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John W. Spencer v. L. C. Crowther : Brief of Plaintiff and Appellant

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

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JOHN W. SPENCER,
Plaintiff and Appellant,

vs.

L. C. CROWTHER, et al,
Defendant and Respondent,

Clerk, Supreme Court

Case No. 8538

BRIEF OF PLAINTIFF AND APPELLANT

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BRIEF OF PLAINTIFF AND APPELLANT

STATEMENT OF FACTS

Appellant was a member of the Salt Lake City Police Department from October, 1938, to and including June 1, 1951 (R. 68). On the latter date he was discharged by order of the Chief of Police, L. C. Crowther. The reason assigned for appellant's removal from the police payroll was that he was not at that time a bona fide resident of Salt Lake City living with his family within the City. (Def's. Exh. 11).

Police officers of Salt Lake City had been

given notice dated April 24, 1950, that after thirty days from that date every officer not living within Salt Lake City would be suspended, (Def's. Exh. 8). At the time of the issuance of this notice appellant was residing in Salt Lake County (R. 69).

After receiving notice, appellant obtained a room within Salt Lake City at 364 East Sixth South (R. 74). Appellant subsequently maintained a room with his brother at the Fairmont Appartments in Salt Lake City (R. 75) and later maintained a room at the home of Mrs. Irma Finch at 823 Elm Avenue, Salt Lake City (R. 76). Appellant maintained a room at the last address until two weeks after his discharge (R. 76).

It is undisputed that during the time he maintained these rooms his wife and son continued to reside at 2111 Walker's Lane in Salt Lake County (R. 77). After appellant's discharge he moved back to 2111 Walker's Lane, where he remained until July 1, 1952, when he moved to 2731 Fillmore Street, Salt Lake City, which was his address and residence at the time of trial (R. 78).

Within five days of his discharge appellant appealed to the Civil Service Commission of Salt Lake City, and in November of 1951 he was advised by letter from the Civil Service Commission that the Commission would not hear the appeal because it had no jurisdiction (Plntf's Exh. 12).

Thereafter appellant filed this action, which was tried March 27, 1956, and he appeals to this Court from the adverse judgment entered at the trial.

STATEMENT OF POINTS

POINT 1.

THE TRIAL COURT ERRED IN FINDING AND CONCLUDING THAT APPELLANT WAS NOT A RESIDENT OF SALT LAKE CITY AT THE TIME OF HIS REMOVAL FROM THE POLICE DEPARTMENT.

POINT 2.

THE COURT ERRED IN HIS CONCLUSION OF LAW THAT APPELLANT WAS LAWFULLY DISMISSED FROM THE POLICE DEPARTMENT.

ARGUMENT

The two points here relied upon by the appellant are actually concomitant parts of the error alleged to have been committed by the trial judge and will be here argued together.

This appeal is entirely a matter of analyzing and applying statutory sections to the facts introduced at the trial. Two sections of the statutes should be examined. The first is Sec. 10-6-6, U.C.A. 1953, which reads as follows:

“Eligibility of Officers: All elective officers of cities and of towns shall be chosen by the qualified voters of their respective municipalities. No person shall be eligible to any office, elective or appointive, who is not a qualified elector of the city or town, nor shall

any person be eligible to any office who is a defaulter to the corporation.”

The other is Sec. 20-2-13 and reads as follows:

“A ‘Resident’ Defined: A resident within the meaning of this title is a person who has resided or will have resided continuously within this state for one year, and in the county four months, and in the precinct sixty days, next preceding the day of the next ensuing election.”

The whole question to be decided is whether appellant was or was not a resident of Salt Lake City within the meaning of these sections.

Appellant of course contends that he was, and the only evidence presented leads necessarily to such a finding and conclusion and the trial judge was in error when he found otherwise.

Appellant’s testimony shows he was living in Salt Lake County when advised by the Chief of Police that he would have to move into Salt Lake City (R. 69). What he did then is clear. Appellant made arrangements to move and establish his residence in Salt Lake City.

Appellant consulted the corporation counsel of Salt Lake City about the requirements for establishing residence in Salt Lake City (R. 71). He was told, and rightly so, as a result of this conversation that place of residence is a matter of intention and may be established upon that basis and without any

necessary reference to the time involved. It is therefore appellant's contention that he moved into Salt Lake City with the intent to establish his residence therein and that he did so.

The next consideration is whether appellant complied with that provision of Sec. 10-6-6 of U.C.A. 1953, which required him to be a qualified elector of the City of Salt Lake.

The record is clear that the appellant was registered in voting district No. 68 in Salt Lake City during the years 1942, 1944, 1946 and 1948 (Plntf's. Exh. 1, R. 75-76). Appellant changed his registration in 1950 to Salt Lake City voting District No. 224, which includes the Fairmont Apartments where he was living at that time (Plntf's Exh. 1, R. 75-76). His testimony is that he voted in District No. 224 in 1950 (R. 76).

It seems apparent, therefore, that he was in compliance with the requirements of Sec. 10-6-6 above referred to.

It should further be noted that Chief Odes B. Record made an investigation to determine where the appellant's residence was (R. 131-132). The investigation was conducted after the discharge of the appellant and was cursory and incomplete.

On cross-examination of Chief Record the following questions and answers about his investigation resulted (R. 132-133-134) :

"BY MR. ALLEN:

Q. Chief, you have testified about an investigation that you and Captain Haight made. Was all of the investigation you made on behalf of the Chief conducted after June 1st, 1951?

A. Yes, it was.

Q. And you conducted your own investigation with respect to his residence, or where he was living, prior to that time?

A. No, I didn't.

Q. So to your knowledge you don't have information with respect to where he was living before the Chief asked you to conduct that investigation?

A. No.

Q. Did you do anything out on Walker Lane except observe the mail box?

A. We went out and checked out there and there was just his name on the mail box. We also checked the school to find out if his boy was going to school at the Cottonwood School.

Q. At that time, did you talk with anybody at the place on Walker Lane?

A. No.

Q. And you conducted no investigation in Salt Lake at the Fairmont Apartments?

A. Yes.

Q. What did you do at the Fairmont Apartments?

A. We talked to a Mr. Smith, who I believe he said was the manager of the apartments, and asked him about Mr. Spencer, John Spencer, and he said he had a Clyde Spencer living there and knew of no other Spencer living in the apartment.

Q. You didn't ever go to Clyde Spencer's apartment, did you?

A. He wasn't there when we made the investigation. He moved from there prior to that time.

Q. Did you ever talk with Mrs. Finch out on Elm Avenue?

A. Yes.

Q. When did you talk with her?

A. The same day. We made all three of them the same day, right after the first of June, the first week of June, 1951.

Q. Did you ascertain from talking with her that he had been living there for some time?

A. She told us he lived there and had a bedroom. She took us back and showed us the bedroom he was supposed to be renting from her.

Q. Did you talk with any of the neighbors out there on Elm Avenue?

A. It seems to me like we did talk to some lady out watering her lawn and I think she said, "I don't pay any attention to my neighbors who come and go, 'but I don't know who it was but it was some lady watering the lawn next door east.'"

Q. In connection with the investigation you were requested to make, Chief, did you ever talk to the Plaintiff, John Spencer, about it?

A. I don't believe I ever did."

It seems obvious that this investigation contributed absolutely nothing as to the residence status of the appellant before he was discharged.

From the foregoing the plaintiff contends that Finding No. 8 (R. 147) was clearly against the uncontroverted testimony that appellant was in compliance with the law, was a resident of Salt Lake City, registered and voted. The Trial Court found in Finding No. 8 (R. 147) :

"The court finds from the evidence presented to it at the trial of the issues involved herein, that plaintiff was not on May 29, 1951, or on June 1, 1951, nor had he been for several years prior thereto, and was not thereafter during the remainder of 1951, a qualified resident and elector of Salt Lake City, but during all of said time plaintiff was a resident of Salt Lake County, outside and beyond the limits and boundaries of Salt Lake City and so was ineligible to hold office as a police officer of Salt Lake City."

This is in clear contradiction of appellants Exhibit 1 which showed appellant was a registered voter in 1942, 1944, 1946, 1948 and 1950 and which was admitted by stipulation of counsel for the respondent (R. 75-76).

It seems equally clear that the Trial Court's conclusion of law No. 2 (R. 147) "that plaintiff was lawfully dismissed from the Police Department of Salt Lake City" based upon the charge that he was not a resident of Salt Lake City is erroneous and wholly unsupported by the evidence.

The appellant therefore submits that the judgment of the Trial Court should be reversed and the respondents and their agents be required and ordered to reinstate appellant to the use and enjoyment of his office as a police officer of Salt Lake City.

Respectfully submitted,

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