1982

Wayne M. Patterson v. Alpine City : Brief of Respondent

Utah Supreme Court

Ray M. Harding; Attorney for Respondent;
John C. Backlund; Young, Backlund, Harris & Carter; Attorneys for Appellant;

SUPREME COURT
STATE OF UTAH

--ooo0ooo--

WAYNE M. PATTERSON,	:	
Plaintiff/Respondent,	:	
vs.	:	Case No. 18,114
ALPINE CITY, a municipal corporation,	:	
Defendant/Appellant.	:	

--ooo0ooo--

RESPONDENT'S BRIEF

--ooo0ooo--

Appeal from the Judgment of the
District Court of Utah County
State of Utah
Honorable J. Robert Bullock, Judge

--ooo0ooo--

RAY M. HARDING
HARDING & HARDING
Attorney for Respondent
306 West Main Street
American Fork, Utah 84003
756-7658

JOHN C. BACKLUND
YOUNG, BACKLUND, HARRIS & CARTER
Attorneys for Appellant
350 East Center Street
Provo, Utah 84601
375-9801

SUPREME COURT
STATE OF UTAH

--ooo0ooo--

WAYNE M. PATTERSON, :

Plaintiff/Respondent, :

vs. : Case No. 18,114

ALPINE CITY, a municipal corporation, :

Defendant/Appellant. :

--ooo0ooo--

RESPONDENT'S BRIEF

--ooo0ooo--

Appeal from the Judgment of the
District Court of Utah County
State of Utah
Honorable J. Robert Bullock, Judge

--ooo0ooo--

RAY M. HARDING
HARDING & HARDING
Attorney for Respondent
306 West Main Street
American Fork, Utah 84003
756-7658

JOHN C. BACKLUND
YOUNG, BACKLUND, HARRIS & CARTER
Attorneys for Appellant
350 East Center Street
Provo, Utah 84601
375-9801

TABLE OF CONTENTS

		Page
STATEMENT OF THE NATURE OF THE CASE		1
DISPOSITION IN THE LOWER COURT		1
RELIEF SOUGHT ON APPEAL		2
STATEMENT OF FACTS		2
ARGUMENT		
POINT I:	SUMMARY JUDGMENT IS APPROPRIATE IN THE INSTANT CASE	4
POINT II:	ALPINE CITY WAS WITHOUT AUTHORITY TO ASSESS THE SEWER CONNECTION FEE AGAINST THE RESPONDENT INASMUCH AS SAID FEE WAS NEVER ESTABLISHED BY WRITTEN RESOLUTION	6
POINT III:	ALPINE CITY HAS NOT ACTED WITHIN THE STATUTORY AUTHORITY GIVEN IT TO ASSESS SEWER CONNECTION FEES .	7
CONCLUSION		12

CASES CITED

State v. Hutchinson, No. 16087, S. Ct. Utah, filed Dec. 9, 1980	7,8,12
John Call and Clark Jenkins vs. City of West Jordan, No. 15908 S. Ct. Utah, filed Dec. 26, 1979	7
Rupp v. Grantsville, 610 P.2d 338 (Utah 1980) . .	7
Salt Lake City vs. Allred, 20 Utah 2d 298, 437 P.2d 434 (1968)	8

Redwood Gym vs. Salt Lake County Commission, No. 16833 (Utah 1981) 8

Salt Lake City vs. Howe, 106 P. 705 (Utah 1910) . 8

Salt Lake City vs. Kusse, 93 P.2d 671 (Utah 1938) 8

Homebuilders Association of Greater Salt Lake vs. Provo City, 503 P.2d 451, 452 (Utah, 1972) . . . 10

STATUTES CITED

Utah Code Annotated, 1953 as amended

Section 10-8-38 6,10,11
Section 10-3-717 6
Section 10-3-506 6,12
Section 10-8-84 7

RULES CITED

Utah Rules of Civil Procedure

Rule 56(c) 5

OTHER AUTHORITIES

McQuillin On Municipal Corporations, 3rd Edition, Revised, Volume II, Section 31-10A 10

SUPREME COURT
STATE OF UTAH

--ooo0ooo--

WAYNE M. PATTERSON,	:	
Plaintiff/Respondent,	:	
vs.	:	Case No. 18,114
ALPINE CITY, a municipal corporation,	:	
Defendant/Appellant,	:	

--ooo0ooo--

RESPONDENT'S BRIEF

--ooo0ooo--

STATEMENT OF THE NATURE OF THE CASE

This case concerns the validity of certain Alpine City sewer connection fees and permits.

DISPOSITION IN THE LOWER COURT

The District Court below entered a Partial Summary Judgment on May 29, 1981 holding that the Alpine City sewer connection fee of ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00) had not been legally established by written resolution or ordinance and that the scheme used by Alpine City to sell sewer connection permits was outside the city's statutory authority. After receiving the Partial Summary Judgment, the parties

entered into a Stipulation dismissing the remaining claims involved in this case and Appellant thereafter filed its appeal.

RELIEF SOUGHT ON APPEAL

Respondent respectfully asks this Court to affirm in all respects the Partial Summary Judgment granted to Respondent by the Court below.

STATEMENT OF FACTS

In 1978, Appellant Alpine City enacted Ordinance No. 78-07(7) which provided that a fee for connection to the city sewer system could be fixed from time to time by resolution enacted by the city council. Subsequently, without written ordinance or resolution (R. 30), the city began to assess sewer connection fees. The scheme established by the city was to begin charging $700.00 for a connection permit, then raise the charge to $1,000.00 and then raise the charge to $1,500.00, all within a three month period. This scheme was made public to the residents of Alpine City. Further, each resident had the opportunity to purchase as many permits as he desired at the $700.00 price and then later resell them for a profit to those who needed or sought permits after the price had been raised. The result was that many of the Alpine City residents purchased sewer connection permits without any intent to use them, but

with the sole intent of subsequently reselling them to new residents and builders for a profit.

In December, 1979, Respondent sought to construct a home within Alpine City and was therefore required to obtain a sewer connection permit. On December 14, 1979, Respondent purchased a sewer connection permit for $1,500.00. The purchase was made by check and under protest.

On March 7, 1980, Respondent commenced this action against Appellant seeking a return of the $1,500.00 paid and also a ruling (1) that the sewer connection fee was void and unenforceable and (2) that Alpine City be permanently enjoined from assessing the fee.

On May 29, 1981, the court below entered a Partial Summary Judgment in favor of the Respondent adjudging as follows:

> 1. The sewer connection fee of ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00) was illegally assessed against the Plaintiff for the reason that the sewer connection fee was not established by written resolution or oral (sic) ordinance as required by law.
>
> 2. The scheme used by the Defendant Alpine City to sell sewer connection permits is outside the city's statuatory (sic) authority in the following respects. First, the sewer connection permits were sold in bulk to investors who had no desire to use the permits, but only sought them for later resale to new connectors. Second, the city scheduled and published a graduation in the sewer connection fee from SEVEN HUNDRED

> DOLLARS ($700.00) to ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00) over a period of several months in order to induce early investment in the permits. Because said scheme is outside the statuatory (sic) authority of the city, the issuance of sewer connection permits under said plan was unlawful and the sewer connection permits are null and void.
>
> 3. Plaintiff is not entitled, at this point, as a matter of law to a refund of the full ONE THOUSAND FIVE HUNDRED DOLLAR ($1,500.00) connection fee. The case shall go to trial to determine whether or not the Defendant is entitled to retain all or a part of the connection fee upon the basis of quantum meruit or other equitable considerations.

Pursuant to stipulation of the parties, the court below, on October 1, 1981, entered an Order that;

> . . . the portion of the Complaint praying for restitution to the plaintiff of $1,500.00 from Alpine City be and the same is hereby dismissed. It is further ordered and adjudged that plaintiff shall retain the sewer connection permit received from Alpine City and that Alpine City in this matter shall retain the fee paid for said sewer connection of $1,500.00.

Appellant Alpine City thereafter filed an appeal of the Partial Summary Judgment entered by the Court on May 29, 1981.

ARGUMENT

POINT I

SUMMARY JUDGMENT IS APPROPRIATE IN THE INSTANT CASE

It is clear that under Rule 56(c) of the Utah Rules of Civil Procedure summary judgment may be rendered forthwith when appropriate. As stated:

> . . . the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Appellant asserts that there are substantial and material issues of fact making summary judgment inappropriate in the instant case. Specifically, Appeallant asserts that "evidence should have been received regarding the reasonableness of Appellant's plan for financing construction of the city sewer system and for defraying the costs of constructing, operating, and maintaining the system, in part, through the sale of sewer connection permits."

The Partial Summary Judgment entered by the trial court struck down the Appellant's sewer connection fee on two grounds. First, it was not established by written resolution or ordinance as required by law. Second, the court determined that

the scheme used by the Appellant was outside of the Appellant's statutory authority. The factual issue asserted by the Appellant is simply not material to either of the grounds upon which the Court struck down the sewer connection fee. Accordingly, the entry of summary judgment by the Court below was proper.

POINT II

ALPINE CITY WAS WITHOUT AUTHORITY TO ASSESS THE SEWER CONNECTION FEE AGAINST THE RESPONDENT INASMUCH AS SAID FEE WAS NEVER ESTABLISHED BY WRITTEN RESOLUTION.

Section 10-8-38 of the Utah Code Annotated states that a city may provide for mandatory hook-up with the city sewer system and may "make a reasonable charge for the use thereof." Section 10-3-717 of the Utah Code Annotated, as amended, states that the city's power to establish sewer rates may be exercised by resolution. Section 10-3-506 of the Utah Code Annotated, as amended, provides that all resolutions passed by a city shall be in written form before a vote is taken thereon.

Alpine City has admitted, in response to Respondent's Request for Production, that at the time Respondent paid his sewer connection fee Alpine City "had not by resolution or ordinance in writing established a sewer connection fee for connection to the Alpine sewer system." (R. 30) Inasmuch as the

sewer connection fee charged to Respondent was not established by resolution in writing, it is in violation of the above statutues and is void and unenforceable.

POINT III

ALPINE CITY HAS NOT ACTED WITHIN THE STATUTORY AUTHORITY GIVEN IT TO ASSESS SEWER CONNECTION FEES.

Traditionally, Courts have strictly construed all delegations of power from states to local governments. This rule of strict construction is known as the Dillon Rule. A local government had no authority to act in any area unless it was specifically and explicitly given authority by the state legislature.

In recent years most states (including Utah) have relaxed this rule of strict construction. See cases cited by Appellant, State v. Hutchinson, No. 16087, (S. Ct. Utah, filed Dec. 9, 1980); John Call and Clark Jenkins v. City of West Jordan, No. 15908 (S. Ct. Utah, filed Dec. 26, 1979); and Rupp v. Grantsville, 610 P.2d 338 (Utah 1980). Local units of government are no longer governed by the Dillon Rule and may enact ordinances under general welfare grants such as that contained in the Utah Code Annotated, Section 10-8-84, 1953, as amended.

However, in rejecting the rule of strict construction, the Utah Supreme Court did recognize that there are still limitations on the authority of local governments acting under broad welfare clauses. In Hutchinson, supra, the Court stated:

> . . . local governments are without authority to pass any ordinance prohibited by, or in conflict with, state statutory law. Salt Lake City vs. Allred, 20 Utah 2d 298, 437 P.2d 434 (1968). Also an ordinance is invalid if it intrudes upon an area which the legislature has pre-empted by comprehensive legislation intended to blanket a particular field.

Hutchinson, supra, pg. 90. In 1981 the Utah Supreme Court in Redwood Gym vs. Salt Lake County Commission, No. 16833 (Utah 1981) again declared, "This Court has previously ruled that local governments may legislate by ordinance in areas previously dealt with by state legislation, provided the ordinance in no way conflicts with existing state law. . .", Id., at 1144. See also Salt Lake City vs. Howe, 106 P. 705 (Utah 1910); and Salt Lake City vs. Kusse, 93 P.2d 671 (Utah 1938).

As a further limitation the Court in Hutchinson stated that "specific grants of authority may serve to limit the means available under the general welfare clause, for some limitation may be imposed on the exercise of power by directing the use of power in a particular manner." Hutchinson, supra, at 95. Thus, local governments can rely on broad general welfare clauses for authority to enact ordinances not specifically authorized by the

legislature. But the broad exercise of authority is limited in the following specific instances:

1. When the ordinance is prohibited by state statute.

2. When the ordinance is in conflict with state statute.

3. Where a state statute directs the use of a power in a particular manner.

4. Where the ordinance involves an area which has been pre-empted by comprehensive state legislation.

These four limitations stress that a general statutory grant of authority to municipalities is not without reservations. Local municipal ordinances enacted under broad general welfare clauses are subject to specific grants of authority in other state statutes. Appellant does not acknowledge these limitations, but they apply nonetheless. For example, Appellant quotes McQuillin on Municipal Corporations, 3rd Edition Revised, Volume 11, as unrestricted support for the idea that a municipality has an inherent right under its police power to establish and maintain a sewer system. Appellant then argues that under this power the municipality is authorized to pre-sell a determined number of sewer connection permits to anyone including those interested only in reselling the permits

for a profit. That this police power is subject to restriction is, however, also stated by McQuillin as follows:

> . . . the operation of a sewer system has been said to be a matter of state-wide concern and, where the state legislature has entered the field, any attempt of a city to deal therewith except in strict accordance with the statutes covering the subject would be without force and effect. (Emphasis added)

McQuillin, supra, at Sec. 31-10a. Specific statutory legislation may therefore be determinative in judging how far the local police power extends.

Section 10-8-38 of the Utah Code Annotated provides the statutory authority for a city to assess a sewer connection fee and is specific statutory legislation dealing therewith. See Homebuilders Association of Greater Salt Lake vs. Provo City, 503 P.2d 451, 452 (Utah, 1972). The relavant provisions of Section 10-8-38 provide that "any city or town may, for the purpose of defraying the cost of construction, reconstruction, maintenance or operation of any sewer system or sewage treatment plant, provide for mandatory hookup. . . and make a reasonable charge for the use thereof." A sewer connection fee is a charge for a service rendered. Homebuilders Association of Greater Salt Lake, supra.

The scheme adopted by Alpine City to implement its sewer connection fee includes aspects that are not authorized by

Section 10-8-38 or any other section of the Utah Code. Section 10-8-38 gives a city authority to make a "reasonable charge" for connection to the city sewer system. It does not authorize a city to "sell" connection permits on an open market for profit. Alpine City has allowed purchase of a permit by any resident without regard to whether they intended to build and actually connect to the city sewer system. Each resident was allowed to purchase as many permits as he desired and resell them to anybody. By raising the sewer connection fee from $700.00 to $1,500.00 in less than three months, the city intentionally created a market which would induce residents to invest in permits early.

These intentions by Alpine City clearly distort the purpose and policy of Section 10-8-38. The city is using the state statute as a shield behind which to engage in an investment scheme, and not for the purpose of making "reasonable charges" to residents wishing to hook up to the city sewer line. The state legislature did not intend and the language of Section 10-8-38 does not provide that the authorization granted to cities to charge reasonable hook-up fees be misused in this manner.

The city is therefore acting outside of its authority. In patricular, the Utah Legislature did not authorize the cities

to (1) sell sewer connection permits for subsequent resell, (2) sell sewer connection permits to people who had no intent to build or connect to the city sewer system, but only wanted the permits as an investment, or (3) intentionally create a market for sewer connection permits by announcing that the premits would more than double in price within several months. Because the city was acting outside of its authority implementing its sewer connection fee and issuing the permits thereunder, the sewer connection fee and permits are void and unenforceable.

CONCLUSION

Appellant states that his actions were undeniably taken to protect the health and welfare of Alpine City residents. This argument misses the point. As decided by the trial court, regardless of the practicality and effectiveness of Appellant's sewer finance plan, the plan is not within the city's statutory authority. Hutchinson applies only where municipal acts are not our of harmony with state statutes, and that is not the case here. In addition, the sewer connection fees were illegaly assessed because they were never established by written resolution as required by Section 10-3-506 of the Utah Code, as amended. The sewer connection fee and permits

issued thereunder are therefore void and unenforceable and the judgment entered by the trial court should be affirmed.

RESPECTFULLY SUBMITTED this 2nd day of March, 1982.

RAY M. HARDING
Attorney for Respondent
306 West Main Street
P.O. Box 126
American Fork, UT 84003
756-7658

MAILING CERTIFICATE

I hereby certify that I mailed a true and accurate copy of the foregoing Brief to JOHN C. BACKLUND, Attorney for Defendant/Appellant, 350 East Center Street, Provo, Utah 84601, postage prepaid, this 2nd day of March, 1982.