

White is ruled 'lawful mayor' of Westlake

By Miles Moffeit and Susan Gill Vardon
Star-Telegram staff writers

Dale White is the "lawful mayor" of Westlake because the trial to remove Scott Bradley in April was proper, a 2nd District Court of Appeals panel ruled yesterday.

The finding triggers a new set of questions about the fractured town's future. It also sets up yet another duel between Bradley and White, both of whom will show up at next week's Board of Aldermen meeting as mayor.

The 42-page ruling overturned state District Judge Bob McGrath's decision that Bradley was not legally ousted, and knocked down the linchpin of Bradley's legal case -- that his removal by four aldermen acting as judge, jury and witnesses was unconstitutional.

The state law allowing such trials "does not violate the constitutional doctrine that mandates the separation of powers in government," the ruling states in disputing one of five constitutional arguments by Bradley's attorneys.

But the appellate justices said they did not consider the truthfulness of the aldermen's charges against Bradley that led to his trial.

White could not be reached to comment, but his attorney, Dee Kelly Jr., said the decision was welcome news and "an important decision."

"It shows that this is the law," Kelly said. "The removal is a process that is ingrained in Texas law. And despite Mr. Bradley's objections, there was never anything improper about his removal."

White will preside during Monday's Board of Aldermen meeting, Kelly said.

Bradley said he wasn't surprised and plans to appeal.

"I'm just disappointed," he said. "Based on the court's previous rulings and attitude, we knew what was coming. But I expect the Texas Supreme Court will review the opinion and reverse the appellate court."

Bradley said he can stay in office for 45 days while the case is appealed to the state's high court.

"What basis do they think this opinion has gone into effect?" Bradley said. "Right now it has no effect until the Supreme Court either accepts it for review or refuses to review it. If they accept it, the mandate cannot issue until the Supreme Court has ruled. If they don't accept it, it goes into effect 10 days after they refuse to accept it."

Bradley, who was elected to a two-year term as mayor in 1996, was ousted in the April 29 trial by the then-Board of Aldermen, who testified against him, found him guilty of misconduct and incompetence, and removed him from office. They claimed that he improperly ordered the town engineer to prepare a false town boundary map to include the Stagecoach Hills subdivision, and that he removed public notices for special meetings.

The town was dismantled when board members appointed White mayor and disannexed 90 percent of its property, including Ross Perot Jr.'s Circle T Ranch, some of their own properties and the Solana office

complex.

David Bryant, an attorney representing Perot in Westlake litigation, declined to comment on yesterday's ruling.

In their arguments to the appeals court, Bradley and his attorneys said the aldermen acted improperly as a judiciary, violating constitutional "separation of powers." They said the hearing did not conform with "the rules of justice courts," in part because a jury was not impaneled and because they did not allow him 10 days to "perfect an appeal."

On the separation of power issue, the court ruled: "There is no constitutional provision expressly addressing the removal of mayors of general-law municipalities." But one state constitutional provision allows the Legislature to create special courts and supports the aldermen's actions.

As for Bradley's argument that the aldermen threw out justice court rules when trying him, the court said: "No provision of Section 21.002 [state law] authorizes a board to employ justice court rules when sitting as a board governing the town."

Bradley had also argued that he was allowed to stay in office after his trial because a newly elected Board of Aldermen granted him a "new trial" within 10 days.

But the appellate court said the board's ability to act as a court vanished after its judgment against Bradley because it had reverted back to a "governing body."

"Analogous to Cinderella, the court members' figurative clock tolls the midnight hour when judgment is entered because the entry means their statutory carriage loses its wheels, and their judicial authority over that particular complaint vanishes," states the ruling, signed by Justice Dixon Holman.

Former Aldermen Howard Dudley and Carroll Huntress, among the four who voted for Bradley's removal, considered the court ruling an "exoneration."

"We followed the rules and went by the book and that's all you can do," Huntress said.

Dudley, Huntress and White plan to meet with their attorneys today to discuss the legal ramifications of the ruling. One possibility: Dudley and Huntress could still be aldermen, they said.

"We'll find out what our position is," Dudley said. "If we're still aldermen, we'll be at the [Board of Aldermen] meeting. If not, we'll still be there to support Dale."

But the current aldermen emphasized that the case is far from over.

"Justice has not prevailed yet, that's all there is to it," said Alderman Fred Held, a longtime Bradley supporter who opposed his removal.

The board will continue its fight to reunite the town and will ask the Texas Supreme Court to review yesterday's decision, Held said.

Alderman Jerry Dinsmore downplayed the ruling, saying he believes that the courts will ultimately rule in the town's favor, in part because the lame-duck board's actions were so contrary to the residents' desires.

"Previously the old Board of Aldermen ignored the petitions of 140 citizens, and I would think there's some legality as to whether they can do that," Dinsmore said.

The impact of the decision on other Westlake lawsuits is unclear.

State District Judge Fred Davis stated last week that he was waiting for the appeals court ruling before deciding whether to dismiss the lawsuit Westlake has filed against Fort Worth.

Westlake sued after the Fort Worth City Council voted to include the Circle T Ranch and the former aldermen's properties in its extraterritorial jurisdiction.

Also pending in Davis' court are Westlake's lawsuits against Southlake and Roanoke in the town's dismantling.

Southlake moved to annex Solana, and Roanoke received a parcel of the Circle T Ranch north of Texas 170 as well as other Perot- owned land.

Yesterday was only the latest ruling against Bradley by the appellate court. Last month, four 2nd Court of Appeals justices refused Bradley's request that three justices recuse themselves from reviewing the case because of an alleged bias and conflict of interest.

In an order signed by Chief Justice John Cayce, the four justices said that Bradley's allegations were "based on false speculation and innuendo." They also wrote that they were sending Bradley's motion to the State Bar of Texas for investigation of possible "unprofessional attorney conduct."
