

Westlake case has day in high court

By Miles Moffeit
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WACO -- The Texas Supreme Court yesterday plunged into the murky legal issues surrounding Scott Bradley's ouster as Westlake mayor, hammering each legal team with difficult questions about the fairness of removing elected officials.

At issue is whether Bradley received due process last year when four members of the Board of Aldermen, acting as judge, witnesses and jury, fired him over accusations of misconduct. Three days later, they chose Dale White as mayor and disannexed most of the town's land, including Ross Perot Jr.'s Circle T Ranch.

Bradley's attorney Eldridge Goins launched his remarks in a Baylor University Law School courtroom by displaying a map depicting Westlake's shattered boundaries and declaring that his client's removal was part of a plan to break up the town.

Goins then attacked the state removal statute as unconstitutionally vague. He also contended that the four aldermen, who have left the board, did not comply with rules mandated by the century-old law that was used to oust Bradley.

"The rules of the justice court are shorthand for due process," Goins said. "They were saying, 'Don't put due process in the trash can.' "

White's attorney Dee Kelly Jr. vigorously defended the former aldermen, saying that they satisfied the legal requirements by granting Bradley a hearing and allowing him to present evidence. Even more, Kelly said, the statute has "stood the test of time" since it was created in 1875.

"If it is ruled improper, it would gut the statute," Kelly said.

At the outset, the justices repeatedly pressed the attorneys to clarify the town's current political status, asking who is the town's current mayor and how much of its land remains.

Goins responded that several lawsuits are being fought over the disannexed land, and one -- between Westlake and Fort Worth -- is close to being settled. That possible settlement is being driven by a deal to put Fidelity Investments' regional headquarters on the Circle T. But Goins said he believes that a Supreme Court ruling in Bradley's favor would negate the disannexations.

At one point, Kelly pronounced White as Westlake mayor, drawing jeers in a nearby classroom where a Westlake crowd was watching the hearing on closed-circuit television.

The case went to the Supreme Court after the 2nd Court of Appeals overruled state District Judge Bob McGrath's decision that Bradley's ouster was unconstitutional. Bradley was reappointed mayor last year by a new Board of Aldermen and was elected by voters this year. But if he loses the case, he could be barred from the office for two years.

The nine justices, meeting outside Austin for the first time in the court's 157-year history, spent much of their time quizzing each side on what constitutes due process for an elected official. Some of the justices noted that the law allows removal of elected officials outside the court system.

At the end of one heated exchange, Justice Greg Abbott prodded Goins to suggest how he would rewrite the law.

"I don't think that limits itself to immediate top-of-the-head response," Goins said, taken aback.

Goins assailed the former aldermen for sitting in judgment of Bradley while also testifying against him, and for not allowing themselves to be cross-examined about possible bias.

He also faulted the court of appeals for ruling that Bradley was not entitled to an appeal because the Board of Aldermen had "disbanded as a tribunal" after the hearing.

"They simply said, 'It's all over like Cinderella, and there's no tomorrow,'" Goins said.

Justice Craig Enoch pressed Kelly on his definition of due process, which Kelly characterized as being "entitled to [judicial] review."

Kelly disputed Goins' contention that comprehensive court rules had to be obeyed. The rules would contradict the statute's purpose, he said.

Justices Raul Gonzalez and James Baker zeroed in on questions of bias, querying Kelly on whether the aldermen were sitting as impartial judges.

Gonzalez cited former Alderman Al Oien's testimony that he believed that Bradley was a "liar," and Baker noted that one of the aldermen declined to be questioned during Bradley's trial about his own bias. In defending the aldermen's refusal to be cross-examined, Kelly cited a case upholding a judicial board's verdict in meting out discipline. Members of that board acted as witnesses and judges, he said.

But Baker disputed Kelly, saying that that board was only making a recommendation for discipline. "So it's different," Baker said.

Bradley said he was happy with Goins' effort and was pleased with the justices' interest.

"It's obvious they understood the nuances of the case," Bradley said.

Neither White nor the four former aldermen attended the hearing.

Kelly said, "I think we were able to argue our point, and I really felt like the court was well-informed on the issue."

Westlake residents' reactions ranged from jubilant to reserved.

"I think there's no question among reasonable people that what happened to Scott was wrong," resident Don Redding said. "But sometimes right and wrong get lost in the law's interpretation."

It is uncertain when the court will issue an opinion in the case.

Susan Gill Vardon contributed to this report.

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