

SUPREME COURT OF UTAH

Searle v. Milburn Irrigation Co., 2006 UT 16

133 P.3d 382 (Utah 2006) · No. No. 20040406 · Decided March 10, 2006

SUMMARY

The Utah Supreme Court addresses the standards and burdens applicable to an application to change the point of diversion, place of use, and nature of use of a water right. It holds that the applicant bears the burden of persuasion throughout the process but need only show reason to believe that the proposed change will not impair vested water rights. The court also concludes that direct or circumstantial evidence may undermine that showing and remands for further proceedings.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Justice Durrant; Chief Justice Durham; Associate Chief Justice Wilkins; Justice Parrish; Justice Nehring
JURISDICTION	Utah
DECIDED	March 10, 2006
DOCKET	No. 20040406
DISPOSITION	remanded
PROCEDURAL POSTURE	The plaintiffs sought judicial review of the State Engineer's rejection of their water-right change application. After conducting a trial de novo, the district court upheld the rejection, and the plaintiffs appealed.
STANDARD OF REVIEW	The proper standard of proof and allocation of the burden of proof are reviewed for correctness. The rejection of a change application based on probable impairment is a mixed question of law and fact, reviewed with significant but not broad deference to the district court's application of law to facts.
PRECEDENTIAL VALUE	published, precedential opinion
PARTIES	Lawrence W. Searle, Ann C. Searle v. Milburn Irrigation Company, William M. Hamilton, Utah State Engineer Jerry D. Olds, P.E.

TOPICS

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burden of proof

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QUESTIONS PRESENTED

1. What standard of proof governs a water-right change application when determining whether the proposed change will impair vested rights?
2. Whether the burden of persuasion shifts to a protestant after the applicant makes a prima facie showing of no impairment.
3. Whether circumstantial evidence showing a probability of impairment may undermine an applicant's showing and justify rejection of a change application.
4. What standard of appellate review applies to the district court's determination that a proposed water-use change may impair vested rights?

HOLDINGS

1. A change applicant need only show that there is sufficient evidence to support a reasonable belief that the proposed change can be perfected without impairing vested water rights; the preponderance-of-the-evidence standard applies to final adjudications of water rights, not to the application phase.
2. The burden of persuasion remains on the change applicant throughout the application process; it does not shift to the protesting party after the applicant makes a prima facie showing.
3. A protestant may rely on circumstantial evidence to undermine an applicant's showing that the proposed change will not impair vested rights. Circumstantial evidence may justify denial when it is sufficiently compelling to make the applicant's asserted reasonable belief unreasonable.
4. A district court's determination concerning whether evidence sufficiently demonstrates probable impairment is a mixed question of law and fact subject to significant, though not broad, deference.

KEY QUOTATIONS

“We hold that an applicant seeking a change in water use need only show reason to believe that approval of the application will not result in impairment of vested water rights and that the applicant bears the burden of persuasion throughout the application process.” (¶ 2)

“A change applicant is required only to show reason to believe that the proposed use can be undertaken without impairing vested rights in order for the application to warrant approval.” (¶ 57)

“The burden of persuasion remains on the applicant throughout the application process, although the protestant has the opportunity to provide evidence undermining the applicant's reason to believe showing.” (¶ 57)

“In producing such evidence, a protestant may rely exclusively on circumstantial evidence.” (¶ 57)

FACTUAL BACKGROUND

The Searles owned a water right permitting seasonal irrigation from a well near Chester, Utah, but sought to change the point of diversion to the Jacobsen well near their cabin and to use the water for year-round domestic and stockwatering purposes. Milburn, whose senior water right depended on the South San Pitch River, protested because it believed the Jacobsen well was hydrologically connected to its water source and that the proposed use could worsen existing summer shortages. Expert testimony conflicted concerning whether the two water sources were connected and whether the proposed use would impair Milburn's vested rights.

PROCEDURAL HISTORY

The Searles filed an application to change the point of diversion, place of use, and nature of use of a water right. Milburn protested, and the State Engineer rejected the application after an administrative hearing; reconsideration was denied. The Searles then sought judicial review in district court, which heard evidence de novo and rejected the application after finding impairment by a preponderance of the evidence. The Utah Supreme Court remanded for reconsideration under the correct standard and burden allocation.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The district court must reconsider the change application using the reason-to-believe standard, keeping the burden of persuasion on the applicant throughout and considering any direct or circumstantial evidence offered by the protestant that undermines the applicant's showing.

CASES CITED

- State v. Pena, 869 P.2d 932 (Utah 1994)
- Hansen v. Hansen, 958 P.2d 931 (Utah Ct. App. 1998)
- In re R.N.J., 908 P.2d 345 (Utah Ct. App. 1995)
- In re E.H.H., 2000 UT App 368, 16 P.3d 1257
- Beaver County v. Utah State Tax Commission, 916 P.2d 344 (Utah 1996)
- Jensen v. IHC Hospitals, Inc., 2003 UT 51, 82 P.3d 1076
- Butler, Crockett & Walsh Development Corp. v. Pinecrest Pipeline Operating Co., 2004 UT 67, 98 P.3d 1
- State v. Hansen, 2002 UT 125, 63 P.3d 650
- Jeffs v. Stubbs, 970 P.2d 1234 (Utah 1998)
- Crafts v. Hansen, 667 P.2d 1068 (Utah 1983)
- Salt Lake City v. Boundary Springs Water Users Ass'n, 2 Utah 2d 141, 270 P.2d 453 (1954)
- Piute Reservoir & Irrigation Co. v. Western Panguitch Irrigation & Reservoir Co., 13 Utah 2d 6, 367 P.2d 855 (1962)
- American Fork Irrigation Co. v. Linke, 121 Utah 90, 239 P.2d 188 (1951)

- United States v. District Court, 121 Utah 1, 238 P.2d 1132 (1951)
- Eardley v. Terry, 94 Utah 367, 77 P.2d 362 (1938)
- Tanner v. Humphreys, 87 Utah 164, 48 P.2d 484 (1935)
- New Cache La Poudre Irrigation Co. v. Water Supply & Storage Co., 49 Colo. 1, 111 P. 610 (1910)
- Monte Vista Canal Co. v. Centennial Irrigating Ditch Co., 24 Colo. App. 496, 135 P. 981 (1913)
- Johnson v. Bell, 666 P.2d 308 (Utah 1983)
- Godesky v. Provo City Corp., 690 P.2d 541 (Utah 1984)
- State v. Clark, 2001 UT 9, 20 P.3d 300
- State v. Anderson, 612 P.2d 778 (Utah 1980)
- Whitmore v. Murray City, 107 Utah 445, 154 P.2d 748 (1944)
- Koesling v. Basamaklis, 539 P.2d 1043 (Utah 1975)

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