

SUPREME COURT LIVE

October 29, 2012

Mt. Edgecumbe High School, Sitka

ORAL ARGUMENT CASE SUMMARY

Alaskan Adventure Tours, Inc., Kimberly Riedel-Byler, aka Kimberly C. Riedel, K. Christina Riedel and/or Kimberly Byler, and ABC Leasing, Inc.,

Appellants,

v.

The City and Borough of Yakutat,

Appellee.

Supreme Court Case No. S-14483

Disclaimer: *This summary of the case highlights the major issues raised but is not intended to be comprehensive. It has been prepared for educational purposes only by the Supreme Court LIVE program staff and does not reflect the input or views of any member of the court.*

OVERVIEW OF THE CASE

This case began as a tax dispute between a small business, Alaskan Adventure Tours, and the City and Borough of Yakutat, a local government. Alaskan Adventure Tours transferred its assets before the City and Borough of Yakutat could collect the money it was owed. A jury decided that the transfer of assets was fraudulent. About a year later, Alaskan Adventure Tours asked the court to set aside the judgment. This appeal looks at whether the court should allow litigants to reopen their case after a jury has heard and decided it.

ATTORNEYS

Attorney for the Appellants, Alaskan Adventure Tours, Inc., et. al.:

John E. Casperson
Holmes Weddle & Barcott, Seattle

Attorney for the Appellee, City and Borough of Yakutat:

James T. Brennan
Hedland, Brennan and Heideman, Anchorage

QUESTIONS PRESENTED ON APPEAL

1. Did the trial court err in failing to relieve Alaskan Adventure Tours (AAT) from the fraudulent transfer judgment entered against it based on AAT's allegations that some of the testimony the City and Borough of Yakutat (Yakutat) presented at trial was fraudulent?
 - a. Did AAT have to show that it would have won at trial if the alleged fraudulent testimony were excluded?
 - b. Did AAT have to show "due diligence" in discovering the alleged fraud?
2. Did the trial court award too much in attorney's fees to Yakutat?

MAJOR AUTHORITIES TO CONSIDER**Alaska Rules of Court**

- Alaska Rule of Civil Procedure 60(b), Relief from Judgments
- Alaska Rule of Civil Procedure 82, Attorney's Fees

Alaska Supreme Court Case Law

- ***McCall v. Coats***, 777 P.2d 655 (Alaska 1989).
- ***Babinec v. Yabuki***, 799 P.2d 1325 (Alaska 1990).

SUMMARY OF THE CASE

Alaskan Adventure Tours, Inc. (AAT), a corporation solely owned by Kimberly Riedel-Byler, conducted hunts and tours in the Prince William Sound area in 2007. Riedel-Byler's husband, Darren Byler, was listed as the general manager of the corporation and served as boat captain and guide. AAT was based in Cordova and Seward, but in 2007 some of AAT's business was conducted in the Icy Bay area. Icy Bay is within the boundaries of the City and Borough of Yakutat (Yakutat). A dispute arose between Yakutat and AAT about whether AAT needed a business license from Yakutat or had to pay taxes to Yakutat.

During the time AAT was operating in Icy Bay, in May 2007, one of its guides, Jerry Byler, drowned. His body was flown to Yakutat on May 15, 2007, and police and troopers conducted an investigation of the drowning as required by law. Riedel-Byler accompanied the body to Yakutat and was interviewed by Yakutat's police chief John Nichols. Riedel-Byler left Yakutat with the body that afternoon. At the heart of this appeal is a factual dispute about whether Riedel-Byler and Nichols discussed AAT's potential tax liability while Nichols was driving Riedel-Byler to the airport.

Yakutat filed suit against AAT in February 2008 because AAT had not paid sales tax or an overnight lodging tax that Yakutat said AAT owed. The trial court decided that AAT did owe the taxes and entered a final judgment of approximately \$85,000 against AAT in November 2008. After the court entered the judgment, Yakutat took steps to collect the money from AAT. While trying to collect the money, Yakutat discovered that in early 2008, Riedel-Byler had transferred all of AAT's assets to herself and then transferred those assets to a new corporation, ABC Leasing. During a proceeding related to the collection action, Riedel-Byler testified under oath that she had no notice that Yakutat was trying to collect taxes from AAT before she transferred the assets.

Yakutat asked the court to set aside the property transfers because they were fraudulent and to hold Riedel-Byler in contempt for allegedly lying during the proceeding to collect on the judgment. One of Yakutat's allegations was that Riedel-Byler had lied about whether she had notice that Yakutat thought AAT had to pay taxes. Yakutat filed a sworn statement from Nichols that he and Riedel-Byler had talked about the tax issue when he drove her to the airport in May 2007, during the investigation of the drowning.

Whether Riedel-Byler or ABC Leasing was on notice of the tax liability before she transferred the corporation's assets was an important issue in deciding whether to set aside the transfers. The trial court held a jury trial in February 2010 to determine whether the transfers were fraudulent and whether Riedel-Byler lied. Nichols testified at the trial. The jury decided in favor of Yakutat on both issues.

Later, during a federal court case related to Jerry Byler's drowning, Yakutat gave a CD of the police interviews related to the drowning to the Bylers. Riedel-Byler and AAT then asked the state court to reopen the jury's decision because of fraud by Yakutat. Riedel-Byler claimed that Nichols's testimony in the state case was inconsistent with evidence in the federal case and that his recording of the interviews might have been tampered with.

DECISION BELOW

The state trial court denied Riedel-Byler's and AAT's request to reopen the case, deciding that Nichols's testimony was not the only evidence that supported the jury's verdict. The trial court also faulted Riedel-Byler for not looking at the issues she raised before the state court trial because Yakutat had filed Nichols's sworn statement before the trial. The court refused to give her an opportunity to try to find out more information from Yakutat about the recordings. The trial court awarded attorney's fees of \$4,347.75 to Yakutat for work on the request to reopen the case.

LEGAL ISSUES GENERALLY

Relief from Final Judgments

When a trial court has resolved all of the issues in a case that is brought before it, it issues a **final judgment**. A final judgment is an order that tells who won the case and what they won. The final judgment ends the case in the trial court. If the case involves money, the final judgment says which party has to pay and how much they have to pay. If a party does not pay the money in a judgment, the winning party can take action to collect the money, called executing on the judgment. Execution of a judgment can include seizing the losing party's bank account or other assets to pay the judgment.

A party can ask the trial court to relieve it from a judgment in limited circumstances, such as newly discovered evidence. This request is called a motion for relief from judgment and is governed by Alaska Civil Rule 60. Many of the reasons for relief under Rule 60(b) are related to mistakes that the parties made. Generally parties wanting to be relieved from a judgment have to show that they have a good reason for not bringing up the new issue sooner and that they have a valid defense that the court should consider.

In this case, there were two final judgments. The first final judgment was the order from the Alaska District Court that AAT owed taxes to Yakutat. The second final judgment, from the Alaska Superior Court, was based on the jury's verdict that the transfers of AAT's assets to Riedel-Byler and ABC Leasing were fraudulent. AAT asked the court to relieve it from the second final judgment, alleging that Yakutat had used fraud or misrepresentation to get a judgment in the fraudulent conveyance case. The trial court refused to relieve AAT from the judgment.

AAT's Position: AAT should be relieved from the judgment because Nichols's false or misleading testimony was a reason the jury found against AAT. There are too many differences between what Nichols said at trial and what he and others said later for his trial testimony to be truthful. The trial court incorrectly decided that AAT had to show that the result at trial would have been different. In any event, because Nichols is a police officer, the jury was more likely to believe him than other witnesses. AAT did not have a full opportunity to present its case because it did not have all of the information it now has that shows Nichols's testimony was false. Because AAT claims that Yakutat used false testimony, it does not have to show that it acted diligently to get the information. The court should give AAT another chance to prove to the jury that the transfers were not fraudulent.

Yakutat's Position: The trial court correctly denied AAT's request. Nichols told the truth, and there are good explanations for the differences in testimony. In any event, AAT knew long before the trial what Nichols would say about the conversation, but it did nothing to try to get more information from Yakutat about the interviews to prove to the jury that Nichols was lying. Nothing Yakutat did prevented AAT from telling its side of the story. Even if AAT showed that Nichols testified falsely, it had to show that his testimony made a difference in the jury's decision. Yakutat proved both that it had sent several letters to AAT and the Bylers and that the Bylers responded to at least two letters, so there is no way Nichols's testimony could have made that much of a difference.

Attorney's Fees

In most states, each party has to pay his own attorney's fees unless there is statute that shifts the fees to the other side. Alaska is different: Alaska Civil Rule 82 generally permits the trial court to award partial attorney's fees to the winning side. In this case, the trial court awarded more than the fee set out in Rule 82 because it thought AAT's motion for relief from judgment was unreasonable.

AAT's Position: Because the trial court did not find that AAT's motion was brought in bad faith, there was no reason to award enhanced attorney's fees.

Yakutat's Position: AAT and Riedel-Byler have engaged in a course of litigation without any real legal basis, and the court acted within its discretion in awarding enhanced fees.

QUESTIONS FOR STUDENTS TO CONSIDER

1. The parties in this case have litigated in several different courts. Identify the courts. What do the different courts do and why did the parties use them?
2. How are state and federal courts different? What determines the kinds of cases a court can decide?
3. The parties in this case present very different versions of what happened on May 15, 2007. Read the parties' briefs (pages 32-44 of AAT's brief and pages 19-38 of Yakutat's brief) and identify the key differences in their versions of the facts. How important do you think these differences are?

(cont.)

4. The parties agree that finality of judgments is important. Why is it important? What policies are supported by making it hard to set aside a final judgment? Looking at Alaska Civil Rule 60(b), what are the reasons a party can be relieved from a judgment? What policies support each reason listed in Rule 60(b) for relieving a party from a judgment?
5. The losing party has a right to appeal in most cases, but motions for relief from judgment are not always granted. What is the difference between an appeal and a motion for relief from judgment? Why should people have a right to appeal?
6. What do you think of Alaska's rule about awarding attorney's fees? Whom does the rule help? Can you think of situations when it might not be fair to make someone pay the other side's attorney's fees?
7. Several corporations owned or operated by the Bylers were involved in this litigation. Identify the corporations and explain what they do. What are corporations? What is the purpose of having corporations? How does the law treat corporations, e.g., do they have rights like individuals?
8. What do you think is AAT's strongest argument on appeal? What do you think is its weakest argument? Explain.
9. What do you think Yakutat's strongest argument is? What do you think is its weakest argument? Explain.
10. If you were a justice on the Alaska Supreme Court, how would you decide this case? Explain.