

1960

In the Matter of the Disconnection of Part of the Territory of West Jordan, Inc. : Brief of Utah Municipal League

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

FILED

SEP 26 1960

Clerk, Supreme Court, Utah

In the Matter of Disconnection of
a Part of the Territory of the
TOWN OF WEST JORDAN, INC.

}
AMICUS CURIAE
Case No. 9254

Brief of Utah Municipal League

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TOWN OF WEST JORDAN, INC. } AMICUS CURIAE
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Brief of Utah Municipal League

The Friend of the Court in this case, in preparing this brief, is in the same position as the Court in that the only matter before us is the record on appeal. Counsel took no part in the trial of the cause except upon argument on the Motion to vacate the original Findings of Fact and Conclusions of Law entered by the trial court.

STATEMENT OF FACTS

AS DISCLOSED BY THE RECORD ON APPEAL

The record consists of the Petition which states that each of the signers of the petition is a property owner located in the territory within and lying upon

the borders of the Town of West Jordan and is incorporated (Record Page 1). This is denied by the Answer (Record page 5). The Pre-trial Order is of no assistance because it merely stipulates information to be furnished by the parties (Record page 8). In this connection the Pre-trial Order required the furnishing of a map of the Town of West Jordan. There is no such map in the Record. The original Findings of Fact and Conclusions of Law are found in the Record at pages 9, 10 and 11. These Findings and Conclusions were superceded and we believe nullified by the subsequent Findings and Conclusions found at pages 14 and 15 of the Record. As we view the case the only pertinent Finding is No. 3 (page 14 of the Record) which reads as follows:

“3. The area seeking disconnection does not come within the requirements of Section 10-4-1, U.C.A. 1953, of being within and lying on the borders of the town.”

The Judgment dismissing the Petition (Record page 16). The Order signed March 21, 1960 (Record page 17) which as it relates to this appeal is in our opinion a nullity. Exhibit “A” which is a map of the property sought to be disconnected. This is a summary of the pertinent record which is before this Court. There is no transcript.

STATEMENT OF POINTS

POINT I.

THE RECORD ON APPEAL IS SO INCOMPLETE THAT THERE IS NO BASIS TO REVERSE THE TRIAL COURT.

ARGUMENT

POINT I.

THE RECORD ON APPEAL IS SO INCOMPLETE THAT THERE IS NO BASIS TO REVERSE THE TRIAL COURT.

Under the statutes the appellants must, at the outset allege and prove the following: Section 10-4-1, U.C.A. 1953,

“Whenever a majority of the real property owners in territory within and lying upon the borders of any incorporated city or town shall file with the Clerk of the District Court of the County in which such territory lies a petition.”

This is the only part of the section in which we are interested.

The only Finding made by the Court in which we are interested, is the one heretofore quoted in the Statement of Facts and upon which the Judgment of dismissal is based.

An examination of the record on this appeal discloses that there is no map, nor is there anything in the record which defines the limits of West Jordan. This Court cannot ascertain what property, if any, is “within and lying on the borders” of the Town of West Jordan. There is nothing in the record to disclose whether or not a majority of the real property owners in the territory joined in the petition. The only matter bearing upon this question is the finding of the Court above quoted to the effect that the area seeking disconnection did not come within the requirement of the Statute as being within and lying on the borders of West Jordan. On the record, before this Court, there is

absolutely nothing to justify the reversal of this finding. All the Court could do, as we have done, is speculate as to where the boundaries are, and which property, if any, is on the border.

The appellants in their brief have stated that two parcels of the property seeking to be disconnected are on the border. They do not specify where these parcels are, and here again we must speculate, as far as the record is concerned, the location of these properties in the Town of West Jordan. Nothing in the record will support this gratuitous declaration.

The appellants did not request additional findings in the lower Court which would aid this Court in ascertaining the facts in the case and has left this Court with no basis upon which to reverse the lower Court.

CONCLUSION

There are no Utah cases defining what is meant by a "majority of the real property owners in territory within and lying upon the borders of any incorporated city or town." We, as friends of the Court, would, in a proper case, welcome such an interpretation of the language used for future guidance in cases of this kind, but it is our firm conviction that no such interpretation should be attempted on the record before this Court.

We submit that the case should be affirmed.

Respectfully submitted,

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