

1980

## D. Robinson v. State of Utah, Department of Natural Resources : Respondent Brief

Utah Supreme Court

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Robert B. Hansen; Attorney General; Attorney for Appellant;

Michael Wallace Park; Attorney for Respondent;

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IN THE SUPREME COURT OF THE STATE OF UTAH

D. ROBINSON,

Plaintiff-  
Respondent,

vs.

STATE OF UTAH, DEPARTMENT  
OF NATURAL RESOURCES,

Defendant-  
Appellant.

Case No. ~~16524~~

16529

RESPONDENT BRIEF

Appeal from the Judgment of the Fifth Judicial District  
Court for Iron County  
The Honorable J. Harlan Burns  
District Judge, Presiding

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D. ROBINSON, )

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Respondent, )

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vs. )

STATE OF UTAH, DEPARTMENT )  
OF NATURAL RESOURCES, )

Defendant- )  
Appellant. )

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BRIEF OF RESPONDENT

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STATEMENT OF THE KIND OF CASE

Respondent filed suit requesting the court to enforce a certain land exchange agreement entered into between the State of Utah and Respondent in 1970. At the time of trial in 1978, the Respondent and Appellant agreed that the land should be exchanged and entered into a land exchange agreement signed by the parties to the lawsuit and their respective counsel.

DISPOSITION IN LOWER COURT

The trial court found that the parties had properly entered into a land exchange agreement and entered Judgment in favor of Respondent and ordered the parties to convey their respective properties as previously agreed.

RELIEF SOUGHT ON APPEAL

Respondent seeks to have the Judgment of the Lower Court affirmed.

STATEMENT OF FACTS

Respondent claims that the State of Utah, Division of State Lands, agreed to exchange certain property owned by the State on Summit Mountain for property owned by Respondent in Hamblin Valley. (See Complaint of Plaintiff). Among other things, the defendant claimed that a proper appraisal was not made and that the Summit Mountain property was more valuable than the property at Hamblin Valley.

At the trial the parties entered into a Stipulation (Exhibit 2A).

The basic provisions of this document were:

1. Plaintiff and his wife would file a written application for exchange of state lands for privately owned lands.
2. Thereafter, an exchange agreement would be prepared to conform with Utah Code Ann. Section 65-1-20 (as amended 1953).
3. The land would be properly described.
4. Both parcels of land would be appraised by Ken Esplin as of June 10, 1971 and each party would pay one half of the cost for said appraisal.

5. The appraisal reports would be submitted to the parties.

6. If the land was of equal value the exchange would be made. If the private land appraised higher, the exchange would be made as though each parcel had equal value. If the State land appraised higher, the Plaintiff would have the option of paying the difference and if he choose to pay the difference, the land would be exchanged in accordance with the Stipulation and Agreement for exchange of privately owned land for State land.

7. By the Stipulation, the parties expressly gave the court continuing jurisdiction to enforce its provision

The foregoing Stipulation was entered into on the 24th day of April, 1978 and on the 2nd day of June, 1978. The parties entered into an Agreement for Exchange of Privately Owned Land for State land marked Exhibit 1A. This Agreement was signed by the director of the Division of State Lands; the Plaintiff and his wife, and the attorneys for the parties. The Agreement basically states and provides as follows:

1. Plaintiff and his wife, pursuant to Stipulation, submitted a written application to exchange privately owned lands for State lands (Exhibit 1A acknowledges that this has been done).

2. Exhibit 1A was prepared by the attorney for the State of Utah, Division of State Lands to conform to Section 65-1-70, Utah Code Ann. (as amended 1953).

3. Plaintiffs agreed to exchange their land at Hamblin Valley for the State land on Summit Mountain.

4. The properties would be appraised by Ken Esplin as of June 10, 1971.

5. The appraisal would be submitted to the parties and the original to the clerk of the court.

6. If the lands are of equal value, the trade would be made as soon as possible.

7. If the private land was valued higher than the State land, the land would be exchanged as though the value was equal.

8. If the State land was valued higher than the private land and the Plaintiff payed the excess value of the State land, then the exchange would be consummated.

9. The court would have continuing jurisdiction to consummate the exchange.

This Agreement was executed and an appraisal was made by Ken Esplin pursuant to this Agreement and the original was submitted to the clerk of the court. The appraisal determined that the State land had more value than the private land in an amount of \$630. (See Exhibit 7A)

The Plaintiff received the appraisal on the 13th day of July, 1978 (TR15) and submitted a check in the sum of \$630 to the Iron County clerk for payment of the difference on August 4, 1978 (TR16) (See Exhibit 8A and 9A).

POINT I

THE TRIAL COURT DID NOT ERR IN FINDING THAT THE PARTIES ENTERED INTO AN AGREEMENT TO EXCHANGE STATE LANDS FOR PRIVATELY OWNED LANDS.

Section 65-1-70, Utah Code Ann. (1953 as amended) provides as follows:

In order to compact, as far as practicable, the land holdings of the state, the board is hereby authorized to exchange any of the land held by the state for other land of equal value within the state held by other proprietors; and upon request of the board the governor is hereby authorized to execute and deliver the necessary patents to such other proprietors and receive therefrom the proper deeds of the lands so exchanged; provided, that no exchange shall be made by the land board until a patent for the land so received in exchange shall have been issued to such proprietors of their grantors.

Pursuant to this section, the Division of State Land, by its director, Charles R. Hansen, entered into an agreement with the plaintiff and his wife to exchange the State lands for privately owned lands.

This agreement was prepared for the Division of State Lands by its attorney, Paul E. Reimann. Mr. Reimann, Assistant Attorney General, approved the agreement as to



form in accordance with Section 65-1-76, Utah Code Ann. (1953 as amended) which is set forth hereafter:

65-1-76. Attorney General approves legal forms. All leases and contracts of every kind entered into by the State Land Board shall, before execution by such Board, be approved as to form by the Attorney General.

The Division of State Lands has authority to make the exchange and agreed to make the exchange on the advice of Competent Legal Counsel.

Section 65-1-7, Utah Code Ann. (1953 as amended) confers authority on on the Director of the Division of State Lands to represent the state in action of this type.

The state has authority and, through its agents, properly entered into the land exchange agreement

The Appellant's brief admits that the parties agreed the exchange should be made and the Appellant does not claim that the agreement did not conform to statutory requirements for such exchanges.

The Appellant's complaint is that the value of the property, as appraised by an appraisor selected jointly by both parties, was not satisfactory to the Appellants.

#### POINT II

THE TRIAL COURT DID NOT ERR IN REQUIRING APPELLANTS TO PERFORM IN ACCORDANCE WITH THE TERMS OF SAID AGREEMENT.

The land exchange agreement sets forth the conditions Respondent must meet in order for the transfer:

1. The plaintiff and his wife were to submit a written application for exchange, which they did.

2. The parties agreed that the property was to be appraised by Ken Esplin. Ken Esplin appraised the property.

3. The appraised value of the state land was \$630 more than the private land and, pursuant to the agreement, Respondant paid the \$630 difference.

The Respondent met all of the conditions required in the land exchange agreement. The Court found that, after the conditions had been met, the Respondent and his wife submitted a warranty deed conveying their property, free and clear of encumbrance, together with their check for the difference in the value of the two pieces of property.

The contention of the Appellants, in their brief, is not that the conditions of the agreement were not met but, rather, that the property was not correctly appraised by Ken Esplin.

The Court specifically found that Ken Esplin appraised the property in a proper manner. (Findings of Fact and Conclusions of Law, #11). The Court specifically found that Mark A. Crystal based his appraisal on a future application of highest and best use for the state property, (Findings of Fact and Conclusions of Law, #12).

The Court has held, on many occasions, that the decision of the Trial Court will be upheld unless there is a clear abuse of discretion. Warren Dixon Ranch Co.

123 U. 416, 260 P2d (1953). Accord Knapp vs. Life Insurance Corporation of America, 8 U 2d 220, 332, P2d 662 (1958).

The Court, in this case, did not abuse its discretion by enforcing the exchange agreement. It is the contention of the plaintiff that evidence has not been produced which could lead one to the conclusion that the appraisal was improper. In this case, the Trial Court could believe or not believe the witnesses of the Appellants concerning the appraisal. The Court could have simply found that the two appraisals offered different opinions and that the appraisal of Mr. Esplin was valid. The Court went further and found that the Esplin appraisal more correctly dealt with the property than did the Crystal appraisal.

There was no direct testimony concerning personal knowledge of water that went with the property and, if it does, how much. This applies to both pieces of property. Based on the evidence before this Court, the land offered by the state may not include any water.

Tracy Collins Bank vs. Travelstead, et al.. 592 P2d 605 (1979) involved several litigants in what this Court called a complex series of lawsuits. The parties negotiated a settlement agreement to resolve all issues before their 3rd District Court Judge, David K. Winder. Some of the

agreement.

Thereafter, one of the parties filed a motion to enforce the settlement agreement. The District Court granted the motion and an appeal followed. The appeal was based on the fact that the least that the District Court should have done was hold an evidentiary hearing to determine whether the settlement agreement had been complied with.

This Court quoted Melnick vs. Binstock, 318 P 533, 179 A. 77 (1935) for one proposition that settlement agreements may be summarily enforced by a motion in the court of original origin.

This Court held that the action of the District Court was proper and the enforcement of the settlement agreement was affirmed.

#### CONCLUSION

In the instant case, the District Court held an evidentiary hearing to determine whether Respondent had complied with the terms of the agreement and whether the appraisal was improperly obtained. Both of these issues were determined in favor of the Respondent and it is his request that the Judgment of the District Court be affirmed.

Respectfully submitted

MICHAEL W. PARK  
Attorney for Plaintiff/  
Respondent

IN THE SUPREME COURT OF THE STATE OF UTAH

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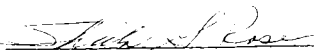
D. ROBINSON,	)	
Plaintiff-	)	
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	)	
vs.	)	
	)	
STATE OF UTAH, DEPARTMENT	)	
OF NATURAL RESOURCES,	)	
	)	
Defendant-	)	
Appellant.	)	
	)	

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CERTIFICATE OF MAILING

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I hereby certify that on the 21<sup>st</sup> day of February, 1980 two copies of the foregoing BRIEF OF RESPONDENT were mailed, first class postage prepaid, to ROBERT B. HANSEN, Attorney General by JOSEPH R. McCARTHY, Assistant Attorney General, 115 State Capitol, Salt Lake City, Utah 84114.

  
Secretary

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