

2003

Washington County Water v. Keyston Conversions : Reply Brief

Utah Supreme Court

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IN THE UTAH SUPREME COURT

BOARD OF TRUSTEES OF WASHINGTON
COUNTY WATER CONSERVANCY
DISTRICT,

Petitioner/Appellee/Cross Appellant,

v.

KEYSTONE CONVERSIONS, L.L.C. a Utah
Limited Liability Company,

Respondent/Appellee/Cross Appellee.

Case No. 20030457-SC
010501616

KEYSTONE CONVERSIONS, L.L.C, a Utah
Limited Liability Company,

Plaintiff/Appellant/Cross Appellee,

v.

The WASHINGTON COUNTY WATER
CONSERVANCY DISTRICT, an independent
special district of Washington County,

Defendant/Appellee/Cross Appellant.

FILED
UTAH APPELLATE COURTS
MAR 30 2004

REPLY BRIEF OF APPELLEE

APPEAL FROM JUDGMENT OF THE FIFTH JUDICIAL DISTRICT COURT
OF WASHINGTON COUNTY, STATE OF UTAH.
HONORABLE G. RAND BEACHAM

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I. ARGUMENT

A. Introduction.

The “Response and Reply Brief” (“Keystone Brief”) filed by Keystone Conversions, L.L.C. (“Keystone”) relies almost entirely on allegations of fact which are unsupported by affidavits, oral testimony or deposition as required by Utah R. Civ. P. 43, and thus cannot be considered in this case. Furthermore, the factual assertions in the Keystone Brief are not supported by the record. Finally, Keystone’s alleged facts are irrelevant to the only issue properly raised before the trial court: whether the Water Availability Fee passed by the Board of Trustees of the Washington County Water Conservancy District (the “District”) pursuant to the “Final Rules and Regulations for Secondary Retail Water Service for the La Verkin Creek Area” (R. 7-24) (the “Rules”) violates Utah Code Ann. §§ 11-36-101 *et seq.* (the “Impact Fees Act”).¹

B. Keystone’s Response Relies upon Facts Without Adequate Evidentiary Support.

Keystone’s new recitation of “material facts” (Keystone Brief, pp. 3-5, in

¹App. Rule 24(c) requires that “Reply briefs shall be limited to answering any new matter set forth in the opposing brief.” In this case, the District must attempt to reply to those portions of Keystone’s brief that constitute a response to the District’s arguments in support of its cross-appeal. The District’s cross appeal challenged the trial court’s finding that the District had passed an impact fee, as a matter of law, and also insofar as the trial court had relied upon facts not in evidence in support of its decision. Keystone directly addresses the District’s arguments on cross-appeal in part A of its argument and also addresses those arguments in scattered assertions throughout the remainder of its brief.

particular ¶¶ 3, 4, 5, 6, 8 and 9) relies upon facts outside of the District’s Verified Petition (R. 1-30). Because these alleged facts are not supported by affidavit or oral or deposition testimony, they simply cannot be considered. This point has already been fully briefed by the District (Brief of Appellee, pp. 27-28) and will not be further discussed here.

C. Keystone Misconstrues the Record.

Keystone misconstrues the record it attempts to rely upon. Because these misinterpretations permeate the Keystone Brief, a reply addressing each and every instance where conclusions cannot be supported by the record Keystone cites would be very lengthy and of little value, given that these “nonevidentiary” allegations cannot properly be considered. This reply will focus on showing that the record does not support Keystone’s assertions regarding the facts to be considered in ruling on the District’s Verified Petition.

Contrary to Keystone’s assertion that the record “evinces that all parties, including the trial court, were confused as to the procedure required” (Keystone Brief, p. 14), the record (R. 357, T. 3:14 - 13:15²) shows that there was discussion about procedure and thereafter the trial court proceeded in accordance with Utah Code Ann. § 17A-2-1442, based upon the facts included with the Verified Petition.

²These portions of the transcript are attached to the Brief of Appellee as Addendum 3. Keystone is probably correct in asserting that the trial court began speaking at T. 8:14.

Indeed, Keystone acknowledged that the parties had agreed to limit the hearing to the issues raised by the fees imposed by the Rules attached to the Verified Petition:

MS. HJELLE: I think what we have before you today is our petition for a ruling on the initial case which was filed.... The parties have reached a stipulation that the hearing today would be limited to the issue of whether or not the fees which have been imposed pursuant to a rule that is attached to our petition ... is, in fact, an impact fee.... Keystone has raised some additional issues both in its answer to our petition and in its separate complaint which was consolidated.... And we have stipulated that those issues can be reserved for later, to be addressed later in the proceedings. So right now before the court is solely the issue of whether or not the fees that we have imposed meet the statutory definition of what is an impact fee. Fair statement?
MR. REECE: Fair, yeah....

R. 357, T. 3:14 - 4:13. The extraneous facts offered by Keystone in its Trial Memorandum and in succeeding filings with the trial court and this Court, as well as its ancillary issues regarding hypothetical scenarios, go far beyond those cognizable pursuant to the stipulation of the parties.

Keystone argues that the parties agreed to accept “proffers” of evidence at the hearing (Keystone Brief, p. 7). However, the record contains no discussion regarding proffers of evidence. Rather, the record supports the conclusion that the trial court proceeded with the hearing solely on the basis of the Verified Petition and attached exhibits.

THE COURT: Okay. So you planned then to present oral argument or any evidence also? Or is it really the evidence

not in dispute, it's a question of interpretation?

MS. HJELLE: I don't think the evidence is in dispute.... But I think this could be ruled on today based on the material facts that are before you in the petition and the exhibits.

THE COURT: Okay. All right. Let's go ahead with your presentation then.

R. 357, T. 12: 19-22, 13:11-15.

There is no basis in the record to conclude that arguments of counsel during the hearing were expected to be considered as proffers of evidence and accepted as such.

D. Facts Outside of the Verified Petition and Attached Exhibits Are Irrelevant to this Case.

This case remains a simple one, requiring only an analysis of the facts set forth in the District's Verified Petition and a review of its Rules to determine whether they impose an impact fee. The trial court found that the Rules impose an impact fee, based upon its conclusion that the District would be obligated to replace any capacity allocated out of its irrigation water transmission system (R. 193-194).³ The law governing the District is clear that no such obligation is imposed. Utah Code Ann. §§ 17A-2-1401 *et seq.* Without that perceived obligation, there is no basis to conclude that the Rules

³In other words, when the District offers to allow connections to its infrastructure, its inspection and approval of those additions constitutes approval of a "development activity" as defined by Utah Code Ann. § 11-36-102(3), based on the assumption that the District is mandated to replace the capacity so allocated.

impose an impact fee. This matter can be determined based upon the legitimate facts before the Court as a matter of law.

There is no need to remand for further evidence. The relevant and necessary facts are set forth in the Verified Petition and its exhibits. Utah Code Ann. § 17A-2-1442 requires that the “petition shall set forth the facts whereon the validity of such power, assessment, act, proceeding or contract is founded and shall be verified by the chair of the board” precisely so that the trial court can rule based on the Verified Petition.

The minimum duty of those opposing the Verified Petition under the applicable rules of civil procedure was to present opposing facts by affidavit. The proceeding before the trial court in this case is most similar to a motion for summary judgment. The District submitted facts in a verified petition, the equivalent of an affidavit. If Keystone desired to put those facts in dispute, it had a duty to present opposing affidavits. Having failed to do so, Keystone now attempts to create a haze of confusion over what is really a simple examination of the District’s Rules.

II. CONCLUSION

Discussion of extraneous facts is unnecessary to conclude this case. The Court can rule on the District’s Verified Petition as a matter of law. Therefore, the District respectfully requests this Court to reverse the decision of the trial court and to find that

the fee imposed by the District's Rules is not an impact fee and, further, to deny
Keystone's request for attorneys' fees.

DATED this 17th day of March, 2004.

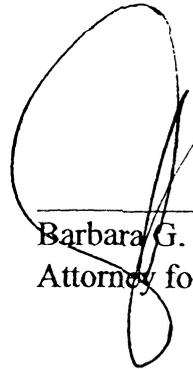


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CERTIFICATE OF MAILING

I hereby certify that on this 17th day of March, 2004, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **REPLY BRIEF OF APPELLEE** to the following:

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