1971

Ronald Bradshaw, Et Al v. Beaver City, A Municipal Corporation, Et Al. : Brief of Respondents

IN THE SUPREME COURT OF THE STATE OF UTAH

RONALD BRADSHAW, et al,
Plaintiffs and Appellants,

vs.

BEAVER CITY, a Municipal Corporation, et al,
Defendants and Respondents.

Case No. 12524

BRIEF OF RESPONDENTS

Appeal from Judgment of the Fifth District Court in and for Beaver County, Utah
Honorable J. Harlan Burns, District Judge

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STATEMENT OF THE NATURE OF THE CASE

This is a suit brought by Plaintiff to enjoin the exercise by Beaver City of its lawful power over its corporate limits as provided by Section 10-3-1, Utah Code Annotated (1962), which delegates to the cities and towns in the State of Utah the power of annexation.

DISPOSITION IN THE LOWER COURT

Upon Motions by the Defendants for Summary Judgment pursuant to Rule 56(c), Utah Rules of Civil Procedure, the Trial Court found that, even were the Plaintiff's allegations determined to be true, the Defendants' acts complained of did not constitute a ground upon which Plaintiff was entitled to relief. The Defendants being entitled to judgment as a matter of law, Summary Judgment in their favor was granted.

RELIEF SOUGHT ON APPEAL

The Defendants-Respondents seek affirmance of the judgment of the Trial Court.

STATEMENT OF FACTS

1. In response to an inquiry by Defendant, Interstate Development Company, regarding the annexation of certain property, the City Council of the City of Beaver announced its judgment that the property should not be annexed until certain modifications had been made to the property. (R. 30)

2. The modifications which the City Council indicated were necessary to bring the property up to a standard which would make it suitable for annexation to the City of Beaver included the installation of water lines through the property in question, and the preparation for the paving of certain portions of the property, prefa-

tory to the dedication of such property as a street, if the annexation were to occur. (R. 30)

3. The Plaintiffs in this case then filed suit seeking to enjoin annexation of the property and alleging three counts: (1) Violation by the City Council of Section 10-3-1, Utah Code Annotated; (2) Unlawful reversal of announced public policy by the City Council; and (3) Abuse of discretion by the City Council. (R. 4-11)

4. Upon the filing of Motions for Summary Judgment by the Defendants, together with Supporting Affidavits, and upon an Affidavit in Contravention filed by the Plaintiffs, the Trial Court found that even if the Plaintiffs were able to prove the factual allegations of their complaint, they would not be entitled to judgment as a matter of law and that Defendants' Motions for Summary Judgment should be granted. (R. T. 4)

ARGUMENT

POINT I.

SUMMARY JUDGMENT IS PROPER WHEN THERE IS NO GENUINE ISSUE OF MATERIAL FACT, THE DETERMINATION OF WHICH IS NECESSARY TO SETTLE THE RIGHTS OF THE PARTIES.

Rule 56(c) of the Utah Rules of Civil Procedure sets forth the grounds upon which summary judgment shall be granted:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no *genuine* issue as to any *material* fact and that the moving party is entitled to judgment *as a matter of law*. [Emphasis added.]

The Utah Supreme Court has given this Rule effect and has affirmed summary judgments in numerous recent cases. See, e.g., *Transamerican Title Ins. Co. v. United Resources, Inc.*, 24 U.2d 346, 471 P.2d 165 (1970); *Summerhays v. Holm*, 24 U.2d 190, 468 P.2d 366 (1970); *Middleton v. Cox*, 24 U.2d 43, 465 P.2d 530 (1970); *Robinson v. Employers' Liability Assurance Corp.*, 22 U.2d 163, 450 P.2d 91 (1969); *Pioneer Finance & Thrift Co. v. Powell*, 21 U.2d 201, 443 P.2d 389 (1968); *Christensen v. Farmers Ins. Exch.*, 21 U.2d 194, 443 P.2d 385 (1968); *Foster v. Steed*, 19 U.2d 435, 432 P.2d 60 (1967); *Menlove v. Salt Lake County*, 18 U.2d 203, 418 P.2d 227 (1966); *Pioneer Savings & LoanAss'n. v. Pioneer Finance & Thrift Co.*, 18 U.2d 106, 417 P.2d 121 (1966); *Allen's Products Co. v. Glover*, 18 U.2d 9, 414 P.2d 93 (1966); *Leininger v. Stearns-Roger Mfg. Co.*, 17 U.2d 37, 404 P.2d 33 (1965); *Nat'l. American Life Ins. Co. v. Bayou Country Club*, 16 U.2d 417, 403 P.2d 26 (1965); *Amundson v. Mutual Benefit Health & Accident Ass'n.*, 13 U.2d 407, 375 P.2d 463 (1962); *Henry v. Washiki Club Inc.*, 11 U.2d 138, 355 P.2d 973 (1960); *Brandt v. Springville Banking Co.*, 10 U.2d 350, 353 P.2d 460 (1960); *Dupler v. Yates*, 10 U.2d 251, 351 P.2d 624 (1960);

Aetna Loan Co. v. Fidelity & Deposit Co. of Maryland, 9 U.2d 412, 346 P.2d 1078 (1959); *Richards v. Anderson*, 9 U.2d 17, 337 P.2d 59 (1959); *Abdulkadir v. Western Pacific R.R. Co.*, 7 U.2d 53, 318 P.2d 339 (1957); *Young v. Felornia*, 121 U. 646, 244 P.2d 862 (1952). And in doing so the court has formulated the test of what constitutes a material fact. For example, in *Transamerica Title Ins. Co. v. United Resources, Inc., supra.*, the Court considered an appeal from a summary judgment according full faith and credit to an Arizona judgment in favor of Plaintiff. In the case, the Defendant asserted as a defense that the Arizona Court did not have jurisdiction to enter judgment. On appeal, the Defendant asserted that such defense raised an issue of fact upon which the Defendant should have been allowed to present evidence. Speaking for a unanimous court, Crockett, J., said:

> It is thus clear from this Rule [56(c)] that when upon the basis of the pleadings, depositions, answers * * *, admissions and affidavits . . . a party is entitled to a judgment as a matter of law, the motion for summary judgment should be granted. But if it appears . . . that there is a dispute as to any *issue of fact which would be determinative of the rights of the parties*, it should be denied. . . . The purpose of the discovery and of the summary judgment procedures . . . is to furnish a method for searching out and facilitating the resolution of issues which are not in dispute, and of settling the rights of the parties without the time, trouble and expense of a trial. [Emphasis added; citations omitted.] 24 U.2d at 348.

The Court concluded that summary judgment was properly granted by the trial court as the Defendant's challenge to the foreign courts jurisdiction, when viewed with the pleadings and other submissions, amounted only to an attempt to challenge jurisdiction as a matter of law.

And in *Dupler v. Yates, supra.*, the Court said:

> The primary purpose of the summary judgment procedure is to pierce the allegations of the pleadings, show that *there is no genuine issue of material fact, although an issue may be raised by the pleadings*, and that the moving party is entitled to judgment as a matter of law. [Emphasis added.] 10 U.2d at 269.

These are but examples of the cases where the Utah Supreme Court has properly recognized that the determinative factor is the existence of issues of material fact, not as appellant here suggests, the existence of any issue of fact. Other Utah cases recognizing the importance of examining the factual issues for materiality include: ***Summerhays v. Holm, supra; Middleton v. Cox, supra.; Robinson v. Employers' Liability Assurance Corp., supra.; Pioneer Finance & Thrift Co. v. Powell, supra.; Christensen v. Farmers Ins. Exch., supra.; Foster v. Steed, supra.; Menlove v. Salt Lake County, supra.; Leininger v. Stearns-Roger Mfg. Co., supra.; Aetna Loan Co. v. Fidelity & Deposit Co. of Maryland, supra.; Young v. Felornia, supra.***

In applying the test that an issue of fact is material only if it is determinative of the rights of the parties, the Utah Supreme Court has repeatedly held that there are

no material issues of fact and that cases should be decided according to applicable law, if under the most favorable view of the Plaintiff's facts, he could not prevail as a matter of law. *Pioneer Finance & Thrift Co. v. Powell, supra.; Pioneer Savings & Loan Ass'n. v. Pioneer Finance & Thrift Co., supra.; Allen's Products Co. v. Glover, supra.; Amundson v. Mutual Benefit Health & Accident Ass'n., supra.; Henry v. Washiki Club Inc., supra.; Brandt v. Springville Banking Co., supra.; Dupler v. Yates, supra.; Richards v. Anderson, supra.; Abdulkadir v. Western Pacific R.R. Co., supra.*

The principles, that an issue of fact is material only if it is determinative of the rights of the parties and that summary judgment for the Defendant is proper when under the most favorable view of the Plaintiff's case he would as a matter of law, not be entitled to judgment, correctly reflect the purpose behind Rule 56(c), that Defendants should not be put to the time, trouble and expense of unmeritorious litigation. *Transamerica Title Ins. Co. v. United Resources, Inc., supra; Pioneer Savings & Loan Ass'n. v. Pioneer Finance & Thrift Co., supra.; Allen's Product Co. v. Glover, supra.; Nat'l. American Life Ins. Co. v. Bayou Country Club, supra.; Henry v. Washiki Club Inc., supra.; Brandt v. Springville Banking Co., supra; Dupler v. Yates, supra.; Aetna Loan Co. v. Fidelity & Deposit Co. of Maryland, supra.; Richards v. Anderson, supra.; Abdulkadir v. Western Pacific R.R. Co., supra.; and see Leininger v. Stearns-Roger Mfg. Co., supra.*

The trial judge properly had these principles of law in mind when in granting Respondents' motions for summary judgment he declared:

> The court finds that even if the facts set forth in the first cause of action were determined to be true that it would be outside the scope 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. The court finds that the second and third cause of action in substance stand in a major portion upon the first cause of action, that falling and failing the motion for summary judgment as to the second and third cause of action is granted also. (R. T. 4)

POINT II.

THE APPELLANT HAS NO LEGAL BASIS FOR RELIEF.

The Plaintiff below proceeded on three theories: (1) That the City of Beaver unconstitutionally and in violation of Section 10-3-1 Utah Code Annotated (1962) delegated and prescribed a condition precedent to annexation; (2) That the City of Beaver improperly altered its announced public policy; and (3) That the possible or proposed annexation is without legal justification.

A. *The City of Beaver properly exercised its legislative power.*

The Utah Supreme Court has repeatedly recog-

nized that the fixing of the boundaries of a city is a legislative function. *In re Town of West Jordan*, 7 U.2d 391, 326 P.2d 105 (1958); *Application of Peterson*, 92 U.212, 66 P.2d 1195 (1937); *Plutus Min. Co. v. Orme*, 76 U.286, 289 P.132 (1930). This power has been properly delegated by the legislature. Utah Code Ann. §10-3-1 (1962); Utah Code Ann. §10-4-1 (1962). The power which the legislature has delegated is divided into two parts: (1) The power to annex pursuant to Section 10-3-1, and (2) The power to serve pursuant to Sections 10-4-1 to 10-4-5.

In dealing with the delegation posed by the latter, Sections 10-4-1 to 10-4-5, which give to the property owners and the district courts power to effectuate a severance of territory from the corporate limits of a municipality, the court has recognized that the delegation should be strictly construed as to the power which it places in the judiciary. The reasons underlying this recognition are founded in the separation of powers created by Art. V, §1 of the Utah Constitution. Thus the court recognizes that the role of the court is one of adjudicator and that the role which it may play in the legislative function of boundary determination is one of fact-finder, not policy maker. *In re Town of West Jordan, supra; Plutus Min. Co. v. Orme, supra; Young v. Salt Lake City*, 24 U. 321, 67 P. 1066 (1902). The court also recognizes in these cases the legislative determination that the legislature cannot sit in judgment of every boundary dispute and the determination that some other body who is closer to the people and to the fact questions involved should

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determine the question of severance. Thus, Sections 10-4-1 to 10-4-5 which provide for severence upon petition of the district courts by property owners in the territory sought to be severed and upon a proper determination by the court that requisite facts exist, has been strictly construed by the Utah Supreme Court, limiting the district courts to judicial functions, while at the same time effectuating the legislative determination that severance should be judged on a local level.

Section 10-3-1, however, provides a different procedure for annexation. The statute places power in the governing bodies of the municipalities to effectuate annexation at their discretion, upon the petition of the owners of property living within the territory sought to be annexed. The separation of powers problem does not exist under this procedure. The governing bodies, in this case the city council, are legislative bodies. Utah Code Ann. 10-6-5 (1962). As legislative bodies they are charged by Section 10-3-1 with the duty of exercising the legislature's power to fix municipal boundaries. Again, we have the legislative determination that a governmental instrumentality which is closer to the people and to the facts of each individual situation shall determine questions of the boundaries of municipalities. But, in this case, absent the separation of powers problem, the statute should be liberally construed to effectuate its purpose, *State v. Jones*, 17 U.2d 190, 407 P.2d 571 (1965); *Andrus v. Allred*, 17 U.2d 106, 404 P.2d 972 (1965); *Sjostrom v. Bishop*, 15 U.2d 373, 393 P.2d 472 (1964); *Peay v. Bd. of Ed. of Provo City School Dist.*,

14 U.2d 63, 377 P.2d 490 (1962); *Ringwood v. State*, 8 U.2d 287, 333 P.2d 943 (1959), even though, of course, the doctrine of separation of powers limits the scope of review by the judiciary. This is not to ask the court to abrogate the fixed requirements for annexation which the delegation imposes, but it must be recognized that the legislature has by its delegation sought to pass the burden of determining the boundaries of cities within the state to the cities and to the people owning property adjacent to the cities. To accomplish this purpose, the statute places the power to initiate formal annexation proceedings in the owners of property adjacent to the city. The city council, however, is the depository of absolute discretion whether annexation shall be finally effected or not.

The city council in this case recognized the statutory scheme for annexation. It has also recognized that the formal annexation procedures should not be empty procedures. It is allowed by the statute to refuse to annex without giving reasons. It would be allowed to refuse to annex the property in dispute, if it felt that the property should meet certain standards before being joined to the City of Beaver. The city council's judgment was that the property did not meet the standards which in its sound discretion would make the property suitable for annexation. To avoid a petition for annexation being reduced to an empty gesture, the city council resolved that the property in question should meet certain standards. We may, here, point out, as an aside, that the Plaintiffs in this case, as taxpayers and residents of the City, are com-

plaining that the City indicated a desire not to annex property until it was upgraded—a curious complaint, which may be viewed as against the taxpayers' interest.

In this case the City acted to give meaning to the statutory procedure, to effectuate its purpose, and to prevent a wasted effort by hopeful property owners who had announced an intention to seek annexation. To invalidate the cities action in this case would be to establish the principle that the only way in which cities can make their will known in respect to standards which must be met in order for annexation to take place is to consider and reject a proper petition for annexation. The effect of such principle would be that any time property owners seek annexation, they must first petition the city to which they desire to be annexed, hear the city's judgment concerning their petition, any reasons why the annexation is refused, and what the city deems requisite of property to be annexed. Such property owners must then determine whether they desire to meet the standards of the city imposes, make the necessary alterations in their property, and again petition the city. Certainly the statute cannot be deemed to require this. Certainly the statute is not so narrow that the cities in Utah cannot speak to annexation without a proper petitioner before them.

The city council's lawful action seeking to clarify its standard and seeking to render the annexation procedure meaningful, cannot be viewed as a delegation of power. A delegation of power is a surrender or grant of power or control over some subject matter which is

properly within the city's power. Acts which have removed far more power and control than is removed in the instant case, under any view of the facts, have not been viewed as delegations by the Utah Supreme Court. See *Tygesen v. Magna Water Co.*, 119 U.274, 226 P.2d 127 (1950); *Lehi City v. Meiling*, 87 U.237, 48 P.2d 530 (1935). The City of Beaver surrendered, in fact or law, no power and no control. It indicated its judgment of the proper standards which property should meet in applying for annexation. It is within the legislative power of a legislative or deliberative body to withdraw, reverse, or re-examine any legislative judgment, although the limits of due process may prohibit disturbing any vested rights in doing so. See e.g., *Crawford v. Gilchrist*, 64 Fla. 41, 59 So. 963 (1912). Any promise which can be construed from the City Council's announcement certainly cannot be construed as running to the Plaintiffs in this case. If the Defendant property owners had acted in reliance upon an asserted promise, perhaps, they could complain. But, they are not here for that purpose, and the Plainiffs cannot assert that there has been any promise to them which has caused them to act or forbear to their detriment.

B. *Municipalities have the right to reconsider actions taken.*

Section 10-7-1 of the Utah Code Annotated provides that cities and towns shall be bodies politic. "Body politic" has been defined as a term particularly appropriate to a public corporation invested with powers and

duties of government. *Munn v. Illinois*, 94 U.S. 113, 124, 24 L.Ed. 77 (1876). The Utah Code does not stop here, however. Section 10-6-5 provides "the Mayor and city council in cities of the third class [the City of Beaver] . . . are and shall be the legislative and governing bodies of such cities . . ." (parenthetical expression added). The appellants assert that it is not within the power of the city council of the City of Beaver to announce a public policy and subsequently abandon it in favor of another policy. In their affidavits supporting the city's motion for summary judgment, the individual members of the city council controverted the assertion that there had been the announcement alleged by the plaintiffs. (R. 30) It may now be said that whether there had been an announced public policy and a subsequent reversal thereof is now a fact in issue. Examination, however, of the power of the city council of the City of Beaver, as the legislative and governing body of a body politic, discloses that particular issue of fact to be totally irrelevant to the dispute before the court.

The Utah Supreme Court has not had occasion to consider whether it is within the power of a municipality to reconsider actions it has taken. That issue, however, has been often litigated in other jurisdictions. *City of Harvey v. Getz*, 118 F.2d 817 (7th Cir.) *cert. den.* 314 U.S. 628, 86 L.Ed. 504, 62 S.Ct. 59 (1941); See *Edwards Realty & Finance Co. v. City of Superior*, 250 Wis. 472, 27 N.W.2d 370; *Dal Maso v. Bd. of Comm'rs of Prince George's County*, 182 Md. 200, 34 A.2d 464 (1943); *Cowlitz County v. Johnson*, 2 Wash. 2d 497, 98

P.2d 644 (1940). The rule which has emerged is that a municipality may reconsider its actions, repeal its ordinances, and reverse its announcements any time until the rights of third parties have vested. The words of the Supreme Court of Florida, in *Crawford v. Gilchrist, supra*, well state the rationale which the courts employ: "A right to reconsider action is *an attribute of all deliberative bodies.*" [Emphasis added.] 50 So. at 968. Of course, the exception made for those situations in which third parties have vested rights is that imposed by various constitutional limitations upon the taking of property without just compensation and due process of law. That exception, it is plain, does not apply here. The plaintiffs claim no vested rights, no money damages, and no specific acts of reliance. Nor could they assert such a claim, as they themselves characterize the city council's action as an announcement of public policy. Yet they ask the court to declare a simple change of legislative intent —of public policy—to be a violation of the cities discretion and a prohibited act. It requires no authority to see the consequences of the rule they seek. If the municipalities of this state cannot change a simple announcement of public policy, how could we find it within their power to repeal or amend an ordinance. If a city may not change its policy, how can we say it may change its laws. This clearly cannot be the rule.

C. *Annexation of the property in question by the City of Beaver would be legally justified.*

The plaintiff asserted that the city has no legal justification upon which to found a decision to annex. They

alleged that annexation would be unreasonable and without legal justification. Viewed most favorably to the plaintiff, it appears that all the third cause of action asserts is that the decision of the City of Beaver, if it has made one, is wrong. The trial court recognized this assertion for what it is when it said:

> The court finds that the action of the city council and the mayor of Beaver City, while this court may or may not agree with what was done, it is within their discretion to do and to take that action. Do you want some time to amend? (R. T. 4)

The trial court obviously had in mind that the Statute, 10-3-1 Utah Code Ann. (1962), leaves to the discretion of the city council the decision whether there should be annexation. R. T. 4 The discretion being vested in the city council, it should not be disturbed unless there is a manifest abuse in the exercise of such discretion *Tygesen v. Magna Water Co.*, *Deuser v. Salt Lake City Corp.*, 123 U. 107, 255 P.2d 723 (1953); *Phi Kappa Inst. Fraternity v. Salt Lake City*, 116 U. 536, 212 P.2d 177 (1949). It seems clear that the plaintiff did not in their complaint allege acts sufficient to disclose or even reasonably infer an abuse of discretion, let alone an abuse so manifestly arbitrary, unreasonable or confiscatory that the court would be called upon to substitute its judgment for that of the city. The words of the Utah Supreme Court in *Deuser v. Salt Lake City Corp.*, supra, are appropriate to this situation:

> Such allegations do not show a confiscatory, discriminatory or arbitrary action by the city in

> thorities which would justify a judicial alteration or extension of the boundaries of the zone. . . . The factual allegations of plaintiff's complaint do not support the conclusions drawn by the plaintiff therefrom and stated in such pleading. The judgment of the lower court, therefore, was correct. 255 P.2d at 724.

Even though the plaintiff's complaint was insufficient, it may be of some guidance to examine the reasonableness of the city's action. Owners of property adjacent to the city sought to devote their property to commercial use by selling it to a commercial enterprise. The city council recognized the property owners' desire, in conjunction with their developmental plans, to be annexed to the City of Beaver. Certainly it was reasonable for the City of Beaver to recognize the advantage of adding commercial property situated adjacent to the city, to its corporate territory. Its interest may be founded both in increasing its tax base and in extending its regulatory power to commercial indeavors which are bound to have an effect upon the commerce of the city and upon its health, safety, and welfare. *Dowse v. Salt Lake City, Corp., supra.* Yet, the plaintiff glibly asserts that the city has abused its discretion.

POINT III.

THE PLAINTIFF POSES A SERIOUS CHALLENGE TO THE POWER GRANTED TO MUNICIPALITIES BY THE UTAH LEGISLATURE.

Throughout this brief we have pointed out the insufficiency of the plaintiff's allegations in the court below. The plaintiff here attempts to divert the court's attention by pointing to issues of fact, even though there are no *material* issues of fact. The plaintiff has in no way, throughout this litigation, addressed himself to the issue of materiality. Plaintiff simply asks the court to order the City of Beaver to engage in extended litigation because plaintiff is able to isolate immaterial issues of fact. The plaintiff may be asked, what becomes of the power to act for the benefit of their citizens which the legislature has delegated to municipalities throughout Title 10 of the Utah Code, if plaintiff or any other irritated citizen is able to come into court, assert an immaterial issue of fact, demand a trial, and receive a trial, regardless of the merits of his claim? Respondent has no doubt what the result would be. Our city and town governments would be hamstrung. Municipal government in the State of Utah would screech to a halt. It is ironic that plaintiff asserts this rule of law as proper after being offered time to amend by the trial court and after declining to amend. The duty of the court is to uphold the powers of government unless there has been a plain and manifest abuse. *Lehi City v. Meiling, supra.* Rule 56(c) provides summary judgment procedures to aid the court in its task. *Menlove v. Salt Lake City, supra.* If Rule 56(c) were ever applicable, it is now.

CONCLUSION

Rule 56(c) of the Utah Rules of Civil Procedures and the cases decided under it indicate that where the plaintiff fails to present a claim under which he could prevail summary judgment is proper. This is such a case. The City Council of the City of Beaver has reasonably acted within its power. The only rule under which plaintiff would be entitled to prevail is one which would, without basis in law, seriously cripple municipal government throughout Utah and which would take all meaning from Rule 56(c). The District Court's summary judgment should be affirmed.

Respectfully submitted,

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