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SPECIAL SERVICE DISTRICTS - UTAH

Cove at Little Valley Homeowners Association v. Traverse Ridge Special Service District

Supreme Court of Utah - June 16, 2022 - P.3d - 2022 WL 2165344 - 2022 UT 23

Homeowners association brought action against special service district, alleging that it paid assessments for street plowing services but did not receive any such services, and seeking an order requiring district to provide services to all areas and a refund of payments made.

The Third District Court granted district's motion to dismiss for failure to state a claim, and association appealed.

The Supreme Court held that:

- Association failed to preserve for appeal claim that code provision conflicted with state law;
- Argument that district lacked "standing" to enforce development agreement did not implicate court's subject matter jurisdiction;
- Court's failure to realize that city code conflicted with the Utah Special Service Act was not plain error, assuming that plain error could apply; and
- Court could not rely on prior case law to determine that assessments were a "tax" which had to be challenged under the Utah Tax Act.

Sentences in homeowners association's complaint that referenced city code provision stating that private streets shall be maintained by the subdivider or other private entity was not sufficient to preserve for appeal claim that code provision conflicted with state law and thus did not control whether city special service district was required to provide snow plowing services to subdivision; association did not even mention the sentences in the opposition to city special service district's motion to dismiss, let alone build an argument around them, and there was no indication that district court understood that the association believed that the city code did not control because it conflicted with state law.

Argument that services district lacked "standing" to enforce development agreement which provided that private subdivision streets had to be privately maintained did not implicate the court's subject matter jurisdiction and thus could be raised by homeowners association for the first time on appeal in action seeking to require district to provide snow plowing services to subdivision; even if court could not enforce the development agreement, court would not lose subject matter jurisdiction to adjudicate the claims the association brought against the district seeking to compel the district to provide snow plowing services and seeking a refund of assessments paid to the district.

District court's failure to realize that city code, which stated that private streets shall be maintained by the subdivider or other private entity, conflicted with the Utah Special Service Act was not plain error, assuming that plain error could apply to unpreserved issues in civil cases; association in fact failed to meet its burden of even demonstrating the correctness of the legal conclusion embedded in that argument.

District court could not rely on prior case law to determine that assessments which homeowners paid to city special service district for purposes of the provision of street services, including snow removal, street lighting services, repairing and maintaining roads, and sweeping and disposal services, were a “tax” which had to be challenged under the Utah Tax Act, as, in prior action, statement that assessments were a “tax” was dicta; issue of whether the assessment was a tax or fee was not necessary to the outcome of the case, and the court in the prior case had not questioned the way the parties had characterized the levy.

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