6-30-2010

Eddins v. City of Lewiston Appellant's Reply Brief Dckt. 37209

IN THE SUPREME COURT OF THE STATE OF IDAHO

STEVEN LEE EDDINS, Petitioner-Appellant, vs. CITY OF LEWISTON, an Idaho municipal corporation, Respondent.	)	Supreme Court No: 37209

APPELLANT'S REPLY BRIEF

Appealed from the District Court of the Second Judicial District in the State of Idaho, In and For the County of Nez Perce.

The Honorable Jeff M. Brudie, District Judge Presiding

Counsel for Appellant

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ARGUMENT

A. THE CONSTITUTIONAL PROTECTION ATTACHES TO THE USE OF THE REAL PROPERTY AND NOT THE RECREATIONAL VEHICLES THEMSELVES.

In this case, the Appellant had several lots that have been continuously used as recreational vehicle spots since the 1940's or 1950's. The use of this property for recreational vehicles had been lawful until a contrary ordinance was passed in 2006. The parties agree that there is a "grandfathered" right but disagree on what is protected.

The Respondent does not deny that the Appellant has a "grandfathered" right contrary to a 2006 ordinance. *See Respondent's Brief* pg. 8. However, the Respondent's position is that the "grandfathered" right is particular to the individual recreational vehicle. As set forth in the *Appellant's Brief*, the Appellant's position is that the "grandfathered" right is not limited to the recreational vehicles themselves, the "grandfatherered" right pertains to the Appellant's real property and how it was used prior to the passing of the 2006 ordinance.

Holding that the "grandfathered" protection is limited to the recreational vehicles themselves does not offers no protection or consideration to how the real property was used prior to the passing of the ordinance. The ordinance passed affects how real property can or cannot be used and so logically any "grandfathered" protection would relate to how the real property would being used prior to the passing of the ordinance.

Hypothetically speaking, if a person owned a piece of property that he grows corn on for twenty years and subsequently an ordinance was passed prohibiting a person from growing corn, what would be constitutionally protected? The person's right to grow corn on his property or that particular corn crop? The answer is clearly that the constitutional protection would attach to the person's right to crow corn on his property and not be limited to a specific corn crop. In this case, the Appellant, and prior owners, since the 1940's or 1950's, have been using a portion of the real property as recreational vehicles spots. The use of the real property as recreational vehicle spots is what is protected, not the recreational vehicles themselves.

B. THE APPELLANT'S SUBSTANTIAL RIGHT TO USE HIS PROPERTY HAS BEEN SEVERELY PREJUDICED.

The Respondent has recognized that a property owner's right to develop and use his or her property is a substantial right. As set forth in earlier briefing, the Appellant's property has been used the same way since the 1940's or 1950's. Approximately 1/4 of the property is used for recreational vehicle spots. If the Appellant is not able to continue to use this property for recreational vehicles spaces this property will be useless. Given the nature of the use and design of his property, his property cannot reasonably be redesigned. *See* R. 44.

If the Appellant is not allowed to continue to use his property since the way it has been used since the 1940's or 1950's, the Appellant substantial right to use his property will be severely prejudiced.

CONCLUSION

The District Court in this matter erroneously affirmed the City's decision in this matter. The constitutional protection afforded in this matter is specific to the use of the real property as recreational vehicle spots, not to the recreational vehicles themselves, and not allowing the Appellant to continue to use his property as it has been used for over 60 years severely prejudices his substantial right as a property owner. As such, Appellant respectfully requests that the District Court's decision in this matter be reversed.

DATED this 28th day of June, 2010.

CLARK AND FEENEY

By: _____
John Charles Mitchell a member of the firm.
Attorneys for Petitioner-Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of June, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Mr. Don L. Roberts PO Box 617 Lewiston, ID 83501	☒ U.S. Mail ☐ Hand Delivered ☐ Overnight Mail ☐ Telecopy

By: _____
Attorneys for Petitioner-Appellant