2000

Teresa Greene v. Utah Transit Authority : Reply Brief

Utah Supreme Court

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IN THE UTAH SUPREME COURT

TERESA GREENE, Plaintiff/Appellant, vs. UTAH TRANSIT AUTHORITY, Defendant/Appellee.	Supreme Court No. 20000664-SC Trial Court No. 990910753 PI

REPLY BRIEF OF APPELLANT TERESA GREENE

APPEAL FROM A JUDGMENT ENTERED IN THE
THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY,
STATE OF UTAH, THE HONORABLE STEPHEN L. HENRIOD PRESIDING

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LIST OF PARTIES

Appellant

Plaintiff: Teresa Greene

Appellee

Defendant: Utah Transit Authority

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STATUES/RULES:

Appellant Teresa Greene respectfully submits her Reply Brief in the above Appeal proceedings.

REPLY TO APPELLEE'S STATEMENT OF ISSUES AND STANDARD OF REVIEW AND DETERMINATIVE LAW

Appellant does not contest Appellee's representations as to the appropriate Standard of Review or the statutes and rules it contends will govern the Court's resolution of this Appeal.

REPLY TO APPELLEE'S STATEMENT OF THE CASE

The facts outlined in Appellee's Statement of the Case are accurate and indeed highlight the controversy between the parties. They reflect that Jensen, Ms. Greene's prior counsel, and Pitcher, UTA's Claims Adjuster, exchanged telephone calls and written correspondence prior to the August 1999 submittal of Appellant's Notice of Claim.[1] The numerous communications between Jensen and Pitcher, be they written or verbal, point out not only the factual disputes here present but also highlight Appellant's and Judge Henriod's concerns about UTA engaging in a course of conduct designed to mislead otherwise deserving claimants.

REPLY TO APPELLEE'S SUMMARY OF THE ARGUMENT

As elsewhere, Appellee's Summary of the Argument disingenuously misconstrues Teresa Greene's estoppel contentions. For instance, Appellant does not necessary believe Pitcher or anyone else at UTA had an affirmative duty to notify counsel that the Notice of Claim was defective.

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[1]UTA's "Statement" describes the August 6, 1999, submittal as a "letter" which "purported to be a Notice of Claim." Such a characterization should not suggest to the Court that it did not comply with the substantive requirements of the Governmental Act. There should not now be nor has there previously been a challenge to the Notice's compliance with the content demands of UTAH CODE ANN. § 63-30-11. It is only service of the Notice which is at issue.

Instead, Appellant challenges the intentional misdirection given Jensen by Pitcher during one of their pre-notice conversations, to-wit: that the Claims Adjuster was authorized to receive the Notice of Claim. Nor does Greene reject the notion that her counsel was primarily responsible for determining who within UTA's organization was to receive the Notice. But accepting this notion does not excuse Pitcher's conduct nor prevent application of the principles the Utah Appellate Courts announced in the numerous opinions relied upon by Appellant and cited in her opening Brief.[2] As the cited cases also reflect, and contrary to the discussion at P. 7 of Appellee's Brief, one does not always need written representations from Governmental officials before the Courts will evoke estoppel. So while Pitcher's representations to Jensen were not written, they were clear, unmistakable and more than adequate for Plaintiff's counsel to rely upon in serving the Notice of Claim.

Finally, Appellee's Summary of Argument suggests there were "numerous preclusive errors" in the Notice of Claim. Not only does Appellee fail to even remotely describe the same, there has not previously been any challenge to the substantive effectiveness of the Notice nor was such the basis for Judge Henriod's dismissal. Hence, such a statement is not only irrelevant but inaccurate.

ARGUMENT

I. WHETHER APPELLANT COMPLIED WITH THE GOVERNMENTAL ACT IS DISPUTED

Admittedly, under the Act a notice of claim upon an entity such as UTA must be "directed and delivered to . . . the President or Secretary of the Board". UTAH CODE ANN.

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[2]Bischel v. Merrit, 907 P.2d 275 (Utah App. 1995); and Britain v. State, 882, P.2d 666 (Utah App. 1994); and Bellonio v. Salt Lake City Corp., 911 P.2d 1294 (Utah App. 1996).

§ 63-30-11(3)(b)(ii)(D). Had Jensen directed the Notice to UTA's President or Secretary of the Board, this would have constituted not simply compliance but strict compliance. The only reasonable argument Appellee can offer is that Ms. Greene's prior counsel failed to strictly comply with the Act.

II WHILE UTAH LAW GENERALLY REQUIRES STRICT COMPLIANCE WITH THE ACT, THIS IS NOT ALWAYS THE CASE

In replying to the remainder of Appellee's Brief, it is initially useful to outline the substantive requirements of a claims' notice. UTAH CODE ANN. § 63-30-11(3)(A) provides the notice is sufficient if it sets forth: a brief statement of the facts; the nature of the claim asserted; and, the damages incurred by the claimant so far as they are known. Subpart B of the cited section then requires the notice to be signed by the person making the claim or that person's attorney; and that it be directed and delivered to the responsible governmental entity. As discussed briefly above, while Appellee hints that the Notice Jensen prepared and delivered did not comply, UTA fails to specify its adequacies nor did Judge Henriod identify the same when he tersely ruled it did not even substantially comply with the Act. If Appellant had not substantially complied, it is quite likely we would not be here today and Ms. Greene would not be asking the Court to review Pitcher's conduct and reverse Judge Henriod's ruling. But Utah Courts have consistently applied estoppel principles to the Immunity Act permitting a plaintiff to proceed with his or her claim where the Act's policies have been met and injustice would result from dismissal. Facts surrounding the service of Teresa Greene's Notice easily justifies such relief.

Appellee is correct in arguing that strict compliance with the Act is **generally** required. The cases UTA relies upon do indeed stand for such a premise. But aside from stating this general

principle underlying governmental immunity law, the cases and Appellee's arguments flowing therefrom offer little assistance to the Court in resolving our appeal.

III. APPELLANT'S ESTOPPEL AND UNIQUE CIRCUMSTANCES CLAIMS EXCUSE STRICT COMPLIANCE

While acknowledging that strict compliance with the service requirements of the act is typically the rule, numerous Utah cases have carved out exceptions thereto. Appellee's Brief has not provided this Court with any basis to reject applying such exceptions in our circumstances.

Pitcher's failure to inform Jensen and others of their noncompliance does not standing alone warrant reversal. It is, nonetheless, pertinent to this Court's inquiry. Coupled with facts discovered in the Serrato and Koch cases (cited in the opening Brief) and Pitcher's own candid admissions, his actions upon receiving arguably proper notices of claims is reprehensible and contrary to the purposes of the Act.[3]

Appellee's attempts to distinguish the pending appeal from Serrato v. Utah Transit Authority are similarly unpersuasive. While Serrato admittedly involved a prior version of UTAH CODE ANN. § 63-30-11, it nonetheless represents another example of David Pitcher (or others within UTA's organization) misadvising claimants as to who should receive their notices of claim. Not only should UTA's conduct outrage this Court, as it did Judge Henriod, it gives great weight to Jensen's Affidavit that Pitcher made the complained of statements. UTA's attack on to Jensen's account of the subject telephone conversation (set forth at P. 15 of its Brief) becomes suspect.

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[3]UTA challenges Ms. Greene's reliance upon Koch v. Utah Transit Authority, Civil No. 970904524 PI. Appellant's counsel acknowledges the Koch case was dismissed based upon a settlement. What Appellee fails to recognize is that UTA defended the action based upon an allegedly improperly served Notice which had been delivered to Pitcher based upon his instructions, similar to what here occurred.

Estoppel typically requires reasonable reliance on the part of the individual raising the argument. Appellee asserts Jensen's reliance was unreasonable because Plaintiff's counsel did not "familiarize himself with the Act's express delivery requirements". And indeed 20/20 hindsight tells us that Jensen was a bit naive in accepting Pitcher's representations. But a little naivete neither excuses Pitcher's actions nor makes the reliance unreasonable. Jensen correctly knew Pitcher was responsible for handling the claim. Pitcher himself testified to the extensive authority he has within UTA's organization and further stated he is the ultimate recipient of a notice of claim regardless of whom it was initially delivered to. Based on Jensen's past experience and dealings with UTA on personal injury matters, it simply made sense when Pitcher said, "send me the Notice".

CONCLUSION

This Appeal presents a compelling set of circumstances for the Court to apply principles which excuse strict compliance with the delivery requirements of Utah's Governmental Immunity Act. Conversely, if the Court does not reverse Judge Henriod's dismissal, it will tacitly pardon agregious conduct of a UTA official who has repeatedly tricked otherwise worthy claimants into forfeiting their claims. Based on these and other reasons set out in Appellant's opening Brief, Teresa Greene respectfully urges the Court to reverse the Trial Court's dismissal of this Complaint and permit it to proceed on its substantive merits.

RESPECTFULLY SUBMITTED this 20th day of December, 2000.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of December, 2000, two copies of the foregoing **APPELLANT'S REPLY BRIEF** were mailed, postage fully prepaid, to:

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