

1978

Salt Lake City, Corp., A Municiple Corporation of the State of Utah v. D. William Layton and Helen Layton, His Wife : Appellant's Brief

Utah Supreme Court

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Recommended Citation

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IN THE SUPREME COURT OF THE STATE OF UTAH

SALT LAKE CITY CORP., a municipal
corporation of the State of Utah,

Plaintiff
and Respondent,

Case No.

vs.

D. WILLIAM LAYTON and HELEN
LAYTON, his wife,

Defendants
and Appellants.

16128

APPELLANT'S BRIEF

Appeal from the Order of the Third District Court

In and For Salt Lake County, Utah

The Honorable David K. Winder, Judge

Don Layton
280 Bankers Court
Salt Lake City, Utah
Phone: 533-5555

Judy Lever
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101 City and County Building
Salt Lake City, Utah 84102

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IN THE SUPREME COURT OF THE STATE OF UTAH

SALT LAKE CITY CORP., a municipal corporation of the State of Utah)

Plaintiff)
and Respondents)

CASE NO.

vs.)

16128

D. WILLIAM LAYTON and HELEN LAYTON, his wife,)

Defendants)
and Appellants.)

C-78-3534

APPELLANT'S BRIEF

STATEMENT OF THE NATURE OF THE CASE

This case concerns part of an alleged street which was abandoned by non use.

DISPOSITION IN LOWER COURT

The lower Court issued an order granting plaintiff's claim to "Pearl Street" in spite of the obvious fact that it was based on a private claim of a noncontributor.

RELIEF SOUGHT ON APPEAL

Defendant appellants seek an order correctly stating the law on the subject of noncontributors rights to an abandoned street in a plat recorded under Chapter XIII Section 2070 S6, Section 2071 S7, Laws of Utah Territory 1888; chapter L. Sections 1,2,3,4,5,6, Laws of Utah Territory 1890 as amended by Laws of Utah Territory 1894

Chapter VIII, VACATING OR CHANGING PLATS Sections 6, 7, 8, 9, 10 and 11. These sections clearly show owner can change.

Inasmuch as Section 2070 S6, cited above, became part of Section 1116 of Title 25 HIGHWAYS Chapter 1, R.S. of Utah 1898 General Provisions/which stated:

Provided, that a road not used or worked for a period of five years ceases to be a highway.

and the said section 1116 was in the nature of a self executing provision of the law, defendant appellant feels that plaintiff respondent is not properly before the court. The right of the public to this so called street was obviously lost in 1902 through the above cited section.

STATEMENT OF FACTS

Two 5 acre parcels of land namely lots 20 & 21 Riverside Plat were subdivided by a single man named A. F. Lawson during May, 1897. This became known as Subdivision of lots 20 & 21 Riverside Plat. It is located in Salt Lake County in Section 14 Township 1 South, Range 1 West SLB&M (1700 South to approx. 1800 South (railroad) and 900 West to 1045 West. It has not been developed on a lot basis. Defendant appellant has owned all of Block 4 of this subdivision for nearly 25 years, and has spent several thousand dollars filling with gravel (flood insurance) and fencing it. In all that time no one has seriously questioned defendant appellants' possession. The above was generally conceded by plaintiff respondent throughout the record.

ARGUMENT

POINT I

Plaintiff respondent has no right. A. F. Lawson's offer to dedicate was dated May 17, 1897. The 5 year non use or worked provision (section 1116 R. S. of Utah 1898) cut off any rights the public may have had on May 17, 1902.

This statement is based on and supported by many decisions of the Supreme Court of Utah, namely:

Roy S. Ludlow Inv. Co. v. Salt Lake County etal.
28 U2d 139, 499 P2d 283 (1972)

1. Highways, key 79(2)

North Temple Invest. Corp. v. Salt Lake City Corp.
26 U2d 306, 489 P2d 106 (1971)

2. Dedication, key 34.

Mallory v. Taggart 24 U2d 267, 470 P2d 254 (1970)

2. Municipal Corporations, key 663(2)
3. Dedication, key 31

Sowadski v. Salt Lake County 36 U 127, 104 Pac 117 (1909)

3. Dedication--Abandonment--County Roads.
4. Dedication--Abandonment--limited fee.
5. Easements--Abandonment of highway--effect on private rights.

And decisions in other states which had a similar limitation law namely:

Floyd Van Sant, v. City of Seattle 237 P2d 130 (1955)

1. Highways, key 79(4)
. . . self executing.
2. Highways, key 79(7)
6. Dedication, key 21

Howell v. King County, Washington etal 134 P2d 80 (1943)

1. Highways, key 79(4)
2. Highways, key 79(4)
3. Highways, key 79(4)

Hislop v. Lincoln County, Oregon 437 P2d 847 (1968)
and a host of others.

POINT II

In spite of what has already been said on the subject, defendant appellant calls the Court's attention to the wording of Section 1 of Chapter 50, Laws of Utah 1890, which states:

Be it enacted by the Governor and Legislative assembly of the Territory of Utah: That it shall be lawful for any owner or owners of any land, to lay out and plat such land into lots, streets, alleys, and public places.

This section is simply a statement in writing indicating the manner in which an intelligent person can dispose of his property in an orderly manner, the same way it could have been done for years. It is in no way a command, nor a demand. That there may be other methods of doing the same thing must surely be true. They may not have been the most efficient nor the most logical, but there were many land transactions taking place elsewhere in the world before the laws of 1890 were passed. The fact that Section 5 indicates that if a party elected not to do it that way, they could elect to forfeit to the County in which such town or addition is located, a sum not exceeding three hundred dollars. Even at that, an out-of-state property owner might have escaped paying such forfeit altogether.

"AN ACT concerning the Laying Out and Flatting of Towns."

However, it is also obvious from a careful reading of the title of the act which itself says "Towns", and Sections 4 and 5 also say "Towns", that it may very well have meant what it said and only referred to land within a town inasmuch as Art. VI Sec. 22 Constitution of Utah states:

. . . no bill shall be passed containing more than one subject, which shall be clearly expressed in its title . . .

Nowhere in the title of this act is there anything said which could be construed as a basis for passing title to property. Therefore the statement in Sec. 4 which states:

. . . sufficient to vest the fee of such parcels of land . . .

is far beyond the subject included in the title of the act and therefore unconstitutional.

POINT III

Since the defendant appellants' predecessor did at one time offer for the County's consideration, a Subdivision of some land he owned in 1897, and even though it had never been accepted, nor used, nor worked, the plaintiff respondent contends that what was once known as "Pearl Street" directly east of lots 18 to 26, Block 4 Sub. of lots 20 & 21 Riverside Plat should now, more than 80 years later, be opened to allow the party to the east of defendant appellants' land the use of 33 feet to which they

(a noncontributor) never held title, never paid taxes on, have never been in possession of, nor have any need in order to have access to their property. Title 25 Chapter 1 Sec. 1120 Revised Statutes of Utah 1898 states:

By taking or accepting land for a highway, the public acquires only the right of way and incidents necessary to enjoying and maintaining it. A transfer of land bounded by a highway passes the title of the person whose estate is transferred to the center of the highway.

That this position is totally without merit is shown by:

Niel v. Independent Reality Co. 317 Mo 1235, 298 SW 363, 70 A.L.R. 550.

In an extensive discussion, the Missouri Supreme Court (Div. No.1) on Sept. 16, 1927 held:

Highways, key 22 --vacation of street--reversion of fee.

1. If a street is taken wholly from one man's property, the fee upon its vacation, reverts to the original owner or his grantees.
2. A statutory provision that upon vacation of a dedicated street the land shall be attached to the ground bordering on the street, and all title thereto shall vest in the persons owning the property on each side thereof in equal proportions, must be held to apply only in case the proprietors on each side of the street contributed to the dedication; not where the street was wholly dedicated by the owner of property abutting on one side of it.

Boundaries, key 13 --highway--title to center--assumption.

3. The rule that the abutting owners hold title to the center of a street was founded upon the assumption that the owners had each contributed equally to the street.

Dedication, key 19 -- of street--what conveyed.

4. Under a common-law dedication of land for a street, the title to the center of the street is a mere easement.

Dedication, key 19 --highways, key 22--statutory requirements--effect.

6. Statute requiring one dedicating land for streets to convey the fee for public uses in trust and for the uses therein expressed or intended and for no other use or purpose, does not require a conveyance in fee simple, but merely a trust for street use, so that upon vacation of the street, the title will revert to the dedicator.

Constitutional law, key507--vesting title to vacated street in noncontributor.

7. Where, by statute, land dedicated for street purposes is solely for public use, no portion of a street which is dedicated wholly by one person can, upon its vacation, be vested in one whose land abuts upon the street, but who neither personally nor through his predecessors in title contributed anything to the street, where the Constitution prohibits the taking of private property for private use.
8. Statutes in pari materia must be construed together and given a construction, if possible, which violates no constitutional provision.

CONCLUSION

From the undisputed facts of this case, the respondent, without the benefit of statutory, legislative, case law or common law authority, seeks to obtain the benefit of appellant's property which appellants or their predecessors have been in possession of for 80 years. In spite of statutory enactments, case law, and the passage of 80 years and then only at the urging of a stranger to the title, the City has come forth to claim that appellants' possession of the land in question is without right.

We respectfully set forth that under the authorities, facts and circumstances herein set forth, the Order of the trial Court should be reversed and an appropriate order stating that the land has been and now is free of this adverse claim be made.

Respectfully Submitted,

Lou Layton

Delivered two copies of the foregoing brief to Judy Lever, attorney for plaintiff, respondent December 11, 1978.

Lou Layton