

1976

## Merlin Dansie v. Murray City Corporation : Brief of Plaintiff-Respondent

Utah Supreme Court

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George H. Searle; Attorney for Respondent;

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IN THE SUPREME COURT OF THE STATE OF UTAH

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MERLIN DANSIE,

Plaintiff and  
Respondent,

-vs-

MURRAY CITY CORPORATION,  
a Municipal Corporation,

Defendant and  
Appellant,

:

: Case No. 14592

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BRIEF OF PLAINTIFF-RESPONDENT

MERLIN DANSIE

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CLERK, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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MERLIN DANSIE,

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BRIEF OF PLAINTIFF, RESPONDENT

MERLIN DANSIE

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NATURE OF CASE

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This is an action initiated by Merlin Dansie for an Order restraining Murray City from enforcing its building height restriction ordinances as concerning a storage shed Plaintiff was constructing on his residential property.

DISPOSITION IN LOWER COURT

The case was tried to the Court. Plaintiff's-Respondent's petition of an extraordinary writ was granted.

RELIEF SOUGHT ON APPEAL

Plaintiff-Respondent seeks denial of Defendant's Appellants

Appeal.

### STATEMENT OF FACTS

Same as set forth in Defendant's-Appellants Brief, except some vital differences, to-wit:

1. The Garage for which the permit was issued was nearly and substantially completed except for putting on top coat of the garage.

2. That the Affidavits of Mr. Lorin Simper and Mr. Charles D. Clay were signed, filed and presented to the Court on the date of trial without the opportunity of the Plaintiff to counter the Affidavits, or to cross-examine Affiants, having no known knowledge of the Affidavits prior to submission to the Court.

3. That Defendant-Appellant was informed at the time the Plaintiff-Respondent issued the building permit, knowledge of Section 11 of Ordinance No. 4004, but nothing was said of Section of Ordinance No. 4004.

### ARGUMENT

This matter was submitted to the Court, and the facts submitted. Plaintiff was granted the relief prayed. (T-7) The Court found in effect that Plaintiff's Petition to be true (T-2 & that estoppel should apply, and to do so found sufficient justification to do so. In addition to the foregoing, it is submitted

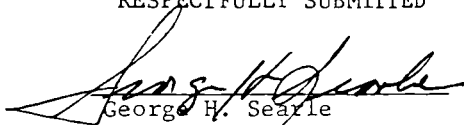
that the ordinance the Appellant contends should be rigidly enforced, Section 15 of Ordinance No.4004, is unreasonable. Owner A with a one-story high house could not put another building on his lot higher than the eves of the house, unless he added a second story to his house, even if the building was at the back of his lot a half ( $\frac{1}{2}$ ) block away, while A's next door neighbor, who may own a half ( $\frac{1}{2}$ ) mile square lot adjacent to A's lot could put a 30 foot high building within yards of A's house if he built his house 30 feet high, on the opposite side of his half ( $\frac{1}{2}$ ) block square lot. Also, I assume a man could not, at any time, build a garage or building first, before building his house because there would be no eves to be compared to, and what about a basement house? It is submitted that limiting the height of buildings to a set height to insure conformity of a whole neighborhood makes sense, but limiting the height of a building such as a garage to the eves of the owner's house when the house is a low-ranch-type house, and allowing the owner across the street, or next door, to go 30 feet high if the neighbor can afford to build, or desires to build, a 30 foot high house is unreasonable. Limiting all building, including all houses to 30 feet high might make sense to control a neighborhood, but to restrict a man from building his garage to the eves of

his 15-foot high house, and to let his next door neighbor build to 30 feet high, if he builds a higher house, is unreasonable. Especially when the 30-foot high garage<sup>next door</sup> could possibly be built closer to the low-house than the high-house<sup>next door</sup> depending upon the size of the lots and the location of the houses thereon.

#### CONCLUSIONS

The order of the District Court should be confirmed.

RESPECTFULLY SUBMITTED

  
George H. Searle  
Attorney for Respondent.