1982

George W. Frame and Lory Herbison Frame v. Residency Appeals Committee of Utah State University et al : Reply Brief of Appellants

Utah Supreme Court

Lisa J. Remal; Attorney for Appellants;
Tom C. Anderson; Attorney for Respondents;

IN THE SUPREME COURT OF THE STATE OF UTAH

GEORGE W. FRAME and LORY HERBISON FRAME,

Appellants,

-vs-

RESIDENCY APPEALS COMMITTEE OF UTAH STATE UNIVERSITY, CLAUDE J. BURTENSHAW, Chairman, and EVAN J. SORENSON, Assistant Director of Admissions and Records,

Respondents.

Case No. 18097

REPLY BRIEF OF APPELLANTS

Appeal from the District Court's denial of Appellants' Motion for Summary Judgment.

LISA J. REMAL
UTAH LEGAL SERVICES, INC.
385 - 24th Street
Suite 522
Ogden, Utah 84401-1477
Telephone: 394 9431

MICHAEL SMITH
Assistant Attorney General
Attorney for Respondents
Old Main, Room 116, U.M.C. 14
Utah State University
Logan, Utah 84322
Telephone: (801) 750 1162

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REPLY BRIEF OF APPELLANTS

INTRODUCTION

This action was filed with the Utah Supreme Court seeking judicial review and reversal of the decision of the First Judicial District Court, the Honorable VeNoy Christofferson, whereby appellants' Motion for Summary Judgment was denied and respondents' Motion for Summary Judgment was granted.

STATEMENT OF FACTS

Appellants do not agree with the Statement of

Facts recited by respondents in their brief, and refer the court to the Statement of Facts as stated in appellants' initial brief to the court.

Appellants specifically wish to point out that appellants returned to Utah, after being in Africa, and registered at Utah State University in March of 1978, not September of 1978 as stated by respondents in their Brief.

ARGUMENT

POINT I.

THE RATIONAL RELATIONSHIP TEST IS NOT THE PROPER STANDARD FOR ANALYZING AN IRREBUTTABLE PRESUMPTION.

Appellants' Complaint against respondents for refusing to classify them as residents of Utah State University (hereinafter "USU") alleges an unconstitutional denial of both equal protection and due process.

Respondents' brief indicates that the only relevant standard to be employed by the court in determining the constitutionality of Section I.(D) of the Rules and Regulations for Determining Resident Status in the Utah System of Higher Education (hereinafter the "30-day rule") is the rational relationship test. This test is described in respondents' brief, at p.12, by quoting a phrase from Weber v. Aetna Casualty and Surety Co., 406 U.S. 164 (1972).

The quoted from Weber, supra, in respondents' brief is clearly limited to constitutional challenges under

the Equal Protection Clause. The entire quote from Weber, supra, is: "The tests to determine the validity of state statutes under the Equal Protection Clause have been variously expressed, but this court requires, at a minimum, that a statutory classification bear some rational relationship to a legitimate state purpose". Weber, supra, at 172, (emphasis added).

Appellants agree that the rational relationship test is the proper test to be employed by the court in regard to their challenge to the 30-day rule under the Equal Protection Clause. In addition to their equal protection challenge, however, appellants have also challenged the 30-day rule under the Due Process Clause; they respectfully submit that the proper standard to be used by the court for analyzing their due process challenge is different from the rational relationship test described in Weber, supra.

As argued in appellants' initial brief to this court, the 30-day rule creates an irrebuttable presumption. It has long been recognized that an irrebuttable presumption is a violation of the Due Process Clause. Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974); Vlandis v. Kline, 412 U.S. 441 (1973); Stanley v. Illinois, 405 U.S. 645 (1972).

> [I]t is forbidden by the Due Process Clause to deny an individual the resident rates on the basis of a permanent and irrebuttable presumption

> of nonresidence, when that presumption is not necessarily or universally true in fact, and when the State has reasonable alternative means of making the crucial determination. Vlandis supra, at 452 (emphasis added).

In analyzing appellants' due process challenge, then, it would be improper for the court to use the rational relationship test, as advocated by respondents, because that is an equal protection standard. Rather, the court must use the test enunciated in Stanley, supra, Vlandis, supra, and LaFleur, supra. That type of analysis is explained as follows in Moreno v. University of Maryland, 420 F. Supp. 541, at 554 (D. Md. 1976):

> In this case, then, several questions relative to plaintiffs' due process claim must be resolved: (1) does the University of Maryland's "In-State Policy" create an irrebuttable presumption...(2) if so, is that presumption appropriate because universally true? (3) if not, can the defendants so justify that presumption as to save it from unconstitutionality?

By using the correct test for appellants' due process challenge to the 30-day rule, the only appropriate conclusion is that the 30-day rule creates an irrebuttable presumption which is an unconstitutional violation of the Due Process Clause. See Point I, Brief of Appellants.

POINT II.

THE 30-DAY RULE IS NOT RATIONALLY RELATED TO A LEGITIMATE STATE PURPOSE.

In the area of social welfare and economics, the proper test for judging an equal protection challenge to a statute or regulation is whether the classification is rationally related to a legitimate state interest. Dandridge v. Williams, 397 U.S. 471 (1970). This, then, is the standard to be applied here to appellants' equal protection challenge to the 30-day rule, although it is not the proper standard for their due process challenge.

Even given this minimal equal protection standard, the 30-day rule fails to pass constitutional muster. Appellants recognize that it is legitimate for respondents to differentiate between resident and non-resident tuition at USU. The 30-day rule, however, must fall under an equal protection challenge because the rule is so unreasonable and so senseless that it is not even rationally related to respondents' purpose of maintaining the tuition differentiation.

In order to prevent non-residents from taking advantage of the lower resident tuition, respondents require a person who comes to Utah for the primary purpose of attending an institution of higher education to reside in Utah for a least one year before he/she can possibly be

considered a resident for tuition purposes. Appellants do not challenge the reasonableness of such a rule.

Appellants do, however, contend that it is totally unreasonable for respondents to impose the additional requirement on applicants for resident status that, during that one year, they be absolutely precluded from being physically absent from the State for more than 30 days.

There is no reason to assume that a person who leaves the State for more than 30 days is not a resident. Possible legitimate reasons for such absences include temporary employment, research related to one's studies, participation in special educational programs offered only in other states, or joining a branch of the military. All of these examples show legitimate reasons why a Utah resident might be absent from the State for more than 30 days and yet still be a bona fide Utah resident. It is not only unfair, but totally illogical, to strip all persons who leave the State for more than 30 days of resident student status.

The irrationality of the 30-day rule is furthered by its irrefutable nature. A student who has not yet been in Utah for one year and who has left Utah for more than 30 days is allowed no opportunity to present evidence that his/her absence has not negated his/her residency.

This irrationality is evident when one examines appellants' situation. The running of the one continuous year's presence within the State has been broken by their summer trips to other parts of the country. These trips have been for one or both of two purposes - studies and employment.

Both appellants are in the field of wildlife science. Because of the fact that certain kinds of wildlife exist only in certain areas of the country or the world, appellants have found it necessary to travel to places such as Africa and New Jersey to do the research required for their studies. Yet this necessity has automatically deprived them of any chance to attain resident student status.

Appellants' trips out-of-state were also, at times, for the purpose of employment. They were engaged, at various times, in doing slide shows and lectures about their studies, and in researching and writing articles on wildlife for a children's magazine.

The 30-day rule specifically mentions employment out-of-state as being an indicia of non-residence. Such an assumption is absurd. Many students take summer jobs, if possible, to help defray the costs of their educations. Those students, especially graduate level students often attempt to find employment in their area of study even if

they must go to a different state for that employment; they realize that any extra knowledge and experience they gain through a summer job in their fields will help them when competing for employment once their education is completed. To penalize students such as appellants for trying to help themselves in this way is certainly irrational.

POINT III.

NO SUBSTANTIAL EVIDENCE EXISTS TO SUPPORT THE FINDING THAT APPELLANTS ARE NOT RESIDENTS.

Respondents, in the brief, argue that substantial evidence existed to support their administrative decision in which they denied appellants' applications for resident status. Therefore, respondents argue, their decision was not arbitrary and capricious.

Appellants respectfully submit that respondents' decision was not supported by substantial evidence and that it was, indeed, arbitrary and capricious. See Point III, Appellants' Brief.

In their brief, respondents also cite the case of Michelson v. Cox, 476 F. Supp. 1315 (S.D. Iowa 1979), and argue that Michelson and the present case are substantially alike, and that this court should, like the Michelson court, affirm the administrative finding of non-residency.

The Michelson case, supra, is easily distinguishable from the case at bar here. In Michelson,

the presumption of non-residency was rebuttable, capable of being overcome; on the other hand, the presumption of non-residency created by the 30-day rule in the present case is not rebuttable. This major difference distinguishes Michelson significantly from the present case. Appellants, therefore, respectfully submit that the Michelson case is not relevant to the court's decision in the present case.

CONCLUSION

Appellants respectfully submit that the decision below should be reversed and appellants be granted the relief requested in their brief.

DATED this 2nd days of November, 1982.

Respectfully Submitted:

UTAH LEGAL SERVICES, INC.

Lisa J. Remal

LISA J. REMAL
Attorney for Appellants

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above REPLY BRIEF OF APPELLANTS to Michael Smith, Assistant Attorney General, Attorney for Respondents, President's Office, Old Main, Room 116, U.M.C. 14, Utah State University, Logan, Utah, via first class U.S. Mail, postage prepaid this 2nd day of November, 1982.

S/

LINDA TAYLOR
Secretary