1956

Clifford J. Madsen et al v. Davis County et al : Brief of Respondent

Utah Supreme Court

Milton J. Hess; J. Duffy Palmer; Attorneys for Defendant;

IN THE SUPREME COURT OF THE STATE OF UTAH

CLIFFORD J. MADSEN, ELVA E. MADSEN, EUGENE JOHNSON, FREYA JOHNSON, JACK JOHNSON, ESTHER JOHNSON, ALBERT L. ANDERSON, JANIS B. ANDERSON, PERRY L. EEN, LOLA R. EEN, ERMA SMITH and LEWIS W. SMITH,

Plaintiffs,

and

CHARLES W. GIBBS COMPANY, a corporation; MARY GODBE GIBBS; LUANA SALISBURY; O. CLARE BREINHOLT; FLORA P. MASON; and ANNIE M. TAGGART,

Plaintiffs and Appellants,

vs.

DAVIS COUNTY; EUGENE TOLMAN, THOMAS AMBY BRIGGS, and CLYDE B. ADAMS, individually and as members of the Board of Commissioners of Davis County; THE BOARD OF TRUSTEES OF THE SOUTH DAVIS WATER IMPROVEMENT DISTRICT; FRANCIS T. MAYO, JOSEPH H. WOOD, and ALMOREAN BAGLEY,

Defendants and Respondents.

Case No. 8482

BRIEF OF RESPONDENT, DAVIS COUNTY

MILTON J. HESS
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STATEMENT OF FACTS

The Respondent, Davis County, agrees with the facts as stated by Appellants with the following exceptions:

1. Lines 4-6, page 2 of the Statement of Facts in Appellants' Brief fails to mention that plaintiff also brought this action for the purpose of obtaining a declaratory judgment that under Title 17, Section 6, Utah Code Annotated, 1953, the Board of County Commissioners of Davis County, Utah, with the consent of the Board of Trustees of the South Davis Water Improvement District, upon proper notice and hearing in accordance with law and procedure established by 17-6-3 U.C.A. 1953, may by resolution exclude plaintiffs' property from South Davis Water Improvement District.

2. Line 10, page 2 of the Statement of Facts in Appellants' Brief states that the Commissioners of Davis County were joined as parties defendant. It is true that Davis County was joined and that the Commissioners were named in the complaint, but never at any time were they served with Summons and the Davis County Commissioners never have been and are not now parties to this action.

STATEMENT OF POINTS

The decision of the lower court should be affirmed because the complaint fails to state a claim upon which relief can be granted under the provisions of the Utah Declaratory Judgments Act as against Respondent, Davis County.

ARGUMENT

I.

THE DECISION OF THE LOWER COURT SHOULD BE AFFIRMED BECAUSE THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE

GRANTED UNDER THE PROVISIONS OF THE UTAH DECLARATORY JUDGMENTS ACT AS AGAINST RESPONDENT, DAVIS COUNTY.

In the second paragraph of the prayer of Plaintiffs' complaint, Plaintiffs seek a declaratory judgment by the court that under Title 17, Chapter 6, Utah Code Annotated, 1953, the Board of County Commissioners of Davis County, with the consent of the Board of Trustees of South Davis Water Improvement District upon proper notice of hearing in accordance with law and procedures established by 17-6-3 U. C. A. 1953, may by resolution exclude Plaintiffs' property from South Davis Water Improvement District. This would appear to be the only relief sought by Plaintiffs in the prayer of their complaint as against Respondent, Davis County.

Under the provisions of Title 17, Chapter 6, U. C. A. 1953, the Board of County Commissioners are granted certain powers and authority in regard to the creation of such an improvement district. Section 17-6-3 provides, among other things, that in the County's resolution creating such a district, the Board of Commissioners may change the boundary lines "as may be considered by the Board to be equitable and necessary including changes in the boundaries thereof to assure that the District shall contain no property which will not be benefited by the proposed improvements." This section further provides that any property owner who shall have filed a written protest as to his property being included in the district may within 30 days after the adoption of the resolution establishing such district, apply to the District Court for a writ of review of the actions of the Board of County Commissioners. This is the only authority the Board of County Commissioners has in regard to varying or changing the boundary lines of an improvement district. Plaintiffs concede (page 9) that they are unable to

bring a declaratory judgment action under this section after the lapse of this statutory period, to determine whether the County Commission correctly decided the question of benefit, or to determine whether County Commission followed statutory procedure in establishing this district, and thus they are not attempting to invoke the specific power of County Commission to change boundary lines under this section.

Title 17, Chapter 6, Section 20, U. C. A. 1953, sets up a procedure for the dissolution of an improvement district by petition of the Board of Trustees of the District to the District Court. In the dissolution proceeding neither the County nor the Board of County Commissioners has any responsibility or authority and it is not even a requisite of the statute that they or either of them be served with notice of the hearing.

Thus, once an improvement district is organized under the statute and trustees are appointed other than the County Commissioners, the Board of County Commissioners nor the County has any further control or authority in relation to the District. The District thus having been created becomes a quasi-municipal entity with its own officers, power to levy taxes and various other powers and functions of a political subdivision. This court has so held in the case of Tygeson vs. Magna Water Company, 226 Pacific 2d at page 127, as follows:

> "In all of these acts once the initiating agencies have acted and a district has been formed, their functions cease and *the governing body of the district assumes full control of the district and its properties.* This court has held that the Metropolitan Water Districts and the Water Conservancy Districts organized under those Acts were separate and distinct arms of the government and not special commissions, boards,

private corporations or associations within the purview of the constitutional prohibition. See Lehi City v. Meiling, City Recorder, 87 Utah 237, 48 P. 2d 530 and Patterick v. Carbon Water Conservancy District, 106 Utah 55, 145 P. 2d 503. The fact that proceedings to initiate an improvement district is left to the county commissioners of the Counties in which the Districts can be formed might lend some support to an argument that a district would not be a separate and distinct arm of the government but merely be an arm of a county for the purpose of carrying out a county function, were it not for the fact *that once the District is actually organized the county has no further connection with the District except the ministerial one of levying any taxes certified to it by the Board of Trustees,* a duty of the county which is similar to that performed by it for Boards of Education under the provision of Sec. 75-12-10 U.C.A. 1943. Once the District is formed the Board of Trustees have full control and supervision of the property and the conduct of affairs of the District. The District must have its own seal and its Board of Trustees may sue and be sued. Also the taxes which are certified by the Board to the county commissioners can be levied only on property within the District. If a District were merely an arm of the county then the general taxes levied whether used for benefits inuring to the District or not should be levied against all residents of the county rather than on those only within the District."

(Emphasis ours)

For these reasons as against the Respondent, Davis County, the Plaintiffs in their complaint have failed to state a claim upon which relief can be granted. This would be true regardless of the allegations set forth by the plaintiff or the proof adduced in support thereof, since under any allegations of fact, County would have no authority to disconnect terri-

tory from such an improvement district. Therefore, the District Court properly dismissed the Plaintiffs' complaint as failing to state a cause of action as against Davis County.

For the reasons stated above, Appellants' Arguments II and III have no direct application to position of Respondent, Davis County. These arguments are being answered in the Brief of Respondents, Board of Trustees of the South Davis Water Improvement District.

Respectfully submitted,

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