

1983

Lamar Jolley v. Lindon City Corp. et al : Brief of Respondents

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

LAMAR JOLLEY,)
)
 Plaintiff/Appellant,)
)
 vs.)
)
 LINDON CITY CORPORATION,) Case No. 18,337
 DENNIS THOMPSON and)
 LEON WALKER,)
)
 Defendants/Respondents.)

BRIEF OF RESPONDENTS

Appeal From The Final Judgment Rendered By
The Honorable J. Robert Bullock, Judge
In The District Court Of The Fourth Judicial District
In and For Utah County, State of Utah

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Clerk, Supreme Court, Utah

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BRIEF OF RESPONDENTS

NATURE OF CASE

This action was brought by Appellant, claiming that he had been wrongfully discharged from the position of police chief of Lindon City by Respondents. Appellant was also seeking judgment for compensation allegedly owed him by Respondent Lindon City Corporation.

LOWER COURT'S DISPOSITION OF CASE

Respondents filed a Motion to Dismiss Appellant's Complaint, pursuant to Rule 12, Utah Rules of Civil Procedure, and in accordance with Rule 2.8 of the Rules of Practice of the District Courts of the State of Utah. A Statement of Points and Authorities in Support of the Motion to Dismiss was filed with the Motion, as required by Rule 2.8. Appellant filed a Memorandum of Points and

Authorities in Opposition of the Motion to Dismiss. Respondents then filed a Statement of Points and Authorities in Support of the Motion to Dismiss in response to Appellant's memorandum, in accordance with Rule 2.8. Appellant then filed a pleading entitled Amendment To Plaintiff's Memorandum of Points and Authorities in Opposition to Defendant's Motion to Dismiss. The "Amendment" was not filed with leave of the District Court Judge, nor do the provisions of Rule 2.8 allow for a party opposing a Rule 2.8 Motion to file an amendment or the final legal brief, since the burden is upon the moving party.

Appellant did not request oral argument before the Court, which he was allowed to do under Rule 2.8. Respondents next filed a Request for Decision with the Court. Subsequently, on the 21st day of September, 1982, the District Court made and entered its written Ruling, granting the Motion to Dismiss. The District Court then, on September 30, 1982, made and entered Findings of Fact, Conclusions of Law and an Order and Judgment, granting Respondents' Motion to Dismiss.

RELIEF SOUGHT ON APPEAL

Respondents seek affirmance of the Order and Judgment of the Lower Court dated September 30, 1982, granting Respondents' Motion to Dismiss.

STATEMENT OF FACTS

Respondent Lindon City Corporation is an incorporated municipality situated in Utah County, State of Utah. The City was at all times mentioned in Appellant's Complaint, and now is, a third class city. Respondent Dennis Thompson was at all times mentioned in the Complaint a member of the Lindon City Council. Respondent Leon Walker was at all times mentioned in the Complaint the Mayor of Lindon City.

From September 12, 1973, to March 6, 1981, Appellant was the police chief of Lindon City. On March 6, 1981, Appellant was terminated as police chief of Lindon City by Respondents. Appellant acknowledged this termination by immediately discontinuing his employment as police chief for Lindon City.

On March 14, 1981, Appellant requested a review of his dismissal by the City Council, which request was granted. This review took place approximately one week later. In an executive session of the City Council Appellant demanded to know the reason for his discharge. No minutes are kept of executive sessions and there is nothing in the record to reflect what occurred at the proceedings. The discharge of the Appellant was upheld by the City Council, and Appellant filed his Complaint.

ARGUMENT

I

APPELLANT HAS FAILED TO CHALLENGE THE SUFFICIENCY OF THE EVIDENCE IN SUPPORT OF THE LOWER COURT'S ORDER BY CITATION TO THE RECORD IN THIS MATTER.

The Utah Supreme Court has held that an Appellant who challenges the sufficiency of the evidence to sustain the finding of the Lower Court, must with detail make appropriate citation to the record to show why the finding or ruling of the Lower Court is in error. In re Lavelle's Estate, 122 U. 253, 248 P.2d 372.

Appellant merely argues that no citation to the record can be made because no evidence was taken below. The essential facts were clear and virtually uncontested. Appellant is required to state which fact or facts would sustain a reversal of the decision of the Lower Court. He has failed to do that, and the judgment of the Lower Court should be affirmed.

II.

THE JUDGMENT OF THE LOWER COURT IS IN ACCORDANCE WITH THE PROVISIONS OF STATE STATUTORY LAW.

The language of 10-3-911 U.C.A., 1953, as amended (1977), which language is controlling in this matter, is clear and unambiguous. This law provides that the chief of police of the cities may at any time be removed, without trial, hearing or an opportunity to be heard whenever, in the opinion of the governing body the good of the service of the police department would be served by such removal. The statute further provides that such removal shall be final and conclusive and shall not be received or called in question before any court.

Appellant acknowledges that he was advised of his removal as police chief by both the Mayor and a City Councilman of the City. Appellant further admits that the matter was reviewed by the entire City Council in executive session and that the dismissal was not rescinded.

Clearly, Appellant was terminated by Respondent Lindon City in accordance with the above cited statute. The statute does not state that removal may only be made for cause, nor does it authorized civil action to call into question the intent or movtive of the City Council. The District Court was without jurisdiction to hear the matter of Appellant's claim that he was wrongfully discharged.

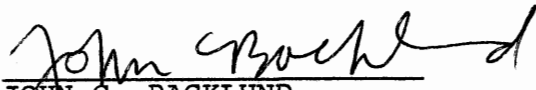
The District Court acted properly and in accordance with statutory law in granting the Motion to Dismiss.

CONCLUSION

This action was fully and fairly heard by the Lower Court, in accordance with the Utah Rules of Civil Procedure and the Rules of the District Courts of the State of Utah. The Findings of Fact, Conclusions of Law, and Order and Judgment of the Lower Court are supported by the clear and unambiguous provisions of 10-3-911, U.C.A., 1953, as amended (1977).

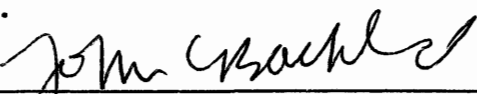
In light of the foregoing, the Order and Judgment of the Trial Court should be affirmed.

Respectfully Submitted



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MAILED two (2) true and accurate copies of the foregoing Brief of Respondents on this 30th day of March, 1983, to: Mr. Ronald R. Stanger, ESQ. Attorney for Appellant, 42 North University Avenue, P.O. Box 477, Provo, Utah 84601.



JOHN C. BACKLUND