

IN THE SUPREME COURT OF NORTH CAROLINA

No. 53PA96-2

FILED: 7 APRIL 2000

WAKE COUNTY NO. 92CVS10221

JAMES H. POU BAILEY, A. PILSTON GODWIN, HARRY L. UNDERWOOD, HENRY L. BRIDGES, ROSALIE T. ADAMS, JESSE M. ALMON, HELEN L. ANDREWS, WORTH B. ASKEW, BILLY A. BAKER, PARKER N. BARE, ARTHUR C. BEAMAN and GRACE G. BEAMAN, JOSEPH G. BINKLEY, ROBERT L. BLEVINS, ELLIE L. BOYLES, CHANCEL T. BROWN and JOAN W. BROWN, ELIZABETH S. BUTLER, DOROTHY T. CARMICHAEL, JOHN CARRICKER, HAROLD D. COLEY, SR., ANNA L. COOPER, CHARLES C. COOPER and BERTIE S. COOPER, T.J. DUNCAN and ESTHER P. DUNCAN, DAN R. EMORY, MARTIN W. ERICSON, FRED W. GENTRY, IVEY B. GORDON and IZORIA S. GORDON, LOUIS N. GOSSELIN, EARL T. GREEN, BOB HAMMONS, DARIUS B. HERRING, RAY F. HOLCOMB, TILLIE M. HOLCOMB, KAY C. HURT, JOHN I. KIGER and MARIE K. KIGER, CLARENCE T. LEINBACH, WALTER G. LEMING and BARBARA C. LEMING, YATES LOWE, HARRIETTE B. MCCORMICK, VIRGINIA H. MICKEY, WILLIAM F. MORGAN, HARRIETTA B. MCCORMICK, EARL RAY PARKER, CALVIN C. PEARCE, MICHAEL PELECH, DIANE S. PEOPLES, MILDRED R. POINDEXTER, WINNIE D. POTTS, PATSY M. REYNOLDS, GLENN D. RUSSELL, BLANCHE S. SHIPP, CLYDE R. SHOOK, HAROLD E. SIMPSON, SONNIE B. SIMPSON, LENORA S. SMITH, FRANCES J. SNOW, CHARLES A. SPEED, JUSTUS M. TUCKER, WALTER P. UPRIGHT, RALPH B. WALKER and MARTHA M. WALKER, JEAN A. WATSON, ROBERT I. WEATHERSBEE, RUBY WEBSTER, HARRY LEE WILLIAMS, DANIEL W. WILLIAMS, ELIZABETH H. WILSON, WILBUR G. WILSON, ERNEST B. WOOD, THOMAS S. WORSHAM, individually for the benefit and on behalf of all others similarly situated,
Petitioner-Plaintiffs,

and

W.K. AUBRY, JR., JAMES BRYAN BARRETT, NORMAN W. CASH, ROBERTA M. COOK, JOHN ED DAVIS, DANIEL M. DYSON, EDWIN C. GUY, SAMUEL L. HARMON, JOHN MARSHALL HARTLEY, DONALD ELLIOTT HARTLE, MARTHA M. LAWING, DOUGLAS LAMAR MASON, DELMA DALTON REPASS, JR., WILLIAM ELMER RIGGS, PAUL L. SALISBURY, JR., RICHARD A. SHARPE, NELSON LEROY SHEAROUSE, FRANCIS C. SIMMONS and MARY E. SIMMONS, NED RAEFORD SMITH, G. VANCE SOLOMON and EULALIA T. SOLOMON, THOMAS LASH TRANSOU and WILBUR EUGENE YOUNG,
Additional Petitioner-Plaintiffs

v.

STATE OF NORTH CAROLINA, THE NORTH CAROLINA DEPARTMENT OF REVENUE, JANICE FAULKNER, in her capacity as SECRETARY OF THE NORTH CAROLINA DEPARTMENT OF REVENUE, THE NORTH CAROLINA DEPARTMENT OF STATE TREASURER, HARLAN E. BOYLES, in his capacity as TREASURER OF THE STATE OF NORTH CAROLINA
Respondent-Defendants

WAKE COUNTY NO. 94CVS06904

JAMES H. POUL BAILEY, DONALD L. SMITH, MILDRED GODWIN as surviving beneficiary and as Executrix of the Estate of A. PILSTON GODWIN, HARRY L. UNDERWOOD, HENRY L. BRIDGES, ROSALIE T. ADAMS, JESSE M. ALMON, HELEN L. ANDREWS, WORTH B. ASKEW, BILLY A. BAKER, PARKER N. BARE, ARTHUR C. BEAMAN and GRACE G. BEAMAN, JOSEPH G. BRINKLEY, ROBERT L. BLEVINS, ELLIE L. BOYLES, CHANCEL T. BROWN and JOAN W. BROWN, ELIZABETH S. BUTLER, DOROTHY T. CARMICHAEL, JOHN CARRICKER, HAROLD D. COLEY, SR., ANNA L. COOPER, CHARLES C. COOPER and BERTIE S. COOPER, T.J. DUNCAN and ESTHER P. DUNCAN, DAN R. EMORY, MARTIN W. ERICSON, FRED W. GENTRY, IVEY B. GORDON and IZORIA S. GORDON, LOUIS N. GOSSELIN, EARL T. GREEN, BOB HAMMONS, DARIUS B. HERRING, RAY F. HOLCOMB, TILLE M. HOLCOMB, KAY C. HURT, JOHN I. KIGER and MARIE A. KIGER, CLARENCE T. LEINBACH, WALTER G. LEMING and BARBARA C. LEMING, YATES LOWE, HARRIETTE B. MCCORMICK, VIRGINIA H. MICKEY, WILLIAM F. MORGAN, HARRIETTA B. MCCORMICK, EARL RAY PARKER, CALVIN C. PEARCE, MICHAEL PELECH, DIANE S. PEOPLES, MILDRED R. POINDEXTER, WINNIE D. POTTS, PATSY M. REYNOLDS, GLENN D. RUSSELL, BLANCHE S. SHIPP, CLYDE R. SHOOK, HAROLD E. SIMPSON, SONNIE B. SIMPSON, LENORA S. SMITH, FRANCES J. SNOW, CHARLES A. SPEED, JUSTUS M. TUCKER, WALTER P. UPRIGHT, RALPH B. WALKER and MARTHA M. WALKER, JEAN A. WATSON, ROBERT I. WEATHERSBEE, RUBY WEBSTER, HARRY LEE WILLIAMS, DANIEL W. WILLIAMS, ELIZABETH H. WILSON, WILBUR G. WILSON, ERNEST B. WOOD, THOMAS S. WORSHAM, W.K. AUBRY, JR., JAMES BRYAN BARRETT, NORMAN W. CASH, ROBERTA M. COOK, JOHN ED DAVIS, DANIEL M. DYSON, EDWIN C. GUY, SAMUEL L. HARMAN, JOHN MARSHALL HARTLEY, DONALD ELLIOTT HARTLE, MARTHA M. LAWING, DOUGLAS LAMAR MASON, DELMA DALTON REPASS, JR., WILLIAM ELMER RIGGS, PAUL L. SALISBURY, JR., RICHARD A. SHARPE, NELSON LEROY SHEAROUSE, FRANCIS C. SIMMONS and MARY E. SIMMONS, NED RAEFORD SMITH, G. VANCE SOLOMON and EULALIA T. SOLOMON, THOMAS LASH TRANSOU and WILBUR EUGENE YOUNG, individually for the benefit and on behalf of all others similarly situated,
Plaintiffs

v.

STATE OF NORTH CAROLINA, THE NORTH CAROLINA DEPARTMENT OF REVENUE, JANICE FAULKNER, in her capacity as SECRETARY OF THE NORTH CAROLINA DEPARTMENT OF REVENUE, THE NORTH CAROLINA DEPARTMENT OF STATE TREASURER, HARLAN E. BOYLES, in his capacity as TREASURER OF THE STATE OF NORTH CAROLINA, and officer ex *officio* of the RETIREMENT SYSTEMS, the TEACHERS AND STATE EMPLOYEES RETIREMENT SYSTEMS OF NORTH CAROLINA, and the LOCAL GOVERNMENT EMPLOYEES RETIREMENT SYSTEMS OF NORTH CAROLINA,
Defendants

WAKE COUNTY NO. 95CVS04346

CHARLES R. PATTON, EUGENE E. MOODY, MARY L. PRITCHARD, MERRILL R. CAMPBELL, THOMAS M. GROOME, JR., ROBERT J. DAVIS, MILTON H. QUINN, MAXINE S. WOOD, individually and as Executor of the Estate of ROBERT V. WOOD, WINTON H. WILLIAMS, WILLIAM E. DENTON, BILLY CLARK, NORMAN W. SWANSON, WOODFORD T. MOSELEY, MARION B. ZOLLIFFER, RAY HOMESLEY, DANIEL J. QUESENBERRY, RICHARD M.

HERIOT, PAUL F. CHAVEZ, WILLIAM H. ADAMS, and others similarly situated,

Plaintiffs

v.

STATE OF NORTH CAROLINA, THE NORTH CAROLINA DEPARTMENT OF REVENUE, JANICE FAULKNER, in her capacity as SECRETARY OF THE NORTH CAROLINA DEPARTMENT OF REVENUE, THE NORTH CAROLINA DEPARTMENT OF STATE TREASURER, HARLAN E. BOYLES, in his capacity as TREASURER OF THE STATE OF NORTH CAROLINA,

Defendants

WAKE COUNTY NO. 95CVS06625

JAMES H. POU BAILEY, DONALD L. SMITH, MILDRED GODWIN as surviving beneficiary and as Executrix of the Estate of A. PILSTON GODWIN, HARRY L. UNDERWOOD, HENRY L. BRIDGES, ROSALIE T. ADAMS, JESSE M. ALMON, HELEN L. ANDREWS, WORTH B. ASKEW, BILLY A. BAKER, PARKER N. BARE, ARTHUR C. BEAMAN and GRACE G. BEAMAN, JOSEPH G. BRINKLEY, ROBERT L. BLEVINS, ELLIE L. BOYLES, CHANCEL T. BROWN and JOAN W. BROWN, ELIZABETH S. BUTLER, DOROTHY T. CARMICHAEL, JOHN CARRICKER, HAROLD D. COLEY, SR., ANNA L. COOPER, CHARLES C. COOPER and BERTIE S. COOPER, T.J. DUNCAN and ESTHER P. DUNCAN, DAN R. EMORY, MARTIN W. ERICSON, FRED W. GENTRY, IVEY B. GORDON and IZORIA S. GORDON, LOUIS N. GOSSELIN, EARL T. GREEN, BOB HAMMONS, DARIUS B. HERRING, RAY F. HOLCOMB, TILLE M. HOLCOMB, KAY C. HURT, JOHN I. KIGER and MARIE A. KIGER, CLARENCE T. LEINBACH, WALTER G. LEMING and BARBARA C. LEMING, YATES LOWE, HARRIETTE B. MCCORMICK, VIRGINIA H. MICKEY, WILLIAM F. MORGAN, HARRIETTA B. MCCORMICK, EARL RAY PARKER, CALVIN C. PEARCE, MICHAEL PELECH, DIANE S. PEOPLES, MILDRED R. POINDEXTER, WINNIE D. POTTS, PATSY M. REYNOLDS, GLENN D. RUSSELL, BLANCHE S. SHIPP, CLYDE R. SHOOK, HAROLD E. SIMPSON, SONNIE B. SIMPSON, LENORA S. SMITH, FRANCES J. SNOW, CHARLES A. SPEED, JUSTUS M. TUCKER, WALTER P. UPRIGHT, RALPH B. WALKER and MARTHA M. WALKER, JEAN A. WATSON, ROBERT I. WEATHERSBEE, RUBY WEBSTER, HARRY LEE WILLIAMS, DANIEL W. WILLIAMS, ELIZABETH H. WILSON, WILBUR G. WILSON, ERNEST B. WOOD, THOMAS S. WORSHAM, W.K. AUBRY, JR., JAMES BRYAN BARRETT, NORMAN W. CASH, ROBERTA M. COOK, JOHN ED DAVIS, DANIEL M. DYSON, EDWIN C. GUY, SAMUEL L. HARMAN, JOHN MARSHALL HARTLEY, DONALD ELLIOTT HARTLE, MARTHA M. LAWING, DOUGLAS LAMAR MASON, DELMA DALTON REPASS, JR., WILLIAM ELMER RIGGS, PAUL L. SALISBURY, JR., RICHARD A. SHARPE, NELSON LEROY SHEAROUSE, FRANCIS C. SIMMONS and MARY E. SIMMONS, NED RAEFORD SMITH, G. VANCE SOLOMON and EULALIA T. SOLOMON, THOMAS LASH TRANSOU and WILBUR EUGENE YOUNG, individually for the benefit and on behalf of all others similarly situated,

Plaintiffs

v.

STATE OF NORTH CAROLINA, THE NORTH CAROLINA DEPARTMENT OF REVENUE, JANICE FAULKNER, in her capacity as SECRETARY OF THE NORTH CAROLINA DEPARTMENT OF REVENUE, THE NORTH CAROLINA DEPARTMENT OF STATE TREASURER, HARLAN E. BOYLES, in his capacity

as TREASURER OF THE STATE OF NORTH CAROLINA, and officer *ex officio* of the RETIREMENT SYSTEMS, the TEACHERS AND STATE EMPLOYEES RETIREMENT SYSTEMS OF NORTH CAROLINA, and the LOCAL GOVERNMENT EMPLOYEES RETIREMENT SYSTEMS OF NORTH CAROLINA,
Defendants

WAKE COUNTY NO. 95CVS08230

JAMES H. POU BAILEY, DONALD L. SMITH, MILDRED GODWIN as surviving beneficiary and as Executrix of the Estate of A. PILSTON GODWIN, HARRY L. UNDERWOOD, HENRY L. BRIDGES, ROSALIE T. ADAMS, JESSE M. ALMON, HELEN L. ANDREWS, WORTH B. ASKEW, BILLY A. BAKER, PARKER N. BARE, ARTHUR C. BEAMAN and GRACE G. BEAMAN, JOSEPH G. BRINKLEY, ROBERT L. BLEVINS, ELLIE L. BOYLES, CHANCEL T. BROWN and JOAN W. BROWN, ELIZABETH S. BUTLER, DOROTHY T. CARMICHAEL, JOHN CARRICKER, HAROLD D. COLEY, SR., ANNA L. COOPER, CHARLES C. COOPER and BERTIE S. COOPER, T.J. DUNCAN and ESTHER P. DUNCAN, DAN R. EMORY, MARTIN W. ERICSON, FRED W. GENTRY, IVEY B. GORDON and IZORIA S. GORDON, LOUIS N. GOSSELIN, EARL T. GREEN, BOB HAMMONS, DARIUS B. HERRING, RAY F. HOLCOMB, TILLE M. HOLCOMB, KAY C. HURT, JOHN I. KIGER and MARIE A. KIGER, CLARENCE T. LEINBACH, WALTER G. LEMING and BARBARA C. LEMING, YATES LOWE, HARRIETTE B. MCCORMICK, VIRGINIA H. MICKEY, WILLIAM F. MORGAN, HARRIETTA B. MCCORMICK, EARL RAY PARKER, CALVIN C. PEARCE, MICHAEL PELECH, DIANE S. PEOPLES, MILDRED R. POINDEXTER, WINNIE D. POTTS, PATSY M. REYNOLDS, GLENN D. RUSSELL, BLANCHE S. SHIPP, CLYDE R. SHOOK, HAROLD E. SIMPSON, SONNIE B. SIMPSON, LENORA S. SMITH, FRANCES J. SNOW, CHARLES A. SPEED, JUSTUS M. TUCKER, WALTER P. UPRIGHT, RALPH B. WALKER and MARTHA M. WALKER, JEAN A. WATSON, ROBERT I. WEATHERSBEE, RUBY WEBSTER, HARRY LEE WILLIAMS, DANIEL W. WILLIAMS, ELIZABETH H. WILSON, WILBUR G. WILSON, ERNEST B. WOOD, THOMAS S. WORSHAM, W.K. AUBRY, JR., JAMES BRYAN BARRETT, NORMAN W. CASH, ROBERTA M. COOK, JOHN ED DAVIS, DANIEL M. DYSON, EDWIN C. GUY, SAMUEL L. HARMAN, JOHN MARSHALL HARTLEY, DONALD ELLIOTT HARTLE, MARTHA M. LAWING, DOUGLAS LAMAR MASON, DELMA DALTON REPASS, JR., WILLIAM ELMER RIGGS, PAUL L. SALISBURY, JR., RICHARD A. SHARPE, NELSON LEROY SHEAROUSE, FRANCIS C. SIMMONS and MARY E. SIMMONS, NED RAEFORD SMITH, G. VANCE SOLOMON and EULALIA T. SOLOMON, THOMAS LASH TRANSOU and WILBUR EUGENE YOUNG, individually for the benefit and on behalf of all others similarly situated,
Plaintiffs

v.

STATE OF NORTH CAROLINA, THE NORTH CAROLINA DEPARTMENT OF REVENUE, JANICE FAULKNER, in her capacity as SECRETARY OF THE NORTH CAROLINA DEPARTMENT OF REVENUE, THE NORTH CAROLINA DEPARTMENT OF STATE TREASURER, HARLAN E. BOYLES, in his capacity as TREASURER OF THE STATE OF NORTH CAROLINA, and officer *ex officio* of the RETIREMENT SYSTEMS, the TEACHERS AND STATE EMPLOYEES RETIREMENT SYSTEMS OF NORTH CAROLINA, and the LOCAL GOVERNMENT EMPLOYEES RETIREMENT SYSTEMS OF NORTH CAROLINA, CONSOLIDATED JUDICIAL RETIREMENT SYSTEM and the LOCAL GOVERNMENT EMPLOYEES RETIREMENT SYSTEM OF NORTH CAROLINA,
Defendants

WAKE COUNTY NO. 98CVS00738

DAN R. EMORY, E. MICHAEL LATTA, individually and on behalf of all
others similarly situated,
Plaintiffs

v.

STATE OF NORTH CAROLINA, and HARLAN E. BOYLES, TREASURER OF THE
STATE OF NORTH CAROLINA,
Defendants

On discretionary review pursuant to N.C.G.S. § 7A-31, prior
to a determination by the Court of Appeals, of an order entered
by Thompson, J., on 23 April 1999 in Superior Court, Wake County.
Heard in the Supreme Court 14 December 1999.

*G. Eugene Boyce; and Womble, Carlyle, Sandridge & Rice,
P.L.L.C., by Keith W. Vaughan, W. David Edwards, and
Alexander P. Sands, III, for plaintiff-appellees.*

*Michael F. Easley, Attorney General, by Norma S. Harrell and
Thomas F. Moffitt, Special Deputy Attorneys General, for
defendant-appellants.*

FREEMAN, Justice.

In an opinion certified on 28 May 1998, this Court held that
state and local government retirees challenging the collection of
state income taxes on their retirement benefits from 1989 through
1991 were entitled to exemptions from state income taxes on those
benefits if they were "vested" in their respective retirement
systems as of 12 August 1989. *Bailey v. State*, 348 N.C. 130, 500
S.E.2d 54 (1998). On 11 June 1998, plaintiffs entered into a
Consent Order with the General Assembly and the State of North
Carolina, settling the consolidated cases for \$799 million and
requiring the parties to create a Settlement Fund to return the
collected money to plaintiffs.

The General Assembly enacted legislation stating that it "established" the reserve fund for the Bailey/Emory/Patton refunds, and at the same time it "appropriated" and "transferred" funds from the General Fund to the reserve. Act of Sept. 30, 1998, ch. 164, sec. 2, 1998 N.C. Sess. Laws 534, 534. The General Assembly specified the Act's effective date as 1 July 1998. On 9 October 1998, the trial court approved the proposed settlement and concluded as a matter of law that "[t]his Order shall be effective as of the effective date prescribed in the Act of 1997 Session (1998 Special Session) of the General Assembly making the initial appropriation as agreed to by the parties and approved by the Court." No appeal was taken from this order. Thus, it became the law of the case and the effective date of the court approval of the settlement is 1 July 1998.

Pursuant to an inquiry from the Department of the State Treasurer, the Attorney General's Office informed the Treasurer's Office in a letter dated 6 November 1998 that the interest on the \$400 million appropriated in Chapter 164 should commence "no sooner than October 9, 1998, the date Judge Thompson's order was entered approving the settlement of the *Bailey/Emory/Patton* litigation." On 8 January 1999, plaintiffs filed a motion for determination of the effective date of the transfer of the first payment.

On 23 April 1999, the trial court entered an order in which it decreed that the effective date of the first installment was 1 July 1998, with interest accruing to the benefit of plaintiffs from that date. The State appealed. On 6 October 1999, the parties filed a joint petition for discretionary review prior to

determination by the North Carolina Court of Appeals, which was allowed by this Court on 4 November 1999.

The sole issue presented on appeal is the determination of the date interest began to accrue on the first payment of \$400 million appropriated by the General Assembly. Plaintiffs assert that the plain language of the pertinent legislation provides that the money was transferred on 1 July 1998. In contrast, defendants assert that interest could not begin to accrue any sooner than 9 October 1998, the date defendants contend the money was actually transferred after the trial court approved the settlement, because the plain language of the Consent Order provides that "[a]ll interest and earnings on the principal after payment by the Treasurer to the Settlement Fund shall accrue to the Settlement Fund." Thus, defendants assert that interest did not begin on 1 July 1998 because the Treasurer had not made the payment to the Settlement Fund and the trial court had not approved the settlement on that date.

We hold that the Consent Order, the pertinent legislation, and the court order approving the settlement, when read together, reveal that the effective date of the first installment is 1 July 1998, with interest accruing to the benefit of plaintiffs from that date. The Consent Order provides that the settlement becomes effective upon: (a) the enactment of legislation appropriating the money necessary to make the payments called for herein, and (b) court approval following notice to class members.

The General Assembly enacted legislation stating that it "established" the reserve fund, and it also "appropriated" and "transferred" funds from the General Fund to the reserve. The

General Assembly specifically provided that the Act's effective date was 1 July 1998, which was ninety-two days before the legislation's actual enactment on 30 September 1998. Ch. 164, sec. 2, 1998 N.C. Sess. Laws at 534. On 9 October 1998, the trial court concluded as a matter of law that the effective date of the approval of the settlement was 1 July 1998.

The Consent Order states that the first installment "shall be paid within thirty (30) days of the entry of an order approving the settlement after class notice or enactment of legislation appropriating the funds necessary to make the payments called for herein, whichever is later." The effective date for these two events is 1 July 1998. The only evidence of record as to when the State actually made the payment is the appropriation and transfer of the \$400 million effective on that date.

The legislative act establishing the reserve fund provides that its effective date is 1 July 1998. The 9 October 1998 court order approving the settlement allocates distribution of the funds between principal and interest as of the effective date prescribed in the legislative act, 1 July 1998. Thus, the legislative act appropriating and transferring the funds for the settlement and the order approving the settlement became simultaneously effective on 1 July 1998.

Although legislation generally operates prospectively, remedial legislation is presumed to operate retroactively. See *Smith v. Mercer*, 276 N.C. 329, 338, 172 S.E.2d 489, 495 (1970). The purpose of the pertinent legislation is to remedy a tax that the legislature knew, from this Court's prior decision, had been unconstitutionally collected seven to nine years earlier. The

selection of the 1 July 1998 date manifests the General Assembly's commendable intent to remediate and make as near whole as possible those whose money was so taken. Thus, the settlement was effective on 1 July 1998, the retroactive date of the legislative act appropriating the funds and the retroactive date of court approval.

Since the settlement was effective on 1 July 1998, defendants were obligated to pay the principal as of that date. Under the centuries-old rule that "interest shall follow the principal, as the shadow the body," the trial court properly provided that interest began accruing in the instant case on 1 July 1998. *See Beckford v. Tobin*, 27 Eng. Rep. 1049, 1051 (1749).

For the foregoing reasons, the decision of the trial court is

AFFIRMED.

Justice MARTIN did not participate in the consideration or decision of this case.