

1982

John E. Merrihew v. Salt Lake County et al : Reply Brief

Utah Supreme Court

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Recommended Citation

Reply Brief, *Merrihew v. Salt Lake County*, No. 18070 (Utah Supreme Court, 1982).

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IN THE SUPREME COURT OF THE STATE OF UTAH

JOHN E. MERRIHEW,

Plaintiff-Appellant,

-vs-

SALT LAKE COUNTY PLANNING AND
ZONING COMMISSION, LELAND S.
SWANER, BUDD M. RICH, GARY D.
PALMER, DALE V. JONES, THOMAS
BOWEN, VELMA STEELE, WILLIAM
MARSH, CLAYNE RICKS & RAY NOBLE,

Defendants-Respondents.

Case No. 18070

REPLY BRIEF

ON APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH

HONORABLE G. HAL TAYLOR
Former District Judge

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FILED

JUN 29 1982

Clerk, Supreme Court, Utah

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Defendants-Respondents.)

Case No. 18070

REPLY BRIEF

Plaintiff-Appellant John E. Merrihew replies to the
Brief of Defendants-Respondents as follows:

PRELIMINARY COMMENTS

Because the trial court records seems to indicate that the entry of Summary Judgment was not founded upon the failure of plaintiff to exhaust his administrative remedies, the plaintiff-appellant did not discuss this point extensively in his Appeal Brief. Since the defendants-respondents seem to rely on this issue as their primary point on appeal, the plaintiff feels it necessary to file this Reply Brief for the sole purpose of elaborating on questions relating to the exhaustion of administrative remedies.

ARGUMENT

POINT NO. I

THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE
REMEDIES DOES NOT APPLY TO THE CASE NOW
BEFORE THE COURT.

Plaintiff reminds the court that this case arises out of an unusual set of facts. Plaintiff's Application for a zoning change was denied by the Salt Lake County Planning & Zoning Commission. On statutory appeal, the Board of County Commissioners granted the zoning change, thereby overruling the previous decision of the Planning Commission. No appeal was taken from that decision. A Building Permit was granted to the plaintiff and arrangements were made to construct a building on the newly-zoned premises. Before construction was started, the Building Permit was revoked and the approval of the zoning change was withdrawn by the Planning Commission on grounds that the legal description in plaintiff's zoning application was not accurate. Suit was filed to obtain mandamus relief from the actions of the Salt Lake County Planning & Zoning Commission.

The defendants have extensively argued the issue of exhaustion of administrative remedies in their Appeal Brief. Their emphasis on this issue makes it necessary for plaintiff to file this Reply Brief to discuss the concept of exhaustion of administrative remedies.

Rule 65B(4), Utah Rules of Civil Procedure, permits plaintiff to seek relief from the arbitrary and capricious actions of the Salt Lake County Planning & Zoning Commission. Applicable portions of that rule read as follows:

"(b) Grounds for Relief. Appropriate relief may be granted:
... (4) Where the relief sought is to arrest the proceedings of any tribunal, corporation, board or person, whether exercising functions judicial or ministerial, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person."

The Salt Lake County Planning Commission exceeded its jurisdiction when it cancelled plaintiff's Building Permit and revoked the action of the Board of County Commissioners. An arbitrary decision was made by representatives of the commission to declare the action of the Board of County Commissioners null and void because of the erroneous property description. Plaintiff was advised that he would be required to file a second appeal to the Board of County Commissioners and obtain a second decision from that body.

There is no provision in the law that authorizes the planning and zoning commission to require plaintiff to file a second appeal on his application for a zoning change. Having once received a final and favorable decision from the Board of County Commissioners, the plaintiff had a right to assume that the decision was proper until the

Board was overruled by a higher body on further appeal. This concept is illustrated well by the Georgia Supreme Court in the case of *Ledbetter v. Roberts*, 98 S.E.2d 654. In that case a landowner applied for a building permit which was denied by the building inspector. On appeal, the Board of Adjustment reversed and granted the permit. The Mayor, acting on behalf of the building inspector, then filed suit in the state court alleging that the landowner had given insufficient notice of his appeal. The landowner contended that the Mayor had not exhausted his administrative remedies and was not entitled to judicial review until he applied to the board of adjustment for a re-hearing to resolve the notice issue. The court found that the doctrine of exhaustion of administrative remedies was inapplicable to the case and that no provision in the law required such an action on the part of the Mayor.

Applying the rational of the Ledbetter case to the facts now before the court, it seems clear that where an appeal has already been taken to the appellate Board of County Commissioners, the administrative remedies have already been exhausted and the doctrine no longer applies.

In support of their argument that plaintiff is required to exhaust further administrative remedies before filing an action in

the district court, the defendants have cited numerous appellate decisions from this and other courts. None of these cases are applicable to the case now before the court. In each of the cited cases the appellant sought judicial review without first appealing his case to the Board of Adjustment. In each instance the court rightfully denied judicial review and stated that the doctrine of exhaustion of administrative remedies was an effective bar to judicial review.

The facts of the present case are completely different than the facts shown in the cases cited by the defendants. For this reason, those decision are not analogous to the present case and are not in point on the issue now before this court.

POINT NO. II

DEFENDANTS ARBITRARILY AND CAPRICIOUSLY
EXCEEDED THEIR JURISDICTION BY INVALIDATING
THE FINAL DECISION OF THE BOARD OF COUNTY
COMMISSIONERS AND BY ORDERING PLAINTIFF TO
APPLY TO THAT BODY FOR A RE-HEARING.

The right of a quasi-judicial body to reconsider its own final decisions must be statutorily granted. This general rule is discussed in Yamada v. Natural Disaster Claims Commission, 513 P.2d 1001(Hawaii 1973), where the court invalidated a re-hearing of an administrative body that was scheduled to evaluate losses resulting from a natural disaster. In Alexander v. Muscogee County Board of

Adjustment, 112 S.E.2d 690, the Georgia court held that a purported re-hearing of a final determination by the zoning board of adjustment was void and explained that party litigants cannot create methods of procedure that are not provided by law.

In Magma Copper Company v. Arizona State Tax Commission, 191 P.2d 169 (Arizona 1948), the court invalidated a re-hearing conducted by the tax commission and stated that the fact that the legislature provided for an appeal to the courts from the decision of the tax commission was conclusive evidence that the legislature intended that the administrative body's decision should be final and that appeal should constitute the exclusive remedy of the parties. The court went on to say that if the action performed by a board, commission, or other inferior body is judicial in character, the jurisdiction of such inferior tribunal is exhausted when it renders its decision. See annotation found in 73 ALR 2d 953. See also People ex rel Swedish Hospital v. Leo, 198 NYS 397 and Peters v. Berryman, 245 P. 282, 284.

The plaintiff has been unable to find any statutory provision in Utah which would authorize the respondents to compel a re-hearing on plaintiff's application for a zoning change. The Utah Legislature has provided for an appeal to the court by judicial review.

Since the Board of County Commissioners is a quasi-judicial body, it can only be reversed by a superior body. Under prevailing law, the board cannot even entertain a re-hearing of its previous decision.

Plaintiff-appellant has alleged in his Complaint that the defendants intentionally withheld notice of the defect in the application for zoning change until two of the members of the board had left office. The incumbent commissioner was the only one who voted to sustain the planning commission's decision when the matter was before the board. Some courts have refused to allow a re-hearing by the board of county commissioners under such circumstances. In People ex rel Brennan v. Walsh, 195 NYS 264,266, the New York Court concluded that a re-hearing by the board of county commissioners would be unjust when the personnel of the board had changed since the original hearing. See also Equitable Trust Company of New York v. Hamilton, 123 N.E. 380.

In the case of St. Patrick's Church Corporation v. Daniels, 154 A. 343, 345, the Connecticut court held that the administrative Board of Appeals lacked the power to re-open and reconsider its previous decision and explained its refusal by stating that "otherwise there would be no finality to the proceeding; the result would be subject to change at the whim of members or due to the effect of influence exerted upon them, or other undesirable elements pertaining

to uncertainty and impermanence." In a similar holding, the California held in McFarland v. McCowen, 33 P. 113, that an auditor is not permitted to refuse payment of claims allowed by a board of supervisors and explained its decision as follows:

"If an auditor may attack the conclusion of the Board of Supervisors for the reason and in the manner attempted here, there is no good reason why the treasurer, or any taxpayer, may not make a similar attack for like cause, and thus defeat the manifest object of the legislature in confirming the power of determination upon the local body. There should be an end to litigation in every case, and when a case has once been heard upon its merits, and fully determined, it should be held conclusive until reversed, modified, or set aside in the mode described by law."

The above language describes with certainty the dangers inherent in defendants' attempt to invalidate the final decision of the Board of County Commissioners in the matter now before the court. To allow such an attempt would promote circuitry of action, delay the administration of justice and offend the appellate process provided by law.

CONCLUSION

The doctrine of exhaustion of administrative remedies does not apply to the case before the court, and defendants' attempt to revoke the final decision of the Board of County Commissioners and

require a re-hearing on plaintiff's appeal in an unauthorized, arbitrary and capricious usurpation of that body's jurisdiction.

DATED this 25th day of June, 1982.

RESPECTFULLY SUBMITTED,



H. RALPH KLEMM

Attorney for Appellant

NOTICE OF SERVICE

Served the foregoing by having two copies thereof delivered to counsel for the defendants-resondents, Kent S. Lewis, 151 East 2100 South, Salt Lake City, Utah, 84115, this 25th day of June, 1982.

