

1981

In the Matter of the Disconnection of Territory and Restriction of the Corporate Limits of the City of Draper, Utah : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

IN THE MATTER OF THE
DISCONNECTION OF TERRITORY
AND RESTRICTION OF THE
CORPORATE LIMITS OF THE
CITY OF DRAPER, UTAH

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Case No. 17048

BRIEF OF APPELLANT

Appeal from Judgment of the Third Judicial District
In and for Salt Lake County, State of Utah
Hon. Bryant H. Croft, District Judge

FILED

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CITY OF DRAPER, UTAH	:	

NATURE OF THE CASE

The action below was a petition for the disconnection of territory from the incorporated municipality of Draper, Utah, of certain land areas within the corporate limits of Draper, Utah.

DISPOSITION IN THE LOWER COURT

The Third Judicial District Court, Hon. Bryant H. Croft, Judge, heard this matter upon trial without jury and adjudged that the petition to disconnect the land area in question be granted.

RELIEF SOUGHT ON APPEAL

Appellant Draper City seeks a reversal of the judgment below and a determination that the land area in question not be disconnected from the corporate limits of Draper City.

STATEMENT OF THE FACTS

The city of Draper, Utah, was incorporated in 1978. Thereafter, a petition to disconnect certain lands from the corporate limits of Draper was filed. Trial was had on the petition in April, 1979, at which testimony and evidence were presented by the petitioners and by respondent Draper city.

The petition states that the following are reasons why the territory in question should be disconnected from the city of Draper:

- A. The territory which lies generally between the Interstate 15 freeway and the Jordan River has been historically identified with the settlement and area now known as Bluffdale.
- B. The Salt Lake County Commission, by way of a petition duly filed and recorded had scheduled an election regarding the issue of incorporating Bluffdale, Utah, and the petitioners desired to be identified with the settlement and area now known as Bluffdale rather than Draper, whether or not the election resulted in the incorporation of the city of Bluffdale.
- C. The territory is, save for a few points of crossing physically separated from Draper by the freeway.
- D. Draper was alleged to be not capable of then providing adequate fire and police service to the land

area in question.

E. The governmental services offered by Draper to the territory were substantially less adequate than were experienced prior to the incorporation of Draper.

F. Prior to the incorporation of Draper, the then-constituted representatives of those in favor of the incorporation of Draper, some of whom were at the time of trial Draper City Councilmen and Mayor, agreed to allow the territory mentioned to be disconnected.

(R.2-3)

Petitioners also alleged in their petition:

[7]. "That the prayed for disconnection, if granted shall not leave the municipality of Draper with a residual area within its boundaries for which the cost, requirements or other burdens of municipal services will materially increase over previous years, or for which it would become economically or practically unreasonable to administer as a municipality.

[8]. "That the prayed for disconnection will not have the result of leaving or forming islands or unreasonably large or varied shaped peninsular land masses within or projecting in to the boundaries of the municipality of Draper, Utah.

[9]. "That the prayed for disconnection will have no detrimental effect upon existing or projected streets

or public ways, water mains, water services, sewer mains, sewer services, law enforcement, zoning or other municipal services rendered or proposed to be rendered by the municipality of Draper." (R. 3-4).

The trial court found that the requirements specified in Section 10-2-501, U.C.A. 1953 as amended 1977, were fulfilled by the petitioners in that (1) the petition was signed by some sixty-six persons purporting to be a majority of the real property owners in the territory sought to be disconnected, (2) that the territory is within and lying on the borders of Draper City, (3) the petition was accompanied by a map or plat of the territory sought to be disconnected, (4) the petitioners designated not more than five persons as being empowered to act for the petitioners, and (5) the reasons set forth in the petition were true to a legal sufficiency. (R. 118). The court also found, however, that the reasons specified in numbered reasons "A", "C", and "D", found herein above at pp. 2-3, were generally supported and found true by the evidence, but that reasons "B", "E", and "F" were "not meritorious reasons to support a petition to disconnect." (R. 124). The court also found that reasons identified above as "[7]", "[8]", and "[9]" above were meritorious and worthy of consideration and found in each instance in favor of the petitioners and against the position of Draper City. (R. 126-127).

The court found, additionally, that "a majority of the registered voters of the territory concerned" did sign the petition (R. 129), and that the requirements of "justice and equity" were met (R. 125-128) in favor of the disconnection. The court required counsel to enter into a stipulation after the conclusion of the trial regarding the ownership of property located in the area sought to be disconnected (R. 113-116).

ARGUMENT

Point I: PETITIONERS FAILED TO MEET THEIR BURDEN OF PROOF.

Petitioners filed their petition pursuant to the requirements of Title 10, U.C.A. 1953 as amended 1977, more specifically under Chapter 2, Part 5 thereof. Section 10-2-501 as amended requires:

"A majority of the real property owners in any territory within and lying on the borders of any incorporated municipality may file with the clerk of the district court of the county in which the territory lies a petition praying that the territory be disconnected therefrom. The petition shall:

- (1) Set forth reasons why the territory should be disconnected from the municipality; and
- (2) Be accompanied with map or plat of the territory sought to be disconnected; and
- (3) Designate not more than five persons who are empowered to act for the petitioners in the proceedings...."

Section 10-2-502 requires;

"If the district court finds that the petition

was signed by a majority of the registered voters of the territory concerned and that the allegations of the petition are true and that justice and equity require the territory or any part thereof to be disconnected from the municipality, it shall appoint three disinterested persons as commissioners...."

Appellants contend that these requirements are in the conjunctive form, i.e. disconnection requires petition signatures from "a majority of the real property owners" and "a majority of the registered voters."

The petitioners wholly failed to have any evidence whatsoever on the subject of a majority of registered voters having signed the petition. An April, 1979, affidavit was introduced into evidence which spoke only to April, 1979, voter registration. (Exhibit #15-P). Appellant's counsel timely moved at the conclusion of the petitioner's case for denial of the request for disconnection (R. 527) which after some discussion was denied (R. 527-539).

Draper City submits that the burden of proof to prove the allegations of the petition as submitted to the trial court rests with the petitioners and, while the standard of proof is by a preponderance of the evidence, this Court has held that courts should be reluctant to intrude into the prerogative of the legislative branch of government, including in the determination of boundaries.

In an earlier case this Court stated:

"The determination of the boundaries of a city and what may or may not be encompassed therein, including annexation or severance, is a legislative

function to be performed by the governing body of the city. The courts are and should be reluctant to intrude into the prerogative of the legislative branch of government, and will interfere with such action only if it plainly appears that it is so lacking in propriety and reason that it must be deemed capricious and arbitrary, or is in excess of the authority of the legislative body."

Bradshaw v. Beaver City, 27 Utah 2d 135, 493 P2d 643 (1972).

Although the factual situation encompassed in the above-mentioned case varies with the case before the Court, the principle of determining boundaries is well established and should be applicable to the case at hand wherein the court looks to disturb the boundaries of an existing city.

A more direct statement by this Court as to whom shall bear the burden of proof in a severance or disconnection case have been stated clearly and without ambiguity by this Court in In Re Chief Consolidated Mining Company et al., 71 Utah 430, 266 P 1044 (1928) where is stated at 1046:

"It should be kept in mind that the boundaries of Mammoth City were and are an existing fact. It is in evidence that its present boundaries were established at the time of incorporation of the municipality. The burden, therefore, is upon the petitioners to establish facts that warrant the court in decreeing a severance of the territory sought to be taken out of the city. By reason of the undisputed facts made to appear in this record, it is our judgment that the petitioners have not sustained that burden respecting the mining areas located in the northeastern part of the city decreed to be detached from the city be the judgment of the trial court."

This case was reaffirmed in Kennecott Copper Corp. v. City of Bingham Canyon, 18 Utah 2d 60, 415 P2d 209 (1966).

The trial court, however, apparently saw the issues in a different light. The court made findings regarding the issues presented in the petition, which are numbered and discussed:

A. "The territory which lies generally between the I-15 Freeway and the Jordan River has been historically identified with the settlement and area now known as Bluffdale."

The trial judge determined that this issue was generally supported by the evidence as to its truth and merit (R. 119, 124). Appellant contends that this is not a meritorious reason, even if true, to support a judgment granting disconnection. Criteria for disconnection are statutorily set out in Section 10-2-503:

"The court for the purposes of determining whether or not territory should be disconnected shall consider whether or not disconnection will leave the municipality with a residual area within its boundaries for which the cost, requirements, or other burdens of municipal services would materially increase over previous years or for which it would become economically or practically unreasonable to administer as a municipality. The court shall consider, among other factors, the effect of the disconnection on existing or projected streets or public ways, water mains and water services, sewer mains and sewer services, law enforcement, zoning and other municipal services and whether or not the disconnection will result in islands or unreasonably large or varied-shaped peninsular land masses within or projecting into the boundaries of the municipality from which the territory is to be disconnected."

Nor does the "historical identification" criterion exist in Utah case law. It is simply not a recognized factor in

criteria for determining whether or not a land area should be disconnected. Furthermore, the court in its rulings disallowed the use of historical identification (e.g., R.421), as not being material. Yet in the memorandum decision the court states that it was a factor in his determination for disconnection.

B. The Salt Lake County Commission, by way of petition duly filed and recorded has scheduled an election regarding the issue of incorporating Bluffdale and the petitioners herein desires to be identified with Bluffdale rather than Draper whether or not the election results in the incorporation of Bluffdale.

The court stated at R. 124 that the foregoing was not a meritorious factor in making a determination of whether or not to grant disconnection. In any event, there were several witnesses testify that, in effect, their desires to be identified with Bluffdale were merely that, i.e., desires. Children went to school outside of Bluffdale and personal relations of those living in the area seeking disconnection were not affected by the fact they were part of Draper (e.g., R.425, 429, 449, & 452).

C. The territory is, save for a few points of crossing, physically separated from Draper by the freeway.

The trial court stated that it found the foregoing generally supported by the evidence, both as to truth and

merit (R. 124). As with #A, supra, this is not a recognized

criterion supporting disconnection.

D. Draper is not capable of presently providing adequate fire and police service to the said territory.

The court state that the foregoing was generally supported by the evidence both as to its truth and merit (R. 124). The evidence was to the contrary in the view of Draper City. The area was, if anything, getting better police service with the additional Draper City force on duty. The Highway Patrol was mentioned in testimony as being frequently seen in the area, as were Sheriff's Department vehicles, just as had been the case prior to the incorporation of Draper (e.g., R. 425, 436). The Draper Police force has two full-time officers and "five or six" reserves (R. 337).

As for fire service, Draper has a Fire Department and equipment located in Draper. Should the Disconnection be upheld, Salt Lake County stations would be relied upon. The area subject to disconnection is located south of 13800 and 14600 South extending to the Utah County line. The nearest County fire station is located on 6400 S. and 13th E. Other County fire stations nearest the disconnection area are located in Kearns at 5420 S. 4400 West, a volunteer station in Herriman at 12400 South and about 4000 West, and a station in Taylorsville at about 1700 West and 4500 S. (R. 367-369). The testimony by petitioners' witness was to the effect that the County firemen were better equipped and

trained but that getting them to a fire in the disconnection area would be a race between them getting there and the fire being completely finished (R. 368).

In spite of the court's finding that the allegation was supported, the court stated that Draper had not then had a reasonable opportunity or time within which to establish adequate police and fire protection services to justify giving much weight to the testimony of witnesses regarding the inadequacy of the services to the date of trial, but nevertheless described it as a factor in passing upon whether "justice and equity" would require disconnection of the territory (R.128).

E. The governmental services offered by Draper to the territory are substantially less adequate than were experienced prior to incorporation.

The foregoing allegation was described by the court as not being a meritorious reason to support disconnection (R. 124).

F. Prior to the incorporation of Draper, the then constituted representatives of those in favor of the incorporation of Draper, some of whom were at the time of trial City Councilmen and Mayor, agreed to allow the territory in question to be disconnected.

The court found this allegation to not be meritorious to support a petition to disconnect (R. 124), but nevertheless seems to have relied on a belief in the truth of it in saying

that it "constitutes a moral commitment and is a tacit affirmation of the generally recognized appropriateness of the disconnection of the territory from Draper" (R.119). Appellant believes that the court erred in its position. The court referred to a "generally recognized appropriateness" of the disconnection; where recognized and by whom? The court has said that some of the petitioners' allegations are not appropriate but then proceeds to look to them as support for its decision.

The court made findings on other allegations which were numbered differently in the court's memorandum decision and which are numbered "[7]", "[8]", and "[9]" above at pp. 3-4. They are:

[7]. The prayed for disconnection, if granted, shall not leave the municipality of Draper with a residual area within its boundaries for which the cost, requirements or other burdens of municipal services will materially increase over previous years, or for which it would become economically or practically unreasonable to administer as a municipality.

The trial court found and held that the foregoing statutory criterion was met (R. 126) despite a lack of affirmative evidence pertaining thereto and a presence of uncontradicted evidence refuting the holding, namely pertaining to the water supply system and sewer requirements (see generally R. 619-658).

[8]. "That the prayed-for disconnection will not have the result of leaving or forming islands or unreasonably large or varied shaped peninsular land masses within or projecting into the boundaries of the municipality of Draper."

The court also found that the above statutory (§10-2-503) criteria allowing for disconnection were met (R. 127), again in spite of contrary and unopposed testimony. The disconnection clearly leaves a large peninsula on the east side of the I-15 Freeway (Ex. 49), which by virtue of topography, is not independent of the terrain on the west side of the freeway, especially regarding water, sewage and storm drainage and in increased costs of services to the Draper area (R. 628-637).

[9]. "That the prayed for disconnection will have no detrimental effect upon existing or projected streets of public ways, water mains, water services, sewer mains, sewer services, law enforcement, zoning or other municipal services rendered or proposed to be rendered by the municipality of Draper."

The court found that the effects of disconnection on the above factors are "minimal to say the least" because of its very limited existence as a municipality (R. 127). This ruling was contrary to the evidence produced. Draper employed planners to develop master plans for Draper, which included all or nearly all of the above-mentioned factors (R. 571-572; 578-592; 596-

Perhaps of critical import are the definitions of the terms "projected," "services rendered" and "[services] proposed to be rendered" and the weight the court gave to the terms as applied to the Draper services involved. Draper is presently rendering to the disconnection area police and fire protection, street maintenance, master planning, snow removal and garbage collection (R. 555). Water, sewer, and street construction are in the planning stages (R.662 ff.). These are all municipal "services rendered," "projected" or "proposed to be rendered." The court apparently chose to give little weight to these factors as well as the necessity of connecting the southern peninsula with the disconnect area for water and sewer services and for efficient planning, especially of the peninsula bench area which will be hard to service without those connections in the disconnection area (R. 630-635). In spite of the court's observation that Draper's limited time of existence as a municipality the fact remains that the topography of the area exists now and will continue to exist virtually unchanged and planning and services for Draper must necessarily take into account the topography of the disconnected area, with substantial planning, service and cost detriments should the decree of disconnection be upheld. Appellant believes that the practical aspects of service to the disconnect area and the southern part of

the city remaining un-disconnected out weigh the limited existence of the corporate city. The topography will remain and must be considered in the provision of services to these areas, a reality which remains regardless of sentiments on the issues of incorporation and disconnection.

Appellant respectfully contends that the petitioners failed to meet their burden of proof and that the weight of evidence favors denial of the decree of disconnection.

Point II: JUSTICE AND EQUITY REQUIRE DENIAL OF
THE PETITION FOR DISCONNECTION.

Judge Croft spoke correctly when he stated that the "justice and equity" consideration is closely akin to the more specifically set-out criteria regarding disconnection (R. 125). As to what constitutes "justice and equity" in disconnection actions this court said through Justice McDonough that

"In considering whether justice and equity warrant the order of severance from the city it is appropriate to examine the following questions: the extent of any special benefits the property in question will lose by disconnection; [and] conversely what will be the effect upon the city, including whether it is necessary for use in relation to its [present and future] needs. (Emphasis added) Kennecott Corporation v. City of Bingham Canyon, 18 Utah2d 60, 415 P2d 209 (1966) at 211.

In the Kennecott case and in two others this Court has consistently looked at the services rendered by the city to the area sought to be disconnected and whether or not the city was providing services or benefits to the citizens of that area and noat just trying to retain that area for taxation

purposes. Where the Court found that there were no significant services rendered with the only viable link between the city and the area was for taxation purposes, the Court granted disconnection. On the other hand, where services were provided and benefits were derived by the citizens, the court disallowed disconnection.

In Howard v. Town of North Salt Lake, 7 Utah 2d 278, 323 P2d 261 (1958) the evidence sustained a judgment for disconnecting lands belonging to the Plaintiff from the corporate limits of a town where the area sought to be disconnected would not be required for the future of the town and the territory did not receive any substantial benefits from the town. The Court found that the only connecting factor was the question of revenues from taxation. The Court in a five page opinion reviewed in detail the services rendered to the petitioners seeking disconnection. The Court found that there were no sidewalks curbs, gutters or road services rendered. No water or sewer services were furnished. No firefighting was provided and police enforcement was elementary at best. There was no garbage removal either. The Court in summarizing the benefits derived by the petitioners said:

"Upon consideration of all of the evidence in this proceeding the Court further finds that the territory sought to be disconnected from the town does not now and within the foreseeable future will [not] receive any substantial, direct and special benefit resulting from the exercise of the powers granted to the town." (Emphasis added) Howard at 265.

In another instance where a city had failed to provide

any substantial municipal services to the area, the Court reviewed the water, garbage, fire and police protection of an area and granted disconnection when it found that these services had not been provided by the city to the petitioner. In the matter of Disconnection of the Territory from Layton City, 27 Utah 2d 60, 415 P2d 209 (1972). These same criteria were used as far back as 1928 in the case of In re Chief Consolidated Mining Company, 71 Utah 430, 266 P 1044.

In the present case there are services already being supplied, more planned, and a need to integrate the southern peninsula of Draper with the disconnection area for sewer and water services. Additionally, there is the matter of the disconnection area constituting an island of Salt Lake County surrounded by Draper, Bluffdale and Utah lands (R. 493) and which the County would have a hard time servicing. Fire protection, for example, would come from 10 miles away from the disconnect area (supra, at pp. 10-11).

Draper City respectfully suggests that the standards set out in the referenced cases coupled with the other points and authorities submitted and taken with the evidence submitted at trial should lead this Court to the following conclusions:

1. The City of Draper does not claim jurisdiction over the disconnection area for the sole purposes of taxation or tax revenue.

2. Draper City, as soon as it was incorporated and functioning provided services to the area in question by

virtue of police protection, fire protection, street services, planning and zoning, snow removal and garbage collection. Plans have been made regarding the acquisition of water and the provision of water and sewer services to the area.

3. Should the petitioners be disconnected from Draper City the area would have a lower level of service in Salt Lake County.

4. Draper City would suffer and adverse impact on its provision and administration of water and sewer services in its southernmost and peninsular area. The disconnection area would still need to be serviced from Draper City in both water and sewer facilities.

5. Draper City has met the criteria of Kennecott, supra.

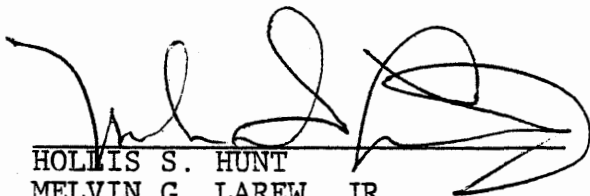
6. The petitioners herein allege, in effect, that by virtue of their majority as landowners and voters within the area, that the area should be disconnected. Those circumstances merely give standing to present the issue of disconnection to the district court and give no presumptions to them. The cited Court decisions testify that more is required. There is little doubt that the petitioners want to be out of Draper City boundaries but there is a greater issue of public policy of whether a small and isolated majority are to dictate to the greater community majority. The public policy regarding the matter was decided in ballot box in the incorporation balloting. The larger majority determined that Draper City should exist and that the boundary lines should include those individuals

petitioning for disconnection. If the petitioners are to be allowed to disconnect it must be done upon their proven allegations going far beyond the minimal qualifications required for the filing of a petition for disconnection. If not, no municipality could maintain its integrity as an entity regardless of size. A majority of the land owners and registered voters could on a gerrymandered basis pick and choose those areas which they wanted to be disconnected from a city. There would be no practical way for any city to maintain its boundaries if the only criteria for disconnection were the basis that a majority of the property owners and registered voters in a given area wanted out of a city.

CONCLUSION

Draper City should be maintained in its entirety and the petition for disconnection should be denied.

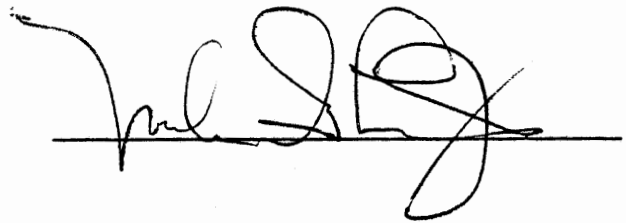
Respectfully submitted this 19 day of January, 1981



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CERTIFICATE OF DELIVERY

I hereby certify that I hand-delivered two copies of the Brief of Appellant to Dale F. Gardiner, MATHESON, JEPPSON & GARDINER, Attorneys for Petitioners, 419 East 1st South, Salt Lake City, Utah, this ²⁹19th day of January, 1981.

A handwritten signature in black ink, appearing to be "Paul S. [unclear]", is written over a horizontal line.