

1995

Salt Lake City v. Wyllis Dorman-Ligh : Brief of Appellee

Utah Court of Appeals

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UTAH

BRIEF

NO.

950166CA

IN THE UTAH COURT OF APPEALS

SALT LAKE CITY,
a municipal corporation,

Case No. 950166-CA

Plaintiff/Appellant,

v.

PRIORITY 15

WYLLIS DORMAN-LIGH,

Defendant/Appellee.

BRIEF OF DEFENDANT/APPELLEE

APPEAL FROM A DECISION OF THE THIRD CIRCUIT COURT
SALT LAKE DEPARTMENT, STATE OF UTAH
DISMISSING A CRIMINAL INFORMATION
HONORABLE FRANCES M. PALACIOS, PRESIDING

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COURT OF APPEALS

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BRIEF OF DEFENDANT/APPELLEE

STATEMENT OF JURISDICTION

Jurisdiction of this appeal is conferred pursuant to Utah Code Ann. §78-2a-3(2)(d) (1994).

STATEMENT REGARDING ORAL ARGUMENT AND WRITTEN OPINION

Appellee Wyllis Dorman-Ligh submits that the "facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument." Utah R.App.P. 29(a)(3) (1995).

STATEMENT OF THE ISSUES AND STANDARD OF REVIEW

Appellee Wyllis Dorman-Ligh disputes the "Statement Of The Issues" submitted by the Appellant Salt Lake City, and proposes that the following issue be substituted:

1. Is Appellant Salt Lake City's appeal and its opening brief deficient for failure to cite any place in the record in the lower court where it preserved the issues it seeks to present on appeal, as required pursuant to Utah R.App.R. 24(a)(5)(A).

STANDARD OF REVIEW: This Court reviews issues relating to a party's alleged non-compliance with the Utah Rules of Appellate Procedure pursuant to the applicable provisions thereof. State v. Price, 827 P.2d 247 (Utah Ct. App. 1992).

DETERMINATIVE AUTHORITIES

The legal authorities determinative of this appeal include:

1. Utah R.App.P. 24(a)(5)(A), which provides:

Rule 24. Briefs.

(a) Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order indicated:

(1) A complete list of all parties to the proceeding in the court or agency whose judgment or order is sought to be reviewed, except where the caption of the case on appeal contains the names of all such parties. The list should be set out on a separate page which appears immediately inside the cover.

(2) A table of contents, including the contents of the addendum, with page references;

(3) A table of authorities with cases alphabetically arranged and with parallel citations, rules, statutes and other authorities cited, with references to the pages of the brief where they are cited;

(4) A brief statement whoing the jurisdiction of the court.

(5) A statement of the issues presented for review, including for each issue: the standard of appellate review, with supporting authority; and

(A) citation to the record showing that the issue was preserved in the trial court; or

(B) a statement of grounds for seeking review of an issue not preserved in the trial court.

(Emphasis supplied)

2. Utah R.App.P. 24(j), which provides:

(j) Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs which are not in compliance may be disregarded and stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

(Emphasis supplied)

STATEMENT OF THE CASE

I. NATURE OF THE CASE

This is an appeal from a final judgment of the Third Circuit Court of Utah, Salt Lake Department, dated February 23, 1995, the Honorable Francis M. Palacios, Commissioner, presiding, dismissing a Criminal Information filed by Appellant Salt Lake City against Appellee Wyllis Dorman-Ligh.

II. COURSE OF PROCEEDINGS AND DISPOSITION BELOW

On February 8, 1993, Appellant Salt Lake City filed an Information against Appellee Wyllis Dorman-Ligh, charging her with five counts of violating Salt Lake City zoning ordinances. R. at 1-2.

On March 9, 1993, Appellee Dorman-Ligh entered a "not guilty" plea and a pretrial conference was scheduled for May 3, 1993. Thereafter, a series of negotiations between Appellant Salt Lake City, represented by City prosecutor Cheryl Luke, and Appellee, represented by her undersigned counsel, resulting in the continuance of the matter until January 12, 1994, when the parties' counsel informed the court that they had been unable to reach a settlement agreement. R.3-9

On April 18, 1994, Appellee Wyllis Dorman-Ligh filed a Motion To Dismiss the Information, on the grounds that the criminal prosecution of Appellee under the zoning ordinances cited in the Information, violated her federal and state constitutional rights to due process and equal protection of law. R. 17-25.

The parties appeared before the Court on that date, and Commissioner Palacios ordered the City prosecutor, Cheryl Luke, who had been negotiating with the counsel for Appellee for several months, to appear for argument on the Motion To Dismiss, which the Court scheduled for May 19, 1994. The Court further ordered that the City submit a brief in opposition to the Motion To Dismiss by April 30, 1994. See, Transcript of Proceedings, April 18, 1994, R. 111-121.

Thereafter, Appellant Salt Lake City did not file a memorandum in opposition to Appellee Dorman-Ligh's Motion To Dismiss as ordered by the Court, and City prosecutor, Cheryl Luke, did not appear to argue the Motion To Dismiss on May 19, 1994, as ordered by the Court.

During the hearing on the Motion To Dismiss on May 19, 1994, the Circuit Court expressly found that Appellant Salt Lake City had violated the Court's orders in failing to file a memorandum in opposition to the Motion To Dismiss and in failing to have prosecutor Luke appear to argue the Motion. R. 207-209.

Following argument on the motion, Commissioner Palacios verbally granted Appellee Dorman-Ligh's Motion To Dismiss on the merits. See, "Amended" Transcript of Proceedings, May 19, 1994, R. 209-233.

On June 17, 1994, Appellant Salt Lake City filed a Notice of Appeal, seeking to appeal the dismissal of this case, R. 26-27, which appeal was rejected by this Court on August 25, 1994, on the ground that the appeal was premature. R. 91.

On June 27, 1994, the City filed Objections To Defendants' Proposed Findings of Fact and Conclusions of Law, R. 31-46.

On June 28, 1994, Appellant Salt Lake City filed a Motion For Determination of Jurisdiction, R.47-49, and a Motion For Rehearing on the Defendant's Motion To Dismiss. R. 50-74. Appellee Dorman-Ligh filed a memorandum in opposition. R. 75-80.

On September 1, 1994, the Circuit Court heard argument on the foregoing Motions and took the motions under advisement. R. 158-194. Commissioner Palacios again reiterated that the City had violated her orders by not filing a memorandum in response to Appellee Dorman-Ligh's Motion To Dismiss, and by not having prosecutor Luke appear to argue the Motion. R. 165, 168-169.

On September 26, 1994, the Circuit Court reversed its earlier ruling, granting Appellee Dorman-Ligh's Motion to Dismiss based upon the Court's concern regarding the admissability of certain evidence supporting the ruling. The Circuit Court then issued an order dismissing the case, with prejudice, because of Appellant Salt Lake City's failure to be prepared to proceed with the case. The City was directed to prepare the Findings and Judgment. R. 197-198. Appellant Salt Lake City did not file the proposed Findings of Fact, Conclusions of Law or Judgment until November 29, 1994. R. 93.

Thereafter, Commissioner Palacios entered Findings Of Fact and Conclusions of Law, and an Judgment and Order Of Dismissal With Prejudice, dated January 9, 1995. R. 94-100, 104-107. Appellant Salt Lake City did not file any objections to the Findings of Fact, Conclusions Of Law or Judgment entered by the Circuit Court.

Appellant Salt Lake City filed a Notice of Appeal on March 7, 1995, R. 108-109, and this appeal ensued.

III. STATEMENT OF FACTS

In addition to the foregoing, on or about June 5, 1995, Appellant Salt Lake City filed its opening brief on appeal. The "Statement Of Issues" in the brief sets forth five issues relating to factual findings and conclusions of laws made by the Circuit Court, which Appellant Salt Lake City maintains are unsupported and incorrect. Br. Of Appellant, 1-4.

In its opening brief on appeal, Appellant Salt Lake City fails to reference any place in the record of the Circuit Court proceedings where the City objected to the challenged findings and conclusions in order to preserve the City's right to appeal the same, as required pursuant to Utah R.App.R. 24(a)(5)(A). Id.

SUMMARY OF THE ARGUMENT

Based upon Appellant Salt Lake City's failure, in its opening brief, to provide any reference to the record of the Circuit Court where it objected to the factual and legal findings of the lower court it seeks to challenge in this appeal, as required pursuant to Utah R.App.P. 24(a)(5) (1995), Appellee Wyllis Dorman-Ligh asserts that this appeal should be dismissed and/or the lower decision affirmed, and Appellee awarded the attorney's fees and costs reasonably and necessarily incurred in responding to this appeal, pursuant to the provisions of Utah R.App.P. 24(j) (1995).

ARGUMENT

POINT I

APPELLANT SALT LAKE CITY'S APPEAL IS DEFICIENT ON ITS FACE FOR FAILURE TO DEMONSTRATE THAT IT PRESERVED THE ISSUES IT SEEKS TO APPEAL IN THE LOWER COURT. THEREFORE, THIS COURT SHOULD DISMISS THE APPEAL AND/OR AFFIRM THE DECISION OF THE LOWER COURT AND AWARD DEFENDANT HER ATTORNEY'S FEES AND COSTS NECESSARILY INCURRED IN RESPONDING TO THIS APPEAL.

In its "Statement Of The Issues", Appellant Salt Lake City presents five issues relating to factual and legal findings of the Circuit Court. Br. of Appellant, 1-4.

In each instance, the City cites the Circuit Court's own findings of fact and conclusions of law as the place in the lower court record where these issues were allegedly preserved for appeal. Br. of Appellant, 1-4. This apparent attempt to satisfy the requirement of Utah R.App.P. 24(a)(5), is insufficient. This rule requires an appellant to set forth in their brief on appeal,

"A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority' and (A) citation to the record showing that the issue was preserved in the trial court." (Emphasis supplied)

Mere reference to the lower court's findings on the issues sought to be appealed does not meet this requirement. "A brief must contain some support for each contention." State v. Wareham, 772 P.2d 960 (Utah 1989); State v. Reiners, 803 P.2d 1300 (Utah Ct. App. 1990). Since the City does not cite any reference to the record of proceedings in the lower court where it objected to the factual findings and legal proceedings it seeks to challenge on appeal, the City has failed to properly demonstrate that such issues are properly before the Court. State v. Price, 827 P.2d 247

(Utah Ct. App. 1990); State v. Yates, 834 P.2d 69 (Utah Ct. Ap. 1992).

Accordingly, the Court is entitled to assume the correctness of the judgment of the lower court. Steele v. Board of Review of Indus. Comm'n, 845 P.2d 960 (Utah Ct. App. 1993). "The standard of review requirement in Subdivision (a)(5) should not be ignored. The purpose of the requirement is to focus the briefs, thus promoting more accuracy and efficiency in the processing of appeals." Christensen v. Christensen, 812 P.2d 69 (Utah Ct. App. 1991).

Based upon the foregoing, Appellee Wyllis Dorman-Ligh respectfully objects to the consideration of the issues the City purports to raise on appeal, and submits that since the City's brief is deficient on its face, this Court should dismiss this appeal and/or affirm the lower court's judgment dismissing the case, and award Appellee Wyllis Dorman-Ligh the attorney's fees and costs she has necessarily incurred in responding to the City's deficient appeal pursuant to the provisions of Utah R.App.P. 24(j) (1995), which authorizes the Court to award such sanctions where the opposing party submits a brief which fails to comply with the rules governing the requirements for appellate briefs.

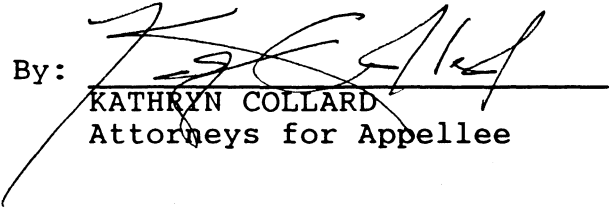
CONCLUSION

BASED UPON THE FOREGOING and for good cause shown, this Court should dismiss this appeal and/or affirm the decision of the lower court, and award Appellee Wyllis Dorman-Ligh her attorney's fees and costs on appeal.

RESPECTFULLY SUBMITTED AND DATED this 12th day of July, 1995.

COLLARD, APPEL & WARLAUMONT, L.C.

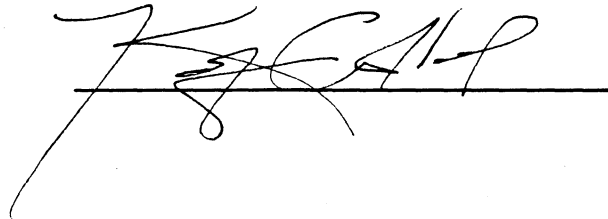
By:


KATHRYN COLLARD
Attorneys for Appellee

CERTIFICATE OF MAILING

I hereby certify that on this 12th day of July, 1995, I mailed, postage prepaid, two true and correct copies of the above and foregoing BRIEF OF APPELLEE, to:

LARRY V. SPENDLOVE
Attorney for Appellant
Assistant City Attorney
Salt Lake City Corporation
451 South State, Suite 505A
Salt Lake City, Utah 84111



A handwritten signature in black ink, appearing to read "L. Spendlove", is written over a solid horizontal line.