

1952

State of Utah et al v. Hyrum A. Danielson et al : Brief of Respondents

Utah Supreme Court

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Harley W. Gustin; Elliott W. Evans; Attorneys for Respondents;

Recommended Citation

Brief of Respondent, *State v. Danielson*, No. 7752 (Utah Supreme Court, 1952).
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**IN THE SUPREME COURT
of the
STATE OF UTAH**

STATE OF UTAH, by and through
its ROAD COMMISSION, D. H.
Whittenburg, Chairman, and Lay-
ton Maxfield and H. J. Corleissen,
members of the STATE ROAD
COMMISSION,

Plaintiff and Appellant,

vs.

HYRUM A. DANIELSON and
OLIVIA B. DANIELSON, his
wife; and C. ELLSWORTH HAN-
SEN and FLORENCE HANSEN,
his wife,

Defendants and Respondents.

RESPONDENTS' BRIEF

FILED

JAN 24 1952

Clerk, Supreme Court, Utah

HARLEY W. GUSTIN
Attorney for Respondents
Hyrum A. Danielson and
Olivia B. Danielson

ELLIOTT W. EVANS
Attorney for Respondents
C. Ellsworth Hansen and
Florence Hansen

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SEN and FLORENCE HANSEN,
his wife,

Defendants and Respondents.

Civil No. 7752

RESPONDENTS' BRIEF

STATEMENT OF FACTS

We are substantially content with appellant's state-
ment of the facts. We desire to stress, however, the fact
that prior to the condemnation proceedings the Hansen
property was immediately adjacent to the northeast to a
right angle turn on Highland Drive and 6200 South in
Salt Lake County, and that the Danielson property was
to the south and west immediately across 6200 South
Street. By the condemnation proceedings, the State has
voided the right angle turn, taking "thru traffic" north
and south on Highland Drive and thus a portion of the

Hansen property and the Danielson property (see map following R. 5). Obviously, traffic formerly going to Big Cottonwood Canyon has been diverted to the south so that it will by-pass many fine homes in the vicinity.

The fact remains, in the absence of any proof to the contrary and which the State seems to recognize, that by shunting the right angle turn property having potential business use has lost a frontage value. The State is irked at not having the values submitted by its engineers sustained.

The State elected to file the action against the respondents jointly and then concedes in its statement of facts that, although a motion to proceed separately against the defendants was never formally ruled upon, it was prejudiced by the consolidation of the issues for trial.

STATEMENT OF POINTS

We will discuss the statement of points in the reverse order as those stated by appellant, eliminating appellant's last point for the reason that it is included in our Point I. We present the case in the following manner:

POINT I.

THE JUDGMENT AS TO VALUE IS SUSTAINED BY THE EVIDENCE.

POINT II.

THE COURT DID NOT ERR IN ALLOWING INTEREST AT THE JUDGMENT RATE FROM THE DATE OF THE ORDER OF IMMEDIATE OCCUPANCY.

POINT III.

THE COURT DID NOT ERR IN CONSOLIDATING THE CASES FOR PURPOSES OF TRIAL.

ARGUMENT

POINT I.

THE JUDGMENT AS TO VALUE IS SUSTAINED BY THE EVIDENCE.

The trial court, in its memorandum decision, found the damages sustained by defendants Hansen as follows:

Loss of use.....	\$2665.00
Land taken	1120.00
Cost of fill.....	390.00

\$4175.00

Credited back for limited use	666.00
--	--------

Net Loss	\$3509.00
----------------	-----------

plus costs and
interest from
day of taking

and then further found that the damages sustained by defendants Danielson were as follows:

Corner for business.....	\$1990.00
Land taken	647.00
Cost of fill.....	580.90
Cost of Piping.....	194.00

Net Loss	\$3411.90
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plus costs and
interest from
day of taking,

as will be determined from the trial court's memorandum

decision (R. 298-299). The testimony of the various witnesses, including C. Francis Solomon, an expert in his field, were analyzed and the testimony, as it appears from the record, of Mrs. Danielson as to the damage to her fruit trees was excluded. There is competent, relevant and material evidence to support the judgment of the trial court.

The bias and prejudice that appellant claims is not supported by the record and can only be attributed to its chagrin in having waived a jury trial and letting a competent court determine the issues.

POINT II.

THE COURT DID NOT ERR IN ALLOWING INTEREST AT THE JUDGMENT RATE FROM THE DATE OF THE ORDER OF IMMEDIATE OCCUPANCY.

An old text, *Freeman on Judgments*, Fifth Edition, is applicable to these proceedings. Section 831 is to the effect that proceedings in the exercise of eminent domain are statutory in character and that final adjudication in such proceedings is conclusive as to all intendments of the same. Section 832 of the same text is to the effect that an order of immediate occupancy is *res judicata* as to the public character of the use, as well as the necessity for condemnation and the amount of land required, leaving for future determination the damage incidental thereto.

See also Justice Larson's concurring and dissenting opinion in *Hyde Park Town v. Chambers et al.*, 99 Utah 118, 104 P. 2d 220.

There is no dispute but what interest should start from the date of the order of immediate occupancy. *Salt Lake & U. R. Co. v. Schramm et al.*, 56 Utah 53, 189 P. 90, wherein the court stated:

"The action was commenced by filing of complaint in the district court February 21, 1918. Order was made granting right of immediate possession of premises pending condemnation proceedings April 28, 1918. Trial was concluded, verdict rendered, and judgment entered January 30, 1919. Under authority of *Oregon S. L. R. Co. v. Jones*, 29 Utah, 147, 80 Pac. 732, in which the question of interest upon the amount of damages assessed for the taking of the property in this class of cases was ably and exhaustively discussed by Mr. Justice Straup, and in which it was held that in our jurisdiction interest should not be computed from date of commencement of the action, but rather from the date of the order of occupancy, which in this case would be April 29, 1918, this assignment of error is well founded. The above case is controlling, and should have been followed; therefore the trial court erred in allowing interest from the date of the commencement of the action."

This leaves the sole question as to whether the interest should be six per cent or eight per cent. *Section 44-0-1, U.C.A. 1943*, provides that the legal rate of interest for the loan or forbearance of any money, goods or things in action shall be six per cent per annum, while *Section 44-0-4* provides as follows:

“Any judgment rendered on a lawful contract shall conform thereto and shall bear the interest agreed upon by the parties, which shall be specified in the judgment; other judgments shall bear interest at the rate of eight per cent per annum.”

The order of immediate occupancy was a final judgment as to the taking of property and, therefore, such judgment should be entitled to interest at the rate of eight per cent rather than six per cent. The damage occurred at that time and the compensation became owing to the parties. It was just a matter of fixing the amount to be paid that remained for the court to determine.

POINT III.

THE COURT DID NOT ERR IN CONSOLIDATING THE CASES FOR PURPOSES OF TRIAL.

As pointed out in our statement of the facts, there is no substantial difference between actual land values in the property involved and then you add to this the fact that the State elected to join the Hansens and the Danielsons in the same action. There is no showing in the record nor in the brief that the State was prejudiced by trying the two land questions in the one action. The question is not worthy of consideration.

CONCLUSION

1. The procedure followed by the trial judge did not result in any substantial inconvenience or damage to the State.

2. The State elected to bring this action, joining the respondents as parties defendant, and, therefore, should not now be heard to complain that the actions were not separably maintained or stated.

3. Condemnation proceedings involving separate parcels of real property in the same locality should be tried as one issue, leaving to the trier of the fact matters of special damage or in the way of improvements as affects the respective parcels.

4. The interim feature of interest is not involved in this case because of the order of immediate occupancy.

5. The minute the State filed its action there were two problems to resolve: (1) The right to take the property, which was resolved by the order of immediate occupancy. (2) The citizen's right to a future determination of damage.

6. The order of immediate occupancy was in every respect and had every significance of a judgment, leaving for future determination the question of damage.

7. *Section 44-0-1, UCA. 1943*, provides the legal rate of interest at six per cent per annum, but counsel does not point to *Section 44-0-4*, which reads as follows:

“Any judgment rendered on a lawful contract shall conform thereto and shall bear the interest agreed upon by the parties, which shall be specified in the judgment; other judgments shall bear interest at the rate of eight per cent per annum.”

8. The effect of the order of immediate occupancy

was to take one's property. It is our contention that the order had the same effect of a final judgment, at least in that regard, and, therefore, the interest rate pertaining to judgments should be enforced against the State from that date, the damage or compensation to the citizen being only incidental.

9. C. Francis Solomon, a competent witness, testified in favor of the defendants and controverted the State's likewise expert testimony as to values. Complaint is made about Solomon's testimony and yet he was not challenged as to his competency in the appraisal of real estate. The property involved in this litigation was in a commercial zone and had frontage on 6200 South Street. The record shows that some lands had been sold for as much as \$4,000.00 an acre. Solomon's testimony indicates that he took into consideration the front-foot commercial value of the property taken by the State, consistent with a much more modest acreage value that he placed upon the land.

10. The trial court apparently excluded the value of the apple trees and the reference to the apple trees in counsel's brief is beside the point and is an attempt to convince this court that the judgment appealed from is based upon something not in the record.

11. This court has announced by authorities too numerous to mention that it will not set aside a judgment or a verdict supported by any competent, relevant or material evidence so far as the amount is concerned. The State stipulated that the case be tried without a jury. Therefore, the trial court became the trier of the

facts. With the combined testimony of Mrs. Danielson, Mr. Hansen, C. Francis Solomon and other witnesses who testified as to values, it cannot be said that there was not substantial evidence in that regard and, therefore, the feature of this appeal having to do with values should be summarily dismissed.

12. On page 15 of counsel's brief the implication is that some one in the vicinity of the property "secured an extra good deal." How can any citizen secure a good deal when the sovereign takes over property and leaves it to him or to her to prove the value of the same? Furthermore, this case has to do with the differential of six per cent and eight per cent interest from the time of immediate occupancy.

We suggest that in this case there be a per curiam order forthwith, announcing that the State pays its honest obligation upon a decision fairly made by the trial court.

Respectfully submitted,

HARLEY W. GUSTIN
Attorney for Respondents
Hyrum A. Danielson and
Olivia B. Danielson

ELLIOTT W. EVANS
Attorney for Respondents
C. Ellsworth Hansen and
Florence Hansen