

1955

H. C. Hardgraves v. Harry L. Young et al : Brief in Opposition to Rehearing

Utah Supreme Court

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✓ *James V. Gas Co.*
Case No. 8275

IN THE SUPREME COURT
of the
STATE OF UTAH

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H. C. HARGRAVES, Building In-
specter for Salt Lake City, a
municipal corporation,

Plaintiff and Appellant,

— vs. —

HARRY L. YOUNG, KENNETH L.
ANDERSON and WILLIAM
WALKENHORST,

Defendants and Respondents.

FILED

MAY - 4 1955

Clerk, Supreme Court, Utah

BRIEF IN OPPOSITION TO REHEARING

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IN THE SUPREME COURT of the STATE OF UTAH

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It seems that the principal argument which counsel for defendants made at the original hearing and now makes relates to his contention that we must decide whether the carports in question constitute buildings. This merely confuses the issue and is not necessary to the action of either the District Court or this court.

There are various statutes throughout the country which state in effect that “no building shall be construct-

ed nearer than X feet to the property line. . . .” However, the ordinance with which we are involved here is patterned after those ordinances which require that side and rear yards shall be open and unobstructed. There is nothing in the order of the District Court which says anything about a building and the District Court and this court refer to the carports as structures. All the talk, argument and purported citation of authorities which try to force us to a determination as to whether these carports are buildings are immaterial and have absolutely no bearing on the case. In the instant case we feel that the question of a building being involved is completely out of the picture and if this is so substantially the entire argument made by counsel for defendants fails.

Counsel for defendants seem worried because the decision in this case possibly doesn’t decide every question that could arise under the zoning laws in the future. Of course, we respectfully submit that few court decisions do settle for all time every question that can arise in relation to the subject of the decision.

Counsel for defendants express concern about what will happen to clotheslines and TV aerials. By analogy the answer to that can be found in a statement by the Supreme Court of the United States in the case of *Daybright Lighting Company v. Missouri*, 72 Sup. Ct. 405, where the court stated:

“Extreme cases are conjured up where an employer is required to pay wages for a period

that has no relationship to the legitimate end. Those cases can await decision as and when they arise.”

We think here that the zoning ordinances have worked out pretty well and this is perhaps the first case of this general nature which has arisen in a great many years. It is doubtful if we need to be unduly apprehensive about a needless stream of litigation because of the decision in this case. Certainly our experience doesn't justify such an apprehension.

Of course, in all such matters a line must be drawn somewhere and we think the legislative body not only has the authority, but is better equipped than the court to say where lines shall be drawn. It would perhaps require considerable argument to justify a fine for going 51 miles an hour at a given location where everyone was permitted to go 50 miles an hour with impunity at the same location.

Presumably, if someone installed a radio antenna in an area designated as a sideyard little or no complaint would be made and it is doubtful if police action would be taken. On the other hand if someone stacked lumber 20 feet high in the entire area from the house to the property line we think there would be action taken on the part of the zoning authorities and this in spite of the vigorous contention of counsel for defendants that such a stack of lumber couldn't possibly constitute a building. Thus we see that extreme examples can be

given which don't solve all the more refined problems. The point is, however, that we draw a line and the distance from one inch one side of the line to one inch the other side of the line is very narrow and the person who is one inch on the wrong side feels terribly aggrieved. The fact still remains that wherever we project the line the distance between the right side and the wrong side will still be only an inch or two.

As to whether or not we have questions of public health, safety, morals and general welfare, we feel that the legislatures with judicial approval, have given legislative bodies considerable power in the field of zoning. Since the power does exist there is no justifiable reason for striking down legislative action even if there is a difference of opinion between the court and the legislative body as to whether or not the structures involved in this, or any other action, should be permitted or prohibited. A further statement from the case of *Daybright Lighting Company v. Missouri* (supra) fairly states the proposition in this respect as follows:

“The judgment of the legislature that time out for voting should cost the employee nothing may be a debatable one. It is indeed conceded by the opposition to be such, but if our recent cases mean anything they leave debatable issues as respect to business, economic and social affairs to legislative decision. We could strike down this law only if we return to the philosophy of the *Lochner*, *Coppage* and *Adkins* cases.”

Finally, we might point out that which is axiomatic, namely that there must be some very excellent reasons for the granting of a rehearing. This court in the case of *Cummings v. Nelson* at 129 Pac. 619 had this to say about rehearings:

“We desire to add a word in conclusion respecting the numerous applications for rehearings in this court. To make an application for a rehearing is a matter of right, and we have no desire to discourage the practice of filing petitions for rehearings in proper cases. When this court, however, has considered and decided all of the material questions involved in a case, a rehearing should not be applied for, unless we have misconstrued or overlooked some material fact or facts, or have overlooked some statute or decision which may affect the result, or that we have based the decision on some wrong principle of law, or have either misapplied or overlooked something which materially affects the result. In this case nothing was done or attempted by counsel, except to reargue the very propositions we had fully considered and decided. If we should write opinions on all the petitions for rehearings filed, we would have to devote a very large portion of our time in answering counsel’s contentions a second time; and, if we should grant rehearings because they are demanded, we should do nothing else save to write and rewrite opinions in a few cases. Let it again be said that it is conceded, as a matter of course, that we cannot convince losing counsel that their contentions should not prevail, but in making this concession let it also be remembered that we, and not counsel, must ultimately assume all responsibility with respect to whether our

conclusions are sound or unsound. Our endeavor is to determine all cases correctly upon the law and the facts, and, if we fail in this, it is because we are incapable of arriving at just conclusions. As a general rule, therefore, merely to reargue the grounds originally presented can be of little, if any, aid to us."

We see nothing in the present case that qualifies it for a rehearing under the requirements above set forth. Thus for the reasons stated herein we feel that the petition for a rehearing in this matter should be denied.

Respectfully submitted,

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