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In the Matter of the Disconnection of Part of Territory Of the Town of West Jordan, Inc. : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT

of the **FILED**
STATE OF UTAH APR 15 1958

Clerk, Supreme Court, Utah

IN THE MATTER OF THE DIS-
CONNECTION OF PART OF
TERRITORY OF THE TOWN
OF WEST JORDAN, INC.

Case No. 8811

BRIEF OF RESPONDENT

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of the
STATE OF UTAH

IN THE MATTER OF THE DIS-
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BRIEF OF RESPONDENT

STATEMENT OF FACTS

The Statement of Facts made in appellants' brief is substantially correct and the respondent believes no amplification of it is necessary or would be useful to the court.

STATEMENT OF POINTS

POINT I

THE DEFENSE OF RES JUDICATA CAN BE RELIED UPON BY THE RESPONDENT, AND NEED NOT HAVE BEEN PLEADED.

POINT II

THE PLEADINGS AND RECORD ARE ADEQUATE TO SUPPORT THE TRIAL COURT'S FINDINGS AND ORDERS.

POINT III

THE ORDER OF NOVEMBER 25, 1957, WAS PROPER AND THE PETITIONERS' MOTION TO ALTER JUDGMENT WAS PROPERLY DENIED.

ARGUMENT

POINT I

THE DEFENSE OF RES JUDICATA CAN BE RELIED UPON BY THE RESPONDENT, AND NEED NOT HAVE BEEN PLEADED.

The petitioners and appellants had ample opportunity to argue the applicability of the defense of res judicata as a matter of law and were given plenty of notice that the defense would be relied upon.

It further appears that the respondent could not have known from the pleadings and the map filed by appellants with the trial court that some of petitioners had been parties to a previous severance action until the question was raised at the pre-trial conference. The court's attention is invited to the record and particularly statements made by counsel for the appellants at the pre-trial conference relative to this question.

The following question by the court and answer by Mr. Hansen (R. 6-7).

“THE COURT: May it be agreed, Gentlemen, that the total number of legal property holders whose property is affected by this petition is 139; that 35 of that 139 own land within this petition that was not in the petition heretofore filed and adjudicated in this court; and that 104 owners of land involved in the 139 property holders were a party to the prior suit which was adjudicated in this action; and that those 104 are the people whose names do not have an asterisk beside it on Exhibit A attached to the reply to objections to notice of readiness for trial?

“MR. HANSEN: No, we can't stipulate to that, Your Honor, because there has been no attempt to break down how many of the property owners involved in this total petition reside within the area which has been litigated before and how much of those reside within the new area.”

A further statement by counsel for the appellants appears in the transcript of the pre-trial proceedings (R. 7) and reads as follows:

“We have made no attempt to divide by property owners how many of those are in the new area and how many are in the old area.”

It seems clear that even at the time of pre-trial, counsel for the appellants was not in a position to advise the court or counsel for the respondent

how many of the petitioners were parties to the previous lawsuit.

An examination of the map filed by appellants (R. 5) indicates on its face that no part of the land involved in the present petition was the subject of litigation in the previous lawsuit.

The appellants had ample opportunity to know of the assertion of the defense and to argue the law relative to the question on the hearing upon appellants' motion to alter the trial court's judgment. That motion was filed December 5, 1957, and was argued and disposed of by order dated December 23, 1957. (R. 16-18)

In the case of *Hansen v. Morris*, 283 P2d 884, the question was raised in a quiet title action whether the defense of the statute of limitations (one of the defenses mentioned in Rule 8(c)) was properly raised by plaintiff in its pleadings. The court held the matter was properly raised by the plaintiff in submitting demands for admissions which raised the defense. This was held to satisfy the rule.

In that case, the assertion of the defense of the statute of limitations was raised and asserted at trial. Under these circumstances, this court decided that the requirements of our rules of pleading were satisfied. The opinion contains the following language on Page 886 of 283 P2d.

“Furthermore, at the very outset of the trial, upon being asked by opposing counsel if the statute were to be relied on, counsel for plaintiffs announced that ‘If you challenge the validity of the tax sale, we will then assert the laws contained in Sec. 78-12-5.1 and following immediately thereafter * * * as being a bar to any attempt to challenge the validity of the tax sale.’ We believe our rules of pleading the statute were satisfied in this unorthodox situation.”

The same reasoning and interpretation of Rule 8(c) was applied in the more recent case of *Thomas v. Braffets’ Heirs*, 305 P2d, 507. The opinion in the *Hansen v. Morris* case commends the “logic and good sense” interpretation of Rule 8(c). The record here shows the following:

(1) Neither the petition for severance nor the plat or map required to be filed disclose how many of the petitioners had been parties to the previous severance action.

(2) The appellants’ counsel himself could not at pre-trial advise the court how many of these petitioners were parties to the prior action.

(3) The appellants were advised at pre-trial that the respondent would rely upon the defense of res judicata.

(4) The appellants were afforded a later opportunity to brief and argue the matter of the non-

availability of this defense by respondent. Under these circumstances, the respondent submits that the rules of pleading were satisfied and the respondent was entitled to assert and rely upon the defense of res judicata, and the trial court was entitled to make the orders appealed from based upon the assertion of that defense.

POINT II

THE PLEADINGS AND RECORD ARE ADEQUATE TO SUPPORT THE TRIAL COURT'S FINDINGS AND ORDERS.

The appellants contend that "a disconnection proceeding is legislative and not judicial, in nature" and the doctrine of res judicata cannot apply. The further statement is made by appellants that res judicata is not "a barrier to legislative action." The appellants rely for this proposition on *Plutus Mining Company v. Orme*, 289 P 132. Since the appellants' brief only refers to the case and does not discuss it, the respondent feels a brief review of what that case actually holds is necessary.

On October 15, 1925, the District Court of Juab County entered a decree segregating certain land owned by the Plutus Mining Company from Mammoth City. On February 3, 1928, this court reversed, in part, that order and returned part of the land previously segregated. The case came to this court

on appeal from a writ of prohibition restraining Juab County officials from reapportioning to Mammoth City the valuations of the area segregated. This court said at Page 135 of 289 P. the following:

“The sole question of merit presented by this appeal is whether or not Mammoth City is entitled to recover taxes on the area which was segregated from Mammoth City by the decree of the district court during the interim between the entry of such decree on August 15, 1925, and the reversal of such decree by this court in 1928. The solution of that question is dependent upon whether the area upon which it is sought to collect the taxes was within or without the corporate limits of Mammoth City during such interim.”

This court solved the problem by holding that it was final and binding when the statute was complied with, that is when the decree was entered, a certified copy of it and a plat were recorded with the County Recorder of Juab County. The holding was further that the order was final and binding until its reversal in part by this court and during the interim the segregated area was not part of Mammoth City.

The *Plutus Mining Company* case holds also that *when* a decree of severance becomes final is for the legislature to say and not the court. No where in the *Plutus Mining Company* case does this court say or even hint that the question of equity

and justice requiring segregation or its refusal or simply the proposition of *whether* it should be ordered or not is a legislative function. One of the sections of our statute under which the present action was brought is 10-4-2, *Utah Code Annotated*, 1953, which provides as follows:

“10-4-2. Court commissioners to adjust terms. — If the court finds that the petition was signed by a majority of the real property owners of the territory concerned and that the allegations of the petition are true and that justice and equity require that such territory or any part thereof should be disconnected from such city or town, it shall appoint three disinterested persons as commissioners to adjust the terms upon which such part shall be so severed as to any liabilities of such city or town that have accrued during the connection of such part with the corporation, and as to the mutual property rights of the city or town and the territory to be detached.”

This is obviously a judicial function requiring a judicial determination.

The question of whether the function of the trial court in a severance petition brought under our statutes is legislative or judicial has been unlamentedly laid to rest since 1902. The exact question was raised in *Young v. Salt Lake City*, 24 Ut. 321, 67 P. 1066. In this case, the court granted a petition severing part of Salt Lake City and the statutory sections involved were 288 and 289 re-

vised statutes of *Utah* 1898 which are identical with the present provisions.

Salt Lake City appealed claiming, among other things, that the statute was void as an unconstitutional delegation of legislative power. The opinion of the court at *Page 330 of 24 Utah* says the following:

“The facts required to be shown, under the statute, must be passed upon by the court. A majority of the owners of land must petition. The land must lie upon the borders of the city, and the reasons for such severance must be stated. A map or plat of the property must accompany the petition. These are issuable facts. The statute provides that issue may be joined thereon and the cause tried as is provided for the trial of civil cases, as near as may be. The determination of these issues and the facts and findings of the commissioners is a judicial act, and does not pertain either to the legislative or executive department of the State.”

The opinion of the court continues on *Page 331*.

“The right to disconnect the territory depends entirely upon the facts and the existence of the condition covered by the statute, and the determination of the question involves an examination and weight of the testimony, which is certainly in the nature of a judicial determination.”

The concluding statement of the opinion on this question on *Page 331* settles the matter.

“The statute names the conditions under which land lying on the borders of a city may be detached, and authorizes the court to determine whether such conditions exist, and whether, under all the facts, justice and equity require the land to be detached. The court is required to determine these questions. They are therefore of such a judicial character as to come within the jurisdiction of the district court.”

The same determination was made by this court in “*In re Fullmer et al*, 33 Ut 43, 92 P. 768. This decision follows the *Young v. Salt Lake City* case and has not been questioned since.

The appellants refer the court to Section 61 of the *Restatement of the Law of Judgments*, and particularly to comment (c) thereon. It is obvious from reading the comment that the example used there sets out two different and distinct batteries, and two distinct causes of action based on different facts even though involving the same parties.

We are not here concerned with two different sets of petitioners for severance, nor different land sought to be severed, nor different issues. Here we have:

- (a) the same people
- (b) the same property
- (c) the same issues based upon petitions which are identical in language, raising the same issue

presented to the trial court in the first severance action, Civil No. 112503.

The respondent has been unable to find any Utah severance action in which the question posed by this appeal has been presented and decided, nor has a case from another jurisdiction been found. However, the principles governing the application of the doctrine of res judicata previously announced by this court have equal application to this case.

A good general statement of the elements necessary to the application of res judicata appears in *Utah Fuel Company v. Industrial Commission of Utah*, 245 P 381. That case involved applications for an award to a widow and her minor children of death benefits under workmen's compensation for loss sustained because of the accidental death of the applicant's son who contributed to her support, and that of the minor children. A previous award had been made for the death of the husband on finding his family was "wholly dependent upon him for support." The appellants contended the applicant was bound by the previous finding of total dependence on the father. This court held that they were two different causes, each involving a different subject. However, the general principles are set out as follows at Page 387 of 245 P.

"The rule respecting res adjudicata is

well stated by the Supreme Court of Wisconsin in *Goodwin v. Snyder*, 44 N.W. 746, 75 Wis. 450, where it is stated thus:

‘To make such record of a former adjudication evidence in a subsequent case, the subject matter must not only be the same, but the parties must be the same.’

‘If, therefore, either the subject of the action or the parties are different, the doctrine of res adjudicata does not apply. In *People v. Johnson*, 38 N.Y. 63, 97 Am Dec. 770, followed in *House v. Lockwood*, 33 N.E. 595, 137 N.Y. 268, and in *Stokes v. Foote*, 65 N.E. 176, 172 N.Y. 341, it is held:

‘That in order that a judgment be res judicata it is not enough that the party producing a record showing a judicial determination of the same question litigated in his favor, but it must also appear that it was rendered upon the merits, upon a material point, and substantially upon the same facts presented in the subsequent case.’ ”

The more recent Utah case of *Brandon v. Teague*, 299 P2d 1113 involved the application of the principle of res judicata to the question of whether jurisdiction had been obtained under the Non-resident Motorist Act. Service was attempted under that statute and a motion to quash based upon lack of proving of nonresidence was denied. A writ of prohibition issued from this court stopping proceedings

in the District Court until jurisdiction of the defendant was acquired. The plaintiff attempted service in the same way again and a motion to quash was granted on the ground that residence status had been determined previously and was *res judicata*. This order was appealed from and the order affirmed by this court. The following language appears at *Page 1114 of 299 P2d*.

“The issue as to Teague’s nonresidence was raised and determined on the motion to quash summons in the first action. The facts relative thereto existed, were available to proof, and the plaintiff was permitted to present all of the evidence he desired. Thus, on the question of his nonresidence, he had his day in court and that is all he is entitled to.”

The respondent contends the petitioners involved in this appeal have had their day in court and that is all they are entitled to.

POINT III

THE ORDER OF NOVEMBER 25, 1957, WAS PROPER AND THE PETITIONERS’ MOTION TO ALTER JUDGMENT WAS PROPERLY DENIED.

The appellants under Point III of their brief claim that the court was influenced by matters not part of the record. Such material even if it did influence the trial judge is not before this court.

The respondent agrees that the trial judge was influenced by the facts and record to stop litigation

involving the same parties and issues involving propositions previously litigated. The order made by the trial judge was proper and should have been made.

The petitioners' motion to alter the judgment was an attempt to get the trial judge to change his mind and this he properly refused to do.

CONCLUSION

The respondent submits that the appellant have had their day in court, and have had their cause decided upon its merits. The orders appealed from were proper, and the trial judge should be affirmed.

Respectfully submitted,

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