

1989

Velma Marchant, Elma Winterton, Leora
Robinson, Wanda Penrod, Mona Lichty and Merle
Anderson v. Park City, a municipal corporation and
the State of Utah : Response to Supplement

Utah Court of Appeals

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Robert Felton; Attorney for Plaintiffs

Alan Bachman; Assistant Attorney General; James W. Carter; Park City Municipal Corporation;
Attorneys for Defendants.

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BRIEF

LAW OFFICES

WHEATLEY & RANQUIST

SUITE 1225

EAGLE GATE TOWER BUILDING

60 EAST SOUTH TEMPLE

SALT LAKE CITY, UTAH 84111-1004

(801) 237-1700

WASHINGTON D.C. AREA OFFICE
34 DEFENSE STREET
ANNAPOLIS, MARYLAND 21401
(301) 266-7524
IN WASHINGTON D.C.
261-8608

DOCKET NO. **890139**

CHARLES F. WHEATLEY, JR.*

HAROLD A. RANQUIST

DON C. UTHUS*

PHILIP B. MALTER*

PETER A. GOLDSMITH*

JOHN R. KROEGER*

TIMOTHY P. INGRAM*

MICHAEL W. CRIPPEN

J. CRAIG SMITH

*NOT ADMITTED IN UTAH

February 1, 1990

FILED

FEB 2 1990

Clerk, Supreme Court, Utah

Geoffrey J. Butler, Esq., Clerk
Supreme Court of the State of Utah
332 State Capitol
Salt Lake City, Utah 84114

Re: Marchant v. Park City and The State of Utah,
No. 890139

Dear Mr. Butler:

This letter is in response to a letter dated January 24, 1990 addressed to you from Robert Felton, counsel for Plaintiffs/Appellants in the above-referenced matter, regarding a claim of supplemental authority.

Plaintiffs contend that this Court's opinion on boundary by acquiescence in Staker v. Ainsworth, 125 Adv. Rep. 25 (1990), is supplemental authority for the above-referenced matter.

While Plaintiffs did originally plead the doctrine of boundary by acquiescence, the trial court dismissed Plaintiffs' claim of boundary by acquiescence prior to the trial following a Motion for Summary Judgment brought by the Defendants.

Plaintiffs' citation of the record which suggests that boundary by acquiescence was an issue at trial and that evidence was heard thereon is patently misleading. Boundary by acquiescence was never an issue at trial and was dismissed by order of the trial court prior to trial.

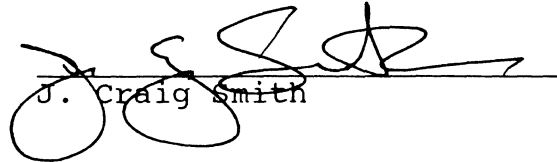
Plaintiffs also failed to raise boundary by acquiescence as an issue on appeal to this Court either in their Docketing Statement or their Briefs. Plaintiffs did not "reference either to the page of the brief or to a point argued orally" to which Staker would apply, as required by Rule 24(J), RUSC. Plaintiffs could not cite to their brief record or their oral argument because a claim to the property through boundary by acquiescence

Geoffrey J. Butler, Esq.
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does not appear in Plaintiffs' brief, nor was it argued to this Court by Plaintiffs when oral argument was held on January 8, 1990.

Plaintiffs should not be allowed to misuse Rule 24(J), RUSC to raise a new issue which they failed to properly raise on appeal after their appeal has been briefed and argued to both the Utah Court of Appeals and to the Utah Supreme Court.

Respectfully submitted this 1st day of February, 1990.


J. Craig Smith

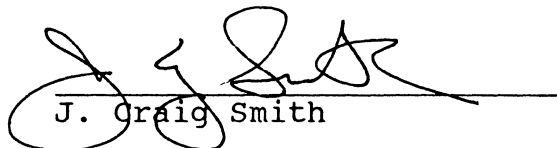
MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing letter was mailed, first-class, postage prepaid, this 1st day of February, 1990 to:

Robert Felton, Esq.
310 South Main Street
Salt Lake City, Utah 84101

Alan Bachman, Esq.
Assistant Attorney General
State Capitol Building
Salt Lake City, Utah 84114

James W. Carter, Esq.
Park City Municipal Corporation
445 Marsac Avenue
P. O. Box 1480
Park City, Utah 84060


J. Craig Smith

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