

1985

Ronald L. And Shirley Diane Baxter, Husband And Wife And Rio Vista Oil Ltd., A Utah Corp. An Involuntary Plaintiff v. Utah Department Of Transportation v. Robert Rees Dansie And Marie Grow Dansie, His Wife; Davis County Com-Missioners; Davis County Assessor; Davis County Recorder; And Weber Co-Unty, A Body Politic of the State of Utah : Petition And Brief For Rehearing

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IN THE SUPREME COURT OF THE STATE OF UTAH

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RONALD L. BAXTER and SHIRLEY :
DIANE BAXTER, husband and
wife,

Plaintiffs and :
Appellants,

vs.

:

RIO VISTA OIL, LTD., a
Utah Corporation,

PETITION AND BRIEF

An Involuntary :
Plaintiff,

FOR REHEARING

vs.

:

UTAH DEPARTMENT OF
TRANSPORTATION,

Defendant, Third- :
Party Plaintiff
and Respondent,

vs.

:

ROBERT REES DANSIE and MARIE :
GROW DANSIE, his wife; DAVIS :
COUNTY COMMISSIONERS; DAVIS :
COUNTY ASSESSOR; DAVIS :
COUNTY RECORDER; and WEBER :
COUNTY, a Body Politic of :
the State of Utah,

Case No. 19097

Third-Party :
Defendants.

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DAVID L. WILKINSON
Attorney General
STEPHEN C. WARD
Assistant Attorney General
124 State Capitol
Salt Lake City, Utah 84114

STEVEN C. VANDERLINDEN
Assistant Davis County Attorney
Farmington, Utah 84025

BRENT D. JOHNS
2411 Kiesel Avenue
Ogden, Utah 84401

GLEN E. FULLER
Attorney for Plaintiffs-
Appellants
245 North Vine Street
Salt Lake City, Utah 84103

Attorneys for Utah Department
of Transportation and Third-
Party Defendants Weber and
Davis County - Petitioners



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PETITION AND BRIEF

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Defendant, Third- :
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COUNTY ASSESSOR; DAVIS :
COUNTY RECORDER; and WEBER :
COUNTY, a Body Politic of :
the State of Utah,

Third-Party :
Defendants.

Case No. 19097

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PETITION AND BRIEF FOR REHEARING

Petitioner seeks a ruling from this Court reversing its decision filed on August 26, 1985, and requests this Court to sustain the ruling of the trial court.

STATEMENT OF FACTS

The facts are set out in Petitioner's Brief heretofore filed in this cause.

ARGUMENT

Petitioner respectfully requests this Court to reconsider its opinion heretofore issued in this case. Petitioner admits the Supreme Court has issued its opinion on the sole issue of collateral estoppel. In spite of this fact, other issues were raised not only in the pleadings, the decision of the trial court and in the parties' briefs that have been submitted to this Court which were not addressed in this Court's decision.

POINT I

ISSUES RAISED BY THE PLEADINGS IN THE LOWER COURT WHICH WERE CONSIDERED AND RULED UPON IN THE SUMMARY JUDGMENT, BUT WERE NOT ADDRESSED BY THE SUPREME COURT IN ITS RULING.

Obviously, one of the issues raised dealt with the issue of collateral estoppel as a defense to the Appellant prevailing in the current action.

Although Petitioner does not agree with this Court's decision on this issue, nevertheless the present Petitioner does not request this Court to rehear this issue.

The sole justification presented by the Appellant in relitigating the boundary located between Davis and Weber Counties was that in the Toone v. LeGrande Johnson Construction, case, Civil No. 20915, the Court used the time of Statehood (1896) as the critical time for determining this boundary instead of 1866. (R. 141) Obviously, if the present Appellant sought to try his case on the same basis as the Toone case, supra, their changes of prevailing would be for the most part, minimal. The primary issue of the location of the county line is only preliminary to the ultimate decision of whether Davis County could properly have sold the subject property at its tax sale.

The present arguments of the Appellant on whether the critical date for determining the county boundary line were not only argued as a post trial motion in the Toone case, supra, but in the Appellant's Brief. (R. 141)

Obviously, because of the foregoing being contained in the Briefs of the parties it is fair to assume the lower court considered these arguments and legal memoranda in the making of its decision. The lower court, exclusive of any collateral estoppel arguments concluded there were no issues of fact to be decided. (R. 250) The Court specifically affirmed this in its decision. (R. 251)

It being a legal determination as to the critical date for determining the recognized boundary between Davis and Weber Counties. The critical date was argued to the lower court, which

concluded that the time of Statehood, (1896) was the critical date to determine the location of the boundary between Davis and Weber Counties. The foregoing decision of the trial court was made independently of any collateral estoppel arguments. (R. 251)

Consequently, the issue on the location of the Davis and Weber County boundary was raised, argued and ruled on in the lower court and was not done so on the basis of collateral estoppel. This issue alone would provide the Supreme Court with enough justification to affirm the decision of the trial court.

POINT II

THE LOWER COURT RULED THAT THE APPELLANT'S TAX DEED WAS VOID.

It was raised in Appellant's brief (R. 124) the issue referred to above. The trial court was aware that Davis County, prior to the Appellant's filing their Complaint, abated and refunded to the Appellant any taxes they may have previously paid (R. 108, 109) and refused to assess or accept taxes on the Appellant's six acres. Also, Davis County changed its plat maps (R. 110) to reflect that Appellant's six acres were located in Weber County. All of the foregoing was raised, briefed and argued to the trial court. The lower court then ruled as a matter of law that the Appellant could not maintain this action against the Petitioner. Based upon the foregoing, it is the position of this Petitioner the lower court's ruling on this

issue provided a separate basis for the Supreme Court to affirm. This issue was never addressed by the Supreme Court in its ruling of reversal.

CONCLUSION

Petitioner respectfully submits that the Court in rendering its opinion in the instant case erred in that:

1. It based its entire decision on the issue of collateral estoppel.
2. This Court failed to consider that the trial court based its ruling and made its decision that the critical time for determining the boundary between Davis and Weber was 1896.
3. This Court failed to consider that the trial court specifically found that Appellant's deed had been voided by Davis County and had been done so prior to the filing of the present action.

Petitioner further submits that the Supreme Court failed to consider the two issues referred to above in the rendering of its decision. The sole basis of the Supreme Court's decision was that collateral estoppel was not a barr to the Appellant's claims.

That a reading of the record in the lower court reveals that at least two other issues were decided, neither of which were addressed by the Supreme Court. The decision of the lower on either one of these issues would be a sufficient basis for the Supreme Court to affirm. It is the position of this Petitioner

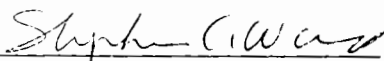
that if Appellant has any claim whatsoever, it lies only against Davis County.

The Supreme Court has held on so many occasions in past cases that it is their position that a judgment under review should be affirmed if it is sustainable on any legal ground apparent from the record. Edward v. Iron County, 531 P.2d 476 (1975); Goocsel v. Dept. Bus. Reg., Utah, 523 P.2d 1230; Globe Recreation v. Cedar Hills Development, 614 P.2d 155 (1980).

This Petitioner feels this decision of the trial, because of the reasons heretofore stated should be affirmed.

DATED this 9 day of September, 1985.

Respectfully submitted,



STEPHEN C. WARD
Assistant Attorney General
Attorney for Petitioner-
Respondent

CERTIFICATE

COMES NOW, Stephen C. Ward, Attorney for Respondent Petitioner and pursuant to Rule 35(a) of the Utah Rules of Appellate Procedure and hereby certifies to this Court that the foregoing Petition is presented in good faith and has not been interposed for the purpose of delay.

DATED this 9 day of September, 1985.

Respectfully submitted,


STEPHEN C. WARD
Assistant Attorney General
Attorney for Petitioner-
Respondent

CERTIFICATE OF MAILING

This is to certify that two copies each of the foregoing Petition and Brief for Rehearing were mailed, postage prepaid, to the following this 9th day of September, 1985:

Glen E. Fuller
245 North Vine Street
Box 608
Salt Lake City, Utah 84103
Attorney for Plaintiff-Appellant

Steven C. Vanderlinder
Davis County Attorney's Office
Farmington, Utah 84025

-and-

Brent D. Johns
2411 Kiesel Avenue
Ogden, Utah 84401

Attorneys for Third-Party Defendants, Witnesses
and Davis County Respondents

