

1985

Douglas Eames v. The City of Logan Utah a
Municipal Corporation, Newell G. Daines in his
individual and official capacity as Mayor of the City
of Logan Utah, Does 1 through 25 Inclusive : Reply
Brief

Utah Supreme Court

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W. Scott Barrett; Barret and Brady; Attorney for Defendants.

Elliott Levine; Attorney for Plaintiff.

Recommended Citation

Reply Brief, *Eames v. City of Logan*, No. 198520449.00 (Utah Supreme Court, 1985).

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UTAH

20449

IN THE SUPREME COURT
OF THE STATE OF UTAH

DOUGLAS EAMES,)
)
 Plaintiff and Appellant,)
 vs.)
)
 THE CITY OF LOGAN, UTAH, A Municipal)
 Corporation; NEWELL G. DAINES, in)
 his individual and official capacity)
 as Mayor of the City of Logan, Utah;)
 DOES 1 through 25, Inclusive,)
)
 Defendants and Respondents.)

Case No. 20449

APPELLANT'S REPLY BRIEF

APPEAL FROM THE FIRST JUDICIAL DISTRICT COURT, CACHE COUNTY
THE HONORABLE VENOY CHRISTOPHERSEN, PRESIDING

W. SCOTT BARRETT
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FILED
JUN 14 1985

Clerk, Supreme Court, Utah

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as Mayor of the City of Logan, Utah;)	
DOES 1 through 25, Inclusive,)	
)	
Defendants and Respondents.)	

APPELLANT'S REPLY BRIEF

In response to POINT I of Respondent's Brief, Appellant relies upon his arguments as set forth in Appellant's Brief.

In response to POINT II of Respondent's Brief, Appellant relies upon his arguments as set forth in Appellant's Brief.

In response to POINT III of Respondent's Brief, Appellant relies upon his arguments as set forth in Appellant's Brief.

In response to POINT IV of Respondent's Brief, Appellant relies upon his arguments as set forth in Appellant's Brief.


In response to POINT V of Respondent's Brief, Appellant states as follows:

Respondents rely, unappropriately, upon the Governmental Immunity Act, Utah Code Annotated, sections 60-30-1, et. seq., and

in particular section 63-30-10. Appellants assert that the Governmental Immunity Act is not applicable in this present situation due to the fact that the injuries complained of in Appellant's Complaint did not result from the exercise of a governmental function. As such, and in line with **DALTON v. SALT LAKE SUBURBAN SANITARY DISTRICT**, 676 P2d 399(1984), **MADSEN v. BORTHICK**, 658 P2d 627(1983), **BIGELOW v. INGERSOLL**, 618 P2d 50(1980), and **FRANK v. STATE**, 613 P2d 517(1980), Appellant contends that their injuries resulted from a decision at an operational level (one which concerns routine everyday matters), in an act which cannot be construed as a governmental function, and thus being outside the scope of UCA §63-30-10(a), UCA §63-30-10(b), and the Governmental Immunity Act as a whole. The actions which caused the injuries complained of were not the result of the exercise and discharge of a governmental function, but were, if anything, the result of the exercise of a proprietary function and thus not subject to governmental immunity. The injuries complained of by Appellant arose from the way in which the Mayor chose to carry out the investigation and termination of Mr. Eames, comments made pursuant to the termination and firing, and the message set by the Mayor vis-a-vis his comments, conduct, and course of investigation (proprietary functions) as opposed to arising from the Mayor's decision to investigate and fire Mr. Eames (possible governmental function).

Wherefore Appellant prays for the relief requested in their original brief entitled Appellant's Brief.

DATED this 14th day of June, 1985.



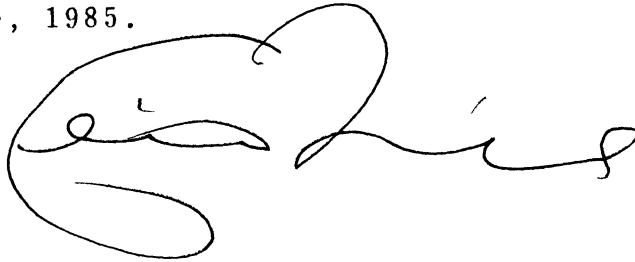
ELLIOTT LEVINE, Attorney for
Appellant

CERTIFICATE OF MAILING

THE UNDERSIGNED certifies that they mailed four (4) true and correct copies of the foregoing document, postage prepaid, to:

W. SCOTT BARRETT, Attorney
BARRETT & BRADY
300 South Main
Logan, Utah 84321

on the 14th day of June, 1985.

A handwritten signature in black ink, appearing to read "W. Scott Barrett". The signature is fluid and cursive, with a large initial "W" and a long, sweeping tail.