1986

Colman v. Utah State Land Board : Unknown

Utah Supreme Court

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STATE OF UTAH

March 9, 1990

HAND-DELIVERED

Mr. Geoffrey J. Butler
Supreme Court Clerk
332 State Capitol
SALT LAKE CITY UT 84114

Re: Colman v. Utah State Land Board,
Utah Supreme Court No. 860331

Dear Mr. Butler:

By letter dated March 6, 1990, Colman replied to the State Respondents' recent citation of Flying Diamond Oil Corp. v. Newton Sheep Co., 776 P.2d 618 (Utah 1989).

Colman's reply is fundamentally wrong. First, it tries to distinguish our case by saying: "Flying Diamond is an appeal of a judgment rendered after a trial." We cannot see what difference that makes.

Flying Diamond shows that no remand is necessary if the case can be decided as a matter of law on undisputed record evidence. 776 P.2d at 622. That is only reasonable. And, logically, that principle applies regardless of how the record was generated (by trial or otherwise), so long as each party had fair opportunity to rebut the other's evidence. The principle is the same in either event. We think Colman's distinction is without meaning, relevance or merit.

Besides, the asserted distinction does not exist here. Colman wants to distinguish our case on the basis that Flying Diamond had a bench trial. But Judge Banks also conducted a full evidentiary hearing in our case. In that hearing, each party's case was cross-examined; and that is where much of the record was developed. There is no distinction here. We think the rule from Flying Diamond applies in our case with full force.

Colman also alleges, "The material facts were disputed at that hearing * * *." We strongly disagree. The evidence we refer to was not disputed. For example, as Colman admitted, his application to appropriate water had lapsed for lack of proof

that he had ever put the water to use. (Without a water right, he could not divert water from the Lake, and therefore his "ditch" had no function and his business no value.) Also, the undisputed evidence was that, opposite the breach site, Colman had no ditch. Colman could not contradict that evidence. Indeed, he admitted he had not dredged the ditch in years. And his expert admitted Colman's ditch could have eroded away in the months and years before the Causeway was breached, as the wind and water rose up around the ditch.

Such undisputed evidence leaves Colman without a case. The law cannot sustain Colman's "takings" claim if undisputed facts show he had nothing to take.

A similar example is the lease agreement. The Court can read and interpret the agreement as a matter of law. If, as we believe, the agreement allows the State to take action such as breaching the Causeway, Colman has no claim as a matter of law.

Finally, while the Complaint's material allegations of fact are accepted as true for purposes of a motion to dismiss, the same is not true for its conclusions of law. Besides, we are far beyond the mere allegations of the Complaint. These parties have litigated this matter in open court; there is an evidentiary record; and the undisputed evidence proves Colman cannot state a claim as a matter of law.

For the reasons given in our briefs, and also by virtue of Flying Diamond, this case can be decided as a matter of law on the present record.

Sincerely,

R. DOUGLAS CREDILLE
Assistant Attorney General

RDC/ac

cc: Carol Clawson
Ridd Larson