

1976

Merlin Dansie v. Murray City Corporation : Brief of Defendant-Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

MERLIN DANSIE,

Plaintiff and
Respondent,

vs.

Case No. 14592

MURRAY CITY CORPORATION,
a municipal corporation,

Defendant and
Appellant.

BRIEF OF DEFENDANT - APPELLANT.
MURRAY CITY CORPORATION

An Appeal From An Injunctive Order Entered
In The Third Judicial District Court,
In And For The County of Salt Lake, State of Utah
The Honorable Marcelus K. Snow, Judge

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IN THE SUPREME COURT OF THE STATE OF UTAH

MERLIN DANSIE, :
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 Plaintiff and :
 Respondent, :
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 - vs - : Case No. 14592
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 MURRAY CITY CORPORATION, :
 a municipal corporation, :
 :
 Defendant and :
 Appellant. :
 :

BRIEF OF DEFENDANT - APPELLANT

MURRAY CITY CORPORATION

NATURE OF CASE

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

Defendant - Appellant seeks a reversal of Honorable Marcellus K. Snow's Order granting Respondent's petition for a restraining order.

STATEMENT OF FACTS

The Plaintiff, Merlin Dansie, resides at 5864 South 157 West, Murray, Utah. He is in the contracting business and operates an office in his home at such address under a "home occupation" status. On January 21, 1976, Plaintiff applied to the Murray City Engineering Department for a building permit to construct a "storage shed", and "accessory building" under the ordinances, in the rear yard area of his property. Plaintiff submitted a sketch showing horizontal dimensions only. Said dimensions showed that the proposed building would be 14' x 19'4". Dansie paid his fee and received a building permit for such accessory building. At that time, Plaintiff asked an employee of the Engineering Department, Mr. Lorin Simper, what the building height requirements were for the residential zone in which Plaintiff's property was located. Simper indicated that he believed that the ordinances would allow a building height of thirty-five (35) feet.

Dansie commenced construction of the storage shed to an unfinished height of approximately 18 feet, which was then approximately three feet higher than the main building, the house. It was then brought to the attention of the City officials that the building was unusually high. Upon investigation

it was discovered that the building was in fact, higher than the main building, contrary to City Ordinance No. 4004-15 which states:

No building which is accessory to a one-family, two-family, three-family or four-family dwelling shall be erected to a height greater than one (1) story or twenty feet, except in no case shall the height exceed the height of the main building. Eaves of such accessory building shall not be higher than the eave line of the main building nor shall the pitch exceed the pitch of the roof of the main building.

The City, on March 16, 1976, notified Dansie of the violation and instructed him to cease construction and to bring the building into compliance. Dansie then petitioned the District Court for a restraining order against the City. The City presented an Affidavit from Mr. Simper explaining his limitations of authority regarding zoning matters, his unawareness of Ordinance No. 4004-15 at the time he talked to Dansie, and the circumstances surrounding said conversation. City Engineer, Charles Clay, also submitted his Affidavit stating Mr. Simper's limited authority with respect to the interpretation of zoning Ordinances and stated that Simper had, in fact, exceeded his authority.

The Honorable Municipal K. Snow, District Judge, granted Plaintiff's petition restraining Defendant from enforcing its Ordinance No. 4004-15 incident. The City herewith Appeals.

ARGUMENT

POINT I

THE CITY IS NOT BOUND BY REPRESENTATIONS OF ITS EMPLOYEES OR AGENTS TO THIRD PERSONS WHERE SUCH STATEMENTS ARE CONTRARY TO CITY ORDINANCE AND WHICH ARE MADE IN EXCESS OF SAID EMPLOYEES AUTHORITY.

The great weight of authority holds that a municipal corporation is not bound by acts or statements of its officers or agents, made in excess of their authority, even where a third party has relied thereon to his detriment.

The general rule, followed in all but a handful of exceptional cases, is that a municipal body is not estopped or bound by unauthorized acts or statements of its officers or employees.¹ Utah followed this position in a 1944 case² which does not appear to have been overturned or modified. Even in cases where the City official may have committed substantial error causing extensive damage to the person attempting to invoke it, the Courts have been constrained to apply the doctrine of estoppel. The case of 154 East Park Avenue Corporation vs. City of Long Beach, 350 NYS 2d 974 (1973) was such a case and the Court there stated that "where a municipal worker improperly applies a city law, and

1. 3 Bequithan Municipal Corporations, 3rd Ed., §12.126a. Also see 6 A.L.R. 2nd 960.
2. Petty et al. vs. Borg, 106 U524, 150 P2nd 776 (1944).

someone relies upon that application, the law does not become a nullity; the employee action does." In another case the Court held that ". . . conduct . . . as individuals, however harsh and unjust its affect . . . cannot be used to prejudice or destroy the rights of the public to require enforcement of valid laws and ordinances as written."³

The recognized exception to the general rule is commonly referred to as the "Illinois Rule." This exception was the result of a case decided by the Illinois Court.⁴ There, the Plaintiff had installed gas storage tanks and pumps in reliance upon a permit issued by the City. The City waited over seven months before notifying Plaintiff that there was an ordinance violation and the permit should not have been issued in the first instance.

In our case the permit was properly issued and as soon as it was evident that Dansie was constructing his storage shed too high he was notified. At that point, the evidence pointed out, all Dansie needed to do to comply with the law was to remove approximately three courses of block, as the roof had not been installed.

Courts have recognized the so-called "Illinois Rule" but refused to apply it because circumstances were not severe

3. City of San Antonio v. Humble Oil & Refining Co.
27 SW 2d 868 (1930)
4. Cities Service Oil Co. vs. City of DesPlaines,
211 F.2d 117, 119 F.2d 605, 608.

enough to warrant a deviation from the long established general rule.⁵

The Court in State ex rel Barker v. Town of Stevensville, 523 P2d 1388, analyzed the two positions and compared the requirements for the application of each before holding that estoppel did not apply. The Courts must be extremely cautious in applying estoppel against a governmental entity, especially where it is functioning in its governmental, rather than proprietary capacity.⁶ It is true that Courts have granted exceptions to the general rule, but only in cases where it was necessary to prevent "manifest injustice."⁷ No such circumstances are present in the case at hand. Also, in our case, to grant estoppel would interfere with governmental function, of the orderly and consistent application of zoning regulations, which is one of the criteria to be considered.⁸

Even in Illinois, the home of the rule of exception, the Court has considered the so-called "Illinois Rule" applicable only under extraordinary cases and has refused to grant estoppel.⁹

5. City of Hutchins vs. Prasifka, 450 SW 2d 835 (Texas 1970)
6. State ex rel Nat'l Bank of Tacoma v. City of Tacoma, 166 P. 66
7. State v. Northwest Magnesite Co., 182 P2d 643.
8. Metropolitan Park District of Tacoma v. State Department of Natural Resources, 85 Wash. 2d 821, 539 P. 2d 854.
9. 28 Am Jur 2d Estoppel and Waiver §128, 129.
- Supra.
9. People ex rel American National Bank & Trust Co. of Chicago vs. Smith, 110 Ill. App. 2d 354, 249 N.E. 2d 2
- Canley v. City of Chicago, 18 Ill App 3d 248, 309 N.E. 2d 653 (1974).

It is clear that the City employee who gave respondent the misinformation concerning building height requirements was acting beyond his authority. It is generally held that ". . . estoppel will not be applied where the officials on whose conduct or acts it is sought to be predicated, acted wholly beyond their power and authority."¹⁰ It is further stated that "no estoppel can grow out of dealings with municipal officers of limited authority in respect of matters as to which such authority has been exceeded."¹¹

10. 28 Am. Jur. 2d Estoppel and Waiver §122.

11. Supra § 130 Cities Service Oil Co. vs. City of Des Plaines, 21 Ill. 2d 157, 171 N.E. 2d 605, 608.

ARGUMENT

POINT II

A PERSON DEALING WITH A CITY HAS A DUTY TO INQUIRE AS TO THE EXTENT OF THE AUTHORITY OF THE CITY AGENT OR EMPLOYEE WITH WHOM SUCH PERSON IS DEALING.

It is generally conceded that ". . . all who contract with a municipal corporation are charged with notice of the extent of its powers and of the powers of the municipal officers and agents with whom they contract . . ." ¹² In the Ganley case ¹³ the Court ruled that "anyone dealing with a governmental body takes the risk of having accurately ascertained that he who purports to act for it stays within the bounds of his authority." ¹⁴ There was absolutely no evidence that respondent inquired of Simper as to his duties or authority.

12. 10 McQuillin Municipal Corporations, §29.02
See also §37.103.

13. Ganley vs. City of Chicago, Supra.

14. Chicago vs. Smith, 110 Ill. App. 2d 354, 249 N.E. 2d 23

CONCLUSION

It is respectfully submitted that estoppel was improperly invoked under the facts and circumstances of this case. The order of the District Court should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Merrill G. Hansen', written in a cursive style.

MERRILL G. HANSEN
Murray City Attorney

Attorney for Appellant