "low" in this state during their lifetimes. No one in [*10] plaintiff's family has died and left her real property as an inheritance - and she finds it repulsive that the Court of Appeal effectively asked her and others like her to look forward to the death of a family member as means to acquire property for purposes of gaining taxpayer standing. And despite plaintiff's occasional \$ 5 play, her lucky numbers have not been called in the state lottery, so she has not fortuitously fallen into money allowing for home ownership.

Though plaintiff is poorer than many other Californians and as result does not own real property or a business, she has never felt herself a second-class citizen, less deserving or less important than her wealthier neighbors who own expensive homes and run their own businesses. *Until now*. The Court of Appeal here and in *Wheatherford* has told plaintiff that because she is not wealthy enough, or otherwise fortunate enough, to own real property or a business and pay taxes assessed thereon, she lacks taxpayer standing under section 526a to challenge the legality of state and local government action. Finding that contrary to principles of equality and justice, and believing it creates a wealth-based system of standing [*11] in which the rich are afforded the right to be heard in court on far broader grounds that are available to the poor, plaintiff seeks review in this Court.

While plaintiff's complaint specifically concerns the legality of the City and County's vehicle impoundment practices, the Court of Appeal's holding applies broadly to all forms of government action, preventing persons like plaintiff from

bringing suit at all under section 526a, no matter how unlawful and harmful the challenged government action may be and no matter how unlikely it is that wealthier and more fortunate taxpayers who own homes and businesses will bring suit under section 526a to challenge that action. Plaintiff is steadfast in the belief that such a rule enjoys no place in taxpayer standing and the California justice system and should be reviewed by the Court and promptly abolished.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Plaintiff filed a 2-count complaint for declaratory and injunctive relief on January 4, 2013. (CT 1-14.) The complaint challenges the City and County's enforcement of [Vehicle Code section 14602.6](#), authorizing 30-day impoundment of a motor vehicle operated [*12] by a person with a suspended or revoked license, or who has never been issued a valid licence. Plaintiff claims, in sum, that the City and County impound vehicles in circumstances where [Vehicle Code section 14602.6](#) does not allow it and provide post-seizure notice and an administrative hearing process which violate procedural due process guarantees. (CT 1-14, 82-83.)

Plaintiff has not suffered the impoundment of a vehicle. She alleges that declaratory and injunctive relief are nonetheless available to her as a taxpayer under section 526a because paid police officers are used to enforce [Vehicle Code section 14602.6](#) in an unlawful manner, which constitutes an illegal waste and expenditure of taxpayer funds within the meaning of section 526a. Plaintiff avers that she has paid gasoline, sales and income taxes in and to the City and County, and has also paid water, sewage and other standard municipal fees to the City, but does not pay real property taxes because she does not own and cannot afford to buy real property in California. (CT 1-3.)

The City filed a general demurrer on January 30, 2013 on grounds that plaintiff lacks taxpayer [*13] standing under section 526a because she does not pay real property taxes. The City relied on [Torres v. City of Yorba Linda \(4th Dist., Div. 3, 1993\) 13 Cal.App.4th 1035](#) (*Torres*) and [Cornelius v. Los Angeles County etc. Authority \(2nd Dist., Div. 4, 1996\) 49 Cal.App.4th 1761](#) (*Cornelius*), which found that real property tax payment is required by section 526a and payment of income, sales and gasoline taxes does not suffice for taxpayer standing. The City and County claimed that this Court's intervening decision in [Tobe v. City of Santa Ana \(1995\) 9 Cal.4th 1069](#) (*Tobe*), granting taxpayer standing to 2 homeless plaintiffs, is not controlling because it did not expressly consider the type of taxes which must be paid for a plaintiff to have standing under section 526a. (CT 1528.)

Plaintiff filed opposition to the City's demurrer on February 5, 2013. Plaintiff's argument was directly opposite the City's - the trial court should find taxpayer standing based on this Court's decision in *Tobe*, which should take precedent over the contrary appellate opinions in *Torres* and *Cornelius*. Plaintiff also argued that a property [*14] tax requirement constitutes unconstitutional wealth-based discrimination. (CT 51-73.) Plaintiff filed a declaration from her counsel stating he selected plaintiff to litigate this case precisely because she has *not* paid property taxes, in order to pursue an appellate determination on taxpayer standing. (CT 74-77.)

The City filed a reply brief in support of its demurrer on March 20, 2013. The City reiterated its argument that plaintiff lacks taxpayer standing because she has not paid real property taxes. The City also accused plaintiff's counsel of unethically soliciting plaintiff as a client and improperly hand-selecting her to serve as a "proxy" litigant so that counsel might raise new and novel legal issues on appeal and thereby secure an attorney's fee award for his *personal* benefit. (CT 173-179.)

Plaintiff's counsel filed a responsive declaration on March 22, 2013, stating, in sum, that he had not solicited plaintiff as a client - she had contacted him about a 3rd party vehicle impoundment - and he did not appreciate the City's unsubstantiated ad hominem attack. (CT 192-194.)

The trial court issued a tentative ruling granting the City's demurrer on March 26, 2013. Adhering [*15] to the appellate decisions in *Torres* and *Cornelius*, the court found that property tax payment is a required element of standing under section 526a. The intervening Supreme Court decision in *Tobe* was not controlling, the trial court said, because taxpayer standing was granted to 2 homeless plaintiffs without indication of the type of taxes they had paid, so "presumably" they had paid some form of tax which satisfies section 526a (the trial court did not state what tax it might be). Plaintiff was given leave to amend (CT 222-223), but she had earlier stated she would not amend to add a

new property tax payer in her place and there was no other amendment which might cure the perceived defect in standing.. (CT 196.)

The matter was heard March 27, 2013 and resolved pursuant to a stipulated order and judgment of dismissal which reserved plaintiff's right of appeal. (CT 202-207; see [Nogart v. Upjohn Co. \(1999\) 21 Cal.4th 383, 399-402.](#)) The order and judgment sustained the City's demurrer *without* leave to amend and dismissed the case with prejudice based on plaintiff's lack of taxpayer standing for want of payment of real property tax, and applied that ruling [*16] equally to the County, which had not yet responded to the complaint. In addition, based on existing appellate case law adverse to plaintiff, the stipulated order denied plaintiff's motion for preliminary injunction against the City. (CT 29-50, 202-207.) Plaintiff timely filed a notice of appeal on April 8, 2013. (CT 209-210.)

After briefing was completed in this case in the Court of Appeal, the First District Court of Appeal issued its published decision in [Wheatherford v. City of San Rafael \(May 22, 2014\) 226 Cal.App.4th 460](#), A138949, which involved the identical issue of taxpayer standing arising from an identical legal challenge to the vehicle impoundment practices of the City of San Rafael and County of Marin. The Court of Appeal in this case invited supplemental letter briefs on the application of *Wheatherford*. The parties agreed *Wheatherford* is indistinguishable from this case. The City and County argued that *Wheatherford* is correctly decided and should be followed. Plaintiff argued the opposite.

By unpublished decision issued August 14, 2014, the Court of Appeal sided with the City and County and elected to follow *Wheatherford*, as well as the [*17] earlier decisions of the same kind in *Torres* and *Cornelius*, rejecting taxpayer standing for plaintiffs who have not paid real property taxes or retail business taxes. The Court of Appeal quoted extensively from *Wheatherford* and essentially adopted the decision as its own, adding a few minor comments to address unique points raised by the parties in this case.

On September 10, 2014, this Court unanimously granted review in *Wheatherford v. City of San Rafael*, S219567. Plaintiff now asks the Court to do the same in this case, as a companion case to *Wheatherford* or on a grant and hold basis pending its finality in this Court.

ARGUMENT

I.

REVIEW IS APPROPRIATELY GRANTED TO SETTLE AN IMPORTANT ISSUE OF LAW

Originally enacted in 1909, the taxpayer standing statute, section 526a, has been used as grounds to challenge the legality of government action in hundreds of published decision, including at least 32 cases decided by this Court which plaintiff's counsel has found. This Court, however, has never said what type of taxes must be paid by a plaintiff to qualify for standing under section 526a. But on at least two occasions the Court has found [*18] taxpayer standing on the part of plaintiffs who plainly had not paid real property or business taxes, and necessarily paid other forms of taxes, like income, sales and gasoline taxes, such as [Tobe, supra, 9 Cal.4th 1069, 1081-1086](#), involving two homeless plaintiffs who were granted taxpayer standing to challenge the constitutionality of a no-camping ordinance, and [Arrieta v. Mahon \(1982\) 31 Cal.3d 381](#), brought by several former renters who had been evicted from their home and were found to have taxpayer standing to challenge the legality of the evictions. The Court has thus left open the type of taxes one must pay to qualify for standing under section 526a.

The Court will decide that question in *Wheatherford v. City of San Rafael*, S219567, which the Court of Appeal here recognized is procedurally and substantively identical to this case - a point the parties have conceded. It would be appropriate, then, to also grant review in this case, so that it, too, will ultimately be decided based on views of this Court.

It would be incorrect to presume that granting review here will add nothing to the debate over the proper application and construction [*19] of the taxpayer standing statute, since the *Wheatherford* cases involving the same issues. At their core the *Wheatherford* case and this case are about the rights of *individuals* to be heard by the Court concerning

their grievances against government action which they believe is unlawful and should be changed through judicial intervention under section 526a. Plaintiff at bar and Cheritty Weatherford are both equally offended by the Court of Appeal's suggestion that their voices need not be heard in court on significant legal issues near and dear to their hearts, because *others* with taxpayer standing *may* bring those issues before the Court under section 526a. Plaintiff and Cheritty Weatherford are not carbon-copy duplicates of other California citizens who have taxpayer standing. They have unique experiences, views and perspectives on the legal issues underlying this case, concerning vehicle impoundment, as well as other important government action affecting their lives and the lives of other Californians. They object to the misguided notion that others who have taxpayer standing under the existing state of the law can speak for them with the same passion, vigor and [*20] persuasiveness that they bring to the table. And, though they are linked in spirit and purpose, they must also passionately object to the suggestion that they are effectively the *same* voice and thus only one of them need be heard on the issue of taxpayer standing and the proper construction and application of the vehicle impoundment statute. They are not the same people and they do not believe they should be treated as one when considering the important legal question which they each face. Each of their voices should be heard and considered by the Court. Review should be granted in this case as it has been in *Weatherford*.

CONCLUSION

Based on the foregoing, the Court should grant review in accordance with Rule 8.500 to consider plaintiff's right to bring suit under the taxpayer standing statute, section 526a.

Date: September 12, 2014

By: /s/ [Signature]

Mark T. Clausen,
Attorney for Plaintiff/Appellant/Petitioner
Taylor Dane

CERTIFICATE OF WORD COUNT

I, Mark T. Clausen, do hereby certify that the word count for this brief is 3,103 words as determined by WordPerfect software. All margins are set at 1.5 inches and line spacing is set [*21] at 1.5, with the exception of blocked text. Appellant has separately submitted a motion for leave to file an excess word brief.

/s/ [Signature]

Mark T. Clausen

PROOF OF SERVICE

I, Mark T. Clausen, do hereby declare:

I am over the age of 18 and not a party to the above-entitled action. My business address is 769 Carr Avenue, Santa Rosa, California, 95404. On the date indicated below true copies of the attached document - to wit, Appellant's Petition for Review - were placed in a sealed envelope, postage prepaid, and deposited in the United States Mail, address as follows:

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Earl Warren Building
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(Original and 9 copies)

High Court

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Taylor Dane
(BY HAND DELIVERY)

Plaintiff and Appellant

I declare that the foregoing is true and correct under penalty of perjury of the laws of the State of California. So declared this 18th day of September 2014 in Santa Rosa, California.

/s/ [Signature]
Mark T. Clausen