

2001

Bessie Padjen v. Douglas Shipley : Brief of Respondent

Utah Supreme Court

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BRIEF

ME COURT

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OF THE STATE OF UTAH

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

)
BESSIE PADJEN,
)
Plaintiff and Respondent,)

vs.)

)
DOUGLAS SHIPLEY and INAGENE)
D. SHIPLEY,)

)
Defendants and Appellant.)

Case No.

14453

BRIEF OF PLAINTIFF-RESPONDENT

Appeal from the Judgment of the Third Judicial
District Court for Salt Lake County
The Honorable Bryant H. Croft, Judge

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FILED

MAR 29 1976

TABLE OF CONTENTS

	Page
STATEMENT OF NATURE OF CASE	1
DISPOSITION IN THE LOWER COURT.....	1
STATEMENT OF THE FACTS.....	1 and 2

STATEMENT OF POINTS

POINT ONE. REVISED ORDINANCES OF SALT LAKE COUNTY AS AMENDED DECLARES: NO ANIMALS OR FOWL SHALL BE KEPT OR MAINTAINED CLOSER THAN FORTY FEET FROM ANY DWELLING IS APPLICABLE TO THE PROPERTY OF THE DEFENDANT IN ZONING R-2-10H.....	2
POINT TWO. REVISED SALT LAKE COUNTY ORDINANCES DEFINE DOGS AS DOMESTICATED ANIMALS WHICH MAY BE PETS.....	2
POINT THREE. COURT HAS POWER TO TAKE JUDICIAL NOTICE OF FACT THAT PENNED ANIMALS CAUSE (A) FOULING OF AIR BY ODORS AND (B) INSANITARY CONDITIONS OF ENCLOSURES OR SURROUNDINGS.....	3
POINT FOUR. ANIMALS ARE PUBLIC NUISANCE WHICH CAUSE FOULING OF THE AIR BY ODORS AND/OR CAUSE UNSANITARY CONDITIONS OF ENCLOSURES OR SURROUNDINGS.	3
CONCLUSION.....	3

TABLE OF ORDINANCES CITED

SALT LAKE COUNTY ORDINANCES.	
SECTION 22-2-16.....	2
SECTION 16-3-2(10).....	3
SECTION 16-3-2(16).....	3
SECTION 16-3-2(18)(d)(e).....	3

IN THE SUPREME COURT
OF THE STATE OF UTAH

_____)
BESSIE PADJEN,)
Plaintiff and Respondent,)

vs.)

DOUGLAS SHIPLEY and INAGENE)
D. SHIPLEY,)
Defendants and Appellant.)

Case No.

14453

_____)
RESPONDENT'S BRIEF

STATEMENT OF NATURE OF CASE

Plaintiff sued to restrain defendants keeping and maintaining the nuisance of dogs in a generally unsanitary condition in the particular location of pens erected in violation of Salt Lake County Ordinance Section 22-2-16.

DISPOSITION IN LOWER COURT

Respondent accepts disposition as stated in Appellant's Brief.

RELIEF SOUGHT ON APPEAL

The Supreme Court shall sustain judgment of Lower Court.

STATEMENT OF FACTS

Defendant-Appellant and Plaintiff-Respondent are

adjoining owners with a chain link boundary fence between them. Appellants used forty-four feet of fence as one side of a dog run to within eighteen feet of plaintiff's house (Survey Rec. Pg. 28) and kept and maintained two dogs and occasionally three dogs therein.

ARGUMENT

POINT I

Appellant stipulates zoning as R-2-10H (Appellants Brief Pg. 3) and does not object to the applicability of Section 22-2-16 to that zoning.

Rather she objects to an interpretation applying its proscription to pets for the reason that an animal kept as a pet should not be considered an animal.

Section 22-2-16 declares: "No animals or fowl shall be kept or maintained closer than forty feet (40) from any dwelling," is applicable to the property of the defendant in zoning R-2-10H.

POINT II

Salt Lake County Ordinances define dogs as domesticated animals which may be pets.

Revised Salt Lake County Ordinances 1966 supply us with the following definitions under Police Regulations

Section 16-3-2(10). "Domesticated animals are animals such as are accustomed to live in or about the habitation of man, including, but not limited to cats, cows, dogs, fowl, horses, and swine."

Section 16-3-2(16). "Pet shall be a domesticated animal kept for pleasure rather than utility."

Section 16-3-2(18). "Public nuisance animal or animals shall be any animal or animals which (d) causes fouling of the air by odors; (e) causes insanitary conditions of enclosures or surrounding."

POINT III

Court has power to take Judicial Notice of fact that penned animals cause (a) fouling of air by odors and (b) insanitary conditions of enclosures or surroundings.

POINT IV

Animals are public nuisance animals which cause fouling of the air by odors and/or cause unsanitary conditions of enclosures or surroundings.

Section 16-3-2(18). Revised Salt Lake County Ordinances 1966.

CONCLUSION

Plaintiff-Respondent is justifiably entitled to have the decision and judgment of the trial court affirmed.

Respectfully submitted,

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