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Kain v. Department of Environmental Protection

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***Kain v. Department of Environmental Protection*, 49 N.E. 3d. 1124
(Mass. 2016)**

Sarah M. Danno

Global climate change and its chronic frustrations generated passage of the Massachusetts Global Warming Solutions Act. The Massachusetts Legislature imposed time-bound implementation mandates on the Massachusetts Department of Environmental Protection with Massachusetts residents acting as compliance watchdogs. In *Kain*, the Supreme Judicial Court of Massachusetts interpreted the Act in favor of environmental integrity and strict agency compliance standards.

I. INTRODUCTION

Establishing a leading interpretation of the Massachusetts Global Warming Solutions Act (“Act”), *Kain v. Department of Environmental Protection* clarified the Massachusetts Department of Environmental Protection’s (“Department”) regulatory obligations.¹ Massachusetts residents (“Plaintiffs”) argued the Department failed to comply with § 3(d) of the Act’s companion statute, which requires it to set a declining emission limit on greenhouse gas emitting sources.² The Department relied on its prior adoption of three regulatory programs aimed at combating greenhouse gases to demonstrate its compliance with the Act.³ The Superior Court of Massachusetts agreed that the Department’s actions substantially complied with the Act’s mandates and consequently ruled in its favor.⁴ Plaintiffs appealed and were granted direct appellate review by the Supreme Judicial Court of Massachusetts. Upon review, the Supreme Judicial Court vacated the lower court’s judgment and determined the Department failed to set greenhouse gas emissions limits as required under the Act.⁵

II. FACTUAL AND PROCEDURAL BACKGROUND

The continuous rise of global climate concerns among Massachusetts residents led the Massachusetts Legislature (“Legislature”) to enact solution-based legislation.⁶ Largely motivated by scientific analysis linking climate change to increased greenhouse gas emissions, the Legislature enacted “the most ambitious greenhouse gas reductions for a

1. *Kain v. Dep’t. of Env’tl. Prot.*, 49 N.E.3d 1124, 1127 (Mass. 2016).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.* at 1127–1128.
6. *Id.* at 1127.

single state in the entire country.”⁷ The Act specifically charged the Secretary of Energy and Environmental Affairs (“Secretary”), and his counterpart - the Department, with setting legally binding limits on identified emissions in Massachusetts.⁸ Additionally, § 6 of the Act established the Climate Protection and Green Economy Act (“Statute”), a companion statute placing specific time limits on the Secretary and the Department to implement the Act’s mission and goals.⁹

The Act’s goals are designed to be achieved through the Secretary and Department’s adherence to their prescribed regulatory duties.¹⁰ The mandated duties are sequentially organized to build upon themselves.¹¹ They include (1) establishing an emission reporting system, (2) determining current and prospective emission levels if “business as usual” management techniques are continued, (3) issuing statewide emission limits to achieve specified percentage emissions reductions, and (4), pursuant to Statute § 3(d), establishing regulations that provide for “a desired level of declining annual aggregate emission limits for sources or categories of sources that emit greenhouse gas emissions.”¹² The Department met each of these duties except the final mandate’s deadline for establishing regulations on emission limits.¹³

The Department’s failure to meet the final mandate’s deadline induced the Plaintiffs to petition the Department and demand it establish emission-limiting regulations.¹⁴ In response, the Department held a public hearing and resolved it had complied with the Act’s mandates.¹⁵ The Department argued three regulatory measures it took to reduce emissions demonstrated such compliance—limiting sulfur hexafluoride leaks, placing a cap and trade market on carbon dioxide emissions, and establishing an automobile emissions reduction program.¹⁶ After the Department’s determination, Plaintiffs filed a complaint arguing the Department failed to meet its statutory requirements.¹⁷

Seeking declaratory relief or a writ of mandamus, Plaintiffs alleged the Department failed to fulfill its responsibility to establish emissions limits for greenhouse gas emitting sources under § 3(d).¹⁸ Repeating its previous argument from the public hearing, the Department insisted it met these requirements through its implementation of the three

7. *Id.* at 1129 (quoting the Executive Office of Energy & Environmental Affairs, Commonwealth of Massachusetts Global Warming Solutions Act 5-Year Progress Report at introductory letter from the Secretary).

8. *Id.* at 1129–30.

9. *Id.* at 1128–30.

10. *Id.*

11. *Id.*

12. *Id.* at 1130–31.

13. *Id.* at 1131.

14. *Id.* at 1127.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

greenhouse gas limiting programs.¹⁹ The Superior Court ruled in the Department's favor, finding that the regulatory programs "substantially complied" with the Department's obligations under the Act.²⁰ Plaintiffs appealed to the Supreme Judicial Court of Massachusetts and the Court granted direct appellate review.²¹

III. ANALYSIS

The Supreme Judicial Court of Massachusetts decided this case by interpreting the statutory language of § 3(d) which reads, "[t]he department shall promulgate the regulations establishing a desired level of declining annual aggregate emission limits for sources or categories of sources that emit greenhouse gas emissions."²² Plaintiffs argued this language required the Department to enact regulations that set a precise annually declining limit on discharged emissions.²³ The Department countered that it need only set "aspirational targets."²⁴ Further, it reasserted it met § 3(d)'s requirements by implementing three greenhouse gas limiting programs.²⁵

The Court reviewed the Department's statutory interpretation de novo and applied the general canons of statutory construction.²⁶ In doing so, the Court considered both § 3(d)'s plain meaning and legislative evolution.²⁷ This encompassed § 3(d)'s development, advancement through the legislature, contemporary history, earlier legislation, customs and conditions, and the overall scheme of positive law in which it exists.²⁸

The Court concluded § 3(d)'s language was unambiguous and dismissed the Department's argument as essentially undermining the integrity and intent of the Act.²⁹ The Court began its analysis by interpreting the phrase "emission limits" with respect to both Plaintiff's and the Department's perspectives³⁰. The Court applied two interpreting principles.³¹ The first principle called for a word's meaning to remain the same when used in different parts of a statute.³² The second principle entailed utilizing a plain meaning approach to statutory language.³³ The Court determined the provision's plain language clearly intended

19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.* at 1131. (quoting Mass. Gen. Laws Ann. ch. 21N, § 3 (West 2008)).
23. *Id.*
24. *Id.* at 1131–1132.
25. *Id.* at 1132.
26. *Id.*
27. *Id.*
28. *Id.* (citing *Oxford v. Oxford Water Co.*, 463 N.E.2d 330 (1984)).
29. *Id.* at 1132.
30. *Id.* at 1132–1133.
31. *Id.* at 1133.
32. *Id.*
33. *Id.*

“emissions limit(s)” to mean *greenhouse gas* emissions as shown by its direct reference to limits on sources emitting greenhouse gases.³⁴ The Court added that the word “desired” in conjunction with the Act’s purpose, exhibited the Legislature’s intent that the Department should set actual limits to achieve emission reductions.³⁵

The Court then analyzed § 3(d)’s remaining statutory language with a focus on interpreting “declining annual aggregate emission limits” for greenhouse gas emitters.³⁶ The parties disagreed on whether the language required the Department to set limits on source-specific emissions as opposed to limits on source categories.³⁷ The Court highlighted the provision’s use of the plural form when referencing “limits,” “sources,” and “regulations,” and held the Legislature intended the Department to regulate *multiple* sources of greenhouse gas emitters.³⁸ Additionally, the Court held the Act’s essential function would be displaced by limiting a single source or source category.³⁹ The Court then applied a plain meaning approach to determine the Department was required to set annually declining source emission limits.⁴⁰

Upon clarifying the obligations of § 3(d), the Court determined the three greenhouse gas reduction programs implemented by the Department failed to meet § 3(d)’s directive.⁴¹ The sulfur hexafluoride program addressed leakage prevention from gas-insulated switchgear systems and set a maximum rate instead of a maximum limit.⁴² It did not meet the mandated “source-wide volumetric cap on emissions” required by § 3(d) because it failed to control the composite amount of leakage and was thus unable to achieve the Act’s mandated reductions.⁴³

The Regional Greenhouse Gas Initiative and carbon dioxide budget trading program was implemented under a separate statute and its goals and emission reductions were calculated into the “business as usual” baseline utilized in the Act.⁴⁴ Further, the program could not achieve the emission reductions required by § 3(d) due to a carbon dioxide allowance component included in its framework.⁴⁵ This component undermined § 3(d)’s purpose by preventing the assurance of “mass-based” carbon dioxide emissions reductions.⁴⁶

Akin to the sulfur hexafluoride program, the Low Emission Vehicle program also failed to comply with § 3(d)’s requirements due to

34. *Id.* (emphasis added).

35. *Id.* at 1134.

36. *Id.* at 1135.

37. *Id.*

38. *Id.* (emphasis added).

39. *Id.*

40. *Id.* at 1136.

41. *Id.* at 1137.

42. *Id.*

43. *Id.* at 1138.

44. *Id.* at 1140.

45. *Id.*

46. *Id.* at 1140–1141.

its use of “rates” to establish emissions reductions as opposed to “limits”.⁴⁷ The program adopted strict vehicle emission standards, but its regulations failed to guarantee aggregate emissions reductions, a required component of § 3(d).⁴⁸ For the foregoing reasons, each of the department’s implemented regulatory programs failed to meet § 3(d)’s demands.⁴⁹

Finding that the material facts of this case were undisputed and an actual controversy existed, the Court determined declaratory judgment the proper remedy.⁵⁰ After completing its statutory interpretation of § 3(d), the Court remanded the case for judgment and declared that the Department must enact specific and measurable regulations directed at multiple sources or categories of greenhouse gas emitting sources.⁵¹ The regulations must limit the amount of emissions discharged by each source and the Department must place an annually declining limit on the aggregate emissions of those sources.⁵²

IV. CONCLUSION

The Supreme Judicial Court of Massachusetts has proven to be an instrumental judicial body in global climate change litigation. The Court’s decision in *Kain* further demonstrates its inclination to adopt the policy of legislative intent over agency discretion. This case places strict legislative compliance on the Massachusetts Department of Environmental Protection and establishes a high standard for future agency action and statutory interpretation cases. While this decision may be regarded as a victory for the environmental movement, it is substantially reliant on the intent and expression of the Massachusetts Legislature. This decision has the potential to promote legislative clarity and empower other states to combat global climate change through legislative action.

47. *Id.* at 1142.

48. *Id.*

49. *Id.*

50. *Id.* at 1128.

51. *Id.* at 1142.

52. *Id.*