1980

Dan Siegel v. Salt Lake County Cottonwood Sanitary District : Brief of Plaintiff-Appellant

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

---oo0oo---

DAN SIEGEL,

Plaintiff-Appellant,

vs.

SALT LAKE COUNTY COTTONWOOD SANITARY DISTRICT,

Defendant-Respondent.

Case No.

BRIEF OF PLAINTIFF-APPELLANT

Frank J.
200
77
Salt Lake

Attorney

Fred L. Finlinson
FINLINSON & FINLINSON
721 Kearns Building
Salt Lake City, Utah 84101

Attorneys for Defendant-Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

Cases

Statutes Cited

IN THE SUPREME COURT OF THE STATE OF UTAH

---ooo0ooo---

DAN SIEGEL, Plaintiff-Appellant, vs. SALT LAKE COUNTY COTTONWOOD SANITARY DISTRICT, Defendant-Respondent.	)	BRIEF OF PLAINTIFF-APPELLANT Case No. 17181

NATURE OF THE CASE

Defendant-Respondent Sewer District ("District") installed a sewer line across land owned by Plaintiff-Appellant ("Siegel") while negotiations with Siegel for an easement were in progress but without first obtaining an easement or an order of occupancy and without notice to Siegel.

Siegel commenced this action to compel the District to remove its line and for trespass damages. The proceedings was converted to a condemnation action by the District's Answer. The case proceeded to trial on the issues of just compensation and damages only.

DISPOSITION BELOW

After non-jury trial, the Court decreed that the District had acquired an easement by condemnation in a strip of land ten (10) feet on each side of the sewer's center line, awarded Siegel no damages for trespass, and awarded Siegel compensation for the take using a formula which Siegel contends to violate

Utah's eminent domain statutes.

STATEMENT OF FACTS

A. Events Before Filing of Complaint.

During a period of about four days beginning on November 19, 1976, the District installed a sewer line across an approximately 17-acre parcel of Siegel's land (the "Tract") located near 10th East and 70th South in Salt Lake County (R-106, Testimony of Roscoe Godfrey, the District's manager). The Tract and approximate route of the sewer line are delineated on Exhibit P-1. The District had not, at the time of sewer installation, obtained a grant of easement from Siegel, and it had not obtained or even made application for an order of occupancy (R-107, Godfrey testimony).

Not only did the District enter the Tract without notice to Siegel, its manager failed to mention the entry during a telephone conversation with Siegel on the day it occurred. On that very day, Godfrey had a telephone conversation with Siegel during which the terms of a possible easement were discussed (R-144, Godfrey testimony). During his testimony at trial, Godfrey was asked to recall all that was said in that conversation. He was certainly then aware of Siegel's complaint that the District's entry was surreptitious. According to his testimony, he did not tell Siegel during the November 19 conversation that, while they were conversing, the District was already occupying the Tract and laying the sewer line across it. The record reveals no notice to Siegel, written or oral. Siegel learned of the

installation months later from a resident of the Tract's neighborhood (R-38,39; 97,98). He then wrote the District and asked for confirmation (Exhibit P-5).

The District has claimed some kind of oral permission to make the sewer installation across the Tract. Obviously, an oral permission would not justify the District's occupation, and the District was aware that it would not (R-20). Without regard to statute of fraud issues, however, it is clear from the evidence that the District had not, when it laid the sewer through the Tract, satisfied the conditions upon which Siegel had expressed willingness to continue negotiations. By the District's own admission, Siegel insisted that the District at least execute a written commitment to relocate the line if the freeway off-ramp (projected for construction through the Tract) was located along a different route (R-144). Godfrey at some time prepared such a commitment (Exhibit P-6) but it was never executed, and it was never mailed, delivered or even shown to Siegel until months after the installation was complete (R-99, Siegel's testimony; R-144, Godfrey's testimony) and Siegel began to complain.

Siegel testified that he imposed at least two conditions as prerequisites to his granting an easement, and neither condition was ever met (R-96, 97). He was astonished and incensed that the District had made the installation without authority.

There is little question about the District's motivation for taking a totalitarian attitude when Siegel was reluctant to grant an easement. It had entered into a contract with Hermes Associates (Exhibit P-8) under which it promised, for a $10,000.00 consideration, to "endeavor to have (the line) completed" to serve a Hermes shopping center "on or before August 1, 1976". The District was already three-and-a-half months behind that schedule when it entered the Tract. Whatever its motivation, the District entered and occupied Siegel's land without right and without notice to Siegel.

B. Procedural Facts.

Despite Siegel's expression of concern about the District's tortious entry upon his property, the District failed to make any attempt to institute eminent domain proceedings. On August 22, 1977, Siegel filed his Complaint (R-2) seeking ejectment and damages. On November 9, 1977, almost three months later, the District filed the first pleading of any kind in which a right of eminent domain was asserted (R, 6-12). That pleading, by center line description, described the easement sought to be condemned.

On December 30, 1977 Siegel filed his Reply in which he denied the District's power to condemn the easement, alleged that the line location sought to be condemned was not compatible with the greatest public good and the least private injury, and denied that the easement was needed, in the statutory

context, by the District. At no time did Siegel claim right to compensation for severance.

On February 23, 1978, Siegel entered into an option agreement with Prowswood, Inc. contemplating the sale of the Tract but reserving all rights in his cause of action against the District if the sale was consummated (Exhibit P-2). On April 24, 1978, Siegel entered his consent to the taking of the easement subject to a determination of just compensation (R-47). On June 5, 1978, Prowswood's option having been exercised, Siegel conveyed the Tract to Prowswood (Exhibit D-3).

On June 4, 1980, after trial on April 2, Judge Sawaya entered his Findings of Fact, Conclusions of Law and Judgment (R, 69-72). He ruled (1) that Siegel was entitled to no damages for the District's tortious entry upon and occupation of his land, (2) that the District had acquired by condemnation an easement in .33 acres of the Tract, (3) that the value of the .33 acres was $16,666.00 at the time of the take, (4) that the rights taken represented one-half the value of the .33 acres, (5) that the sewer installation had imparted a $4,000.00 value to the portions of the Tract not subjected to the easement, and (6) that Siegel was entitled to receive from the District, as just compensation for the take, one-half of $16,666.00, or $8,333.00, less the $4,000.00 enhancement. The judgment provided for no interest on the total award of $4,333.00.

RELIEF SOUGHT ON APPEAL

Siegel asks this Court to remand the case to the District Court and direct that the Judgment be amended (1) to award $8,333.00 as just compensation for the take for the reason that the offset for enhancement is inconsistent with the applicable statutes, (2) to award Siegel interest on the amount of the award from November 19, 1976, at 8% per annum, and (3) to award at least nominal damages for trespass.

ARGUMENT

Point I

THE TRIAL COURT IMPROPERLY REDUCED THE CONDEMNATION AWARD BY THE AMOUNT OF BENEFIT TO SIEGEL'S REMAINING PROPERTY ATTRIBUTED BY THE COURT TO THE PRESENCE OF THE SEWER.

Judge Sawaya's Findings of Fact and Conclusions of Law leave no question about the formula by which he calculated the award. He found the value of the .33 acre strip subjected to the easement to be $16,666.00. He found the easement to constitute one-half the value of the strip. He consequently found just compensation for the take to be $8,333.00. There is evidence in the record to support those findings, and Siegel cannot take effective exception to them.

When the trial court granted the District an offset for enhancement to Siegel's remaining property attributed to the presence of the sewer, the Court acted without statutory authority and in disregard of explicit statutory direction.

The statute which specifically addresses the assessment

of compensation in eminent domain cases is:

> 78-34-10.* Compensation and damages--How assessed. The court, jury or referee must hear such legal evidence as may be offered by any of the parties to the proceedings, and thereupon must ascertain and assess:
>
> (1) the value of the property sought to be condemned and all improvements thereon appertaining to the realty, and of each and every separate estate or interest therein; and if it consists of different parcels, the value of each parcel and of each estate or interest therein shall be separately assessed.
>
> (2) If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff.
>
> (3) If the property, though no part thereof is taken, will be damaged by the construction of the proposed improvement, the amount of such damages.
>
> (4) Separately, how much the portion not sought to be condemned, and each estate or interest therein, will be benefited, if at all, by the construction of the improvement proposed by the plaintiff. If the benefit shall be equal to the damages assessed under subdivision (2) of this section, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value of the portion taken.
>
> (5) As far as practicable compensation must be assessed for each source of damages separately.

Two separate elements of compensation are provided for: 1) compensation for the value of the property taken, and 2) additional

---

*All statutory references are to Utah Code Annotated, 1953, as amended.

"severance damages" where the property taken constitutes a portion of a larger parcel owned by the condemnee. Under no circumstances may a condemnee be awarded less than the value of the property actually taken. Benefit to remaining land of the condemnee becomes significant only if severance damage is claimed. In that event, the enhancement value is deducted from the severance damage. Even if the benefit determined under subparagraph (4) is greater than the severance damage determined under subparagraph (2), however, the owner must still be awarded the "value of the portion taken".

The statutory language leaves no room for conflicting views as to the legislative intent on this issue. Even if there were some ambiguity in the statute, there is none in this Court's pronouncements on the subject. The issue was last raised in Automotive Products Corp. v. Provo City, 502 P.2d 568, 28 Ut.2d 358 (1972). In that case, Provo City constructed a street upon Automotive Products' land without condemnation relying on a right by implied dedication. The trial court found there had been no such dedication, and the city paid a stipulated value for the rights taken.* The city moved to reopen and adduce enhancement evidence. In a unanimous opinion, this Court stated:

> Inasmuch as no severance damages were awarded by the court, any benefits to the remaining property would have no application. The rule that benefits can only be offset against severance damages is set forth in 78-34-10(2), (4), UCA, 1953.

*In Automotive Products, as in the case at bar, the rights taken were a mere easement, not a fee. The applicable statute is 78-34-2, UCA, 1953.

The doctrine of Automotive Products reflects the majority if not the universal judicial view (see City of Baldwin Park v. Stockus, 503 P.2d 1033, 105 Cal.Rptr. 325, 1972).

Point II

THE COURT ERRED IN FAILING TO AWARD INTEREST FROM NOVEMBER 19, 1976, THE DATE THE DISTRICT TOOK ACTUAL POSSESSION OF THE PROPERTY.

The Judgment makes no provision at all for interest, and Siegel would be entitled to collect interest on the judgment only from the date of its entry. Utah's eminent domain statutes are specific about a condemnee's right to interest from the date of actual taking of possession by the condemnor or the order of occupancy, whichever is earlier. The relevant section is 78-34-9, which reads in pertinent part, as follows:

> ...The rights of just compensation for the land so taken or damaged shall vest in the parties entitled thereto, and said compensation shall be ascertained and awarded as provided in section 78-34-10 and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 8% per annum on the amount finally awarded as the value of the property and damages, from the date of taking actual possession thereof by the plaintiff or order of occupancy, whichever is earlier,...

The statute further provides that interest shall not be allowed on so much of the award as shall have been paid into court. The District paid nothing to the Court before the Judgment was entered. In fact, the District made no appraisal of the property sought to be condemned, no deposit of money with the Court, and no effort to satisfy the

obligations imposed on condemning agencies by the section.

There is absolutely no conflict in the evidence about the date of original entry and occupancy by the District. The evidence came entirely from the District because Siegel was not given notice and was not aware of the installation until months after its completion. The date was November 19, 1976, and it is from that date that Siegel is entitled to interest on the award.

Point III

AN AWARD OF DAMAGES FOR WRONGFUL ENTRY AND OCCUPATION IS APPROPRIATE

Without question, the District's entry upon the Tract was unauthorized and tortious. A political entity presumably acts for the public good and without malice. In this case, however, the District displayed an arrogance and general disregard of private property rights which call for some official rebuke.

If agencies with power of condemnation are encouraged to ignore the eminent domain statutes and are assured they will suffer no disadvantage if they take private property without notice or ceremony, serious erosion of freedoms must result. Punitive damages are not awarded against political subdivisions, but it is entirely appropriate for the courts to award damages for trespass.

Siegel adduced no evidence of actual damage except that he was obliged to institute the action which precipitated

the District's assertion of right to condemn. We submit, however, that the circumstances compel an award of at least nominal damages.

CONCLUSION

Siegel submits that the trial court has misread the statutes and has shown less than appropriate concern for the protection of rights which are constitutionally guaranteed to citizens in their confrontations with government. The relief Siegel seeks on this appeal is the minimum relief for which the circumstances call. The District's disdain for the state and federal constitutions as implemented by our eminent domain statutes should not be judicially condoned.

Respectfully submitted,

Frank J. Allen
Attorney for Plaintiff-Appellant

CERTIFICATE OF MAILING

I hereby certify that on this 15th day of October, 1980, true and correct copies of the above and foregoing Brief of Plaintiff-Appellant were mailed, postage prepaid, to Mr. Fred L. Finlinson, Attorney for Defendant-Respondent, 721 Kearns Building, Salt Lake City, Utah 84101.

Pamela Blomquist