1960

Daisy Rowley v. Milford City et al : Brief of Respondent

Utah Supreme Court

Durham Morris; Attorney for Respondent;

No. 9182

IN THE SUPREME COURT
of the
STATE OF UTAH

DAISY ROWLEY,
Plaintiff and Respondent,

—vs.—

MILFORD CITY, a Municipal Corporation of the State of Utah; R. L. KIZER as Mayor of Milford City; A. S. WHITTAKER, JOHN DAVIS, W. S. BOLTON, M. S. BOWN and J. N. WESTON, as City Councilmen of said Milford City; V. M. BURNS, as City Recorder of said Milford City; ELWOOD JEFFERSON and ALENE JEFFERSON, his wife; and MIKE L. BRIMBERRY and DOROTHY BRIMBERRY, his wife; FIRST DOE, SECOND DOE and THIRD DOE,
Defendants, and Appellants.

RESPONDENT'S BRIEF

On Appeal from the District Court of the Fifth Judicial District of the State of Utah, in and for Beaver County
HON. WILL L. HOYT, *Judge*

DURHAM MORRIS
Attorney for Respondent

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RESPONDENT'S BRIEF

STATEMENT OF THE CASE

This is an action brought by Mrs. Daisy Rowley, a resident and taxpayer of the City of Milford, Utah, acting in her own behalf and for and in behalf of all other taxpayers of said Milford City to have a certain purported sale of real property made by Milford City at a purported special meeting of the Mayor and four of

the City Council of Milford City held on November 21, 1958, at 8 p.m., to Elwood Jefferson and Mike L. Brimberry for a consideration of $2500.00 declared illegal and void, and to have a Quitclaim Deed for such property dated December 27, 1958, made by the Mayor and City Recorder of Milford City to said purported purchasers pursuant to authority of such meeting, declared to be null and void and ordered delivered up and cancelled, and requiring said purported purchaser to remove from said premises certain structures alleged to have been placed by them upon the premises, UPON THE FOLLOWING GROUNDS:

I. That said special meeting of the Mayor and four City Councilmen of Milford City held on November 21, 1958, at 8 p.m. was not a legal meeting for the reason that no notice of said special meeting was given as required by law and by the City ordinances of Milford City, to City Councilman W. S. Bolton, who did not attend said meeting (Complaint Paragraph 9).

2. That the two City Councilmen who voted in favor of such sale were influenced by considerations of their employment by one of the purported purchasers, or members of his immediate family, to vote in favor of the purported sale (Complaint Paragraph 9).

3. That such purported sale was made for a grossly inadaequate consideration, without either soliciting other offers, or allowing other prospective purchasers to bid on the property (Complaint Paragraph 9).

4. That the property affected by such purported sale and other property was prior to on or about March 9, 1939, dedicated as a public park and playground for Milford City by its governing body, namely, its Mayor and City Council, and that from on or about March 9, 1939, down to the time of filing the plaintiff's Complaint the land affected by such purported sale has been dedicated as and used as a public park and playground for the use and benefit of the inhabitants of Milford City, and such property so dedicated as a public park could not be legally sold at the time of such purported sale. (Complaint Paragraphs 5 and 9).

The case was tried before the court sitting without a jury on October 22 to 24, 1959; both parties rested and the case was argued by counsel for both parties. On or about November 9, 1959, the defendants tendered their respective Supplemental Answers and moved the court for an Order permitting them to file and serve such Supplemental Answers. The court overruled and denied the motions and an intermediate appeal was taken by defendants from such Order.

STATEMENT OF FACTS

The plaintiff agrees with the Statements of Facts set forth in Appellants' Brief, but invites an examination of the proposed Supplemental Answers for a detailed statement of all acts alleged to have occurred after the trial and to the time of filing of the motions for leave to file the Supplemental Answers.

STATEMENT OF POINTS

FIRST: The tendered Supplemental Answers do not set forth facts material to the issues in this action, and hence should not be permitted to be filed.

SECOND: The tendered Supplemental Answers set forth facts which when considered alone would constitute no defense to the cause of action pleaded in the Complaint, and which, if and when considered in connection with suggested possible future occurrences and possible future actions of Milford City Council at some subsequently called meeting in making a sale of the property to the defendants, Jefferson and Brimberry, or someone else, and ordering a Deed made to such purchaser or purchasers, which events may or may not occur if the proceedings in this action were ordered stayed, could at most give rise to a new and independent action, if the legality of such meeting or meetings and any Deed made pursuant to the authority thereof is questioned by a resident and taxpayer of Milford City, and hence the tendered Supplemental Answers should not be allowed to be filed, or any Order made staying the proceedings in this case to await the possible happening of such possible future events.

THIRD: The matter of allowing the filing of supplemental pleadings rests within the discretion of the trial court and the allowance or denial thereof will not be reversed on appeal in the absence of a manifest abuse of discretion by the trial court. There was no manifest abuse of discretion by the trial court in denying defend-

ants motions to file the tendered Supplemental Answers.

ARGUMENT

FIRST: The tendered Supplemental Answers did not set forth facts which are material to the issues of the case, and hence their filing was properly disallowed.

> Rule 15(d), Utah Rules of Civil Procedure relating to the filing of supplemental pleadings is taken verbatum from Rule 15(d) of the Federal Rules, and in Sec. 455, page 945, Vol. 1, Barron and Holtzoff Federal Practice and Procedure it is stated in commenting on Rule 15(d) of the Federal Rules: A supplemental answer should be allowed to be filed only when the matter to be set forth embraces other and further defenses which arose after the original answer was filed and which relate to the plaintiff's claim for relief stated in the original complaint.
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> Sec. 104-13-13 U.C.A. 1943, in force before the Utah Rules of Civil Procedure were adopted provided: Either party may be allowed to make a supplemental complaint, answer or reply, alleging facts material to the case, which have happened or have come to his knowledge after the filing of the former pleading.
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> 10 Hillyer Forms of Pleading and Practice, Pages 9572-9573. Supplemental Pleadings. Introductory Note: ". . . . The court may properly refuse leave to file a supplemental answer if timely application is not made therefor, or if the pleading sought to be filed does not state facts sufficient to constitute a defense, but not because of a mere defect in the statement of the defense."

BARTON et al. v. HACKNEY, 224 P 2d, 995, Kansas, 1950. 2. The filing of amended or supplemental pleading is a matter within sound discretion of trial court, and to secure the reversal of ruling refusing to allow a party to amend or supplement his pleading, he must show affirmatively that the proposed pleading was material and that its refusal was a clear abuse of judicial discretion.

IMPERIAL LAND CO. et al v. IMPERIAL IRR. DIST. et al. 161 P. 116, California, 1916. 5. Facts to be alleged in a supplemental pleading must relate to and be material to the original case.

The purported sale which the plaintiff seeks to have declared illegal and void on the grounds alleged in the Complaint, is the purported sale made at a purported special meeting of the Mayor and four members of the Milford City Council held on November 21, 1958, at 8 p.m., and the Deed which plaintiff seeks to have declared illegal and ordered delivered up and cancelled is the Deed dated December 27, 1958, identified in the plaintiff's Complaint. The issues joined are whether such special meeting was a legal meeting and whether the purported sale made at such special meeting was a valid sale, and whether the Deed issued to the defendants Jefferson and Brimberry under authority of such special meeting is a valid Deed or whether the same should be ordered delivered up and cancelled. The matters alleged in the proposed Supplemental Answers are not material to and can have no bearing upon these issues raised by the original pleadings.

If the special meeting and the Deed of Conveyance pursuant to purported authority of such meeting were illegal at their inception, then the facts pleaded in the Supplemental Answer could not affect the illegality of said special meeting and said Deed. If all of the facts pleaded in the Supplemental Answers could be proved these facts would be immaterial to the issues of the case. If the alleged special meeting was illegal at its inception, the additional facts pleaded in the Supplemental Answers, if proved, could not convert such illegal special meeting into a legal meeting, or breathe legality into the Deed which was illegal at its inception. The facts pleaded in the tendered Supplemental Answers are wholly immaterial to the issues in the case, and the motions to allow their filing were properly denied.

SECOND: If the proceedings were ordered stayed, as suggested on page 12 of Appellants' Brief, and if at some time in the future some other meeting of the City Council of Milford City was held at which the property involved in this action was ordered sold to the defendants Jefferson and Brimberry, or to any other person or persons, and pursuant to such authority a conveyance of the property was made to such purchaser or purchasers, such subsequent transactions could have no bearing on the legality of the special meeting held on November 21, 1958, at 8 p.m., or the purported sale made at such special meeting, or upon the legaility of the Deed dated December 27, 1958, at issue in this case, and the most that the happenings of such possible future events, when

coupled with the facts alleged in the tendered Supplemental Answers, could do, would be to give rise to a new and independent cause of action, if the legality thereof is questioned by a resident and taxpayer of Milford City.

It is a matter of mere conjecture whether any meeting or meetings of the City Council of Milford City will be held at any time in the future, at which the matter of the sale of the property in question will be considered and/or authorized, or whether any officer or officers of Milford City will ever at any future time execute any purported Deed of Conveyance to anyone for the property in question. If any such acts do occur and the legality of such acts is questioned, the same would of necessity have to be determined in a new and independent action.

The filing of supplemental pleadings which allege matters which can only be determined in a new and independent action should be denied.

> NATIONAL BANK OF ANADARKO v. FIRST NAT. BANK OF ANADARKO, 134 P. 866, Oklahoma, 1913. 2. The facts embodied in a supplemental petition under the code must relate to the cause of action set forth in the original petition and must be in aid thereof. It is not proper to bring into a case by a supplemental petition new facts which have arisen since the action was commenced and which by themselves, if they are sufficient, constitute a new and independent cause of action, without reference to the facts alleged in the original pleading. In such case relief should be had by a new and independent action.

STEPHANI v. ABBOTT et al. 30 P 2d, 1033, California, 1934. 4. Permission to file supplemental complaint rests in trial court's discretion, provided it is in furtherance of and consistent with original complaint and is not new or independent cause of action.

LEWIS & QUEEN v. S. EDMONSON & SONS et al. 248 P 2d, 973, California, 1952. 12. A party should not be permitted to so amend his pleadings as to raise a new cause of action or a new defense.

THIRD: Motions to file supplemental pleadings are addressed to the discretion of the trial court and their allowance or denial will not be reversed on appeal in the absence of a manifest abuse of discretion.

Mazle ERICKSON, Executrix, etc., Plaintiff and Appellant, v. Clyde D. BOOTHE, Defendant and Respondent, 274 P 2d, 460, California, 1954. 3. A motion to file a supplemental complaint is addressed to the sound legal discretion of the trial court, and its ruling thereon will not be disturbed on appeal in the absence of a showing of a manifest abuse of that discretion.

Henry S. GREENSTONE, Plaintiff, Respondent and Cross-Appellant, v. CLARETIAN THEOLOGICAL SEMINARY, CLARETVILLE, California, a corporation, Defendant, Appellant and Cross-Respondent, 343 P 2d, 161, California, 1959. 16. It was within discretion of trial court to deny motion of defendant to file supplemental answer and reviewing court would not reverse order entered thereon unless abuse of discretion was manifest in record.

FEDERAL LIFE INS. CO. v. BARTLETT, 80 P 2d, 587, Oklahoma, 1938. 2. The allowance of filing of supplemental pleadings is within discretion of trial court, and allowance or refusal of supplemental pleadings will not be reversed on appeal in absence of clear abuse of discretion.

It was no abuse of discretion for the trial judge to refuse to grant defendants' motions for leave to file the Supplemental Answers which did not state facts constituting any defense to the cause of action pleaded in the plaintiff's Complaint.

CONCLUSION

The matters alleged in the tendered Suppemental Answers are not material to the issues in this case and can constitute no defense to the cause of action pleaded in the Complaint. The matters referred to on page 12 of Appellants' Brief, which may or may not occur at some future time if the proceedings were stayed, could at most give rise to a new and independent action, if any such acts or events do occur at some future time, and their legality is then contested. Clearly there was no abuse of discretion on the part of the trial judge in denying the motions of the defendants for leave to file their tendered Supplemental Answers. The decision of the trial judge in denying the motions is the only decision which could properly have been made. It would have been an abuse

of discretion on the part of the trial judge to have granted the motions, and the decision of the trial court should be affirmed.

Respecfully submitted,

DURHAM MORRIS
Attorney for Respondent