

2007

William P. Ramey, III v. Salt Lake City Corporation : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Evelyn Furse; City Attorney's Office; Defendant/Appellee.

William P. Ramey, III; Plaintiff/Appellant Pro Se.

Recommended Citation

Brief of Appellant, *Ramey v. Salt Lake City Corporation*, No. 20070477 (Utah Court of Appeals, 2007).
https://digitalcommons.law.byu.edu/byu_ca3/306

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

<p>William P. RAMEY, III, an individual, Plaintiff/Appellant, <i>pro se</i>,</p> <p>v.</p> <p>SALT LAKE CITY CORPORATION, a Utah corporation, and Defendant/Appellee.</p>	<p>Brief of Appellant</p> <p>Appeal from Civil No.</p> <p>060920071</p> <p>Appeal Number</p> <p><u>20070477</u></p> <p>ORAL ARGUMENT REQUESTED</p>
---	--

Appeal from the Final Judgment of:

The Honorable Glenn K. Iwasaki
Third Judicial Trial court

Parties or Attorneys:

The Salt Lake City Corporation
Ms. Evelyn Furse
City Attorney's Office
451 S. State St.
Salt Lake City, Utah 84111.
Defendant/Appellee

William P. Ramey, III
38 South 1000 East
Salt Lake City, Utah 84102
2244 Welch St.
Houston, TX 77019
(713) 857-6005 (phone)
(713) 429-4187 (fax)
Plaintiff/Appellant
Pro Se

FILED
UTAH APPELLATE COURTS

FILED
UTAH APPELLATE COURTS

OCT 15 2007

IN THE UTAH COURT OF APPEALS

<p>William P. RAMEY, III, an individual, Plaintiff/Appellant, <i>pro se</i>,</p> <p>v.</p> <p>SALT LAKE CITY CORPORATION, a Utah corporation, and Defendant/Appellee.</p>	<p>Brief of Appellant</p> <p>Appeal from Civil No.</p> <p>060920071</p> <p>Appeal Number</p> <p>20070477</p> <p>ORAL ARGUMENT REQUESTED</p>
---	---

Appeal from the Final Judgment of:

The Honorable Glenn K. Iwasaki
Third Judicial Trial court

Parties or Attorneys:

The Salt Lake City Corporation
Ms. Evelyn Furse
City Attorney's Office
451 S. State St.
Salt Lake City, Utah 84111.
Defendant/Appellee

William P. Ramey, III
38 South 1000 East
Salt Lake City, Utah 84102
2244 Welch St.
Houston, TX 77019
(713) 857-6005 (phone)
(713) 429-4187 (fax)
Plaintiff/Appellant
Pro Se

Table of Contents

I. JURISDICTION	1
II. ISSUE PRESENTED AND STANDARD OF REVIEW	1
A. Issues	1
III. STANDARDS OF REVIEW AND CONTROLLING AUTHORITY	2
IV. STATEMENT OF THE CASE.....	5
A. Proceedings Below	5
1. The Three Main Points of the Case Below	5
B. Background	6
1. Purchase of the SLC Property	6
2. Granted permits were relied upon in the purchase of the SLC Property.....	7
3. Ramey filed and was granted a Special Exception by the SLC Corp. 8	
4. Ramey moved to Texas and the SLC Corp filed another Notice of Noncompliance.....	10
5. Ramey Filed a Request for a TRO and accompanying Complaint .	10
6. The TRO was denied	15
7. The SLC Corp filed a Motion to Dismiss.....	16
8. Ramey files a Motion for relief under Rule 59 or 60	21
9. The Court issued a Final Order on May 15, 2007	21
V. ARGUMENT.....	21

A. The underlying cause of action is subject to the Utah Governmental Immunity Act and the common law exception for equitable relief.....	21
B. The trial court erred by denying Ramey's requested Temporary Restraining Order, as Ramey was a bona fide purchaser and was experiencing harm.....	27
1. Ramey Did Suffer Irreparable Harm when the TRO did not issue ..	28
a. Interference with Contract:.....	29
b. Negligent Misrepresentation:	30
c. Negligence:.....	31
d. Wrongful Recordation and Wrongful Attachment.....	31
e. Conversion/Trespass to Try Title/Trespass to Real Property:	32
f. Suit to Quiet Title/Trespass to Real Property:	32
g. Slander of Title:.....	33
2. The Threatened Harm to Ramey Outweighed Any Damages That May Result to SLC Corp	33
3. Issuance of a Temporary Restraining Order Would Not Be Adverse to Public Interest.....	34
4. There Is a Substantial Likelihood That Ramey Will Prevail on the Merits of its Claim in the Instant Case.	35
C. The trial court erred by not addressing Ramey's pending requests for injunctive relief.	35
D. The trial court erred in denying Ramey's Request for Relief Under Rule 59 and 60	36
E. The trial court erred in granting Appellant Salt Lake City Corporation's Motion to Dismiss	37

VI.	PRAYER AND CONCLUSION	37
-----	-----------------------------	----

Table of Authorities

Cases

<u>A.K. & R. Whipple Plumbing & Heating v. Aspen Constr.</u> , 977 P.2d 518 (Utah Ct. App. 1999).....	3, 4, 25, 35, 36
<u>Aquagen Int'l, Inc. v. Calrae Trust</u> , 972 P.2d 411 (Utah 1998)	3, 27
<u>Avila v. Winn</u> , 794 P.2d 20 (Utah 1990).....	5, 37
<u>Butters v. Jackson</u> , 917 P.2d 87 (Utah Ct. App. 1996)	4, 36
<u>Child v. Gonda</u> , 972 P.2d 425 (Utah 1998).....	4, 36
<u>Commercial Union Assocs. v. Clayton</u> , 863 P.2d 29 (Utah Ct. App. 1993)...	3
<u>Crookston v. Fire Ins. Exch.</u> , 860 P.2d 937 (Utah 1993)	4, 36
<u>El Rancho Enterprises, Inc. v. Murray City Corp.</u> , Utah, 565 P.2d 778 (1977)	25, 26, 37
<u>Jacobsen Inv. Co. v. State Tax Comm'n</u> , 839 P.2d 789 (Utah 1992).....	3
<u>Jenkins v. Swan</u> 675 P.2d 1145 (Utah 1983)	18, 25, 26, 37
<u>Loporto v. Hoegemann</u> , 370 Utah Adv. Rep. 21 (Utah Ct. App. 1999) ...	2, 25
<u>Miller v. Martineau & Co.</u> , 372 Utah Adv. Rep. 34 (Utah Ct. App. 1999) ...	3, 27
<u>Orton v. Carter</u> , 970 P.2d 1254 (Utah 1998).....	3, 35
<u>Rackley v. Fairview Care Ctrs., Inc.</u> , 970 P.2d 277 (Utah Ct. App. 1998).....	4
<u>Rushton v. Salt Lake County</u> , 977 P.2d 1201 (Utah 1999).....	2, 25
<u>S.S. v. State</u> , 972 P.2d 439 (Utah 1998).....	3, 35
<u>State v. Pena</u> , 869 P.2d 932 (Utah 1994).....	4, 36
<u>State v. Ramirez</u> , 817 P.2d 774 (Utah 1991).....	4, 36
<u>State v. Richardson</u> , 843 P.2d 517 (Utah Ct. App. 1992)	2, 22, 24
<u>State v. Thurman</u> , 846 P.2d 1256 (Utah 1993).....	4, 36
<u>Taylor ex rel. C.T. v. Johnson</u> , 977 P.2d 479 (Utah 1999)	2, 25
<u>Trujillo v. Jenkins</u> , 840 P.2d 777 (Utah 1992).....	2, 22, 24

Statutes

Utah Governmental Immunity Act, Section 63-30-11	37
--	----

Rules of Civil Procedure

Utah R. of Civ. P. 65A(e).....	28
--------------------------------	----

I. JURISDICTION

The Court has jurisdiction over this Appeal pursuant to at least Utah Code Ann. §78-2-2a(3)(2).

II. ISSUE PRESENTED AND STANDARD OF REVIEW

A. Issues

1. Is this Complaint/Cause of action subject to the Utah Governmental Immunity Act and the common law exception for equitable relief? (*i.e.*, Whether Ramey's Requests for Injunctive Relief and Complaint is Subject to the Utah Governmental Immunity Act.)

2. Did the trial court err by denying Ramey's requested Temporary Restraining Order, as Ramey was a bona fide purchaser and was experiencing harm? (*i.e.*, Whether the trial court properly denied Ramey's injunctive relief.)

3. Did the trial court err by not addressing Ramey's pending requests for injunctive relief? (*i.e.*, Whether the Trial court Committed Error in not Addressing Ramey's pending Requests for Injunctive Relief.)

4. Did the trial court err in denying Ramey's Request for Relief Under Rule 59 and 60? (*i.e.*, Whether the Trial court Improperly Denied Ramey's Request for Relief Under Rule 59 and 60.)

5. Did the trial court err in granting Appellant Salt Lake City Corporation's Motion to Dismiss? (*i.e.*, Whether the Trial court Improperly Granted Appellants Salt Lake City Corporation's Motion to Dismiss.)

III. STANDARDS OF REVIEW AND CONTROLLING AUTHORITY

The issue of whether this Complaint/Cause of action is subject to the Utah Governmental Immunity Act and the common law exception for injunctive relief is a question law. Specifically, it is a question of common law interpretation which the appellate court is well suited to address, and gives no deference to the lower court. See Trujillo v. Jenkins, 840 P.2d 777, 778-79 (Utah 1992); State v. Richardson, 843 P.2d 517, 518 (Utah Ct. App. 1992) ("[W]e consider the trial court's interpretation of binding case law as presenting a question of law and review the trial court's interpretation of that law for correctness.").

Upon information and belief, a trial court's interpretation of statutes, rules and ordinances is a question of law reviewed for correctness. See, e.g., Rushton v. Salt Lake County, 977 P.2d 1201, 1203 (Utah 1999); Taylor ex rel. C.T. v. Johnson, 977 P.2d 479, 480 (Utah 1999); Loporto v. Hoegemann, 370 Utah Adv. Rep. 21, 22 (Utah Ct. App. 1999) (judicial

code); A.K. & R. Whipple Plumbing & Heating v. Aspen Constr., 977 P.2d 518, 521 (Utah Ct. App. 1999) (contractor licensing).

The issue of whether the trial court erred by denying Ramey's requested Temporary Restraining Order is, upon information and belief, abuse of discretion. See Aquagen Int'l, Inc. v. Calrae Trust, 972 P.2d 411, 412 (Utah 1998); Miller v. Martineau & Co., 372 Utah Adv. Rep. 34, 36 (Utah Ct. App. 1999).

Whether the Trial court Committed Error in not Addressing Ramey's pending Requests for Injunctive Relief is, upon information and belief, reviewed under correctness of law. See S.S. v. State, 972 P.2d 439, 440-41 (Utah 1998); Orton v. Carter, 970 P.2d 1254, 1256 (Utah 1998); A.K. & R. Whipple Plumbing & Heating v. Aspen Constr., 977 P.2d 518, 522 (Utah Ct. App. 1999). This standard of review has also been referred to as a "correction of error standard." Jacobsen Inv. Co. v. State Tax Comm'n, 839 P.2d 789, 790 (Utah 1992); Sanders v. Ovard, 838 P.2d 1134, 1135 (Utah 1992); Commercial Union Assocs. v. Clayton, 863 P.2d 29, 36 (Utah Ct. App. 1993). As used by Utah's appellate courts, "correctness" means that no particular deference is given to the trial court's ruling on questions of law. See Orton v. Carter, 970 P.2d 1254, 1256 (Utah 1998); State v. Pena, 869

P.2d 932, 936 (Utah 1994); Rackley v. Fairview Care Ctrs., Inc., 970 P.2d 277, 280 (Utah Ct. App. 1998).

The issue of whether the Trial court erred in denying Ramey's Request for Relief Under Rule 59 and 60 is, upon information and belief, reviewed for an abuse of discretion. Supporting authority includes: See Child v. Gonda, 972 P.2d 425, 428 (Utah 1998); State v. Pena, 869 P.2d 932, 938 (Utah 1994) ("At the extreme end of the discretion spectrum would be a decision by the trial court to grant or deny a new trial based on insufficiency of the evidence."); Crookston v. Fire Ins. Exch., 860 P.2d 937, 938 (Utah 1993); A.K. & R. Whipple Plumbing & Heating v. Aspen Constr., 977 P.2d 518, 522 (Utah Ct. App. 1999). See Butters v. Jackson, 917 P.2d 87, 88 (Utah Ct. App. 1996).

However, as the refusal to grant a new trial was also from an application of the law, upon information and belief, the appropriate standard is a correctness standard. Crookston v. Fire Ins. Exch., 860 P.2d 937, 938 (Utah 1993); see State v. Thurman, 846 P.2d 1256, 1270 n.11 (Utah 1993); State v. Ramirez, 817 P.2d 774, 781-82 n.3 (Utah 1991).

The issue of whether the Trial court Improperly Granted Appellant Salt Lake City Corporation's Motion to Dismiss is, upon information and

belief, is correction of error. See Avila v. Winn, 794 P.2d 20, 22 (Utah 1990).

IV. STATEMENT OF THE CASE

A. Proceedings Below

This appeal is taken from the Trial court's error in denying William P. Ramey III's ("Ramey") Temporary Restraining Order and the error in dismissing Ramey's remaining requests for injunctive relief/equitable relief and remaining causes of action.

1. The Three Main Points of the Case Below

The three main contentions that led Ramey to file the underlying action from which this Appeal is taken are: (Exhibit F to Docketing Statement, Affidavit of TRO, ¶ 3)

i. Ramey was and is a bona fide purchaser for value for certain real property located at 38 South 1000 East, salt Lake City, UT 84102 (hereinafter referred to as the "SLC property")).

ii. Ramey acted in reliance on Salt Lake City Corporation's (hereinafter referred to as "the SLC Corp") approved Final Inspection Permits for certain repairs and construction performed on the SLC Property

and the absence of recorded non-compliance issues at the Recorder of Deeds.

iii. Ramey acted in reliance on the Special Exception issued by the SLC Corp in the summer of 2006 approving the previously inspected and approved repairs and construction.

B. Background

1. Purchase of the SLC Property

On or about August 10, 2005 Plaintiff Ramey purchased certain real property at 38 South 1000 East, Salt Lake City, UT 84102 (hereinafter referred to as “SLC Property”) for \$575,000.00 dollars. There were no Certificates of Non-compliance recorded against the property. (See Affidavit of William P. Ramey, III accompanying the Request for a Temporary Restraining Order and Preliminary Injunction, ¶ 4.)(hereinafter referred to as Affidavit)

The SLC Property had undergone several years of restoration including all electrical, plumbing and support structures. As such, there was a tremendous amount of contractor work service performed at the SLC Property. (Affidavit, ¶ 5)

Many of these contract work services performed at the SLC Property required special permitting and inspection procedures by the Appellee SLC

Corp that results in an ultimate Final Inspection report whereby the SLC Corp approves the contractor work services. (Affidavit, ¶ 6) Appellee SLC Corp performed several Mechanical inspections as to the placement of this A/C Unit that ultimately resulted in Permit No. 199163, Final Inspection, dated March 4, 2005, approved by, upon information and belief, Buck, #24. A true and correct copy of which is attached as Exhibit A of the Affidavit. (See Affidavit, ¶ 8 and Exhibit A) This final approval was the approval by the SLC Corp of the placement of the A/C Unit. (Affidavit, ¶ 8, Exhibit A)

2. Granted permits were relied upon in the purchase of the SLC Property

Ramey purchased the SLC Property in reliance upon the various permits issued by the SLC Corp, especially the Final Approval of permit 199163. (Affidavit, ¶ 9)

In or about April of 2006, Ramey became aware that the SLC Corp had filed a Certificate of Non-compliance against the SLC Property. The alleged Non-compliance was the placement of the A/C Unit within four (4) feet of the property line. Ramey contacted the SLC Corp's Planning and Zoning division and was ultimately directed to Kevin LoPiccolo, Zoning Administrator (hereinafter referred to as "LoPiccolo"). LoPiccolo informed Ramey that the Final Approval had been granted improperly. Ramey

informed LoPiccolo that he had purchased the property in reliance upon the permits issued by his office of the SLC Corp. Ramey informed LoPiccolo that he felt he was a bona fide purchaser for value. (Affidavit, ¶ 11) Ramey and LoPiccolo spoke several more times over the next few weeks. In fact, Ramey supplied the SLC Corp with copies of various final approvals that had been lost by the SLC Corp. (Affidavit, ¶ 12) On information and belief, the approvals were never lost by the SLC Corp, but thrown out.

3. Ramey filed and was granted a Special Exception by the SLC Corp.

LoPiccolo informed Ramey that the only option for Ramey to keep the A/C Unit in its location was to file a Special Exception Request. (Affidavit, ¶ 13). The Special Exception allows the SLC Corp and/or the Community to approve a building project. Ramey protested being required to seek approval for that which was already approved. The SLC Corp has a procedure in place for inspecting and approving building projects that was followed. Ramey purchased the property in reliance on that procedure and the SLC Corp should not be allowed to change its mind at a later date. To allow the SLC Corp to make such changes removes all certainty in the approval and inspection process. (Affidavit, ¶ 14)

However, Ramey did prepare the Special Exception request in an attempt to comply with the SLC Corp. The Special Exception Request is a long process whereby an Applicant provides a planned improvement, with all of the specification drawings, the \$200 fee, the cost for the mailing, and the address labels. Putting the documents together required about 20 hours worth of work and \$204. A true and correct copy of Ramey's Special Exception Request is attached as Exhibit B to the Affidavit. The Special Exception Request was a complete document and accepted by the SLC Corp for review. (Affidavit, ¶ 16)

Ramey contacted LoPiccolo on numerous occasions concerning the Special Exception Request. (Affidavit, ¶ 17) On or about June 19, 2006, the SLC Corp granted the Special Exception request. (Affidavit, ¶ 18) Ramey was told by Piccolo that the granting of the Special Exception Request was at least in part because the A/C Unit was a pre-existing condition at the time Ramey purchased the property and because of other adjacent properties to the SLC Property likewise had A/C Units placed in comparable proximity to the property line, namely the property at 42 South 1000 East. Shortly thereafter, the Special Exception was recorded at the County Recorder's Office. (Affidavit, ¶ 19)

4. Ramey moved to Texas and the SLC Corp filed another Notice of Noncompliance

Ramey then moved to Houston, Texas in August of 2006. However, Ramey still owned the SLC Property and had put it on the market. (Affidavit, ¶ 20) On or about November 16, 2006, LoPiccolo contacted Ramey's agent and stated that the placement of the A/C Unit was not in compliance. In response, Ramey immediately contacted LoPiccolo, as they had talked before. LoPiccolo informed Ramey that the SLC Corp was going to issue another Notice of noncompliance against the SLC Property for the placement of the A/C Unit. Ramey questioned LoPiccolo as to how that was possible in light of the two previous approvals and the fact that Ramey was a bona fide purchaser of the pre-existing condition. LoPiccolo informed him that the SLC Corp was requiring the action and there was nothing he could do. (Affidavit, ¶ 21) Ramey's agent questioned whether the SLC property could be sold as it is presently permitted. (Affidavit, ¶22).. Further, LoPiccolo informed Ramey that the SLC Corp has told Ramey's neighbor that the SLC Property is not legally in compliance. (Affidavit, ¶23)

5. Ramey Filed a Request for a TRO and accompanying Complaint

Thereafter, in December of 2006, Ramey filed a Request for a Temporary Restraining Order (hereinafter referred to as "TRO") and Request for a Preliminary Injunction.

In a Complaint filed concurrently (hereinafter referred to as "Complaint"), Ramey further complained that the SLC Corp's action, by and through Kevin LoPiccolo and others acted to dissuade purchasers, acted to cause potential purchasers to look elsewhere, and acted to prevent Ramey from selling the property at market value. (See Complaint, ¶s 1-46).

Further, Ramey complained that the SLC Corp has a duty to the property owners of Salt Lake City to honor its previously issued permits and Special Exceptions. At a minimum, it would be expected that the SLC Corp would honor its issued permits as to a bona fide purchaser or a purchaser of a pre-existing condition. (See Complaint, ¶s 1-63).

Further, Ramey complained that the SLC Corp has a duty to the property owners of Salt Lake City to not falsely make accusations. At a minimum, it would be expected that the SLC Corp would not contact people to falsely state that the SLC Property is not legally in compliance. The SLC Corp has contacted Ramey's agent and stated that the SLC Property was not legally in compliance. The SLC Corp has contacted Ramey's neighbor and

stated that the SLC Property is not legally in compliance. Ramey has been damaged by these false statements by the SLC Corp at least to the appraised value of the property without the Certificate of Non-compliance. All of the permits and a Special Exception have been issued by the SLC Corp. (See Complaint, ¶s 1-86).

Further, Ramey complained that the SLC Corp has a duty to treat all subject properties in a particular zoning area the same. The standard of care would be that the rules should be enforced the same throughout a particular zoning area. The SLC property is in zone R-2. The SLC Corp has not treated all property owners within Ramey's zone the same or similar. Ramey's neighbor, at 42 South 1000 East, has a similar A/C Unit that should be treated like Ramey's A/C Unit. (See Complaint, ¶s 1-91).

Further, Ramey complained that the SLC Corp's action issuing a Certificate of Non-compliance and/or issuing a Certificate of Non-compliance for the previously approved Final Inspection of Permit 199163 and the approved Special Exception for the A/C Unit is being perpetuated falsely without any legal basis. Ramey is a bona fide purchaser for value and the A/C Unit has been approved twice. The SLC Corp is bullying Ramey by preventing him from transferring title of the SLC Property. Ramey will continue to be harmed by this false perpetuation and Appellee

SLC Corp's wrongful conduct at least to the appraised value of the property without the Certificate of Non-compliance. (See Complaint, ¶s 1-91).

Further, Ramey complained that the SLC Corp's action of recording a Certificate of Non-compliance for the previously approved Final Inspection of Permit 199163 and the approved Special Exception for the A/C Unit is being perpetuated falsely without any legal basis. Ramey is a bona fide purchaser for value and the A/C Unit has been approved twice. (See Complaint, ¶s 1-91).

Likewise, Ramey complained that the SLC Corp's action of recording a Certificate of Non-compliance for the previously approved Final Inspection of Permit 199163 was perpetuated falsely without any legal basis. Ramey is a bona fide purchaser for value and the A/C Unit was approved. Ramey was harmed by this false perpetuation and Appellee SLC Corp's wrongful conduct. As the direct and proximate result of Appellee SLC Corp's wrongful conduct, Appellee has unlawfully profited and Ramey has suffered and will continue to suffer irreparable harm. (See Complaint, ¶s 1-91).

Further, Ramey complained that the SLC Corp's action of recording a Certificate of Non-compliance for the previously approved Final Inspection of Permit 199163 was perpetuated falsely without any legal basis. Ramey is

a bona fide purchaser for value and the A/C Unit was approved. The SLC Corp is bullying Ramey by preventing him from transferring title of the SLC Property. (See Complaint, ¶s 1-91).

Further, Ramey complained that Ramey is being treated differently than even his neighbor who has a similar A/C Unit. Upon information and belief, Ramey's neighbor, at 42 South 1000 East, has not been harassed or even contacted concerning the A/C Unit on that property. (See Complaint, ¶s 1-91).

Further, Ramey complained that the Appellee SLC Corp, by and through LoPiccolo, made a false statement to Ramey's neighbor and real estate agent that the property was out of compliance. The SLC Corp knew that all of the permits had been approved and that a Special Exception had been granted. The SLC Corp's actions damaged Ramey by destroying the alienability of the SLC Property. (See Complaint, ¶s 1-91).

Further, Ramey complained that the Appellee SLC Corp, by and through LoPiccolo and, upon information and belief, other SLC Corp employees, has spread the word that the SLC property is not in compliance, a false statement. The SLC Corp knew that all of the permits had been approved and that a Special Exception had been granted. The SLC Corp's

actions damaged Ramey by destroying the alienability of the SLC Property.
(See Complaint, ¶s 1-91).

6. The TRO was denied

The TRO was denied on or about December 15, 2005. As a result:

(1) Ramey suffered irreparable harm because the order or injunction did not issue and Ramey was not able to sell the property because of the Recorded Notice of Non-compliance;

(2) The injury to Ramey outweighed any alleged damage that the SLC Corp might have experienced, as the damage is quantifiable;

(3) The injunction would have served the public interest in that it would have at least restored certainty to the process; and

(4) There is a substantial likelihood that Ramey would have and will prevail on the merits of the underlying claim because Ramey has a validly issued permit and a granted Special Exception.

In fact, the SLC Corp admitted such in the Motion Hearing Transcript from March 12, 2007 (hereinafter referred to as “Hearing Transcript”¹), transcribed and reported back to the Third Trial court on or about August 15,

¹ A copy of this hearing transcript was not received by Appellant until late August 2007. Appellant has concurrently filed a supplemental docketing statement with this Appeal Brief adding the transcript of the March 12, 2007 Motion Hearing to the record on appeal.

2007 and attached in the Appendix of this Appellate Brief. On page 6, line 19, Ms Furse, representing the SLC Corp, stated that

For instance, if he were to appeal to the Third District and get a decision that Salt Lake City erred, then he can do one of two things. Either he can e content, get his decision and not have a problem or he can claim, "Okay, because of the error that was made, as recognized by the Third Trial court, now I'm entitled to damages.

(Exhibit A to the Appendix, lines 19-24). Accordingly, the SLC Corp admitted that if it is shown that the SLC Corp erred in the handling of the SLC Property then Ramey was damaged.

After denying Ramey's TRO, the Trial court allowed the SLC Corp an extension of time to answer, effectively staying the action. The SLC Corp's new answer date was extended to about January 12, 2007. (See Plaintiff's Memorandum in Support of Motion for Relief Under Rule 59 and 60 of the Utah Rules of Civil Procedure ("Motion Under Rule 59 or 60"), ¶17).

On or about January 17, 2007, Ramey did file a Notice and Request for Decision on Plaintiffs Motion for Injunctive relief on or about January 12, 2007. This Court never ruled on Plaintiff's injunctive relief. (See Clerk's Docket, p. 2).

7. The SLC Corp filed a Motion to Dismiss

Rather than answer, the SLC Corp filed a Motion to Dismiss. The SLC Corp's Motion to Dismiss was at least in part predicated upon Ramey's alleged failure to exhaust his administrative remedies and Ramey's alleged failure to give sixty days Notice to the SLC Corp prior to filing suit. (See Motion Under Rule 59 or 60, ¶18).

Ramey did file a Notice and Request for Decision on Plaintiffs Motion for Injunctive relief on or about January 12, 2007. The Trial court never ruled on Plaintiff's injunctive relief. (See Motion Under Rule 59 or 60, ¶19). This period of time was while the Court ordered stay was in effect.

Ultimately, after briefing and a Motion Hearing, on or about March 12, 2007, the Trial court granted the SLC Corp's motion to dismiss in a Minute Entry issued March 14, 2007. (See Minute Entry of March 14, 2007).

At the Motion Hearing, the SLC Corp argued that Ramey's Complaint is about seeking damages from the SLC Corp. (See Appendix, Hearing Transcript, p. 4, l. 9 to p. 7, l. 8). Ramey's Complaint and request for injunctive relief has always been about the fact that

1. Ramey was a Bona Fide Purchaser for Value;
2. Ramey Acted in Reliance on SLC Corp Permits in Purchasing the SLC Property; and,

3. Ramey asserts that he is a bona fide purchaser for value relying on the permits issued by the City in the purchase of the SLC Property. (See Motion Under Rule 59 or 60, ¶s 6-21).

Ramey sought the injunctive relief to stop the SLC Corp from its abuse of the process and return certainty to that process. The SLC Corp cannot recast Ramey's cause of action.

At the Motion Hearing, Ramey handed the Court copies of controlling case law from the Utah Supreme Court, Jenkins v. Swan 675 P.2d 1145, 1153 (Utah 1983) (included in the Addendum, item #2), which explains the common law exception to governmental immunity for equitable claims. (See Appendix, Hearing Transcript, p. 11, l. 21 to p. 12, l. 19).

All permits indicated that the SLC property at 38 South 1000 East, Salt Lake City, UT 84102 was in compliance. All inspections were Final. No Notices of Non-compliance were recorded against the SLC property at the time of Ramey's closing on the SLC Property. (See Motion Under Rule 59 or 60, ¶s 6-21).

Ramey's mortgage company searched the records at the time of closing and also did not locate any Notice of Non-compliance. The SLC Corp filed a first Notice of Non-compliance after Ramey had purchased and

recorded his interest in the property. Ramey's purchase was partial cash and a mortgage. The A/C Unit was therefore a pre-existing condition. Ramey purchased the SLC Property in reliance on the SLC Corp's Final Inspection permits. Ramey would not have purchased the property had the permits not been issued as Final and Approved. The SLC Corp should not be allowed to remove validly issued Final Inspection Permits after Ramey has relied on them in the purchase of the property. (See Motion Under Rule 59 or 60, ¶s 6-21).

After becoming aware of a Non-compliance recorded against the SLC property, Ramey sought to have it removed by going the extraordinary expense of both time and resources to prepare a Special Exception request for a previously granted Final Inspection Permit. The SLC Corp's Planning and Zoning Division agreed with Ramey that the A/C Unit was a pre-existing condition on the SLC Property at the time of Ramey's purchase and granted the Special Exception. When Ramey put his property on the market, the SLC Corp threatened to prevent Ramey from selling the property by recording a Notice of Non-compliance against the property. The SLC Corp should not be allowed to alter recorded records as it desires after a valid Special Exception has issued from its office. Returning to this memorandum, this Court denied Ramey's request for a temporary

restraining order and allowed the SLC Corp an extension of time to answer, effectively staying the action. The SLC Corp's new answer date was extended to about January 12, 2007. (See Motion Under Rule 59 or 60, ¶s 6-21).

Ultimately, the trial court granted the SLC Corp's motion to dismiss in an Order issued March 14, 2007. (See Memorandum Decision of March 14, 2007). The Court appears to have held that "[w]hile Plaintiff contends he is not taking issue with the decision of the Zoning Administrator and only seeks equitable relief, he is, nonetheless, challenging the land use decision embodied in the Certificate of Noncompliance. As a result, Plaintiff must exhaust his administrative remedies. With respect to the Notice of Claim issue, the statute makes clear that the sixty days must be exhausted prior to the action being initiated." See (See Memorandum Decision of March 14, 2007, p. 3). Ramey received the order on March 19, 2007 through regular US mail. The trial court never addressed Ramey's equitable relief.

The trial court appears to have held that "Plaintiff contends he is not taking issue with the decision of the Zoning Administrator and only seeks equitable relief, he is, nonetheless, challenging the land use decision embodied in the Certificate of Noncompliance. As a result, Plaintiff must exhaust his administrative remedies. With respect to the Notice of Claim

issue, the statute makes clear that the sixty days must be exhausted prior to the action being initiated.” (See Minute Entry of May 9, 2007). The Trial court never addressed the pending injunctive relief.

8. Ramey files a Motion for relief under Rule 59 or 60

Ramey then filed a Motion for relief under rule 59 and 60 of the Utah Rules of Civil Procedure to reinstate Ramey’ s dismissed action as required by long established Utah Supreme Court precedent, the Governmental Immunity Act does not apply to claims for equitable relief. The Motion was timely filed and the trial court did consider it. However, the trial court denied Ramey's requested relief.

9. The Court issued a Final Order on May 15, 2007

The Trial court entered a Final Order on or about May 15, 2007 finally dismissing Ramey's Causes of Action. Ramey never received a copy of this Order. In fact, Salt City Attorney Margaret Plane has also indicated that she has not received a copy. Ramey timely appealed from the trial court’s order.

V. ARGUMENT

A. The underlying cause of action is subject to the Utah Governmental Immunity Act and the common law exception for equitable relief

Reference to the first document filed in this case illustrates that this is an equitable action. The title of the Complaint is "Original Complaint and Request for a Temporary Restraining Order and Preliminary Injunction." (See Complaint, title page). File concurrently with the requested equitable relief was a complaint complaining of various injuries and requesting damages, as is standard practice. Accordingly, equitable relief was requested and equitable relief is not subject to the Utah Governmental Immunity Act. This Court gives no deference to the lower court on a misinterpretation of the common law. See Trujillo v. Jenkins, 840 P.2d 777, 778-79 (Utah 1992); State v. Richardson, 843 P.2d 517, 518 (Utah Ct. App. 1992) ("[W]e consider the trial court's interpretation of binding case law as presenting a question of law and review the trial court's interpretation of that law for correctness.").

The SLC Corp has misled the trial court into thinking that the underlying action is an action for damages and an action complaining of a certificate of non-compliance. As Ramey was the underlying plaintiff, Ramey is the master of his own Complaint. As the Background of this Appeal stated, Ramey was seeking relief from the SLC Corp not following its own policies and procedures. (See Complaint, ¶s 6-16).

Ramey purchased a house with all permits approved. The SLC Corp later changed its mind, thereby affecting Ramey as a bona fide purchaser, and issued a Notice of Noncompliance. Ramey then filed for the Special Exception. That Special Exception was granted and recorded on the property.

Then, only after Ramey moved to Texas, the SLC Corp issued and recorded another Notice of Noncompliance in November of 2006. The SLC Corp, without any authority and against public policy and its published procedures, issued another Certificate of Noncompliance for the exact issue that was approved through the Special Exception procedure. Accordingly, the SLC Corp has completely ignored its policies and procedures. It was the SLC Corp that originally permitted the A/C Unit. It then changed its mind after Ramey purchased the property. It was the SLC Corp that granted Ramey's Special Exception. It then changed its mind after Ramey moved to Texas and issued another Notice of Noncompliance. Accordingly, the SLC Corp has operated completely outside its statutory framework and its policies and procedures. Nowhere is authorization provided for what the SLC Corp did.

The SLC Corp's actions damage the public. By its actions, the SLC Corp has removed all certainty from the process. If this Court allows its

Order to stand dismissing this action, the SLC Corp will be authorized to change its mind on any Special Exception that it has granted previously. There will no longer be any certainty in the process. This issue is larger than this one case. Here, the SLC Corp is being given implicit authorization to do as it wishes by this Court in dismissing this cause of action. Ramey's complaint is not about the Notice of Noncompliance. Ramey's complaint is about the broken policies and procedures at the SLC Corp. In fact, Ramey's complaint and the relief sought, injunctive relief, makes this very apparent. It is time to return certainty to the process. It is time to prevent the SLC Corp from changing the rules as it goes. Here, Ramey followed all policies and procedures. Here, the SLC Corp did not.

The trial court was provided with the appropriate law at the Motion Hearing on the Motion to Dismiss and in the briefing on the Motion for Relief under Rule 59 and 60. However, the trial court misinterpreted the common law. This Court gives no deference to the lower court on a misinterpretation of the common law. See Trujillo, 840 P.2d at 778-79; State v. Richardson, 843 P.2d at 518 ("[W]e consider the trial court's interpretation of binding case law as presenting a question of law and review the trial court's interpretation of that law for correctness.").

The trial court, at least in part, dismissed Ramey's causes of action on its misinterpretation that Ramey failed to give proper Notice of Claim to the SLC Corp and that Ramey failed to exhaust his administrative remedies. Ramey requests this Court to affirmatively state that Ramey has complied with the Notice requirement and that Ramey's is complaining of the broken policies and procedures of the SLC Corp.

A trial court's interpretation of statutes, rules and ordinances is a question of law reviewed for correctness. See, e.g., Rushton v. Salt Lake County, 977 P.2d 1201, 1203 (Utah 1999); Taylor ex rel. C.T. v. Johnson, 977 P.2d 479, 480 (Utah 1999); Loporto v. Hoegemann, 370 Utah Adv. Rep. 21, 22 (Utah Ct. App. 1999) (judicial code); A.K. & R. Whipple Plumbing & Heating v. Aspen Constr., 977 P.2d 518, 521 (Utah Ct. App. 1999) (contractor licensing). Here, the trial court/trial court was incorrect in its interpretation of the law and the underlying action should not have been dismissed as equitable relief was sought. Moreover, equitable relief was still pending and never considered by the trial court.

Further, it has long been the law that the sixty (60) days Notice requirement of the Utah Governmental Immunity Act does not apply to requests for injunctive relief. See Jenkins 675 P.2d at 1153 citing El Rancho Enterprises 565 P.2d at 779. In the Jenkins case, the Utah Supreme Court

provided a good discussion on the rationale for the Utah Governmental Immunity Act, Section 63-30-11. That portion of the act provides that “any person having a claim for injury against a governmental entity or against an employee shall before maintaining an action for an act or omission occurring during the performance of his duties, within the scope of employment, or under color of authority, shall file a written notice of claim with such entity.” See Jenkins, 675 P.2d at 1153-1154. The Court then went on to discuss the meaning of the word “injury” within the Act. See Id at 1154. Injury is defined, in the Governmental Immunity Act as “death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, or estate that would be actionable if inflicted by a private person or his agent.” See id. In the Jenkins case, the Utah Supreme Court recognized that actions seeking equitable relief are not subject to the Utah Governmental Immunity Act. See Id and El Rancho, 565 P.2d at 780. Accordingly, Ramey’s Complaint is not subject to the Notice requirement. Therefore, there is no requirement to wait sixty (60) days after a Notice of Claim.

However, even if this Court determines a Notice is due, a Notice was filed by Ramey. Further, the SLC Corp and Ramey were in constant

communication throughout 2006 as is illustrated by the Special Exception and Notices of Non-compliance. The SLC Corp did have Notice.

Moreover, careful examination of the Jenkins case reveals that the Utah Supreme Court also allowed Jenkins' claims for damages of the tax paid in protest. See id at 779. Accordingly, Ramey's requests for damages should be allowed to continue as they were filed with the requests for injunctive relief. Therefore, Ramey requests this Court to Order reinstatement of Ramey's Complaint particularly specifying that proper Notice was given.

Logically, the reinstatement of the damages with the equitable claims is appropriate. This well-established common law exception to the Governmental Immunity Act does not require the maintenance of two separate actions, as would be the effect if this Court did not reinstate the claims for damages and Ramey was required to file a separate action.

B. The trial court erred by denying Ramey's requested Temporary Restraining Order, as Ramey was a bona fide purchaser and was experiencing harm

This Court will review the trial court's denial of Ramey's requested TRO for an abuse of discretion. See Aquagen Int'l, Inc. v. Calrae Trust, 972 P.2d 411, 412 (Utah 1998); Miller v. Martineau & Co., 372 Utah Adv. Rep. 34, 36 (Utah Ct. App. 1999). Under Rule 65A(e) of the Utah Rules of Civil

Procedure, a temporary restraining order and/or a preliminary injunction may issue where the applicant demonstrates the following:

- (1) The applicant will suffer irreparable harm unless the order or injunction issues;
- (2) The threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined;
- (3) The order or injunction, if issued, would not be adverse to the public interest; and
- (4) There is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation. Utah R. of Civ. P. 65A(e).

1. Ramey Did Suffer Irreparable Harm when the TRO did not issue

The SLC Corp's acts of approving the construction through permit 199163, then issuing a Notice of Noncompliance, then granting a Special Exception, then issuing another Notice of Noncompliance prevented Ramey from transferring title the SLC property, dissuaded buyers and lowered the

value of Ramey's property. Further, the SLC Corp damaged Ramey through at least tortious interference with contract and prospective contract, negligent misrepresentation, negligence, fraud, wrongful recordation, wrongful attachment, conversion, trespass to try title, trespass to real property, slander of title, and the like.

As set forth in the record, the SLC Corp, by and through the Planning and Zoning Division, had granted approval of the placement of the A/C Unit through the normal permitting procedure under permit 199163, granted March 4, 1995. However, then the SLC Corp issued a Certificate of Non-compliance against the SLC Property for the placement of the A/C Unit.

Ramey had purchased the property before the Certificate of Non-compliance was recorded, as such he is a bona fide purchaser for value and can rely on the issued permit 199163. However, the SLC Corp proceeded to file the Certificate of Non-compliance

Ramey purchased the property on August 10, 1995 when there were no Certificates of Non-compliance recorded against the property. In August of 2006, Ramey relocated to Texas and placed the SLC Property on the market through an agency. To place the property on the MLS, Ramey had to sign an agreement with his agent.

a. Interference with Contract:

In November of 2006, when the SLC Corp contacted Ramey's agent it committed an act of interference with contract in that the SLC Corp was attempting to cause the agent not to market the property in light of a non-existent compliance issue. Such act is interfering with Ramey's representation agreement with the agent, interfering with his contract. Such actions are calculated by the SLC Corp to force Ramey to spend great sums of money for an issue that has been at least twice remedied under the SLC Corp's procedures. Such damage is a dollar amount at least to the appraised value of the property without the Certificate of Non-compliance.

Likewise, the SLC Corp's action, by and through LoPiccolo and others did dissuade purchasers, acted to cause potential purchasers to look elsewhere, and acted to prevent Ramey from selling the property.

b. Negligent Misrepresentation:

The SLC Corp represented to Ramey that the A/C Unit was properly placed and approved. Ramey purchased the SLC Property in light of an issued permit, permit 199163, a Final Approval. Ramey relied, therefore, on the permit. Likewise, after the long, expensive, and time-consuming process of preparing and getting approved the Special Exception Request, Ramey should be able to rely upon its validity. Here, Ramey relied upon the granted Special Exception.

The SLC Corp has a duty to the property owners of Salt Lake City to honor its previously issued permits and Special Exceptions. Here, the SLC Corp did not honored its previously issued permit 199163.

c. Negligence:

The SLC Corp further has a duty to correctly represent the recorded records on a piece of property. At a minimum, it would be expected that the SLC Corp would not contact people to falsely state that the SLC Property is not legally in compliance. The SLC Corp did contact Ramey's agent and stated that the SLC Property was not legally in compliance. Further, the SLC Corp has contacted Ramey's neighbor and stated that the SLC Property is not legally in compliance even considering that the SLC Corp granted upon Final Inspection approval permit 199163 and even considering that the SLC Corp granted the Special Exception.

d. Wrongful Recordation and Wrongful Attachment

The SLC Corp's action of threatening to record a Certificate of Non-compliance and/or recording a Certificate of Non-compliance for the previously approved Final Inspection of Permit 199163 and the approved Special Exception for the A/C Unit is being perpetuated falsely without any legal basis. Ramey is a bona fide purchaser for value and the A/C Unit has

been approved twice. The SLC Corp's action of recording a Certificate of Non-compliance for the previously approved Final Inspection of Permit 199163 was perpetuated falsely without any legal basis. Ramey is a bona fide purchaser for value and the A/C Unit was approved.

e. Conversion/Trespass to Try Title/Trespass to Real Property:

The SLC Corp's act recording a Certificate of Non-compliance for the previously approved Final Inspection of Permit 199163 and the approved Special Exception for the A/C Unit is being perpetuated falsely without any legal basis.

f. Suit to Quiet Title/Trespass to Real Property:

The SLC Corp discriminated against Ramey in the sale of his property by recording an improper Certificate of Non-compliance and for threatening to file an improper Certificate of Non-compliance. Ramey is being treated differently than even his next door neighbor who has a similar A/C Unit. Upon information and belief, Ramey's neighbor, at 42 South 1000 East, has not been harassed or even contacted concerning the A/C Unit on that property. Ramey is being damaged by this disparate treatment in that the SLC Property cannot be sold because of the threats and actions from the

SLC Corp. Accordingly, the SLC Corp is damaging Ramey at least to the amount of his mortgage.

g. Slander of Title:

Defendant SLC Corp, by and through LoPiccolo, made a false statement to Ramey's neighbor and real estate agent that the property was out of compliance. The SLC Corp knew that all of the permits had been approved and that a Special Exception had been granted. The SLC Corp's actions damaged Ramey by destroying the alienability of Ramey's SLC property.

Accordingly, Ramey is likely to be successful on all of his causes of action, as they all stem from the SLC Corp disregarding its previously issued permit 199163 and its previously granted Special Exception. These harms could only have been resolved by the issuance of injunctive relief, as merely awarding damages was not sufficient to remove all the confusion, to allow certainty to prevail, and to cause SLC Corp to honor its own actions.

2. The Threatened Harm to Ramey Outweighed Any Damages That May Result to SLC Corp

Ramey was irreparably harmed The SLC Corp prevented transfer of title and required Ramey to expend further resources on the SLC property.

The requested temporary restraining order is not outweighed by the potential damages to the Defendant, as the SLC Corp is not entitled to continue its unlawful behavior. Issuance of the temporary restraining order would have only barred the SLC Corp from falsely recording a Certificate of Non-compliance against the SLC Property for the placement of the A/C Unit. The SLC Corp, as a governmental organization, will not be in any way harmed.

3. Issuance of a Temporary Restraining Order Would Not Be Adverse to Public Interest.

Courts have long considered the public interest as a factor to be considered in granting injunctive relief. Here, the granting of the restraining order and injunction would have served the public interest in at least (1) returning certainty to the property records; (2) returning certainty to the special exception procedure; (3) returning certainty to the inspection process; (4) preventing Salt Lake City Corporation from continued harassment of Ramey, a property owner and former resident; (5) establishing that this type of act by the Salt Lake City Corporation is a prohibited act; and, (6) restoring alienability to Ramey's land. Accordingly, there are strong public policy reasons to grant this restraining order and injunction.

4. There Is a Substantial Likelihood That Ramey Will Prevail on the Merits of its Claim in the Instant Case.

Under the present facts, as outlined above, there is a substantial likelihood that Ramey will prevail on the merits of his claims. Ramey has an issued Final Approval for the placement of the A/C Unit on the SLC Property that he relied on as a purchaser of the property. Accordingly, Ramey is a bona fide purchaser. Further, Ramey has a granted Special Exception for which he expended both economic resources and time. As well, public policy should dictate that the SLC Corp honor it's granted permits and granted special exceptions.

Accordingly, the trial court abused its discretion in denying Ramey's requested TRO.

C. The trial court erred by not addressing Ramey's pending requests for injunctive relief.

This Court will give no deference to the trial court in reviewing its decision to dismiss the action without addressing Ramey's pending injunctive relief. See S.S. v. State, 972 P.2d 439, 440-41 (Utah 1998); Orton v. Carter, 970 P.2d 1254, 1256 (Utah 1998); A.K. & R. Whipple Plumbing & Heating v. Aspen Constr., 977 P.2d 518, 522 (Utah Ct. App. 1999).

Ramey had pending injunctive relief that was not addressed by the trial court.

D. The trial court erred in denying Ramey's Request for Relief Under Rule 59 and 60

This Court will review the trial court's denial of Ramey's Request for Relief Under Rule 59 and 60 under an abuse of discretion standard. See Child v. Gonda, 972 P.2d 425, 428 (Utah 1998); State v. Pena, 869 P.2d 932, 938 (Utah 1994) ("At the extreme end of the discretion spectrum would be a decision by the trial court to grant or deny a new trial based on insufficiency of the evidence."); Crookston v. Fire Ins. Exch., 860 P.2d 937, 938 (Utah 1993); A.K. & R. Whipple Plumbing & Heating v. Aspen Constr., 977 P.2d 518, 522 (Utah Ct. App. 1999). See Butters v. Jackson, 917 P.2d 87, 88 (Utah Ct. App. 1996). Here, the trial court did abuse its discretion as it was given the correct law to follow and still dismissed the case and denied the request for relief under rule 59 and 60.

A correctness standard will be used in the trial court's interpretation of the common law. Crookston, 860 P.2d at 938; see State v. Thurman, 846 P.2d 1256, 1270 n.11 (Utah 1993); State v. Ramirez, 817 P.2d 774, 781-82 n.3 (Utah 1991).

E. The trial court erred in granting Appellant Salt Lake City Corporation's Motion to Dismiss

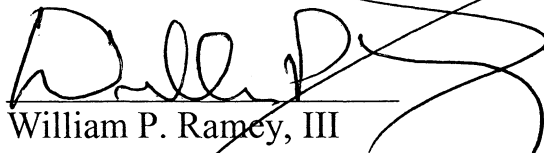
The underlying action was an action for equitable relief and the trial court should not have dismissed the action as equitable relief is not subject to the Utah Governmental Immunity Act. See Jenkins, 675 P.2d at 1153 citing El Rancho Enterprises, Inc., 565 P.2d at 779; and, Utah Governmental Immunity Act, Section 63-30-11. This Court will review the decision under the standard for a correction of error. See Avila v. Winn, 794 P.2d 20, 22 (Utah 1990). Here, it was error to dismiss Ramey's causes of action.

VI. PRAYER AND CONCLUSION

Ramey respectfully prays that this Court reinstate Ramey's Causes of Action by Reversing the Trial court's Order Dismissing all of Ramey's causes of Action. Further, Ramey respectfully requests that this Court order the Appellant to pay the costs for this appeal, a reasonable attorney's fee for this appeal, the costs for the Trial court action, and a reasonable attorney's fee for the Trial court action. Appellant further respectfully requests the ability to supplement issues for appeal once the Final Order Dismissing the action is received.

10/11/07

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "William P. Ramey, III". The signature is stylized with a large, sweeping "S" shape at the end.

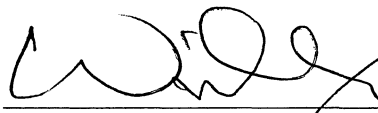
William P. Ramey, III
38 South 1000 East
Salt Lake City, Utah 84102
2244 Welch St.
Houston, TX 77019
(713) 857-6005 (phone)
(713) 429-4187 (fax)
Pro Se

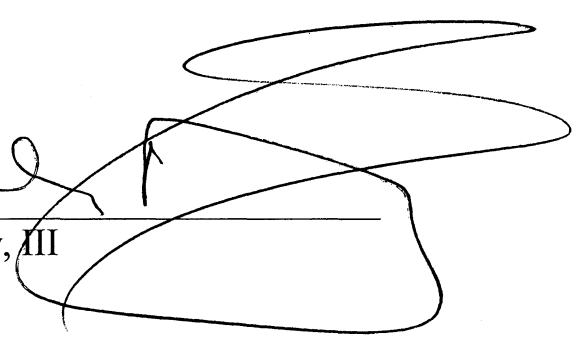
CERTIFICATE OF SERVICE

I hereby certify that I, William P. Ramey, III, has served, via first class mail, the following documents to the Appellee, The Salt Lake City Corporation at
Ms. Evelyn Furse; The Salt Lake City Corporation; City Attorney's Office;
451 S. State St.; Salt Lake City, Utah 84111.

1. Appellant's Brief

10/11/07
Date


William P. Ramey, III



ADDENDUM

1. Transcript of March 12, 2007 Motion Hearing.
2. Jenkins v. Swan 675 P.2d 1145 (Utah1983)

TAB 1

COPY

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

WILLIAM P. RAMEY, III,

Plaintiff,

vs.

SALT LAKE CITY CORPORATION,

Defendant.

Case No. 060920071 PR

MOTION HEARING

March 12, 2007

BEFORE THE HONORABLE GLENN K. IWASAKI
District Court Judge

Jeri Kearbey
Certified Court Transcriber

1230 Gaylene Circle
Sandy, Utah 84094
(801) 566-1510

APPEARANCES:

For the Plaintiff:

Pro Se

For the Defendant:

Evelyn J. Furse
Salt Lake City Attorney
451 South State, #505A
Salt Lake City, Utah 84111

1 SALT LAKE CITY, UTAH; MONDAY, MARCH 12, 2007, 9:00 A.M.

2 -ooo0ooo-

3 THE COURT: Matter before the Court is Ramey v.
4 Salt Lake City Corporation, 060920071. William P. Ramey
5 appears pro se. Evelyn Furse -

6 MS. FURSE: Yes.

7 THE COURT: - on behalf of respondent. Also,
8 Mr. Chandler.

9 MR. CHANDLER: Yes, Your Honor. Good morning.

10 THE COURT: Good morning.

11 This is before the Court on Salt Lake City
12 Corporation's motion to dismiss. That has been briefed.
13 However, on March the 7th, Mr. Ramey filed a notice of the
14 Board of Adjustment decision conclusively ending Ramey's
15 administrative remedies.

16 Ms. Furse, have you had opportunity to review
17 this?

18 MS. FURSE: Yes, I have, Your Honor.

19 THE COURT: Do you wish to have an opportunity to
20 reply to it? Does it - does it warrant a reply on your
21 behalf, or can we go forward with the argument, or do you
22 want opportunity to have a written reply and a response from
23 Mr. Ramey?

24 MS. FURSE: We can go forward today and I can
25 address it in my oral argument today.

1 THE COURT: Very well. Thank you.

2 With that said, the Court appreciates courtesy
3 copies of the motion, both memorandum in support, opposition
4 and reply. This is the time for oral argument on Salt Lake
5 City's motion. Ms. Furse, you have convenience of the
6 record.

7 MS. FURSE: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MS. FURSE: With respect to the Board of
10 Adjustment decision which you just mentioned, that is not
11 before this Court at this time because it is not in the
12 initial complaint as -- that -- that's in dispute for the
13 motion to dismiss here today.

14 However, it doesn't exactly exhaust the
15 administrative process as a point of procedure because, as
16 noted in the -- in the notice from the Board, the plaintiff
17 has 30 days from the time he receives the final written
18 decision to appeal that decision to the Third District
19 Court, which is a separate appeal than what's occurring
20 here.

21 THE COURT: Okay. And, to be honest, you've lost
22 me there.

23 MS. FURSE: I figured I might have.

24 THE COURT: But, I mean, I guess what I was trying
25 to do is to get everybody on the same path so we can move

1 this in an orderly manner through the system.

2 MS. FURSE: That's correct.

3 THE COURT: And maybe my wishes will not come to
4 fruition, because you indicate that there's two separate
5 parallel paths of appeal?

6 MS. FURSE: Well, it - actually, no. It's one
7 parallel - it's one path -

8 THE COURT: Path.

9 MS. FURSE: - but this path got started too
10 early is the problem.

11 THE COURT: Okay.

12 MS. FURSE: The path is, you go from having
13 whatever decision you might receive from the zoning
14 administrator or from the - from whatever land use decision
15 you might get, and you appeal that to the Board of
16 Adjustment. From the Board of Adjustment, you are entitled
17 to appeal their decision to the Third District Court.

18 THE COURT: Okay.

19 MS. FURSE: But that is only the decision. You're
20 not entitled to any damages from that appeal in any fashion.
21 So you finish that appeal to the Third District Court.

22 THE COURT: Now, is that the track we're on now?

23 MS. FURSE: No. That's not the track we're on
24 now.

25 THE COURT: Okay.

1 MS. FURSE: That's the track that this Board of
2 Adjustment decision is part of. And that's why I say it's
3 not really pertinent to this matter.

4 THE COURT: But the track that we're on now, your
5 argument is, that he -- it is premature again and he has
6 failed to exhaust administrative remedies.

7 MS. FURSE: Correct, Your Honor.

8 THE COURT: Okay.

9 MS. FURSE: And the track Mr. Ramey's pursuing now
10 is the track wherein he can get damages. And in order to
11 start on the damage track, you have to exhaust the basic
12 track of getting your final decision. And there's -- and
13 that track -- he's farther along now than he was previously
14 because he's gone to the Board of Adjustment. But he now
15 needs to go from the Board of Adjustment to the Third
16 District Court, which could be you, but it has to -- and get
17 that decision and then, depending on that decision, he may
18 or may not be able to come back for damages.

19 For instance, if he were to appeal to the Third
20 District and get a decision that Salt Lake City erred, then
21 he can do one of two things. Either he can be content, get
22 his decision and not have a problem or he can claim, "Okay,
23 because of the error that was made, as recognized by the
24 Third District Court, now I'm entitled to damages."

25 THE COURT: Okay.

1 MS. FURSE: But none of that can be done until
2 this final step of the appeal from the Board of Adjustment
3 to the Third District Court is complete.

4 THE COURT: So regardless of the path that we're
5 taking, your argument in today's hearing is: In spite of
6 the Board of Adjustment decision, in spite of the procedural
7 history of my case, it is still premature in that he still
8 has to exhaust remedies.

9 MS. FURSE: That's correct, Your Honor.

10 THE COURT: So the remedy you're asking for me to
11 decide is to dismiss without prejudice -

12 MS. FURSE: Correct.

13 THE COURT: - allow him to go - not recreate, but
14 to go back to the original process, pick up loose ends,
15 follow through on that and then ultimately appeal again to
16 the District Court.

17 MS. FURSE: That's exactly right, Your Honor.

18 THE COURT: You anticipate his argument regarding
19 the Board of Adjustment decision and as to his - as to his
20 ending his administrative remedies? Do you anticipate his
21 argument on that? And if you do, tell me what your response
22 is.

23 MS. FURSE: Well, my - what I would anticipate is
24 basically an argument that this does terminate the appeal
25 and that the two - that the appeal from the Third District

1 from the Board of Adjustment decision can be consolidated
2 with this decision without there being any harm.

3 THE COURT: Right.

4 MS. FURSE: Now, my argument to that is it's not
5 about harm, it's about jurisdiction. And when we're looking
6 at jurisdiction, we don't look at harm, we look simply at
7 what does the Court have the authority to do? And in this
8 circumstance, the only authority the Court has is to dismiss
9 this case at this point.

10 THE COURT: And I guess that was what I was
11 looking at to save him the extra time, expense, hassle of
12 jumping through hoops. But if it's a jurisdictional issue,
13 I have no discretion on something like that.

14 MS. FURSE: That's exactly right, Your Honor.

15 THE COURT: Because as you -- as you argue to me
16 now, I do not have jurisdiction now by allowing him and to
17 recognize the -- the Adjustment decision would still be doing
18 something that I have no jurisdiction over.

19 MS. FURSE: That's correct, Your Honor.

20 THE COURT: Anything else?

21 MS. FURSE: That's the -- and it's a similar
22 problem with the notice of claim, which was also filed in
23 the interim.

24 THE COURT: Right.

25 MS. FURSE: Is it's a jurisdictional matter. And

1 *Hall v. Corrections* states quite clearly, you can't file the
2 notice of claim at the same time as you file the actual
3 lawsuit. There has to be the period given.

4 THE COURT: Sixty days. Isn't there 60 days or
5 something like that?

6 MS. FURSE: That - 60 days is the current
7 jurisdictional period. And so - and that is a
8 jurisdictional issue as well. So we're - so the Court lacks
9 jurisdiction both for failure to comply with the notice of
10 claim procedures and also for the failure to exhaust
11 administrative remedies.

12 THE COURT: Now, if I - if I buy your argument and
13 I dismiss without prejudice, are you telling me that
14 Mr. Ramey will suffer no prejudice by virtue of the fact
15 that he has started this action, it's been dismissed and he
16 has to go back. There's no time limits that he's going to
17 be facing, no prejudice he's going to be facing in now
18 readdressing the issues pursuant to your argument?

19 MS. FURSE: That's - I mean, he has a time limit,
20 but he has a - he's not missed it. There is a 30-day time
21 limit from the time he gets a written decision on the Board
22 of Adjustment decision, which he does not - my understanding
23 is he does not have yet. This does - the notice that was
24 sent to you is not the written decision.

25 THE COURT: Yes.

1 MS. FURSE: That doesn't constitute that.

2 MR. RAMEY: Your Honor, if I may. I have received
3 that. I don't have copies of it for everyone -

4 THE COURT: Okay. But you received it and so,
5 then, it's 30 days from the date of receipt.

6 MS. FURSE: Thirty days from the date of receipt.

7 THE COURT: But then I'm anticipating that's time
8 in the future that we can work with.

9 MS. FURSE: Correct.

10 MR. RAMEY: Your Honor, I believe I received that
11 on the 7th. Yes, sir.

12 THE COURT: Thank you. Appreciate that.

13 So he has until April 6th or - or something like
14 that.

15 MS. FURSE: Somewhere around there to appeal -

16 THE COURT: Yeah.

17 MS. FURSE: - simply the Board of Adjustment
18 decision. And then after that, then he files the notice of
19 claim, which will give - you know, assuming - depending what
20 that decision is. Then he's got the 60 days from the notice
21 of claim and then a year from there.

22 THE COURT: But to hear your argument and to
23 reiterate my understanding of it is I lack jurisdiction
24 because he hasn't done all of the procedural requirements.
25 But if I grant your motion to dismiss, he is not having any

1 prejudice against him and as long as he files within the
2 time frame of the 30 days from receiving the decision of the
3 Board of Adjustment.

4 MS. FURSE: That's correct, Your Honor.

5 THE COURT: Okay. Anything else?

6 MS. FURSE: No. That's our argument.

7 THE COURT: Thank you.

8 MS. FURSE: Thank you.

9 THE COURT: Mr. Ramey.

10 MR. RAMEY: Yes, sir.

11 Your Honor, William Ramey, the plaintiff.

12 I'd like to start off, if you wouldn't mind my
13 approaching the Court and handing him a series of documents
14 that I'll reference one at a time through the argument.

15 THE COURT: Have they been included in your
16 briefing?

17 MR. RAMEY: They are not. But I have two copies
18 of them for both sides.

19 THE COURT: Hand it to Counsel.

20 Thank you, Mr. Ramey. Thank you.

21 MR. RAMEY: I'd like to start off, Your Honor, by
22 saying that, from the start, the Salt Lake City Corp. Is
23 trying to couch this action as me filing a complaint seeking
24 damages against the City.

25 You will remember that Mr. Chambers, me and you,

1 we sat in your chambers on December 15th, I believe it was,
2 and I sought a TRO with equitable relief. In equity, there
3 is no jurisdictional limit for me seeking equity. This
4 court has a case right here, what is it, *Jenkins v. Swan*,
5 establishes the age-old principle in Salt Lake -- or in Utah,
6 pardon me, that common law exception to governmental
7 immunity pertaining to equitable claims has long been
8 recognized in this law, so the Utah Governmental Immunity
9 Act does not change that.

10 So, first off, I want to get it straight that we --
11 this was not an action for damages; this was an equitable
12 action when it was filed. And this Court, when we were
13 sitting in there, because everyone was on vacation for
14 Christmas break, we delayed the time Salt Lake City would
15 respond, and so I filed the Notice of Claim in that time.
16 Because this was an equitable action when it started, and
17 when it didn't start the actual damage portion of what I was
18 complaining of as my injuries, what this case goes into as
19 being what I was seeking, that was purely equity.

20 Salt Lake City said, "We're not going to do
21 anything; equity situation was solved." You denied the
22 motion, I filed the Notice of Claim on January 5th, 60 days
23 has passed by now. The claim, the Notice of Claim, doesn't
24 change, it's the same claim. The only thing that's happened
25 in the interim is we've gone one step further. And the

1 Board of Adjustment on their own, not called by me, met and
2 issued a second non-compliance or a third non-compliance.

3 But even though we're there, just to get the facts
4 of the case straight, I never even complained of the fact
5 that they didn't give me - they issued a notice of non-
6 compliance. I complained very simply, if you turn to this
7 document right here, about the procedure that Salt Lake City
8 Corp. used. The procedure was I purchased a house - we'll
9 go back to ninety - pardon me, '95 - purchased a house on
10 August 10th. The title search - we went through the title
11 search and revealed there were no adverse liens or adverse
12 notices of non-compliance that were against the property.

13 Soon thereafter, the Salt Lake City Corp., unknown
14 to me, files a notice of non-compliance on the property, and
15 I find out about it in April of '06. Pardon me, Your Honor.
16 I had to think about the dates. And in April of '06, I then
17 contacted Salt Lake City Corp., Kevin LaPickla, who's the
18 zoning administrator, and asked Kevin, "What do I do about
19 this?"

20 And we talked for about two and a half minutes and
21 we arrived at a decision that I had to file a special
22 exception request. I prepared the special exception
23 request, which takes a lot of hours. It's in my original
24 affidavit. It's a large document with plans and everything
25 drawn up, a large expense for me. And then I took that and

1 I filed it with him. And, in his discretion, he granted it
2 and recorded on the property a certificate of compliance
3 that that air conditioner was placed properly on the
4 property.

5 I then get a job offer in Houston that I take.
6 And I move to Houston in August. And so then, in November,
7 on November 21st or - yeah, November 21st, I get a call from
8 Kevin saying, "We're going to issue another certificate of
9 non-compliance." And so that's when I arranged the plane
10 tickets to come out to file the TRO. And we all know how
11 the story goes from there; Ms. Furse has said it very well.

12 But what I would like to point out is, if you went
13 on the website for Title 21, Salt Lake City has on their
14 website a map - flow chart how the process should work for a
15 special exception. And I've highlighted the relevant
16 portions. We can simply jump through in how I submitted
17 everything, and I don't need to follow through with it, but
18 you can see that the lines go the way the - if the special
19 exceptions - if it doesn't meet the special exception
20 standards, meaning that all neighbors have to sign off on
21 it, it then goes to an administrative hearing where Kevin
22 LaPickla, being the zoning administrator, has the authority,
23 the discretion, Your Honor, to approve it, and then it goes
24 to an issue of permit.

25 Nowhere in this procedure is there anywhere for

1 the Salt Lake City Corp. to come back and issue another
2 certificate of non-compliance. So what I'm -- what I was
3 complaining of in the TRO, was to stop that entire process,
4 if you remember, that, "Wait, something's broken here.
5 Something's not working right. We have policies that we're
6 supposed to follow. We have a -- we have guidelines that
7 they published for us to look at the public that they're
8 supposed to follow," and they're out of bounds in doing
9 that." And that's what I was originally filing on.

10 Going to the administrative remedies. This was
11 never filed as an exhaustion of my administrative remedies,
12 it was filed to actually say, "Hey, wait, there are no
13 administrative procedures in this case. We need a court now
14 to tell Salt Lake City that they have to follow their own
15 guidelines."

16 I was a bona fide purchaser of (inaudible) from
17 the start, through a long talk, I went ahead and did the
18 special exception and even got that approved. And now
19 they've gone back and again changed their mind.

20 And so we could sit here right today -- right here
21 today, Your Honor, and tomorrow they could issue a
22 certificate of compliance based on the facts that have
23 happened today. And I think we need your input, Your Honor,
24 yourself to tell them how they should be doing things, that
25 they need to follow their own procedures. And that's what I

1 was complaining of.

2 The 60 days, again, I filed the notice to the City
3 which was, I believe, filed with your court on the 5th of
4 January, the notice of the notice on January 5th. So that
5 means the 60 days have even passed. So even if we assumed
6 that you have to wait 60 days, which, technically, the City
7 has 60 days, but there's a statutory period that I must wait
8 that period to file, it's just how long the City has to be
9 back with me. But their continued prosecution of this suit
10 actually tells me what they're doing. And the original
11 filing of the TRO should in itself, as an equitable form of
12 remedy, serve as notice in any case. Because it was filed
13 with the city recorder's office when I filed the TRO.

14 See, it's hard to even -- to even say that that
15 document alone didn't suffice as notice. It wasn't styled
16 "Notice to City" would be the only thing that it wasn't.
17 So, yes, I mean, in every ground, I've covered all the
18 jurisdictional bases for this court, and I can't see where
19 the court, under any understanding of the actual facts,
20 doesn't have jurisdiction, Your Honor.

21 THE COURT: Anything more?

22 MR. RAMEY: No. That's it, Your Honor.

23 THE COURT: Thank you, Mr. Ramey. Appreciate your
24 argument. Directly to the point.

25 Ms. Furse, your rebuttal?

1 MS. FURSE: The case submitted to you by - by
2 Mr. Ramey does not address the issue of the Court's
3 jurisdiction. The Court has to have jurisdiction before it
4 can do anything other than rule - than dismiss a case. And
5 that doesn't exist in this matter. And the case on the
6 issue of failure to - failure to exhaust administrative
7 remedies is the *Haun v. Utah versus - or Utah Department of*
8 *Public Safety*, which is cited to you in our brief, which
9 cites:

10 If a plaintiff has failed to exhaust his
11 administrative remedies, then we lack subject
12 matter jurisdiction and we must dismiss the case.

13 And that's as to administrative remedies.

14 With respect to the notice of claim, that matter
15 is set forth in *Hall v. Utah versus - State Department of*
16 *Corrections*, which is also cited to you in the briefs. And
17 it states that - by filing a notice of claim in that case,
18 it was, at the same time as the case was filed not after the
19 case was filed.

20 Hall deprived the State of the opportunity to
21 assess his allegations and to decide, as required
22 by statute, whether to prove or deny the claims.

23 And, thus, it dismissed the case.

24 In this case, the notice was filed even after the
25 case was actually filed. So it's clear, under the Utah

1 Governmental Immunity Act that it -- that this Court lacks
2 jurisdiction unless the notice is filed prior.

3 THE COURT: And, thus, affording Salt Lake City
4 the opportunity to respond to it.

5 MS. FURSE: Exactly, Your Honor.

6 THE COURT: Anything else?

7 MS. FURSE: That's all.

8 THE COURT: Very well. Thank you.

9 MS. FURSE: Thank you.

10 THE COURT: Appreciate the argument. Very concise
11 and to the point. I'll take it under advisement and then
12 get something out to you soon. Thank you both.

13 MR. RAMEY: Thank you, Your Honor.

14 MS. FURSE: Thank you, Your Honor.

15 (Whereupon, at 11:16 a.m., the
16 hearing was concluded.)

17 -ooo0ooo-

18

19

20

21

22

23

24

25


C E R T I F I C A T E

STATE OF UTAH]
] ss.
COUNTY OF SALT LAKE]

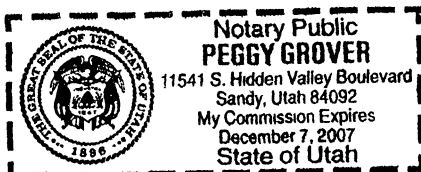
I, JERI KEARBHEY, Certified Court Transcriber in and for the State of Utah, do hereby certify that the foregoing electronically-recorded proceedings were transcribed by me from a video CD furnished by the Third Judicial District Court in and for Salt Lake County, State of Utah;

That pages 1 through 18, both inclusive, represent a full, true and correct transcript of the proceedings held on March 12, 2007, and that said transcript contains all of the evidence, objections of counsel and rulings of the Court and all matters to which the same relate.

DATED this 15th day of August 2007.


JERI KEARBHEY, CCT

I hereby affirm that the foregoing transcript was prepared under my supervision and direction.




Peggy Grover, CSR, RPR / Notary

TAB 2

LEXSEE 675 P2D 1145



Caution

As of: Oct 03, 2007

**Lynn A. JENKINS, Plaintiff and Appellant, v. Karl G. SWAN, et al.,
Defendants and Respondents**

No. 17566

Supreme Court of Utah

675 P.2d 1145; 1983 Utah LEXIS 1204

November 10, 1983, Filed

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff taxpayer sought review of a decision of the District Court (Utah), which dismissed her complaint against defendants, educational employees, county employees, and state employees, which sought a judgment concerning certain aspects of the state educational system and school districts and concerning the taxing practices of the county and the state.

OVERVIEW: The taxpayer brought a multi-party and multi-faceted action, and in one division complaint, she sought judgment concerning certain aspects of the educational system of the state and five of its school districts and concerning the taxing practices of the county and the state. The district court dismissed the complaint as to all parties. On appeal, the court affirmed in part and reversed in part and held that the taxpayer's action alleging that local school districts were prohibited from hiring state legislators during the term of their office was prop-

erly dismissed because absent some claim of specific injury that was casually related to the alleged illegal activity, the taxpayer did not meet the standing test of having a personal stake in the controversy. On the other hand, the taxpayer clearly had standing to demand a refund of her 1980 property tax based on the claim that the tax statute was unconstitutional because the constitutionality of a tax statute could be raised in an action properly filed pursuant to Utah Code Ann. § 59-11-1 in the district court.

OUTCOME: The court affirmed in part and reversed and remanded in part the decision of the district court, which dismissed the taxpayer's action concerning certain aspects of the educational system of the state and five of its school districts and concerning the taxing practices of the county and the state.

CORE TERMS: property taxes, governmental immunity, school districts, textbook, protest, teacher, resident, declaratory judgment, expenditure, exempt, public interest, personal stake,

equitable, notice, school systems, cause of action, adverse impact, religious, adversely, taxation, educators, societal, entity, common law, governmental actions, failed to comply, branches of government, private property, educator-legislators, educational

LexisNexis(R) Headnotes

Civil Procedure > Justiciability > Standing > General Overview

Civil Procedure > Declaratory Judgment Actions > State Judgments > General Overview

Civil Procedure > Remedies > Injunctions > General Overview

[HN1] Injunctive relief is a traditional equitable remedy in the appropriate cases, but as with other common law remedies, the moving party must have standing to invoke the jurisdiction of the court. The same jurisdictional standard applies to declaratory judgments. The statutory creation of relief in the form of a declaratory judgment does not create a cause of action or grant jurisdiction to the court where it would not otherwise exist. The Utah Declaratory Judgment Statute merely authorizes a new form of relief, which in some cases provides a fuller and more adequate remedy than that which exists under the common law.

Civil Procedure > Declaratory Judgment Actions > Federal Judgments > General Overview

Constitutional Law > The Judiciary > Case or Controversy > Ripeness

[HN2] Four requirements must be satisfied before the district court can proceed in an action for declaratory judgment: (1) there must be a justiciable controversy; (2) the interests of the parties must be adverse; (3) the parties seeking relief must have a legally protectible interest in the controversy; and (4) the issues between the parties must be ripe for judicial determination.

Civil Procedure > Justiciability > Standing > Personal Stake

Governments > State & Territorial Governments > General Overview

[HN3] For standing, plaintiff must be able to show that he suffers some distinct and palpable injury that gives him a personal stake in the outcome of the legal dispute. It is generally insufficient for a plaintiff to assert only a general interest he shares in common with members of the public at large. The court cannot entertain generalized grievances that are more appropriately directed to the legislative and executive branches of the state government.

Civil Procedure > Justiciability > Standing > Personal Stake

Constitutional Law > The Judiciary > Case or Controversy > Standing > Elements

[HN4] The judicial power of the state of Utah is not constitutionally restricted by the language of U.S. Const. art. III requiring "cases" and "controversies," since no similar requirement exists in the Utah Constitution. The court may grant standing where matters of great public interest and societal impact are concerned. However, the requirement that the plaintiff have a personal stake in the outcome of a legal dispute is rooted in the historical and constitutional role of the judiciary in Utah.

Civil Procedure > Justiciability > Standing > General Overview

[HN5] The requirement that a plaintiff have a personal stake in the outcome of a dispute is intended to confine the courts to a role consistent with the separation of powers, and to limit the jurisdiction of the courts to those disputes which are most efficiently and effectively resolved through the judicial process. The courts are most competent in the exercise of their function when they have a concrete factual con-

text conducive to a realistic appreciation of the consequences of judicial action.

Civil Procedure > Justiciability > Standing > General Overview

[HN6] A plaintiff with a direct and personal stake in the outcome of a dispute aids the court in its deliberations by fully developing all the material factual and legal issues in an effort to convince the court that the relief requested redresses the claimed injury.

Constitutional Law > The Judiciary > General Overview

[HN7] Constitutionally, the courts have the dual obligation to apply statutory and common law principles to a particular dispute and to evaluate those principles against governing constitutional standards.

Civil Procedure > Justiciability > Standing > Personal Stake

[HN8] Although the court has power to grant standing where matters of great public interest and societal impact are concerned, the court does not readily relieve a plaintiff of the salutary requirement of showing a real and personal interest in the dispute.

Civil Procedure > Justiciability > Standing > Personal Stake

[HN9] The court engages in a three-step inquiry in reviewing the question of a plaintiff's standing to sue. The first step in the inquiry is directed to the traditional criteria of the plaintiff's personal stake in the controversy. One who is adversely affected by governmental actions has standing under this criterion. One who is not adversely affected has no standing. A mere allegation of an adverse impact is not sufficient. There must also be some causal relationship alleged between the injury to the plain-

tiff, the governmental actions and the relief requested. Because standing questions are usually raised prior to the introduction of any evidence, the court is necessarily required to make a judgment whether proof of such a causal relationship is difficult or impossible and whether the relief requested is substantially likely to redress the injury claimed. If the plaintiff satisfies this requirement, he is granted standing and no further inquiry is required.

Civil Procedure > Justiciability > Standing > General Overview

[HN10] If the plaintiff does not have standing under the first step in the three-step inquiry of standing, the court addresses the question of whether there is anyone who has a greater interest in the outcome of the case than the plaintiff. If there is no one, and if the issue is unlikely to be raised at all if the plaintiff is denied standing, this court grants standing. When standing is predicated on the assertion that the issues involve great public interest and societal impact, the court retains our practical concern that the parties involved have the interest necessary to effectively assist the court in developing and reviewing all relevant legal and factual questions. The court denies standing when a plaintiff does not satisfy the first requirement of the analysis and there are potential plaintiffs with a more direct interest in the issues who can more adequately litigate the issues.

Civil Procedure > Justiciability > Standing > General Overview

[HN11] The third step in the three-step analysis of standing is to decide if the issues raised by the plaintiff are of sufficient public importance in and of themselves to grant him standing. The absence of a more appropriate plaintiff does not automatically justify granting standing to a particular plaintiff. This court must still determine, on a case-by-case basis, that the issues are of sufficient weight and that they are not more

properly addressed by the other branches of government.

Civil Procedure > Justiciability > General Overview

Criminal Law & Procedure > Criminal Offenses > Miscellaneous Offenses > General Overview

Education Law > Departments of Education > State Departments of Education > Authority

[HN15] Utah Code Ann. § 53-13-10 provides that members of boards of education are guilty of a misdemeanor if those persons refuse or neglect to enforce the use of textbooks adopted by the Utah State Textbook commission.

*Education Law > Departments of Education > State Departments of Education > Authority
Education Law > Instruction > General Overview*

[HN16] Utah Code Ann. § 53-13-2 states that use of the textbooks adopted by the state textbook commission is mandatory in all districts and high schools of the state.

Governments > Courts > Court Personnel

Governments > Local Governments > Licenses

Tax Law > State & Local Taxes > General Overview

[HN17] Utah Code Ann. § 59-11-11 provides that when a party deems a levy to be unlawful, such party may pay under protest such tax and thereupon the party so paying or his legal representative may bring an action in the tax division of the appropriate district court against the officer to whom said tax or license was paid, or against the state, county, municipality or other taxing unit on whose behalf the same was collected, to recover said tax paid under protest. No particular form of protest is required and in the absence of the creation of a tax court in the district in which the action is filed, the bringing

of an action in the appropriate district court is deemed as being in compliance with § 59-11-11.

Tax Law > State & Local Taxes

[HN15] The constitutionality or legality of a tax statute may be raised in an action that is properly filed pursuant to Utah Code Ann. § 59-11-1 in the district court.

Tax Law > State & Local Taxes > General Overview

[HN16] The court extends the taxpayer's right to sue concerning illegal use of public monies to include an action against the state.

Civil Procedure > Equity > General Overview

[HN17] Taxpayers may resort to a court of equity to prevent the misapplication of public funds, and the right is based upon the taxpayers' equitable ownership of such funds and their liability to replenish the public treasury for the deficiency which is caused by the misappropriation.

*Criminal Law & Procedure > Criminal Offenses > Miscellaneous Offenses > Abuse of Public Office > Neglect of Office > Elements
Governments > State & Territorial Governments > Claims By & Against*

[HN18] See Utah Code Ann. § 63-30-11.

Torts > Public Entity Liability > Immunity > General Overview

[HN19] The word "injury" is defined in Utah Code Ann. § 63-30-2(6) as death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, or estate, that would be actionable if inflicted by a private person or his agent. The definition of "injury" underscores the real con-

cern of the governmental immunity act, namely that a governmental entity, like individuals and private entities, should be liable for an injury inflicted by it.

Governments > Local Governments > Administrative Boards

Governments > State & Territorial Government > Claims By & Against

Taxes > State & Local Taxes > Personal Property Tax > Exempt Property > General Overlap

[HN1] See Utah Code Ann. § 59-11-2.

COUNSEL: **[**1]** Thomas S. Taylor, Provo, Utah, Plaintiff.

David L. Wilkinson, Attorney General, Salt Lake City, Utah, William Evans, Asst. Atty. General, Salt Lake City Utah, Felshaw King, Clerk of Court, Utah, David L. Church & Michael T. McCoy, Salt Lake City, Utah, Bruce Findley, Salt Lake City, Utah, Ron Elton, Tooele, Utah, Ted Cannon, Salt Lake County Atty., Salt Lake City, Utah, Bill Thomas Peters, Deputy S.L. Co. Atty, Salt Lake City, Utah for Defendants.

JUDGES: Durham, Justice, wrote the opinion. We concur: Gordon R. Hall, Chief Justice, Dallin Hanks, Justice. Wahlquist, District Judge: concurring and dissenting. Stewart, Justice, dissenting. Howe, Justice, does not participate here. Wahlquist, District Judge, sat.

OPINION BY: DURHAM

OPINION

[**1] Plaintiff/appellant, Lynn A. Jenkins (Jenkins), has filed this multi-party and multi-defended lawsuit which defies a simple and concise explanation. In a one division complaint directed to all defendants, Jenkins seeks a judgment concerning certain aspects of the educational system of the state of Utah and five

of its school districts, and concerning the taxing practices of Salt Lake County and the state of Utah. Apparently none of the defendants **[**2]** considered it necessary to exercise their rights under Rule 12(e) of the Utah Rules of Civil Procedure to require a more definite statement in light of what is arguably an ambiguous complaint. All the defendants, rather, proceeded under Rule 12(b) of the Utah Rules of Civil Procedure, to ask that the entire complaint be dismissed for, *inter alia*, a lack of jurisdiction because Jenkins lacked standing to press these claims, failure to state a claim upon which relief can be granted, failure to comply with the Utah governmental immunity statute, U.C.A., 1953, § 63-30-1 to -38 (1978 and Supp. 1981 and Interim Supp. 1983), and the previous adjudication of the issues in similar suits filed by Jenkins.¹ In response to these motions, the district court dismissed Jenkins' complaint "as to all of the defendants" because: (1) Jenkins lacked standing, (2) Jenkins failed to comply with notice and undertaking requirements of the governmental immunity act, and (3) the matter was res judicata as "most issues" have already been decided by the Utah Supreme Court. On appeal, Jenkins asks that the district court's order of dismissal be reversed.

1 *Jenkins v. Finlinson*, Utah, 607 P.2d 289 (1980); *Jenkins v. State*, Utah, 585 P.2d 442 (1978).

[3]** The first set of defendants which can be identified in Jenkins' complaint are those related to the Utah educational system. These individual defendants can be matched with their respective school systems as follows: defendant Swan is a teacher for the Tooele School District; defendants Curan and Burningham are teachers for the Davis School District; defendant Bishop is a teacher and defendant Alfor is a principal for the Ogden School District; and defendant LeFevere is Director of Personnel for the Weber School District. The Jordan School District, the State of Utah, Superintendent of Public Instruction Walter D. Talbot, and the

Utah Educational Association are also defendants. Jenkins' complaint prays for judgment as follows:

1. A declaration that the local School Districts and the Utah Department of Public Instruction are prohibited from hiring Utah legislators during the term of their office or continuing such legislators as employees once they become members of legislature. Article V, Section 1 and Article VI, § 6 of the Utah State Constitution, state, respectively, (a) "no person charged with the exercise of the powers properly belonging to one of these departments [****4**] [of the Utah government], shall exercise any functions appertaining to either of the others," and (b) that "no person holding any public office of profit or trust under authority . . . of this State, shall be a member of the legislature."

2. A declaration that the educator-legislators named as individual defendants are in violation of Utah Code Ann. § 67-16 (1953) for failing to file a conflict of interest disclosure statement concerning monies allegedly received from the Utah Education Association during the time when the legislature is in session.

3. A permanent restraining order prohibiting the Utah Educational Association from paying, hiring, loaning or gifting educators-legislators during the term of their office as legislators.

[*1148] 4. A declaration that the "Utah State Textbook Commission" and the mandatory use of textbook provisions of Utah law, §

53-13-2 and 53-13-10, U.C.A., 1953, is unconstitutional, since it is in violation of Article X, § 9 of the Utah State Constitution, which states: "Neither the Legislature nor the State Board of Education shall have power to prescribe textbooks to be used in the common schools."

The second category [****5**] of issues addressed in Jenkins' complaint relates to taxation and certain expenditures of public funds. It appears that Jenkins' demand for relief is directed to the Salt Lake County Attorney, the Salt Lake County Commission, the Salt Lake County Treasurer, the State of Utah, the Utah Attorney General and the Utah Tax Commission. Jenkins filed a protest with his 1980 property taxes, which were paid in the amount of \$807.89. He prays for the following relief:

1. A refund of his 1980 property tax.

2. An order to Salt Lake County to prepare, publish and update a list of all exempt taxable property, itemized by owner valuation and amount of tax forgiven;

3. A declaratory judgment that the funding of the Uniform State Public Education System by local property tax is unconstitutional as not providing for equal distribution of tax throughout the state and being a denial of equal protection.

4. A declaratory judgment that providing public property and public services to religious organizations which are exempt from the payment of property tax is in violation of Article 1, § 4 of the Utah State Constitution, which states:

"The State shall make no law respecting an [**6] establishment of religion" and "no public money or property shall be appropriated for or applied to any religious worship, exercise or instruction or for the support of any ecclesiastical establishment."

I.

We consider first the question of whether Jenkins had standing to raise those issues concerning the service in the Utah Legislature of Utah educators. The threshold requirement that Jenkins have standing is equally applicable whether he seeks declaratory or injunctive relief. [HN1] Injunctive relief is a traditional equitable remedy in the appropriate cases, but as with other common law remedies, the moving party must have standing to invoke the jurisdiction of the court. The same jurisdictional standard applies to declaratory judgments. The statutory creation of relief in the form of a declaratory judgment does not create a cause of action or grant jurisdiction to the court where it would not otherwise exist. The Utah Declaratory Judgment Statute merely authorizes a new form of relief, which in some cases will provide a fuller and more adequate remedy than that which existed under the common law. *Gray v. Deft.* 103 Utah 339, 135 P.2d 251 (1943).

We have previously held [**7] that [HN2] four requirements must be satisfied before the district court can proceed in an action for declaratory judgment: "(1) there must be a justiciable controversy; (2) the interests of the parties must be adverse; (3) the parties seeking relief must have a legally protectible interest in the controversy; and (4) the issues between the parties must be ripe for judicial determination." *Jenkins v. Finlinson*, Utah, 607 P.2d 289 (1980) (citing *Baird v. State*, Utah, 574 P.2d 713

(1978)). See also *Main Parking Mall v. Salt Lake City Corp.*, Utah, 531 P.2d 866 (1975); *Lyon v. Bateman*, 119 Utah 434, 228 P.2d 818 (1951). Requirements (2) and (3) represent the traditional test for standing. [HN3] Plaintiff must be able to show that he has suffered some distinct and palpable injury that gives him a personal stake in the outcome of the legal dispute. See *Warth v. Seldin*, 422 U.S. 490, 45 L. Ed. 2d 343, 95 S. Ct. 2197 (1975); *Stromquist v. Cokayne*, Utah, 646 P.2d 746 (1982); *Sears v. Ogden City*, Utah, 572 P.2d 1359 (1977); *Main Parking Mall*. It is generally insufficient for a [**1149] plaintiff to assert only a general interest he shares in common with members of the [**8] public at large. See *Stromquist; Baird v. State*, Utah, 574 P.2d 713 (1978). We will not entertain generalized grievances that are more appropriately directed to the legislative and executive branches of the state government.

Unlike the federal system, [HN4] the judicial power of the state of Utah is not constitutionally restricted by the language of Article III of the United States Constitution requiring "cases" and "controversies," since no similar requirement exists in the Utah Constitution. We previously have held that "this Court may grant standing where matters of great public interest and societal impact are concerned." *Jenkins v. State*, Utah, 585 P.2d 442, 443 (1978) (footnote omitted). However, the requirement that the plaintiff have a personal stake in the outcome of a legal dispute is rooted in the historical and constitutional role of the judiciary in Utah.

Historically, the courts were an extension of the executive branch and were developed to resolve disputes between private parties, and between the government as a land owner and private parties concerning the use and ownership of land. With the advent of mercantilism, industrialization and urbanization, the courts [**9] became increasingly concerned with disputes over the regulation of economic activity

by private contract, and injuries to individuals in their daily activities in a crowded and complex society. "The liability of one individual to another under the law . . . is a matter of private rights . . . Private-rights disputes . . . lie at the core of the historically recognized judicial power." *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 102 S. Ct. 2858, 2870-71, 73 L. Ed. 2d 598 (1982) (citations omitted). The courts developed ways of identifying and categorizing particular grievances, techniques for the receipt of information, and principles for arriving at a resolution of these disputes. See generally T. Plucknett, *A Concise History of the Common Law* (5th ed. 1956). In the course of this development, the judiciary emerged as a governmental institution distinct from the executive. The identification of the judiciary as one of three separate and equal branches of government in our written state Constitution must be viewed in light of this historical development.

Inherent in the tripartite allocation of governmental powers is the historical [**10] and pragmatic conviction that particular disputes are most amenable to resolution in particular forums. [HN5] The requirement that a plaintiff have a personal stake in the outcome of a dispute is intended to confine the courts to a role consistent with the separation of powers, and to limit the jurisdiction of the courts to those disputes which are most efficiently and effectively resolved through the judicial process. See *Flast v. Cohen*, 392 U.S. 83, 20 L. Ed. 2d 947, 88 S. Ct. 1142 (1968). The courts are most competent in the exercise of their function when they have a "concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 102 S. Ct. 752, 758, 70 L. Ed. 2d 700 (1982). [HN6] A plaintiff with a direct and personal stake in the outcome of a dispute will aid the court in its deliberations by fully developing all the material factual and legal issues in an effort to convince the

court that the relief requested will redress the claimed injury.

[HN7] Constitutionally, the courts have the dual obligation to apply statutory and common law principles [**11] to a particular dispute and to evaluate those principles against governing constitutional standards. The propriety of such action by the federal courts has been recognized since *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 2 L. Ed. 60 (1803), and this Court has recognized that it is the inherent role of the judiciary to interpret constitutional provisions. See *Matheson v. Ferry*, 641 P.2d 674 (1982); *Jenkins v. State*. In the proper discharge of their duty in this regard, the courts *must* necessarily defer on some issues to the other branches of state government. For example, the airing of generalized grievances [**1150] and the vindication of public rights are properly addressed to the legislature, a forum where freewheeling debate on broad issues of public policy is in order.

To grant standing to a litigant, who cannot distinguish himself from all citizens, would be a significant inroad on the representative form of government, and cast the courts in the role of supervising the coordinate branches of government. It would convert the judiciary into an open forum for the resolution of political and ideological disputes about the performance of government.

[**12] *Baird v. State*, Utah, 574 P.2d 713, 717 (1978).

An overstepping of appropriate restraints on judicial review of such political and ideological disputes is not only constitutionally and historically inappropriate, but also unwise. Although

the Utah judiciary is not life-tenured, the following observation is applicable:

Repeated and essentially head-on confrontations between the life-tenured branch and representative branches of government will not, in the long run, be beneficial to either. The public confidence essential to the former and the vitality critical to the latter may well erode if we do not exercise self-restraint in the utilization of our power to negative the actions of the other branches.

United States v. Richardson, 418 U.S. 166, 188, 54 L. Ed. 2d 678, 94 S. Ct. 2940 (1974) (Powell, J., concurring).

Therefore, despite our recognition of this [HN9] Court's power to "grant standing where matters of great public interest and societal impact are concerned," this Court will not readily relieve a plaintiff of the salutary requirement of showing a real and personal interest in the dispute. In light of the historical, constitutional and practical considerations [**13] discussed above, we [HN9] engage in a three-step inquiry in reviewing the question of a plaintiff's standing. The first step in the inquiry will be directed to the traditional criteria of the plaintiff's personal stake in the controversy. One who is adversely affected by governmental action has standing under this criterion. One who is not adversely affected has no standing. A mere allegation of an adverse impact is not sufficient. There must also be some causal relationship alleged between the injury to the plaintiff, the governmental actions and the relief requested. Because standing questions are usually raised prior to the introduction of any evidence, we will necessarily be required to render a judgment whether proof of such a causal relationship is difficult or impossible and whether the relief requested is substantially

likely to redress the injury claimed. K. Davis, *Administrative Law Treatise* § 22.20 at 368-70 (1982 Supp.). If the plaintiff satisfies this requirement, he will be granted standing and no further inquiry is required.

[HN10] If the plaintiff does not have standing under the first step, we will then address the question of whether there is anyone who has [**14] a greater interest in the outcome of the case than the plaintiff. If there is no one, and if the issue is unlikely to be raised at all if the plaintiff is denied standing, this Court will grant standing. See, e.g., *State v. Lewis, Alaska*, 559 P.2d 630, 635 (1977). When standing is predicated on the assertion that the issues involve "great public interest and societal impact," we will retain our practical concern that the parties involved have the interest necessary to effectively assist the court in developing and reviewing all relevant legal and factual questions. The Court will deny standing when a plaintiff does not satisfy the first requirement of the analysis and there are potential plaintiffs with a more direct interest in the issues who can more adequately litigate the issues.

[HN11] The third step in the analysis is to decide if the issues raised by the plaintiff are of sufficient public importance in and of themselves to grant him standing. The absence of a more appropriate plaintiff will not automatically justify granting standing to a particular plaintiff. This Court must still determine, on a case-by-case basis, that the issues are of sufficient weight, see *Jenkins* [**15] v. *Finlinson*, Utah, 607 P.2d 289 (1980), [**1151] and that they are not more properly addressed by the other branches of government. Constitutional and practical considerations will necessarily affect our decisions in cases where a plaintiff who lacks standing under step one nevertheless raises important public issues. These are matters to be more fully developed in the context of future cases.

In this case, Jenkins claims that he is bringing this complaint as a resident of the state of

Utah and as a "citizen, taxpayer, registered voter and parent" who is a member of a class of persons with a joint or common right against the defendants. Jenkins is a resident of Salt Lake County and has paid taxes to that entity. Jenkins is not a resident of the Tooele, Davis, Ogden or Weber School Districts, the districts which employ the educators/legislators named as defendants in this action. Jenkins fails to make any allegations that he is a resident of the legislative districts from which these individuals were elected. His claimed personal stake in the issue of educators serving as legislators is that they vote on legislation which financially benefits them as employees of the education [**16] system and that this adversely affects Jenkins as a taxpayer.

Jenkins' mere reliance on his general status as a taxpayer and citizen does nothing to distinguish him from any member of the public at large with regard to this dispute. His challenge is extremely broad; he attacks the constitutionality of educators serving in the Utah legislature but makes no claim of a *particularized* injury to himself by virtue of the claimed wrong. Absent some claim of specific injury which is causally related to the alleged illegal activity, Jenkins has not met the traditional standing test articulated in step one above.

Jenkins further requests that we grant him standing under the rationale that he raises question of great public interest and societal impact. We need not address that issue. Since Jenkins' claim for standing on this issue is presented solely on the grounds of its public importance, we will not grant him standing where the pleadings reveal other potential plaintiffs with a more direct interest in this particular question. Jenkins' interest as a resident of the state of Utah is certainly less direct than the interest of the residents of the school districts which employ these [**17] individuals or the legislative districts from which they were elected. We need not and do not decide here whether residents of those areas would have

standing to bring this complaint. We do find, however, that Jenkins' interest is less direct than the interest of those living in the relevant school districts or legislative districts. Therefore, we will not invoke the standing doctrine of "great public interest and societal impact" to consider his request for standing.

We also hold that Jenkins lacks standing to present his claims that U.C.A., 1953, §§ 53-13-2 and 53-13-10 are unconstitutional. [HN12] Section 53-13-10 provides that members of boards of education shall be guilty of a misdemeanor if those persons refuse or neglect "to enforce the use of textbooks adopted by the [Utah State Textbook] commission" Jenkins does not allege that he is a member of a local board of education and therefore cannot contend that he is or is likely to be subject to prosecution under this code section. In the absence of any such personal adverse impact, Jenkins lacks standing to raise the issue of the constitutionality of the statute. *See Redwood Gym v. Salt Lake City Commission*, Utah, [**18] 624 P.2d 1138 (1981); *Cavaness v. Cox*, Utah, 598 P.2d 349 (1979). [HN13] Section 53-13-2 states that use of the textbooks adopted by the state textbook commission "shall be mandatory in all districts and high schools of the state." Jenkins fails to allege that this mandate adversely affects him or his children, except insofar as it may inflict some kind of "spiritual" discomfort caused by the existence of a statute he believes is unconstitutional. This Court may not issue an advisory opinion on this question merely to relieve his discomfort. *See Redwood Gym and Baird*. Further, members of local boards of education constitute a class of potential plaintiffs with a more direct interest in this question [**1152] than Jenkins, and, therefore, we will not address the question of whether Jenkins should be granted standing because of the alleged public importance of the issues involved.

Jenkins also requests that this Court enter an order directing the "educator-legislators" to

file a conflict of interest disclosure statement concerning money allegedly received from the Utah Education Association. U.C.A., 1953, § 67-16-12 declares it a misdemeanor for a "public officer or public [**19] employee [to] knowingly and intentionally" violate the statute. The statute does not provide Jenkins with standing to act as a private attorney general in the enforcement of this statute. This Court will not require to order these defendants to do that which they are already required to do by statute. If in fact the statute even applies to legislators.

Jenkins further requests this Court to permanently restrain the Utah Education Association from providing gifts, loans and other financial support to "educator-legislators." U.C.A., 1953, § 67-16-10 states that "no person shall induce or seek to induce any public officer or public employee to violate any of the provisions of this act." The appropriate parties to institute any action concerning violations of this statute are in the executive and legislative branches. Jenkins' position in this situation is identical to that of the citizenry at large, and therefore he lacks standing to pursue this cause of action.

II.

In the introductory portion of this opinion, we defined the relief sought by Jenkins in connection with payment of his 1980 property taxes. Apparently these claims, as well as those discussed above, were dismissed [**20] by the district court on the basis that Jenkins lacks standing, that he failed to comply with the procedural requirements of the statutes on governmental immunity, and that the doctrine of res judicata applied. Unlike the issues concerning educators in the legislature, none of the questions concerning taxation and expenditures raised by Jenkins appear to have been previously addressed to the district court or to this Court. Therefore, the doctrine of res judicata does not apply. Thus, we must review the dis-

trict court's dismissal on the issues of standing and the applicability of the Governmental Immunity Act.

A.

Jenkins alleges that he paid \$807.89 for property taxes in 1980. A copy of a Salt Lake County tax assessment form in that amount is appended to his petition along with a letter addressed to the Salt Lake County Treasurer. This letter advised that Jenkins' taxes had been paid by Prudential Federal Savings & Loan and that the payment of the tax was under protest. The letter is dated November 29, 1980, the date noted on the tax assessment forms as the deadline for payment of the 1980 property taxes. [HN14] U.C.A., 1953, § 59-11-11 (Supp. 1981) provides that when a party deems [**21] a levy to be unlawful, "such party may pay under protest such tax . . . and thereupon the party so paying or his legal representative may bring an action in the tax division of the appropriate district court against the officer to whom said tax or license was paid, or against the state, county, municipality or other taxing unit on whose behalf the same was collected, to recover said tax . . . paid under protest." No particular form of protest is required, *Murdock v. Murdock*, 38 Utah 373, 113 P. 330 (1911), and in the absence of the creation of a tax court in the district in which the action is filed, the bringing of an action in the appropriate district court is deemed as being in compliance with § 59-11-11. See U.C.A., 1953, §§ 59-24-1 to -9 (Supp. 1981 and Interim Supp. 1983). For purposes of our review, we assume Jenkins' allegations that he paid his 1980 property taxes and filed the letter of protest appended to his petition are true.

[HN15] The constitutionality or legality of a tax statute may be raised in an action that is properly filed pursuant to § 59-11-1 in the district court. See *State Tax Commission* [*1153] v. *Wright*, Utah, 596 P.2d 634 (1979). Therefore, [**22] Jenkins clearly has standing to demand a refund of his 1980 property tax based

on his claim that the tax statute pursuant to which all or part of that tax was assessed is unconstitutional. Jenkins' specific claim is that the system of uniform funding of state public education by local property taxes is unconstitutional. We hold that Jenkins has standing to demand a refund of all or part of his 1980 property taxes based on his allegation of the unconstitutionality of this statutory scheme.

Jenkins also requests this Court to declare the providing of public property and public services to religious organizations, which are exempt by law from the payment of property taxes, unconstitutional under Art. 1, Sec. 4 of the Utah Constitution. This Court has long held that a taxpayer has standing to prosecute an action against municipalities and other political subdivisions of the state for illegal expenditures. In an early case involving expenditure for the construction of a water distribution system, we said:

To the extent that the water rates are excessive his taxes are increased, and the mere fact that it increases in like proportion the taxes of all other taxpayers does not [**23] deprive him of the right to maintain an action to arrest the waste of public funds.

Brummitt v. Ogden Waterworks Co., 33 Utah 285, 285-96, 93 P. 828, 831 (1908). See also *Tooele Building Association v. Tooele High School District*, 43 Utah 362, 134 P. 894 (1914).

We have also [HN16] extended the taxpayer's right to sue concerning illegal use of public monies to include an action against the state. In *Lyon v. Bateman*, 119 Utah 434, 228 P.2d 1143 (1951), we reviewed the various arguments for and against the grant of such a taxpayer's right of action and concluded that it should be permitted in this state. "[A] taxpayer

should be permitted to enjoin the unlawful expenditure of tax moneys in which he has a pecuniary interest, or to prevent increased levies for illegal purposes." *Id.* at 441, 228 P.2d at 821. In arriving at this conclusion, we quoted with approval the following language of the Illinois Supreme Court:

We have repeatedly held that [HN17] taxpayers may resort to a court of equity to prevent the misapplication of public funds, and that this right is based upon the taxpayers' equitable ownership of such funds and their liability to replenish the public treasury [**24] for the deficiency which would be caused by the misappropriation.

Id. at 443, 228 P.2d at 823 (quoting *Fergus v. Russel*, 270 Ill. 304, 110 N.E. 130 (1915)).

In applying the foregoing authorities to this case, we note that Jenkins makes allegations concerning the limited amount of private property in the state of Utah subject to state taxation. He further alleges that because of the limited amount of property available for taxation and the unconstitutional expenditure of tax dollars on religious institutions which have large property holdings but pay no property tax, he must pay increased taxes as an owner of taxable private property. He has alleged that he is directly and adversely affected by this governmental action. We hold that these allegations give him standing under the test set out in Section I of this opinion. In arriving at this conclusion, we need not determine the extent of the adverse impact on Jenkins; we only conclude that he has alleged a direct adverse impact which may be subject to proof, and it is likely that if the governmental action is declared unconstitutional, the adverse impact on Jenkins will be relieved. We hold, therefore, that Jenkins [**25] has standing to raise his claim concerning the unconstitutional expenditure of

public monies on tax exempt private property held by religious organizations as part of his claim filed under U.C.A., 1953, § 59-11-11 (Supp. 1981).

P.

The motions of the defendants to dismiss Jenkins' entire complaint were granted on the basis that he failed to comply with the Utah Governmental Immunity Act. *See* U.C.A., 1953, § 63-30-1 to -38 (1978 & [*1154] Supp. 1981 & Interim Supp. 1983). We need only address this issue in connection with Jenkins' claim for the return of his property tax under § 59-11-11 as those are the only causes of action concerning which we have found Jenkins to have standing.

The district court found that Jenkins had failed to comply with the notice and undertaking requirements of the Governmental Immunity Act. Section 63-30-11 of that Act now provides that:

[HN18] Any person having a claim for injury against a governmental entity or against an employee shall before maintaining an action for an act or omission occurring during the performance of his duties, within the scope of employment, or under color of authority, shall file a written notice of claim with such [**26] entity.

[HN19] The word "injury" is defined in § 63-30-2(1) as "death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, or estate, that would be actionable if inflicted by a private person or his agent." This definition of "injury" underscores the real concern of the governmental immunity act, namely that "a governmental entity, like individuals and private entities, should be liable for an injury inflicted by it." *See* *McFarland v. Salt Lake City Corp.*, Utah, 605

P.2d 1230, 1234 (1980). *See also* *Thomas v. Clearfield City*, Utah, 642 P.2d 737 (1982). Jenkins' claim for an adjustment on his property taxes is neither an "injury" as defined in § 63-30-2(6) nor is it an "action under this act." Jenkins is prosecuting this action under a separate statutory authorization, § 59-11-11, which predates the enactment of the Governmental Immunity Act and which provides a distinct and separate basis for his claim against the government. The cause of action authorized under § 59-11-11 has its own notice provision in the form of the requirement to pay the tax under protest and has its own statute of limitation. *See* U.C.A., [**27] 1953, § 78-12-31. It is not governed by the notice or undertaking requirements in the Governmental Immunity Act.

Jenkins seeks equitable relief in the form of a declaratory judgment, in addition to a return of the property tax paid under protest. In *El Rancho Enterprises, Inc. v. Murray City Corp.*, Utah, 565 P.2d 778, 779 (1977), we said that the "common law exception to governmental immunity pertaining to equitable claims has long been recognized in this jurisdiction." We held that neither the passage of time nor the enactment of the Governmental Immunity Act has eroded that principle. *Id.* at 780. In 1978, the statutory section authorizing the suit in *El Rancho*, *see* U.C.A., 1953, § 10-7-77, was repealed and such claims are now covered exclusively by the Governmental Immunity Act. *See* Laws of Utah, 1978 ch. 27 § 12. These amendments do not undermine the continued viability of our holding in *El Rancho* that equitable claims of this nature for assessments made "without authority of law," are exempt from the notice requirements. *El Rancho*, at 780. Because this holding is predicated on the common law exception to governmental immunity for equitable claims, [**28] such claims are also exempt from the undertaking requirements of the Governmental Immunity Act.

We also note that Jenkins has requested this Court to order the Salt Lake County Tax Commission to create and maintain certain records concerning private property which is exempt from taxation. [HN20] U.C.A. 1953, § 59-11-2 provides that "if on examination it is found that any officer . . . has neglected or refused to perform any duty relating to revenue, the attorney general must prosecute the delinquent." Jenkins has failed to allege any statute or rule which imposes upon the tax commission a duty to maintain the records in the manner he requests. Even if there were such a duty, it is the responsibility of the attorney general to prosecute officers who have neglected to maintain records. Jenkins may of course seek any information which is relevant to his property tax claims through normal discovery procedures. Any dispute concerning the availability and relevance of this information or the inconvenience of producing it in a specific [*1155] form would be appropriately addressed to the district court pursuant to its power to control discovery.

III.

As we noted at the outset, the [*29] complaint in this case is complicated and confusing. Plaintiff has not clearly identified the specific parties to whom his allegations are directed. It is unfortunate that the defendants did not request clarification of the complaint prior to proceeding with the motion to dismiss. We have attempted to organize the issues presented on appeal in order to address them. The district court order of dismissal is reversed insofar as it dismissed the causes of action discussed in part of his opinion, and affirmed in all other respects. This case is remanded to the district court for further proceedings consistent with this opinion.

WE CONCUR: Gordon R. Hall, Chief Justice, John H. Oaks, Justice.

CONCURRED BY: WAHLQUIST

DISSENT BY: WAHLQUIST

DISSENT

WAHLQUIST, District Judge: (Concurring and Dissenting.)

I dissent in part. I concur in the majority opinion except in the particular referred to below.

I have read the plaintiff/appellant's pleading and brief and have heard his argument. The plaintiff is not a member of the bar. He appears pro se. He evidences considerable academic training and intellectual control, but does not perform in accordance with the customs of the bar. He should [*30] not be rewarded with undue tolerance at the expense of the defendants for appearing pro se, nor should his communications be rejected because they are not ordinary in the court setting. What he is alleging in layman's terms is surprising, shocking and seems unbelievable; yet, he makes his allegations in sober seriousness.

His allegations, as I understand he intends them, are: there is an operating, grand conspiracy executed by a large segment of the executive branch of the government (involved in public education) to gain control over certain important functions of the legislative branch. He has filed one complaint that in pseudo-legalistic words embraces the breadth of his allegations. When studied in the context of independent paragraphs, it appears to be the allegations of totally independent and unrelated complaints, but taken as he seems to intend it, it is a related allegation. He alleges that the vast majority of the state public school teachers and many of the administrators are members of a group (Utah Education Association) (hereafter "UEA"). They are alleged to be united in the promotion of their own interests and in the shaping of the school system in accordance with [*31] their desires. The UEA allegedly secures funds from the group that it uses to fi-

nance the election of favorable legislative candidates, more particularly, teachers and administrators. During the legislative term, the UEA allegedly compensates the group for legislative and personal expenses, even lost wages, if any. He claims that the UEA makes it possible for the teacher/legislator to draw UEA benefits, teachers' salaries, and legislators' compensation, together with earned retirement benefits under both the teachers' retirement program and the legislators' retirement program simultaneously. Furthermore, all these duplicate wages and benefits continue, not only during the legislative term, but throughout the year, because of committee and legislative hearings. He also alleges that their power in the legislature far exceeds their number, because they are a highly organized, unregistered, unrestricted lobby group with the power to trade votes. They have access to the floor of the legislature, assured of access to all information in committee meetings and even in caucuses. The plaintiff alleges that this results in innumerable laws not possible but for this conspiracy. He alleges [**32] that the school system is now primarily supported by taxes provided by the state legislature, as opposed to the general intent that they be locally controlled by school boards. He alleges that the taxing system for the support of the school system results in favored treatment for certain areas, e.g., that a property owner of a home located in Emery County [*1156] would pay only one-twentieth of the taxes that a resident in Salt Lake County would pay for equal ownership in a home. He further alleges that the legislature has created a textbook commission that empowered the state school superintendent to regulate not only public schools but also private schools, so that the textbooks and curriculum are controlled throughout the state in direct conflict with the state constitutional provisions that state that the legislature will not control school books. He apparently is also convinced that the UEA has formed an alliance with church groups through parent groups, resulting in legislation and the administration of

laws to make property tax-exempt on the basis that it is worship property or charitable property when, in fact, it may be used to promote the evangelistic endeavors [**33] of the church groups, their mutual welfare funds and their general activities involving church schools and recreation. He alleges that it is impossible for a taxpayer to even discover which properties are being treated as tax-exempt. He alleges that there is no adequate remedy in the system because it is extremely unlikely that any member of the UEA would bring a suit over a dispute concerning legislative wages or benefits and even more unlikely that any school board or school system would do so. He further alleges that so long as one cannot see these tax-exempt properties or discover how they are treated, a general law suit involving them is not likely to reach the courts. He seems to be in agreement with the late Martin Luther King, who attempted to bring about social change or constitutional rulings by forcing controversies into court.¹ As a father of school children and a taxpayer in Salt Lake County, he presses for a judicial determination by paying his taxes under protest.

1 See *Jenkins v. State*, Utah, 585 P.2d 442 (1978); *Jenkins v. Bishop*, Utah, 589 P.2d 770 (1980); *Jenkins v. Finlinson*, Utah, 607 P.2d 289 (1980).

[**34] While the plaintiff seems to welcome judicial action on any portion of these allegations, it would be illogical not to look at his general overall allegation for whatever merit it might have. It is noted that the same general melody of his complaint can be heard periodically in the news media in connection with legislative and school board elections. In view of obvious public interest in the matter, I would not dismiss it as a grandiose, paranoid delusion.² I would return the case to the trial court with directions to hold an evidentiary hearing to determine to what extent his allegations may be supported by credible evidence; to hear what public concerns are present that

would indicate jurisdiction should not be entertained and to direct the trial judge to make a discretionary finding as to whether this plaintiff is entitled to have the courts entertain jurisdiction on the basis that he alleges an important public constitutional issue that is not likely to reach the courts by any other means and should be determined if the separation of powers are to be properly maintained. Such a determination would have to be made after paying due respect to the constitutional provisions [**35] that the legislature will be the judge of its own election controversies and that broad matters of a political nature are best determined in the legislative branch of government.

2 It is evident the plaintiff/appellant has taken instruction from both *Jenkins v. State, supra*, and *Jenkins v. Bishop, supra*. He now aims directly at the issues, wants an evidentiary hearing and tactfully reminds the court that in the past, individual justices have agreed and others implied that the issue is one of importance.

Stewart, Justice, dissents.

Howe, Justice, does not participate herein;


Wahlquist, District Judge, sat.

CERTIFICATE OF SERVICE

I hereby certify that I, William P. Ramey, III, has served, via first class mail, the following documents to the Appellee, The Salt Lake City Corporation at
Ms. Evelyn Furse; The Salt Lake City Corporation; City Attorney's Office;
451 S. State St.; Salt Lake City, Utah 84111.

1. Appellant's Brief

10/11/07
Date


William P. Ramey, III

