2001

Salt Lake City Corporation v. Salt Lake County : Petition for Rehearing

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

SALT LAKE CITY CORPORATION, a Utah municipal corporation, E. J. GARN, JAMES L. BARKER, JR., STEPHEN M. HARMSEN, CONRAD B. HARRISON and JENNINGS PHILLIPS, JR.,

Plaintiffs-Appellants,

-vs-

SALT LAKE COUNTY, a Utah body corporate and politic; GERALD R. HANSEN, Salt Lake County Auditor, RALPH McCLURE, Salt Lake County Commissioner; PETE KUTULAS, Salt Lake County Commissioner; WILLIAM E. DUNN, Salt Lake County Commissioner, and SID LAMBOURNE, Salt Lake County Treasurer,

Defendants-Respondents.

Case No. 14304

DEFENDANT-RESPONDENTS' PETITION FOR REHEARING AND BRIEF

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IN THE SUPREME COURT OF THE STATE OF UTAH

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COME NOW, Defendant-Respondents, SALT LAKE COUNTY, et al, by and through their attorneys of record, pursuant to Rule 76 (e) of the Utah Rules of Civil Procedure, and hereby petition the above Court for a rehearing of the above-entitled matter and respectfully show:

1. That the Court's decision in the instant action, if allowed to stand, will deprive the Defendant-Respondents of the right to be heard on the merits of the case and would therefore be contrary to the Due Process Clause of the 14th Amendment of the Constitution of the United States.

2. That there is no evidence to support the Court's conclusion that double taxation does in fact exist in Salt Lake

County or that Salt Lake County is not complying with Section 17-34-1, Utah Code Annotated, 1953.

3. That the Court has committed error because it has exceeded recognized limitations of the Standard of Review concerning appeals from the granting of a motion to dismiss.

WHEREFORE, Petitioner, SALT LAKE COUNTY, et al, prays that this Court grant its petition for rehearing; that the above-entitled matter be reconsidered; that the Court overrule its original decision in this case and sustain the ruling of the trial court, or, in the alternative, this Court remand the case to the trial court for purposes of trial on the merits of the case.

NATURE OF THE CASE

This case came before the Court on an appeal from the granting of Defendant-Respondents' motion to dismiss Plaintiffs' Complaint. As indicated by the record, there has never been an evidentiary hearing of any type. Plaintiffs have never been required to prove the factual assertions raised in their Complaint, and, in particular, no evidence has ever been presented that Defendant-Respondents have not complied with Section 17-34-1, Utah Code Annotated, 1953, or that double taxation in fact exists in Salt Lake County. Defendant-Respondents have never had the opportunity to introduce evidence to refute, deny or controvert Plaintiffs' evidence. Defendant-Respondents have not had the opportunity to cross-examine Plaintiffs' witnesses or have any judicial determination thereof. Respondents presently do not know what evidence Plaintiff intended to offer or have considered, nor have Respondents

been given the opportunity to test, explain or refute such evidence.

DEFENDANT-RESPONDENTS' POINTS AND AUTHORITIES IN SUPPORT OF ITS PETITION FOR REHEARING

Defendant-Respondents above named respectfully submit their brief of Points and Authorities in Support of their Petition for Rehearing of the above-entitled matter.

POINT I

THE COURT'S DETERMINATION THAT SALT LAKE COUNTY AND THE OTHER NAMED DEFENDANTS SHOULD BE ENJOINED CONSTITUTES A DENIAL OF DUE PROCESS IN THAT IT EFFECTIVELY DEPRIVES THE DEFENDANTS OF A TRIAL OR OTHER OPPORTUNITY TO BE HEARD ON THE MERITS OF THE CASE.

It is a well settled principle of law that a reviewing court, on a motion to dismiss, will, for purposes of the motion, view the facts in a light most favorable to the party that lost the motion; and, for purposes of the motion, the facts as pleaded, are deemed to have been admitted. See Slater v. Salt Lake City, 206 P.2d 153, 115 Utah 476, (1949). See also Heathman v. Hatch, 372 P.2d 990, 13 Utah 2d 266, (1962); Barrus v. Wilkinson, 398 P.2d 207, 16 Utah 2d 204 (1965); Evans v. Butters, 399 P.2d 210, 16 Utah 2d 272 (1965). However, the allegations of the Complaint are not assumed to be true for purposes of ruling on the merits of the case.

> *"As a general rule, questions of fact cannot be resolved or determined on a motion to dismiss a complaint for failure to state a claim upon which relief can be granted, and it is not for the court to speculate as to the nature or weight of the evidence which the parties may produce at trial. Accordingly, an action may not be summarily disposed of on a motion to dismiss where it involves a question of fact which should be heard and determined at trial."*

35B C.J.S. Federal Civil Procedure 853 p. 165-66. In the instant case, Defendant-Respondents' motion to dismiss was based, in part, upon the constitutionality of Section 17-34-1 of Utah Code Annotated, 1953. It was also addressed to certain procedural questions raised by Plaintiffs' Complaint. While this Court could properly rule as a matter of law on the constitutionality of the statute, Petitioner would urge that to decide the merits of the case and determine that Salt Lake County and the individual respondents were not complying with the statute is improper because it effectively precludes a hearing on the facts upon which such a conclusion is based. Nor would it be proper for the Court to conclude that the manner in which Salt Lake County provides services to unincorporated areas results in double taxation. The County has many sources of funds other than the property tax. A substantial portion of county revenue is derived from the sales tax. Additional funds are received through Federal Revenue Sharing. To conclude that the services enumerated in Section 17-34-1, Utah Code Annotated, 1953, are paid for and are the result of property tax levies, at this point, is mere speculation. There should be an evidentiary hearing wherein County spending practices can be demonstrated, and the evidence there presented be subject to cross-examination. The effect of such an assumption by this Court in determining non-compliance and therefore requiring the issuance of an injunction effectively deprives Defendant-Respondents of an opportunity to be heard on the merits of the case. It is in direct violation of a basic principle adopted by this Court when, speaking through Justice Crockett, it said: ". . . *What the*

parties are entitled to is a fair opportunity to present their respective cases to a court and jury for determination." Redevelopment Agency of Salt Lake v. Mitsui Investment, Inc., 522 P.2d 1370, (1974). The Defendant-Respondents have had no opportunity to present their case to a court or a jury. The effect of the Court's ruling, unless reconsidered and modified, would be to render a decision on a motion to dismiss and view the allegations of the Complaint as the equivalent of factual evidence on the merits of the case. Again, as pointed out in 35B C.J.S. Federal Civil Procedure Section 853 p. 166, such a motion is not to be taken as a consent to a determination of controversial questions of fact in a summary manner or otherwise than on a formal trial. As was stated in Brookshire, et al v. Whittenmore, 2 F.R.D. 549, (D.C.W.D. Kentucky 1941):

> *"A motion to dismiss cannot be used as a substitute for a trial on the merits. If a genuine issue of fact exists . . . the case is not one for decision either on a motion to dismiss or a motion for summary judgment, but should be passed to a trial on its merits."*

See also Bowles v. Saver, 6 F.R.D. 571 (D.C.W.D. Pa. 1947). And, in the case of Cold Metal Process Co. v. United Engineering and Foundry Co., 190 F.2d 217, (C.A. 3rd 1951), the court observed at page 221:

> *"It must be borne in mind that allegations are not proof and although a motion to dismiss under Rule 12 may dispose quickly and properly of many such suits, such a motion cannot take the place of such proof."*

In the instant case, Respondents have not filed an answer to Plaintiffs' Complaint because the lower court granted the motion to dismiss Plaintiffs' Complaint. The factual allegations raised by

the Complaint are material and are in controversy and yet unresolved. The remand of the case to the trial court with instructions to issue an injunction, in effect, grants Plaintiffs a motion for summary judgment without any opportunity for a hearing. By doing so, this Court has not only gone beyond its own precedents, but it has also ignored the requirements of the Utah Rules of Civil Procedure, which, patterned after the Federal Rules of Civil Procedure, preclude summary disposition of cases when factual issues exist which require a hearing on the merits of the case. In short, the Plaintiffs have not been required to prove any of the factual allegations of their Complaint. Defendants have not had an opportunity to know what evidence is to be offered by Salt Lake City to support the allegations of its Complaint. Nor have Defendant-Respondents been afforded an opportunity to know what evidence was considered by the Court in its determination to enjoin Salt Lake County. In the case of State of Utah v. Lance, 464 P.2d 395, 23 Utah 2d 407 (1970) this court determined that *"it is in error for a court to consider any writing or anything else that is not in evidence . . . the use of the social file was a denial of due process of law, since appellant had no opportunity to know, cross-examine, explain or rebut this secret evidence."* 464 P.2d 395 at page 400. The same error has been committed in this case.

What evidence existed in the instant case concerning Defendant-Respondents non-compliance? What evidence was considered by the Court to determine that Salt Lake County is causing double taxation or that the manner in which Salt Lake County provides services is contrary to law? If such evidence does in fact exist, it is not shown

in the record. Additionally, if it exists, Defendant-Respondents have not been afforded a hearing at which they could explain, refute or rebut such evidence. Such a denial has also been held by the United States Supreme Court to constitute a violation of the 14th Amendment to the Constitution of the United States. See Baltimore and O. R. Co., v. United States, 298 U.S. 349 (1935).

Further, ". . . *the due process clause assumes a full hearing before a court or other tribunal empowered to perform the judicial function involved. That includes the right to introduce evidence and have judicial findings based upon it.*" 298 U.S. 368 at page 370. See also Goldberg v. Kelly, 397 U.S. 254 (1970). The principles of due process are basic to our entire system. It has *"come to us from the law of England . . . and the requirement was there designed to secure the subject against the arbitrary action of the crown and place him under the protection of the law."* Dent v. West Virginia, 129 U.S. 114, 123 (1889). And, as Justice Felix Frankfurter has stated: *"The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction is a principle basic to our society."* Anti-Fascist Committee v. McGrath, 341 U.S. 123, 168 (1951).

For the foregoing reasons it is respectfully submitted that this Court's decision in the instant case constitutes an adjudication on the merits that has effectively denied the Defendant-Respondents of the right to a hearing and the right to a trial on the merits of the claims raised by Plaintiffs' Complaint and there-

fore in violation of the due process requirements of the 14th Amendment to the Constitution of the United States.

POINT II

THE COURT COMMITTED ERROR BECAUSE IT HAS EXCEEDED RECOGNIZED LIMITATIONS OF THE STANDARD OF REVIEW CONCERNING APPEALS FROM THE GRANTING OF A MOTION TO DISMISS.

On an appeal from a dismissal without prejudice, the merits are not in issue and cannot be reviewed. The only relevant issue is whether or not the lower court was justified in entering judgment without reaching the merits. Lewis County Savings and Loan Association v. Black, 374 P.2d 157, 60 Wash. 2d 362 (1962). The scope of review is therefore limited by the posture of the case on appeal. This principle has been adhered to by this Court in numerous cases. For example, in the case of Thompson v. Ford Motor Company, 384 P.2d 109, 14 Utah 2d 334 (1963), this Court concluded that it could not decide the appeal on its merits because the depositions relied upon by both parties were sealed. Since it was apparent to the court that the trial judge had not marked or introduced them into the record, the court would not consider them for purposes of the appeal. In State v. Lance, 464 P.2d 395, 23 Utah 2d 407 (1970) this court refused to consider the social file of the defendant where it was not introduced at trial. In the Arizona case of Young v. Bishop, 353 P.2d 1017, 88 Ariz. 140 (1960) the same position was embraced by the Supreme Court of Arizona when the court concluded that on a motion for summary judgment involving a suit to enforce a contract of sale,

> *"With respect to the actual merits of the present controversy, we have no opinion; the scope of review is limited by the posture of the case presented on appeal. Suffice it to say, the pleadings before us present material fact issues which preclude the granting of a judgment on the pleadings."*

353 P.2d 1017, 1022 (emphasis supplied).

The Arizona court then returned the case to the trial court for a hearing on the merits.

This Court should remain consistent with its own precedents concerning the scope of its review of matters coming before it on motions to dismiss or other summary proceedings. If the Court does not limit its review in the instant case to the Constitutional issue and the sufficiency of Plaintiffs' Complaint, it will be assuming the posture of a trial court. It is not a trial court. Its jurisdiction is defined in Article VIII Section 4 of the Constitution of Utah. Respondents would submit that this Court has exceeded its jurisdiction in that it has undertaken to dispose of this case on its merits.

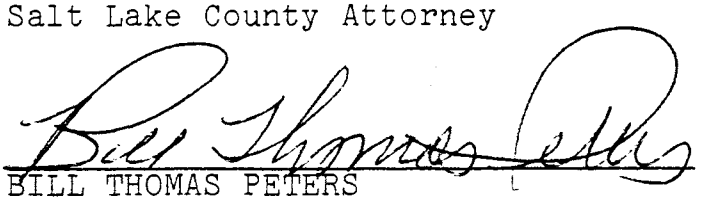
It is therefore respectfully submitted that the present decision of this Court in this case is in error. It exceeds the Court's jurisdiction. It is not consistent with its own prior rulings concerning its function as a Court of review nor is it consistent with the general scope of review adhered to by the appellate courts of other jurisdictions.

CONCLUSION

Petitioners pray that this Court grant a rehearing in the instant action and that upon such rehearing, affirm the decision of the trial court for the reasons specified in the Defendant-Respondents' original brief, or, in the alternative, that the Court limit its determination to the constitutionality of Section 17-34-1, Utah Code Annotated, 1953, and the propriety of the trial court's granting Defendants' motion to dismiss. That the matter be remanded to the trial court for trial and further proceedings whereby the Plaintiffs will be required to present evidence in support of the allegations of the Complaint, including proving whether or not in fact the actions of the Defendant-Respondents do not comply with the provisions of the law or result in the double taxation of certain citizens. Further affording the Defendant-Respondents the opportunity to cross-examine Plaintiffs' witnesses or proofs, if any; refute or rebut the evidence introduced by the Plaintiff and introduce evidence and testimony of witnesses concerning compliance with the terms or intent of the statute in questions. And, at the conclusion of such trial to allow the trial court, based upon the evidence produced, to issue an appropriate decision; and, if appropriate, to fashion a remedy that will take into consideration the fact that counties operate on yearly budgets and the issuance of an injunction be fashioned in such a manner as to not interfere with general county budgetary procedures established by law. That the court grant such further relief as is appropriate in the premises.

DATED this 16th day of June, 1976.

R. PAUL VAN DAM
Salt Lake County Attorney



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CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Defendant-Respondents' Petition for Rehearing and Brief to Roger F. Cutler, 101 City and County Building, Salt Lake City, Utah 84111, Attorney for Plaintiffs-Respondents, postage prepaid this 16th day of June, 1976.