

1986

Colman v. Utah State Land Board : Unknown

Utah Supreme Court

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BRIEF

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March 6, 1990

MAR 6 1990

HAND DELIVERED

Clerk, Supreme Court, Utah

Mr. Geoffrey J. Butler
Supreme Court Clerk
332 State Capitol
Salt Lake City, UT 84114

RE: Colman v. Utah State Land Board, No. 860331
Response to the State's Citation of New Authority

Dear Mr. Butler:

By letter dated March 1, 1990, the State Respondents refer the Court to Flying Diamond Oil Corp. v. Newton Sheep Co., 776 P.2d 618 (Utah 1989) in support of the State's argument that the Court can rule as a matter of law that Colman has not stated a claim for relief. Specifically, the State cites Flying Diamond for the proposition that "remand is not necessary if the evidence in the record is undisputed and the appellate court can fairly and properly resolve the case on the record before it." Id. at 622.

Flying Diamond does not support the State's argument. Flying Diamond is an appeal of a judgment rendered after a trial. The Court determined that, even though the trial court had not made findings on fact on issues material to the appeal, a remand was not necessary because the facts relevant to the issue before the Court was undisputed in the trial record. Id.

Colman is an appeal from a motion to dismiss. The factual record on which the State would have this Court rule is a record resulting from a related motion for a preliminary injunction. The material facts were disputed at that hearing and the trial court did not make a factual findings. The court denied the motion, presumably because the plaintiff failed to meet his burden of showing, among other things, that the balance of hardships weighed in his favor. Significantly, the trial court specifically stated that the ruling was not dispositive of the other issues raised. See Supplemental Brief of Appellant at 4, note 6.

Mr. Geoffrey J. Butler
March 6, 1990
Page 3

In spite of this case's procedural posture, the State argues that the Court should rule as a matter of law that Colman does not have a protectable property right in this case. It makes this argument on the basis of the lease agreement between the parties and other allegedly "undisputed, dispositive items of evidence in the record." Colman refers the Court to his Supplemental Brief at 36-37 for cases supporting his claim that he has a property interest in the brine canal constructed on his right-of-way. Moreover, the record on which the State would have this Court rely demonstrates that the facts relevant to the takings issue--the extent of the physical occupation and damage--are disputed.

This is an appeal from a motion to dismiss, not from a judgment based on findings made after a full trial on the merits of the case. The court did not treat the motion to dismiss as a Rule 56 motion for summary judgment pursuant to Rule 12(c) of the Utah Rules of Civil Procedure. In a motion to dismiss, the material allegations of the complaint must be accepted as true. In reviewing the trial court's ruling on the motion to dismiss, the trial court must be reversed unless it is beyond doubt that Colman can prove no set of facts in support of his claim. Supplemental Brief of Appellant at 5. Flying Diamond does not alter the standard of review for an appeal of a motion to dismiss granted under Rule 12 of the Utah Rules of Civil Procedure.

Sincerely,



Carol Clawson

cc: R. Douglas Credille, Assistant Attorney General
Ridd Larson

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