

1983

Tom Snyder, Wendell K. Nash For Themselves And All Other Uintah County Taxpayers Similarly Situated v. Morris R. Cook, Uintah County Clerk-Auditor, Arden W. Stewart Sheriff Of Uintah County And Western Surety Company, A Corporate Bonding Company : Brief of Respondents

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IN THE SUPREME COURT OF THE STATE OF UTAH

TOM SNYDER, WENDELL K. NASH :
for themselves and all other :
Uintah County Taxpayers :
similarly situated, :
 :
Plaintiffs & Appellants, :
 : No. 18,981
vs. :
 :
MORRIS R. COOK, Uintah County :
Clerk-Auditor, ARDEN W. STEWART :
Sheriff of Uintah County and :
WESTERN SURETY COMPANY, A :
Corporate Bonding Company :
 :
Defendants & Respondents. :

BRIEF OF RESPONDENTS

Appeal from the Judgment of the
Seventh Judicial District Court of Uintah County,
The Honorable Boyd Bunnell, Judge.

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Clerk, Supreme Court, Utah

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BRIEF OF RESPONDENTS

STATEMENT AND NATURE OF CASE

The Appellants brought this case to recover for themselves and all other taxpayers wages which were alleged to have been illegally paid to Uintah County Sheriff Deputies on the grounds such Deputies were not hired in compliance with merit commission requirements set forth in Utah Code Annotated Section 17-30-1 et. seq.

DISPOSITION IN THE LOWER COURT

The Honorable Boyd Bunnell, District Judge of the Seventh Judicial District Court for Uintah County, granted Defendant's Motion to Dismiss on the grounds that Plaintiffs-Appellants

lacked standing and failed to state a claim alleging bad faith, fraud or corruption and that Plaintiffs failed to file a bond as required by Utah Code Annotated Section 78-11-10.

RELIEF SOUGHT ON APPEAL

Appellant seeks to have this Court affirm the Lower Court decision.

STATEMENT OF THE FACTS

Respondent, for the purpose of this appeal does not challenge Appellant's Statement of Facts, but wishes to inform the Court of the following uncontested facts. None of the Appellants have applied for a position with the Uintah County Sheriff Department nor have they ever been employed, denied promotion, fired or demoted by the Uintah County Sheriff Department. It is further an uncontested fact that the Appellants brought this suit against the Sheriff without filing the written undertaking as required by Utah Code Annotated Section 78-11-10.

ARGUMENT

POINT I: THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DISMISSING APPELLANTS CAUSE OF ACTION FOR FAILURE TO FILE A WRITTEN UNDERTAKING.

Section 78-11-10 U.C.A. (1953) as amended states:

Before any action can be filed against any sheriff, constable, peace officer... when such action arises out of, or in the course of the performance of his duty, or in any action upon the bond of any such officer, the proposed Plaintiff, as a condition precedent thereto, shall prepare and file... a written undertaking with at least two sufficient sureties in an amount to be fixed by the court,... for the payment to the Defendant of all costs and expenses that may be awarded against such Plaintiff, including a reasonable attorneys fee to be fixed by the Court.

In Zamoria v. Draper, 635 P2d 78 (Utah 1981), the Utah Supreme Court interpreted this Section and held it to be constitutional when applied to cases involving officers sued for alleged wrongs committed in connection with their official duties. The Court states:

[A] person suing... should not be able to circumvent the statute by simply alleging that the Defendant acted outside his duty and thus in his private capacity. Id. at 79.

Appellants are suing Sheriff Arden Stewart for alleged violations of his duty to appoint deputies from a list certified by the Merit Counsel. This is clearly within the scope of his official duties as a Sheriff and thus the undertaking as required by Section 78-11-10 is a condition precedent to bringing such a action.

POINT II: THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DISMISSING APPELLANTS' CAUSE OF ACTION FOR FAILURE TO STATE CLAIM.

A. A public official incurs no individual liability absent a showing of bad faith, fraud or corruption.

In determining whether Defendant Morris Cook could be charged with individual liability in the suit for the recovery of allegedly illegal expended funds, the Lower Court applied the rule expressed by this Court in Salt Lake County v. Clinton, 39 Utah 462, 117 P 1075 (1911), where it was held that no individual liability would be found where there was no allegation of bad faith, fraud or corruption. The Court recognized that a public officer may misconstrue a statute or a duty in good faith, and in such circumstances should not be held liable.

Even if all of the allegations of Appellants Complaint were proven, there would be no basis for liability of Defendant Morris Cook. As stated in Appellants Complaint Defendant Cook's only actions were to approve the disbursement of salaries. This falls far short of any fraud or corruption.

- B. Plaintiff's do not have standing to recover money allegedly illegally disbursed or to claim an injury for the failure to comply with the merit counsel requirement.

Utah Code Annotated Section 17-30-20 sets forth those who have standing to challenge any violation of the Merit Commission Act. The parties who have standing to allege non-compliance with the merit process are parties who have applied for the deputy sheriff position or who are presently deputy sheriffs and who have not been granted promotions or persons who are deputy sheriffs who have been either fired or demoted. Parties who fit into these categories have a right to appear before the Merit Service Commission to have their grievance heard and then if that administrative procedure does not satisfy grievance they can proceed to District Court. This class of people are parties who are directly injured by non-compliance with the statute. The Plaintiffs do not belong to this class. Plaintiffs allege that they are taxpayers and that they have a right to come in and ask the Court to award the the deputy sheriffs' salaries. The Plaintiffs have not sustained an injury which is any different than that of the general public and therefore lack standing to bring this action.

Furthermore the Plaintiffs have failed to follow the proper procedure when there is an alleged unlawful expenditure of county funds. Utah Code Annotated Section 17-5-12 sets forth a procedure by which unlawful expenditures of county funds are recovered. The Plaintiffs have made no demand on the county attorneys office nor presented any facts to the county attorney indicating that there was an unauthorized expenditure of funds. Surely the Plaintiffs must first make a demand to the county attorney's office before they can proceed any further. Finally Rule 65(b) of the Utah Rules of Civil Procedure indicates that in the event the county attorney's office will not act on the unauthorized expenditure of funds then the attorney general's office should be notified and asked to take appropriate action. If the attorney general refuses to do so then the Plaintiff might have some right to bring an action for an unlawful expenditure of county funds. See Tabor vs. Moore 503 P2d 736 (Wash 1972). Even at that time the Plaintiffs would have to show a direct injury to themselves different than that of the general public so as to have standing to bring this action.

CONCLUSION

Section 78-11-10 U.C.A. (1953) and its interpretation in Zamoria v. Draper leaves little doubt that the filing of undertaking is a condition precedent to bring an action against a peace officer for wrongs committed within the scope of his

duties. Under the Clinton rule public officers have no individual liability absent bad faith, fraud or corruption. Furthermore Appellants lacks standing under Section 17-30-20 and Section 17-5-12 U.C.A. (1953) as amended.

Respectfully submitted this 30th day of March, 1983.

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