

1967

State Of Utah By And Through Its Road Commission v. F. Ephraim Bates And Mae P. Bates : Respondent's Brief

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, by and Through
its ROAD COMMISSION,

Plaintiff and Respondent,

— vs. —

F. EPHRAIM BATES and
MAE P. BATES,

Defendants and Appellants.

Case
No. 10910

RESPONDENT'S BRIEF

Appeal From a Judgment of the Third District Court
In and for Summit County, Utah
HONORABLE STEWART M. HANSON, *Judge*

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No. 10910

RESPONDENT'S BRIEF

STATEMENT OF THE CASE

This is an action in eminent domain brought by the State Road Commission and this action is ancillary to a prior action. The original proceeding in eminent domain involved the taking of land for the Interstate Highway proper, and the ancillary proceeding was for land to construct a stock trail along the Interstate Highway. The Respondent claims that severance damage was paid to the Appellants in the prior proceeding which included damages for loss of access to water in Silver Creek and, therefore, is not obligated to pay for the same loss of water and access in the second proceeding. Appellants

claim that Respondent is obligated to furnish water or pay additional compensation in the ancillary proceeding.

DISPOSITION IN LOWER COURT

The case was pre-tried and tried to the Court, Stewart M. Hanson, Judge, presiding without a jury, and the Court granted Judgment of \$35 per acre pursuant to stipulation of counsels, on 8.71 acres taken by the Respondent for the construction of the stock trail. The Court also found that the Appellants had been paid for the loss of access to their water by the prior case which was settled between the parties, and therefore, Appellants were not entitled to further severance damage on the ancillary proceeding.

RELIEF SOUGHT ON APPEAL

Plaintiff-Respondent seeks an affirmance of the trial Court's finding and Judgment to the effect that the Defendants-Appellants are not entitled to further severance damage for loss of access to their water in the ancillary proceeding.

STATEMENT OF FACTS

In 1959, the Utah State Road Commission began land acquisition in the area known as Silver Creek Canyon which extends approximately from Silver Creek Junction to Wanship, Summit County, Utah. The land acquisition program was part of the overall Interstate construction program and the land of the Appellants was part of the land acquired for the construction of the Interstate Highway.

Prior to the construction of the Interstate Highway, the Appellants watered their livestock in Silver Creek stream by crossing the old highway which separated Appellants' land from Silver Creek. The new Interstate system, pursuant to Interstate requirements, does not permit crossings across the highway and, therefore, the Appellants' right to ingress and egress from their remaining land had to be purchased by paying the Appellants severance damage. One of the items of severance damage was the loss of access to the water in Silver Creek as indicated by exhibits P-5 and P-6, which are appraisals, obtained by the Utah State Road Commission. Based upon such appraisals, a warranty deed, (exhibit P-2) was signed by the Appellants conveying to the Utah State Road Commission, the necessary land and the absolute right to control ingress and egress from the Appellants' land to or from the new Interstate system. In consideration for the conveyance of land and the right to control ingress and egress to and from the Interstate system from Appellants' land, the Utah State Road Commission paid to Appellants, the sum of \$8864.00, plus interest (exhibit P-3).

In 1963, the Utah State Road Commission initiated proceedings to acquire additional land for the construction of certain stock trails along the Interstate system from Silver Creek Junction to Wanship, and the Appellants' land was again affected by the project. The land being taken by Respondent, the Utah State Road Commission, borders along the now constructed Interstate system and the Appellants claim that they are

again entitled to compensation for the loss of access to water in Silver Creek. The Respondent denies that they are again entitled to such compensation since the original settlement included payment for control of Appellants' access to the water.

Based upon the controversy above described the case was pretried and subsequently tried by the Honorable Stewart M. Hanson, Judge, sitting without a jury. Counsel for Respondent was not certain as to what relief Appellants sought at the trial level except for the fact that Appellants, throughout the entire trial, insisted that they were entitled to severance damage on the ancillary case. However, the arguments submitted by Counsel for Appellants appeared to be directed towards mistake and misrepresentation and as such, appeared to be directed towards a rescission of the original contract.

Therefore, at pre-trial and prior to such date, counsel for the Respondent offered the Appellants an opportunity to try all of the issues including the issues of severance damage from the initial taking and the issues of loss of access to Silver Creek by the construction of the Highway itself and the stock trail, provided, however, that the Appellants return to the Respondent the sum of \$8864.00, plus interest, which had been paid by the prior settlement. At the pre-trial, the same offer was again made to the Appellants by counsel for the Respondent and the Court initially ruled that the Appellants refund the money to Respondent and the issues of compensation and damages arising from the construction of the highway and the construction of the stock trail be placed be-

fore the court in an effort to arrive at an equitable disposition of the entire case. (TR. Feb. 17, 1967, Page 12, line 15 through page 19, line 2.)

The Appellants, however, decided against refunding the money obtained by them through the prior proceeding and, therefore a trial was held on the issues of land value for the ancillary proceeding and also included in that trial was the issue of whether or not compensation for loss of access to the water should be included as damages in the ancillary proceeding.

The Court ruled that the Appellants were entitled to the value of the land taken in the ancillary proceeding but that the Appellants were not entitled to further severance damage on the land remaining, since the Appellants had been previously paid for the loss of access to the water by the earlier proceeding.

ARGUMENT

POINTS I AND II

THE COURT DID NOT ERR IN FINDING THAT THE PURPORTED AGREEMENT BY ALDEN S. ADAMS WAS NOT BINDING AND THAT THE APPELLANTS ARE NOT ENTITLED TO ANY FURTHER COMPENSATION.

Appellants' argument of Point One and Point Two are substantially the same and arise from the same factual situation and, therefore, Respondent will submit its arguments of Point One and Point Two under one heading.

The Appellants attack the finding of the Court by stating that the Court erred in finding the purported agreement made by Alden S. Adams was not binding upon the Respondents. The Appellants suggest that there was no evidence contradicting their position that the letters written by Alden S. Adams (D-7 and D-8) were, in fact, binding upon the State. This contention, however, presumes that the letters heretofore referred to were either contracts in and of themselves or that they were an integral part of the right of way agreement and the warranty deed executed by the Appellants in favor of the Respondent. The letters, however, are not sufficiently clear to be called contracts in and of themselves and do not specify any contingencies for the signing of the warranty deed or the right of way contract. The right of way contract and the warranty deed do not in any way refer to any contingencies nor refer to the letters written by Alden S. Adams. Therefore, it must be presumed that the Trial Court did not feel that the letters created any contractual obligation other than as specified in the warranty deed and the right of way contract.

Even if it were to be conceded, for the sake of this argument, that the the letters referred to by the Appellants created contractual liability in favor of Appellants and against Respondent, the question of whether or not the State Road Commission could be bound by such contract would still be in issue in that the authority of Mr. Alden S. Adams would have to be ascertained and established. Appellants argue that Mr. Adams was vested with sufficient authority and discretion to bind the State

Road Commission to whatever terms Mr. Adams determined necessary for the procurement of Appellants' land. To support this contention, Appellants cite 43 *Am. Jur.* 71, Section 254. However, Appellants cite only what is convenient for them to argue and omit such parts as are pertinent to the question before the Court. The true meaning of the section is conveyed in the following sentences :

“When power or jurisdiction is delegated to any public officer over a subject matter and its exercise is confided to his discretion, the acts done in the exercise of the authority are, in general, binding and valid as to the subject matter. *The only question which can arise between an individual and the public, or any person denying the validity are power in the officer and fraud in the party.*” (Emphasis added)

The citation goes on further to say:

“*An unauthorized act or declaration of an officer does not estop the government from insisting on its invalidity.*” *Id.* Page 72. (Emphasis added)

In further support of Appellants' position, they cite 43 *Am. Jur.* 85, Section 273. Appellants claim that this section stands for the proposition that all that is necessary for the letters written by Mr. Alden S. Adams to be binding upon the State is to show that the matters proposed by Mr. Adams need only have been more or less connected with his general duties. However, the section quoted by Appellants does not support this contention and is quoted out of context by Appellants. The citation found in Appellants' brief on page 15, refers to the liability of a public officer for acts committed beyond

his authority and refers to the question of his personal liability and not to the validity of any contractual obligations created by him beyond the scope of his authority.

Moreover, the question of agency being a vital question of the Appellants' case, should be given some consideration and merits some discussion. In 3 *Am. Jur.* 2d, 481, 482, Section 77, we find the following statement of the law:

“It is always competent for a principal to limit the authority of his agent and if such limitations have been brought to the attention of the party with whom the agent is dealing the power to bind the principal is defined thereby. Accordingly, the general rule is that one who deals with an agent, knowing that he is clothed with a limited or circumscribed authority and that his act transcends his powers, cannot hold his principal. This is true whether the agent is a general or a special one, for a principal may limit the authority of one as well as the other. Clearly, a limitation by the principal of the agent's authority communicated to a third party is effective to excuse the principal from liability to that third party for acts by the agent in excess of the limit prescribed; and a person dealing with an agent must use reasonable diligence and prudence to ascertain whether the agent is acting within the scope of his powers. *It follows that the principal is not bound, on the basis of either actual or apparent authority, if the third person dealing with the agent knows or should know, the limitations placed by the principal on the agent's authority and that the agent is exceeding it.*

“Whenever a person who dealt with an agent had notice of lack of authority or was put on notice by the circumstances, is ordinarily a question

of facts for the trier of facts, and not one of law."
(Emphasis added)

In reviewing the evidence most favorable to the successful party at trial, namely, the Respondent, it is not difficult to understand how the trial court arrived at its decision. The State Road Commission right of way contract referred to Mr. Alden S. Adams as an escrow agent and the terms stated in the contract were subject to approval by the State Road Commission and the final executed document indicates that, in fact, the approval of the State Road Commission was obtained 9 days subsequent to the date of the contract (exhibit D-7) and the execution by the Appellants. If the contracts were read by the Appellants, as conceded by Mr. F. Ephraim Bates, Appellants were given sufficient notice of the limited authority of Mr. Alden S. Adams and were required to inquire into his authority. The question of whether Appellants had sufficient notice of authority or whether Appellants were put on notice by the circumstances surrounding the transaction, being a question of fact to be determined by the tryer of the facts, it **must be presumed** to have been decided in favor of the successful party at trial, namely the Respondents.

Next, the Appellants feel that they are the victims of either misrepresentation or misunderstanding of the terms of the right of way contract (P-3) or wording of the warranty deed (P-2) and in support of such contention insist that the letters from Mr. Alden S. Adams (D-7 and D-8) are adequate proof of their position.

A careful reading of the letters, however, and all of the documents on exhibit in no way establishes that the

terms of the right of way agreement or the warranty deed are contingent upon the State paying the Appellants additional severance damage or providing substitute facilities for watering livestock. On the contrary, the warranty deed clearly emphasized the fact that the State was purchasing land from the Appellants together with controlled access and in clear print on the top of the page of the warranty deed we find the words in parenthesis "*controlled access.*" Again, in the last paragraph of the warranty deed we find that the Appellants conveyed to Respondents "*all rights of ingress to and egress from the remaining property contiguous to lands hereby conveyed to or from said highway.*"

In exhibit P-3 we find that each sentence includes the words "damages for controlled access" and the "control of egress and ingress from and to the highway from Appellants' land" is emphasized five times. The Appellants were fully apprised that the construction of the Interstate highway would prevent them from gaining access to the water in Silver Creek and on cross-examination, Mr. F. Ephraim Bates, one of the Appellants, testified that he signed the same. (TR. Feb. 20 and 23, 1967, page 27, line 22 to page 28, line 16.) Under these circumstances, it is difficult to understand how the Appellants could have misunderstood or could have been misled by misrepresentation as to the terms of the right of way contract and the deed which they executed in behalf of the State of Utah.

Assuming, for the sake of the argument, that the Appellants were misled by certain statements and docu-

ments, or assuming that the Appellants misunderstood the terms of the right of way contract and the Deed executed by them, Appellants were given numerous opportunities to rescind all contracts and agreements of settlement and re-try the prior lawsuit together with the subsequent lawsuit in a single hearing to provide them the opportunity to remedy whatever injustice the Appellants felt befell them from such misrepresentations or misunderstandings. Counsel for Respondent, prior to any hearing, offered to re-try the entire case and counsel for Respondent made such offer again at pre-trial. Due to the Appellants' claim of misrepresentation and misunderstanding, the Court ruled that all of the issues should be re-tried in one single hearing and the Appellants should refund to Respondent any sums received by Appellants on the prior proceeding together with interest as a condition to re-try the entire lawsuit. The Appellants were given six months to repay the sum received by them, namely, \$8864.00. Notwithstanding all of the offers to re-try the entire lawsuit, the Appellants refused to refund the necessary money and re-try the case. The Appellants insisted on being paid additional sums over and above what was originally received by them for the alleged deprivation of watering facilities and control of access. If it may be assumed that the Appellants believed that the warranty deed and right of way contract signed by them carried with it certain contingencies which were not fulfilled, and if Respondent believed that the execution of the documents carried no contingencies, the effect of such bilateral mistake is to nullify the contract. (17 *Am. Jur.* 2d, 491, Contracts, Sections 143

and 144.) Further, assuming Appellants' most serious accusations to be true, namely, that the Respondent was guilty of misrepresentation in inducing Appellants to execute the deed and contract for procurement of highway right of way, the remedy is still avoidance of the documents executed. (17 *Am. Jur.*, 501 through 506, Contracts, Section 151 to 154.) Appellants were afforded several opportunities to avoid the terms of the documents complained of and to present evidence to show what they believed to be just compensation for the value of the land taken and severance to the remaining land. The Appellants refused this remedy.

Upon election of the Appellants, a trial was held which was restricted to the issues of land values for the additional taking and Appellants also put on evidence in an attempt to show that they were entitled to additional damages from the control of access and the alleged deprivation of water. The Respondent put on evidence to contradict such evidence. The Court found against the Appellants and in favor of the Respondent, holding that the Appellants were paid for their alleged deprivation of water and severance to the land remaining in the prior proceeding and, therefore, should not recover again for the same items and, therefore, only the value of the land for the additional taking was included in the award to the Appellants.

The Appellants now complain that the affirmance of the Trial Court's findings would cause Appellants to suffer manifest injustice from unfair dealings and inequities and such affirmance would, in essence, permit the

Respondent to renege on its agreement and obligation. Appellants further argue that to demand that they return the money received by them to the Respondent, the State Road Commission, after these many years with interest as suggested by the Court, places them at a great disadvantage. It should be noted that the Court offered to withhold the assessment of interest until the final disposition of the entire case if tried *denovo* and further gave the Appellants six months in which to repay the principal sum received by them. Respondent cannot conceive of any offer more generous than to offer Appellants the opportunity to exonerate themselves from any and all contracts entered into between Respondents and Appellants and to put all of the issues which they complain of into a single lawsuit and proceeding. Having refused this chance, the Appellants should not now be heard to complain of inequities, injustices and unfair dealings. The Respondent could not have made a more generous offer to remedy whatever wrong Appellants felt befell them.

POINT III

THE TRIAL COURT'S FAILURE TO ENTER FINDINGS OF FACT AND JUDGMENT ON FURNISHING APPELLANTS A GATE, RIP-RAP AND CULVERT, IF ERROR, IS HARMLESS ERROR AND A STIPULATION IN RECORD BY RESPONDENT'S COUNSEL BINDS RESPONDENT ON FURNISHING THE ITEMS COMPLAINED OF.

Respondent does not deny that it is obligated to provide the Appellants with a gate, certain rip-rap on a stream crossing Appellants' property and a culvert to

permit crossing a ditch on Appellants' property. The Trial Court's failure to enter Findings of Fact and Judgment on these items does not warrant a reversal of the entire case, however. Counsel for the Respondent stipulated that these miscellaneous items would be furnished to Appellants, such stipulation having been made in open court and appearing in the record, the Appellants were afforded sufficient safeguard as to the stipulation by Section 78-51-32, U. C. A. 1953, which provides that under certain circumstances, counsel may bind his client. Moreover, the Judgment of the lower court may be amended to include the providing of miscellaneous items to protect the Appellants if this procedure is deemed necessary.

CONCLUSION

In view of the evidence presented in the lower Court and in view of the manner in which the Court's decision was arrived at, Respondent respectfully submits that the trial Court's ruling was amply supported by the evidence and the Judgment of the lower Court should be affirmed.

Respectfully submitted,

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