

2000

# Darlene Collins v. Utah State Developmental Center : Reply to Brief in Opposition

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

V

20000055

**IN THE UTAH SUPREME COURT**

DARLENE COLLINS, as guardian of :  
VICKIE L. COLLINS, an incompetent :  
person, :

Plaintiff/Respondent, :

Case No. 20000055

vs. :

UTAH STATE DEVELOPMENTAL :  
CENTER, and the UTAH STATE :  
DEPARTMENT OF HUMAN :  
SERVICES and the STATE OF UTAH, :

Defendants/Petitioners.

**PLAINTIFF'S BRIEF IN OPPOSITION  
TO DEFENDANTS'/PETITIONERS'  
PETITION FOR WRIT OF CERTIORARI**

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**IN THE UTAH SUPREME COURT**

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DARLENE COLLINS, as guardian of :  
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Plaintiff/Respondent, :

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**LIST OF ALL PARTIES**

To the best of Plaintiffs’/Respondents’ knowledge, all interested parties appear in the caption of this Brief.

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## ARGUMENT

### **I. THIS COURT SHOULD REFUSE ITS DISCRETIONARY JURISDICTION OVER THIS APPEAL BECAUSE DEFENDANT HAS FAILED TO PRESENT “SUBSTANTIAL AND IMPORTANT” REASONS AS REQUIRED BY UTAH LAW.**

This Court should deny Defendants’ Petition because there are no substantial and important reasons for this Court to review the Court of Appeals’ decision (“Decision”). Rule 46 controls this Court’s review of petitions for writ of certiorari: “Review by a writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for special and important reasons.” Utah R. Civ. App. 46(a). The Rule lists four examples that this Court will consider in determining whether “special and important” reasons exist to justify review. *Id.* at Rule 46(a)(1)-(4).

Defendants/Appellants (“Defendants”) cite only two reasons in support of this Court’s jurisdiction: 1) the Decision conflicts with other Court of Appeals’ decisions; and, 2) the Decision conflicts with this Court’s prior decisions. Defendants’/Appellants’ Petition for Writ of Certiorari (“Petition”) at 9. Neither claim is accurate, as will be shown below. To the contrary, the Court of Appeals’ decision is in harmony with prior decisions of this Court and the Court of Appeals. This Court should therefore decline its jurisdiction because it is not justified by substantial and important reasons required under the Rules. Before turning to that analysis, however, it is appropriate to consider the public policy that supports denial of this Court’s jurisdiction.

**A. STARE DECISIS AND PUBLIC POLICY CONSIDERATIONS DO NOT SUPPORT JURISDICTION IN THIS CASE BECAUSE THE DECISION IN THIS CASE IS IN HARMONY WITH PRIOR CASES.**

In the context of Rule 46(a)(1) and (2), the doctrine of stare decisis compels appellants to demonstrate an actual conflict for this Court to exercise its jurisdiction.<sup>1</sup> The principle of stare decisis is that, “[w]hen a court lays down a rule of law attaching a specific legal consequence to a detailed set of facts, the court must adhere to the legal principle it has announced by applying it in all subsequent cases that come before it presenting a similar factual premise.” Comment, THE STRAITS OF STARE DECISIS AND THE UTAH COURT OF APPEALS: NAVIGATING THE SCYLLA OF UNDER-APPLICATION AND THE CHARYBDIS OF OVER-APPLICATION, 633 BYU L. Rev 1994 at 641. (footnotes omitted). There are compelling public policy reasons that support this Court’s application of the principle of stare decisis, and decline jurisdiction in this case, including reliance and stability interests, judicial expedition and economy, and the image of justice. *Id.* at 641. In this case, because there is no conflict between the Decision and decisions of the Court of Appeals or the Supreme Court, this Court is bound to apply its prior decisions to the case at bar, and deny Defendants’ petition for writ of certiorari.

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<sup>1</sup> This is not to say that there can be no other “special and important” reasons for this Court to exercise its jurisdiction. There may be other reasons. *See, e.g.* Utah R. Civ. App. 46(a)(3) and (4). In this case, however, these “conflicts” are the only reasons Defendant cites in support of this Court’s jurisdiction.

## 1. The Decision is Consistent with Supreme Court Decisions.

There is no conflict between this Court's prior decisions and the Decision. In the case of Nixdorf v. Hicken, 612 P.2d 348 (Utah 1980), this Court recognized that in medical malpractice cases, there is no need for expert testimony where lay jurors can understand the standard of care. In Nixdorf, this Court held that no expert testimony was required to establish the standard of care where a doctor left a surgical cutting needle in the Plaintiff. Id. at 352. This principle is sometimes called the "common-knowledge" exception in the context of medical malpractice. See, e.g., Decision at ¶ 8. Nixdorf is the most recent Supreme Court case in a line of cases that illustrate the common-knowledge exception in medical malpractice cases. See, Nixdorf, 612 P.2d at 352 n.5, and numerous cases cited therein. As shown infra, Nixdorf has been consistently followed by Utah Courts in medical malpractice cases where jurors can understand the applicable standard of care.<sup>2</sup>

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<sup>2</sup> The position of Utah Courts on this issue is consistent with that of other States. Negligence in health care facilities that involves non-professional care requires no expert testimony. See, e.g., Moore v. Lewis Smith Memorial Hosp., Inc., 454 S.E. 2d 190, 191 (Ga. Ct. App. 1995)(holding injury suffered when Plaintiff moved from wheelchair to bed in health care facility was ordinary negligence, and not medical malpractice), and, Virginia S. v. Salt Lake Care Center, 741 969, 971 (Utah Ct. App. 1987)(holding no expert testimony required where standard to protect disabled woman from rape was within common knowledge of jurors).

Instead, Courts focus on the character of the care at issue, and not merely where the injury occurred. See, e.g., Beverly Enterprise-Virginia, Inc., T/A, Etc. v. Nichols, 441 S.E.2d 1 (Va. 1994) (holding no expert testimony required to establish nursing home negligence where patient choked on food and died, where employees failed to assist patient with history of choking problems); and, Williamson v. Provident Group, Inc., 550 N.W.2d 338, 341 (Neb. 1996) (affirming refusal for directed verdict because no expert testimony required in slip and fall case involving assisted care facility where no professional negligence alleged), rev'd. on other grounds.



Curiously, Defendants cite Nixdorf to suggest that it conflicted with the Decision. Petition at 11-12. The Decision, however, cited to Nixdorf to illustrate the common knowledge exception, and its application to Collins' facts. Decision at ¶¶ 7 and 8. Defendants can not claim that Nixdorf as support for its claim that the Decision is "conflict with a decision of the Supreme Court," Utah R. Civ. App. P. 46(a)(2). To the contrary, the Court of Appeals' application of Nixdorf can only be interpreted a principled example of stare decisis. The Decision is in harmony with Nixdorf, and does not support the exercise of this Court's discretionary jurisdiction.

The other Utah Supreme Court case cited by Defendants addressed an issue not reached by the Decision, and is not in conflict with the issue on appeal. Defendants cited Wessel v. Erickson Landscaping Co., 711 P.2d 250, 253 (Utah 1985) for the proposition that the standard of care in a trade or profession must be determined by the testimony of witnesses in the same trade or profession. Petition at 12. The Court of Appeals, however, did not reach this issue because it recognized that Collins had established the applicable standard of care and breach of that standard with lay testimony. Decision at ¶ 12. The issue before this Court is not who may testify to establish the applicable standard of care, but whether the jurors needed expert testimony, as a threshold matter, to understand the applicable standard of care in Collins' case. Wessel simply has no application to the Decision, and therefore does not illustrate a conflict, much less a substantial and important reason, to justify the exercise of this Court's discretionary jurisdiction.

## 2. The Decision is Consistent with Other Court of Appeals Decisions.

The Decision is in harmony with other Court of Appeals decisions. To determine whether to exercise its discretionary jurisdiction, this Court must consider whether “the Court of Appeals [has rendered] a decision in conflict with the decision of another panel on the same issue of law.” Utah R. Civ. App. P. 46(a)(1). The cases cited by Defendants do not conflict with the Decision, but are in harmony with it.

The sole issue raised by Defendants’ appeal goes to whether the standard of care in medical malpractice case can be established by lay testimony. Defendant, however, cited the case of Hoopiiaina v. IHC, 740 P.2d 270, 271 (Utah Ct. App. 1987) for several propositions, including: “expert testimony must be provided in medical malpractice cases to establish the standard of care, [and to show] defendant’s failure to comply with that standard . . .” Petition at 12. Hoopiiaina, however, does not address those issues.

The only issue in Hoopiiaina was whether the plaintiff needed an expert to opine on medical causation and damages. Hoopiiaina, 740 P.2d at 271. In Hoopiiaina, IHC stipulated to its breach of the standard of care when it gave plaintiff medications that were prescribed to another patient. Id. Hoopiiaina does not “conflict” with the Decision because Hoopiiaina never addressed the standard of care, which is the only issue raised in this appeal. Defendants have failed to show a conflict, let alone substantial and important reasons, for this Court to exercise its discretionary jurisdiction.

The other Court of Appeals case cited by Defendants actually support the Decision. Defendants cited Schreiter v. Wasatch Manor, Inc., 871 P.2d 570 (Utah Ct. App. 1994). Petition at 13. The Schreiter case was a negligence case where the plaintiff sued for personal injuries arising from a fire where the building owner failed to install a fire sprinkler system. Id. The Court specifically disavowed the need for expert testimony to establish the standard of care under those facts: “This is simply not a situation where the issues or facts appear to be so complex or technical that they would otherwise elude the mental processes of the average citizen.” Id. at 575. (citing Nixdorf with approval). Schreiter is not in conflict with the Decision. To the contrary, Schreiter is another example of the Court of Appeals exercising the doctrine of stare decisis, and following this Court’s prior authority under similar facts.

\* \* \*

In sum, the cases cited by Defendants as the basis for exercising this Court’s discretionary jurisdiction do not show a conflict between the cases and the Decision. Defendant appears to equate the common-knowledge exception – where expert testimony is not required to establish the standard of care and breach – with the “conflict” required for this Court’s jurisdiction under Utah law. However, the common-knowledge exception in medical malpractice cases is well-established and necessary. The application of this doctrine to the facts of this case simply creates no conflict with Utah case law. Consequently, there are no substantial and important reasons to justify this Court’s jurisdiction. This Court should therefore deny Defendants’ Petition.

**B. THIS COURT SHOULD DENY DEFENDANT'S PETITION BECAUSE IT INVOLVES A QUESTION OF WELL-ESTABLISHED STATE LAW OF LIMITED APPLICATION.**

This appeal involves a simple negligence tort claim that deals with well established legal precedent, and does not warrant this Court's discretionary review. Although Defendants argued that the Court of Appeals' decision at bar was in "conflict" with prior Court of Appeals and Supreme Court cases,<sup>3</sup> it is notable that Appellant did not claim that this appeal should be heard under Rule 46(a)(4). Under that Rule, this Court considers appeals where the Court of Appeals "has decided an important question of . . . state . . . law which has not been, but should be, settled by the Supreme Court." Utah R. Civ. App. P 46(a)(4). (emphasis added). Without trivializing the tragic facts of this case, it is essentially a negligence case where a severely disabled woman fell from a swing at the facility of a "healthcare provider," as that term is used in the Utah Healthcare Malpractice Act. Utah Code Ann. § 78-14-3 (11) (1998).

While the issue on appeal is of critical importance to the parties, it is doubtful that its resolution will have any widespread impact in the field of medical malpractice. The issue is, after all, a well-recognized "exception" to most malpractice cases, where medical procedures are typically at issue. Put another way, this case raises an issue that pertains to a small subcategory of medical malpractice cases, which is already a small subcategory of negligence cases. The paucity of reported cases on this issue supports this observation.

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<sup>3</sup> The well-established common-knowledge exception for medical malpractice cases is not, however, a "conflict." See discussion, supra, Sections A, Parts 1 and 2.

Also, this issue is well settled under Utah law, as evidenced by the principled and consistent application of this “exception” as reported in the cases. Moreover, the State has not claimed that this narrow issue raises any special status issues that distinguishes the State’s role from that of a private litigant grappling with the same limited issue. At bottom, Defendants are simply dissatisfied with the Decision, and have failed to marshal substantial and important reasons that are required to justify this Court’s discretionary review.

**II DEFENDANTS’ ARGUMENT CONTAINED IN SECTIONS A. AND C. ADDRESS NONE OF THE CRITERIA LISTED IN RULE 46, AND SHOULD BE STRICKEN.**

Defendants have ignored the legal requirements of petitions for writ of certiorari, and its argument should be stricken from the record. Rule 49 requires Petitioners to “present a direct and concise argument explaining the special reasons as provided in Rule 46 for the issuance of the writ.” Utah R. Civ. App. P. 49(a)(9). As set forth above, the only reasons proffered by Defendants went to Rule 46(a)(1) and (2), which showed no conflict with the cases of this Court or the Court of Appeals.

Despite the specific requirements of Rule 49, the remainder of Defendants’ Argument section mentions no other reason listed under Rule 46. Petition at 9-11 (Section A), and 13-16 (Section C). Instead, Defendants argued the merits of the case they made at trial. Section A lists at length the regulations that Defendants believe applied to its treatment of Collins, which they made at trial. Petition at 9-11. Defendants also recites undisputed facts not at issue in this appeal that show Plaintiff’s compliance

with the Utah Healthcare Malpractice Act. *Id.* at 10-11. This Court, however, reviews the decisions of the Court of Appeals, not the trial court. *Butterfield v. Okubo*, 831 P.2d 79 (Utah 1992). None of the contents of Section A address the legal requirements for granting certiorari, and therefore, can not form the basis for the exercise of this Court's discretionary review.

Section C of the Petition then launches into the merits of the Decision, again, with no reference to any reason listed under Rule 46. To the extent that Defendants' arguments go to the merits of the Decision, they circumvent the purpose of principled discretionary review, namely, to limit review to only those litigants who demonstrate substantial and important reasons required by Rule 46. Only those litigants may argue the merits of their case before this Court.<sup>4</sup> Defendants may not circumvent the legal requirements for certiorari by merely ignoring them. These Sections of Defendants' Petition should be stricken or ignored because they are wholly outside the provisions of Rule 49, and are both irrelevant and inappropriate at this point in the appeal.

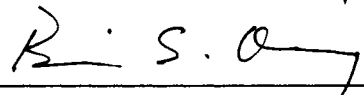
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<sup>4</sup> Plaintiff resists the temptation to discuss the merits of the case at this time, and is content to await remand to the trial court after this Court denies Defendant's Petition. Alternatively, Plaintiff will address the merits of this case if and when this Court believes that there are "substantial and important" reasons to exercise its discretionary review, notwithstanding the Court of Appeals' principled and well-reasoned decision.

## CONCLUSION

This Court should deny Defendant's petition for writ of certiorari because there are no "substantial and important" reasons for this Court to exercise its discretionary review. While this issue is important to the parties, the issue raised on appeal involves well established case precedent in a narrow subcategory of medical malpractice cases that has minimal application outside of this case. The only relevant arguments put forth by Defendant fail to show any "conflict" with any cases from this Court and/or the Court of Appeals. Instead, the Decision is well reasoned, principled, and in harmony with the line of Utah cases that established the common-knowledge exception in medical malpractice cases. Neither Defendants' arguments to the trial court, nor its beliefs about the merits of its appeal are relevant or appropriate at this point in the appeal, and should be stricken or ignored. For these reasons, this Court should deny Petitioner's petition for writ of certiorari.

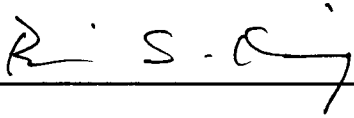
DATED this 18<sup>th</sup> day of February, 2000.

  
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**CERTIFICATE OF SERVICE**

I certify that I mailed a true and correct copy of the foregoing **PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS'/PETITIONERS' PETITION FOR WRIT OF CERTIORARI**, postage prepaid, this 18<sup>th</sup> day of February, 2000, to the following:

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