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Cleve C. Child, Earl L. Bowen, Enoch Ludlow and J. Lee Butler v. City of Spanish Fork : Brief of Respondent

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

CLEVE C. CHILD, EARL L. BOWEN, ENOCH LUDLOW and J. LEE BUTLER,

Plaintiffs and Appellants,

vs.

THE CITY OF SPANISH FORK, a Municipal Corporation,

Defendant and Respondent.

Case No. 13960

BRIEF OF RESPONDENT

Appeal from a Judgment of the Fourth Judicial District Court for Utah County, State of Utah
Honorable George E. Ballif, Judge

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SECOND AUTHORITIES

IN THE SUPREME COURT OF THE STATE OF UTAH

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Plaintiffs and Appellants,

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BRIEF OF RESPONDENT

STATEMENT OF THE CASE

This is an action whereby the plaintiffs, owners of certain real property located in Utah County, are seeking to compel defendant, the City of Spanish Fork, to proceed to complete annexation of an area known as "Wolf Hollow" without being required to comply with a precondition thereof, namely the transfer of two acre feet of Strawberry Valley water or its equivalent, without cost, to Spanish Fork City for each acre of land proposed to be annexed.

DISPOSITION IN LOWER COURT

Pursuant to Rule 12(b) of the Utah Rules of Civil Procedure, the Fourth Judicial District Court, the Honorable George E. Ballif, Judge, treated defendant's mo-

tion to dismiss as a motion for summary judgment. The court ruled that there was no genuine issue as to any material fact and that defendant was entitled to judgment as a matter of law; accordingly, plaintiff's complaint was dismissed with prejudice and on the merits. (R. 7.)

RELIEF SOUGHT ON APPEAL

Respondent asks the court to affirm the aforesaid summary judgment entered by the district court.

COUNTERSTATEMENT OF FACTS

On or about June 4, 1971, and June 15, 1972, plaintiffs presented petitions to the City Council of Spanish Fork City pursuant to Utah Code Ann. §10-3-1 (1953) requesting annexation of certain territory commonly referred to as "Wolf Hollow." (R. 9.) On or about February 15, 1973, in a regular meeting of the said city council, a resolution was passed approving the Wolf Hollow annexation subject to several conditions, one of which was the "transfer of irrigation water to the city." (R. 9-10; 51A.) On or about April 19, 1973, the proponents of the "Wolf Hollow" annexation met again with the city council at which time the transfer of irrigation water was again discussed. (R. 39.) At this time the proponents were clearly informed that before Spanish Fork City would accept the Wolf Hollow annexation, the landowners would be required to transfer to the city without cost, two acre feet of Strawberry Valley water or its equivalent for each acre of land to be annexed. (R. 44.)

It was further explained that this policy had been followed in the past and that they would be expected to follow it also. (R. 44-45; 46-47.) When this matter was heard by the district court on or about October 18, 1974, the plaintiffs admitted noncompliance with the above condition in that they had not transferred *any* irrigation water to Spanish Fork City. (R. 10.)

ARGUMENT

POINT I

THE LOWER COURT PROPERLY ENTERED SUMMARY JUDGMENT IN RESPONDENT'S FAVOR.

Respondent respectfully submits that the instant case is governed by this court's decision in *Bradshaw v. Beaver City,* 27 Utah 2d 135, 493 P.2d 643 (1972). In *Beaver City,* the court was asked to set aside an annexation ordinance passed by the city council subject to certain conditions that the landowners had to fulfill before the annexation would be complete. City taxpayers argued against the annexation, stating that by passing the ordinance subject to such conditions the city council had effectively left the ultimate determination up to the landowners, since the landowners could refrain from fulfilling the conditions and thus defeat the annexation. On the basis of the pleadings and the affidavits filed in the case, the lower court granted defendants' motion for summary judgment and plaintiffs appealed. On appeal, this court identified the "pivotal issue" in the case as "whether the annexation of the area in question to

Beaver City constitutes an unlawful act of the city council." 493 P.2d at 644. The court then cited the trial court with approval:

> The court finds that even if the facts set forth in the first cause of action were determined to be true, it would be outside the scope of authority of this court to make a ruling or determination on matters that are within the discretion of the legislative authorities and mayor of Beaver City. 493 P.2d at 645.

In order to clearly define the scope of judicial review in disputed annexation cases, this court then established the following test:

> The determination of the boundaries of a city and what may or may not be encompassed therein, including annexation or severance, is a legislative function to be performed by the governing body of the city. *The courts are and should be reluctant to intrude into the prerogative of the legislative branch of government, and will interfere with such action only if it plainly appears that it is so lacking in propriety and reason that it must be deemed capricious and arbitrary, or is in excess of the authority of the legislative body.* 493 P.2d at 645 (emphasis added) (footnotes omitted).

Respondent submits that when the instant case is judged according to the standard applied in *Beaver City,* it will be clear that summary judgment was properly entered. In the first place, an examination of the pleadings and affidavits in the record demonstrates that no genuine issue of material fact exists in this case. Appellants failed to plead compliance with the disputed

condition of annexation in their complaint (R. 48-50; R. 40), and later asserted that compliance was immaterial. (R. 35.) Appellants further admitted in Point V of their memorandum that:

> However, at this point, it is not material whether the condition arose from the ordinance, from resolution, or from whatever other source. It is instead a determination of the reasonableness of that condition, considered in light of the evidence and surrounding circumstances, that is being sought by plaintiffs in their action. It is therefore only material here for this court to decide whether or not plaintiffs' Complaint, seeking such determination, is sufficient on its face. (R. 11; R. 36-37.)

Thus the only question remaining for the lower court to decide was the reasonableness of the disputed condition.

In his minute entry explaining his ruling, Judge Ballif cited this court's decision in *Beaver City* as controlling the reasonableness issue. (R. 11.) He then ruled that the condition was reasonable for the following reasons:

> The extension of municipal facilities to new territory requiring servicing by water, power, sewer, roads, etc. would reasonably require that the legislative body provide that resources within the projected area needed to assist in providing the municipal facilities be transferred without compensation to the municipality if annexation is to be allowed. To hold otherwise would make annexation a matter of right by simply meeting the statutory requirement and could force a dilution of municipal services, and increased tax burden to the citizens of the municipality without allow-

> ing them the right to make provision for the servicing of additional territory. All of these considerations would lead to the conclusion that there is no taking of private property without compensation, but the consent of a municipality to include an area only upon condition that needed resources available such as water be given to the municipality for the privilege of gaining such services from the municipality. (R. 11-12.)

In *Beaver City,* this court stated that it will only interfere with legislative action on annexation matters when it plainly appears that it is either (1) capricious and arbitrary, or (2) in excess of legislative authority. 493 P.2d at 645. As Judge Ballif's opinion demonstrates, this showing has not been made. On the contrary, it is apparent that Spanish Fork City recognized and followed the statutory procedure for annexation as set forth in Utah Code Ann. §10-3-1 (1953). (See R. at 40.) It is further evident that the city refused to complete the procedure only when it became evident that the property owners were not going to comply with a condition designed solely to provide needed resources for the area without forcing a dilution of municipal services or an increased tax burden on resident citizens. Such a condition falls far short of the "arbitrary and capricious" standard required before the courts will interfere in an essential legislative function. The lower court should therefore be affirmed.

POINT II

IMPOSING A REQUIREMENT THAT NEEDED WATER RESOURCES BE TRANSFERRED TO THE CITY AS A CONDITION OF ANNEXATION CONSTITUTES A LEGITIMATE EXERCISE OF THE CITY'S DELEGATED POWER TO ACT IN SUCH MATTERS.

The issue presented by Point I of appellants' brief is whether respondent city exceeded its statutory authority by attempting to obtain water sources for a proposed annexation other than by purchase, lease, or condemnation.

A. Utah Code Ann. §10-3-1 (1953).

The procedure for annexation of land which is contiguous to an existing boundary of a municipality is found in Utah Code Ann. §10-3-1 (1953). Basically, the requirements are as follows:

a. Petition for annexation by a majority of the landowners of the land which will be included in the annexation. This must include the owners of at least one-third of the value of the land.

b. Preparation of a map or plat of the proposed annexation.

c. Approval of the annexation by at least two-thirds of the members of the city council.

d. Preparation and passage of an ordinance annexing the portion of land to the city.

e. Recordation of both a certified copy of the annexation ordinance and the plat with the office of the county recorder.

The Utah Supreme Court has repeatedly recognized that a determination of city boundaries is essentially a legislative function, to be performed by the governing body of the city or town. See *Bradshaw v. Beaver City*, 493 P.2d 643, discussed *supra*. Although the power to initiate the formal annexation procedure rests with the owners of contiguous land, there is a clear legislative intent, supported by this court, that the ultimate determination is to be made by the governing body of the municipality. This court is obviously reluctant to interfere with the decisions of such a body, and will do so only when the actions and decisions of that body constitute an abuse of discretion.

It is further clear that a city or town may impose reasonable costs or duties on landowners as a condition of annexation under this statute. In the *Beaver City* case, for example, the city council imposed certain conditions on annexation including installation of water lines and preparation of certain portions of the property for paving. With respect to these conditions, the court stated:

> The actual authorization for the annexation was made by the City Council, *and there is no reason that we know of why it was not proper and within its prerogative to prescribe reasonable conditions in connection with the annexation.* 493 P.2d at 645 (emphasis added).

In the instant case, the Spanish Fork City Council has recognized and followed the statutory procedure for annexation. In the property does not meet certain standards, or if the proponents of the annexation do not meet or comply with the conditions previously imposed by the city council, or if the proposed annexation will jeopardize city services for residents of the city, or if the proposed annexation will be costly or burdensome for the city, then the city council may refuse to complete the annexation procedure until the incoming landowners fulfill certain reasonable conditions thereof. Imposition of such conditions is well within the council's legislative prerogative under Utah Code Ann. §10-3-1 (1953) as interpreted by this court.

B. Utah Code Ann. §10-7-4 (1953).

Appellants further argue, however, that the council's action contravenes Utah Code Ann. §10-7-4 (1953) governing the acquisition of municipal water sources. Appellants precise contention is that unless a city uses the means of *purchase, lease* or *condemnation* as set forth in *this section* to obtain water supplies, it commits an ultra vires act.

Appellants' argument is erroneous for several reasons. The first is that Utah Code Ann. §10-7-4 is not the only statute governing acquisition of water supplies by municipalities as appellants suggest. (Brief of Appellants at 6.) The court's attention is directed to Utah Code Ann. §10-8-18 (1953), for example, which also deals directly with the acquisition of water sources by cities and towns.

More importantly, however, appellants' argument simply ignores that part of the statute which expressly empowers cities to use means other than purchase, lease, or condemnation to obtain water supplies. The exact statutory language is as follows:

> The board of commissioners, city council or board of trustees of any city or town *may acquire,* purchase or lease all or any part of any water, water works system, water supply or property connected therewith, and whenever the governing body of a city or town shall deem it necessary for the public good such city or town may bring condemnation proceedings to acquire the same; . . . Utah Code Ann. §10-7-4 (1953) (emphasis added).

Utah Code Ann. §10-8-18 similarly provides:

> [The boards of commissioners and city councils of cities] may construct, purchase or lease and maintain canals, ditches, artesian wells and reservoirs, may appropriate, purchase or lease springs, stream or sources of water supply for the purpose of providing water for irrigation, domestic or other useful purposes; may prevent all waste or water flowing from artesian wells, and if necessary to secure sources of water supply, may purchase or lease land; they may also purchase, *acquire* or lease stock in canal companies for the purpose of providing water for the city and the inhabitants thereof. (Emphasis added.)

As is evident from the express statutory language cited above, the legislature did not intend to limit municipalities to the means of purchase, lease or condemnation in obtaining water supplies. On the contrary, the legal definition of the term "acquire" includes pur-

chase, lease, condemnation, and much more. Indeed, "acquire" is defined as "to gain by any [lawful] means . . . or in *whatever* manner." Black's Law Dictionary (rev. 4th ed. 1968) (emphasis added). Furthermore, this broad view regarding the legitimate means of acquisition of municipal water sources was recognized in Utah case law as early as 1891 and has been followed to this day. *City of Springville v. Fullmer*, 7 Utah 450, 27 P. 577 (1891). Thus from a strictly legal viewpoint, respondent city's chosen means of obtaining water supplies for the proposed annexation is legitimate under both Utah Code Ann. §10-7-4 and Utah Code Ann. §10-8-18.

Carrying appellants' argument to its logical conclusion also presents practical problems of great significance. By limiting municipalities to the means of purchase, lease, or condemnation only, appellants would necessarily foreclose all other means of obtaining water supplies including gift, adverse possession, and prescriptive easement. Such a result would have a dramatic adverse effect on municipal powers which is not warranted by the enabling statutes. Such a result would also contravene Utah precedent which has recognized the right of a municipality to acquire water rights by adverse possession. *City of Springville*, 27 P. at 577-78.

Finally, in attempting to establish their unrealistically limited theory of municipal powers, appellants have failed to cite a single authority which is directly in point. Thus *Ritholz v. City of Salt Lake*, 3 Utah 2d 385, 384 P.2d 702 (1955); *Lark v. Whitehead*, 28 Utah 2d 343,

502 P.2d 557 (1972); *Sanchez v. City of Santa Fe,* 82 N.M. 322, 481 P.2d 401 (1971); *King v. Alaska State Housing Authority,* 512 P.2d 887 (Ala. 1973); *Town of Sheridan v. Valley Sanitation District,* 137 Colo. 315, 324 P.2d 1038 (1958); *State ex rel. Wisconsin Telephone Co. v. City of Sheboygan,* 111 Wis. 23, 86 N.W. 657 (1901); and *Wisconsin Telephone Co. v. City of Milwaukee,* 223 Wis. 251, 270 N.W. 336 (1936), are all readily distinguishable on the grounds that *none* deals with a city's power to annex contiguous territory or obtain water supplies under the relevant Utah enabling statutes which must be applied in this case. Furthermore, respondent city agrees with the general proposition for which the cases are cited, namely that a city may not exceed its delegated power to act under specific enabling statutes. Rather than demonstrating how respondent has exceeded its authority under the relevant Utah statutes, however, appellants have been content to rely upon generalized statements of law applied to distinguishable factual situations arising under irrelevant enabling statutes. In contrast, respondent has demonstrated how and why it has not exceeded its delegated authority under the applicable Utah statutes as applied to the facts of this case.

Respondent respectfully submits that imposing a condition for annexation which would require the transfer of needed irrigation water to the city is a legitimate exercise of the city's power to acquire water sources under Utah Code Ann. §10-3-1, §10-7-4, and §10-8-18 as well as the Utah cases interpreting these statutes. The lower court should therefore be affirmed on this point.

POINT III

THE CONDITION REQUIRING A TRANSFER OF IRRIGATION WATER TO THE CITY PRIOR TO ANNEXATION DOES NOT CONSTITUTE A TAKING OF PRIVATE PROPERTY WITHOUT COMPENSATION.

The issue raised in Point II of appellants' brief is whether a condition requiring transfer of irrigation water to respondent city prior to annexation constitutes a taking of private property without compensation in violation of the Fifth Amendment to the United States Constitution.

Appellants cite several cases as authority for the general proposition that government cannot seek to obtain compliance with an *unconstitutional* demand by establishing that unconstitutional demand as a precondition to the exercise of discretionary power. See *Frost v. Railroad Commission,* 271 U.S. 583 (1926); *Bynum v. Schiro,* 219 F. Supp. 204 (E.D. La. 1963); *State v. Salt Lake City,* 21 Utah 2d 318, 445 P.2d 691 (1968). (Brief of Appellants at 11-12.) Respondent agrees. However, appellants fail to cite a *single case* in support of their argument that a condition for annexation requiring transfer of water shares to the city amounts to an *unconstitutional* taking. Instead, the only basis for appellants' position is the unsupported conclusory statement that requiring the proponents of annexation to transfer water shares or the money equivalent to the city is "by definition" a "classical example of a taking of private property rights by a government body." (Brief of Appellants at 11.)

Respondent submits that appellants' unsupported conclusion is oversimplified and contrary to the law. See e.g., 56 Am. Jur.2d *Municipal Corporations* §60 (1971); Annot., 64 A.L.R. 1335, 1360 (1929). As these authorities indicate, the test to be applied to this question is essentially the same as applied in *Beaver City, i.e.,* whether the condition of annexation is reasonable. And as Judge Ballif pointed out in applying this test, the city's requirement is not a taking at all, but rather a means of providing the additional resources necessary to properly serve the Wolf Hollow area without forcing a dilution of municipal services or an increased tax burden on present city residents. (R. 11-12.) Such grounds clearly fall short of the "arbitrary or capricious" standard required to justify intervention by the courts. Furthermore, appellants do not even claim that the amount of additional water required by the city exceeds the area's needs. Since the required amount is uncontested, it certainly seems reasonable for the city to require the landowners in the area, presumably those who stand to benefit most by an extension of municipal services, to provide the needed resources before the city becomes obligated to extend such services.

For the foregoing reasons, the lower court properly ruled that the condition at issue does not constitute an unconstitutional taking of private property without just compensation.

POINT IV

THE CONDITION REQUIRING A TRANSFER OF IRRIGATION WATER TO THE CITY PRIOR TO ANNEXATION DOES NOT CONSTITUTE A DENIAL OF EQUAL PROTECTION.

The issue raised in Point III of appellants' brief is essentially the same one raised in Point II, namely, whether the required transfer of irrigation water to the city as a precondition of annexation is reasonable. Appellants further assert, however, that the imposed condition creates an "inherent inequality among the plaintiffs, the minority owners within the territory to be annexed, and the present inhabitants of the city" which creates a denial of equal protection under the Fourteenth Amendment to the United States Constitution. (Brief of Appellants at 16.)

Because municipal corporations enjoy broad legislative powers, the courts will not invalidate a municipality's legislative acts unless the complaining party can present substantial evidence that it has exceeded its federal and state constitution limitations or abused its discretion by acting in an arbitrary, discriminatory, capricious, or unreasonable manner. *State ex rel. Holifield v. Sewerage & Water Board of New Orleans,* 108 So. 2d 277 (La. Ct. App.), *cert. denied,* 361 U.S. 817 (1959); 1 J. Antieau, *Municipal Corporation Law* §4.12, at 206 (1968); 2 E. McQuillan, *The Law of Municipal Corporations* §10.33, at 823-25 (3rd ed. rev. 1966); Comment, 1971 Utah L. Rev. 397. Where the plaintiffs allege that the municipality has exceeded its constitutional limitations by denying the the equal protection of the

laws, the courts apply one of two established tests to determine the validity of the municipality's act. See *Developments in the Law — Equal Protection,* 82 Harv. L. Rev. 1065 (1969). These tests are the "traditional" or "classical" test and the "strict review" test. Since it is uncontested that no suspect classification such as race or fundamental interest such as voting is involved in the instant case, the traditional test is the proper standard to be applied. Under this test, the governmental classification is presumed to be reasonable unless the complaining party shows it to be arbitrary. If, however, there is a rational connection between the classification and a proper governmental objective, the classification will be upheld. *Railway Express Agency, Inc. v. New York,* 336 U.S. 106 (1949).

A. Proponents vs. Dissenting Property Owners

Appellants attack two classifications allegedly imposed by the condition. The first is that which allegedly differentiates between plaintiffs, proponents of annexation, and the dissenting, minority property owners. (Brief of Appellants at 15.) Appellants' argument seems to be that requiring the proponents of annexation to convey water shares for the entire area constitutes an arbitrary and capricious act. (Brief of Appellants at 14-16.)

Upon analysis, it becomes readily apparent that the alleged discriminatory classification between majority and minority property owners in the Wolf Hollow area is without foundation in fact. The condition imposed in this matter is simply the "transfer of irrigation water

to the city'' by the ''owners of property'' in the area. (R. 51A; 54.) It is *not* the ''transfer of irrigation water to the city by the majority landowners only'' as appellants seem to suggest. The city's only concern is that the additional water is provided before annexation is completed; it is not concerned with who provides it.

But even assuming arguendo that a ''classification'' had been made, it seems evident that a rational basis for this ''classification'' would exist. In the first place, it is uncontroverted that the amount of water required to be transferred to the city will be necessary to adequately service the entire Wolf Hollow area. Secondly, since appellants are the majority landowners who petitioned for annexation in the first place, and who will presumably stand to benefit most from subsequent development of the area, it seems obvious that they constitute the group most likely to fulfill the conditions imposed. Thus the city's objective of acquiring adequate water resources to service the entire annexation area would most easily and most probably be achieved, at the lowest cost, by imposing the condition on those most interested in and most likely to benefit from the proposal. Such grounds fall far short of the arbitrary and capricious standard required by the courts.

B. Proponents vs. City Residents

Appellants' second objectionable classification is that which allegedly differentiates between the proponents of annexation and present city inhabitants. (Brief of Appellants at 16.) There are, however, several rational bases which support this classification.

In the first place, it is important to note the inherent distinction which always exists between city residents, already enjoying the benefits and bearing the burdens of city living, and noncity residents attempting to obtain an expansion of municipal services. Such an expansion of city services necessarily results in additional costs which must be met either by requiring the transfer of needed resources as a precondition of annexation, or by penalizing city residents by diluting existing services or increasing their tax burden. In this regard it is no answer to claim that the city could avoid all financial burden on its inhabitants by simply issuing bonds to pay for the water under Utah Code Ann. §10-7-7 through §10-7-10 (1953), since it ignores very real problems such as statutory debt ceilings, bond issue election expense, sinking fund and interest expense, and the substantial possibility that the electors would defeat the bond issue proposal. Furthermore, as Judge Ballif pointed out in his minute entry, to adopt appellants' theory would make annexation a matter of right by simply meeting the statutory petition requirement without consideration of the additional burden thereby imposed on existing residents. (R. 11-12.) Under appellants' view, however, Utah municipalities would be forced to accept annexation petitions regardless of whatever burden may be imposed on city residents to provide water or other resources for the annexed territory. For these reasons, it is evident that the city acted rationally, indeed prudently, in requiring the landowners in the area to provide needed water resources before completing annexation.

CONCLUSION

The summary judgment entered by the lower court in respondent's favor should be affirmed for the following reasons:

1. It is uncontroverted that no genuine issue of material fact exists between the parties.

2. The condition requiring a transfer of irrigation water to the City of Spanish Fork prior to annexation of the Wolf Hollow acreage is reasonable under the circumstances.

3. The condition requiring a transfer of irrigation water to the city prior to annexation does not constitute:

a. an ultra vires act under the relevant Utah enabling statutes;

b. a taking of private property without compensation; or

c. a violation of the Equal Protection Clause of the Fourteenth Amendment.

Respectfully submitted,

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