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Hoyer v. State of Utah : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH SUPREME COURT

RYAN HOYER and RICHARD HOYER,

Plaintiffs/Appellants,

v.

STATE OF UTAH,

Defendant/Appellee.

Case No. 20080103-SC

Dist. Ct. Case No. 040916063

BRIEF OF APPELLANT

APPEAL FROM AN ORDER OF SUMMARY JUDGMENT IN
THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, THE HONORABLE ANTHONY
QUINN, PRESIDING

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FILED
UTAH APPELLATE COURTS

JUN 20 2008

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JURISDICTIONAL STATEMENT

Jurisdiction is proper in the Utah Supreme Court pursuant to Utah Code Ann. §78A-3-102.

ISSUES AND STANDARD OF REVIEW

Whether the District Court erred in granting Defendant's motion for summary judgment by holding that a State agency's negligent destruction of a person's property arises from a judicial proceeding when the property came into its possession pursuant to a search warrant executed several months before the negligence occurred.

Summary judgment should be granted only when "there is no genuine issue of material fact and . . . the moving party is entitled to a judgment as a matter of law." Utah R. Civ. P. 56. When reviewing whether the trial court erred in granting summary judgment, the appellate court reviews the legal conclusions of the trial court for correctness. Blackner v. State, 2002 UT 44, ¶8, 48 P.3d 949. A trial court's interpretation of a statute is a question of law reviewed for correctness. Id. In reviewing a grant of summary judgment, the Court views the facts in the light most favorable to the nonmoving party. Johnson v. Utah Dept. of Transportation, 2006 UT 15, ¶ 15, 133 P.3d 402.

Appellants originally raised this issue in their Memorandum in Opposition to Defendant's Motion to Dismiss (R. at 342-47), preserving the issue for appeal.

CONSTITUTIONAL OR STATUTORY PROVISIONS

Utah Code Ann. §63-30d-301 (1953 as amended by Laws 2004, c.267, § 13—See addendum).

STATEMENT OF THE CASE

Appellant Ryan Hoyer is an amateur herpetologist. He assists his father, Appellant Richard Hoyer, in research centered on a species of snake commonly known as the rubber boa (*Charina bottae*). Richard Hoyer, a retired secondary school science teacher, has been researching and recording data on the rubber boa for over 40 years and has devoted thousands of hours and spent thousands of dollars in the process. He has coauthored a number of publications with professional herpetologists. His research centers on all life-history aspects of the rubber boa (*C. bottae*.)

In June 2002, "Operation Slither" was started as a joint investigation between the Utah Division of Wildlife Resources and the United States Fish and Wildlife Services. Operation Slither was intended to target individuals who were involved in the illegal possession and commercial trade in reptiles. In October of 2003, the U.S. Fish and Wildlife Service pulled out of the Utah portion of this investigation, leaving the Utah Division of Wildlife Resources to continue their investigation alone.

Even though Ryan Hoyer is not a commercial trafficker in the illegal reptile trade, the Division of Wildlife Resources (DWR) targeted his research for investigation. On January 9, 2004, a search warrant was executed at the home of Ryan Hoyer (85 E. 2275 S. Clearfield, Utah) by DWR officers. Among the items seized was a computer, various documents and approximately 65 common rubber boa snakes of the species *C. bottae*, all of which subsequently perished in the possession of DWR.

As of August 2004, twenty six (26) of the approximately sixty-five (65) snakes had died in the possession of Defendants as far as Appellants were aware. On October 16, 2006, pursuant to an order from the Clearfield City Justice Court (Case No. 05-8178), Appellants had opportunity to inspect the seized snakes that were held at DWR offices in Salt Lake City. On that occasion, Appellants learned that of the snakes seized on January 9, 2006 (approximately 65 total) all but eight (8) were dead by that time.

While the snakes have been in possession of Utah DWR, Richard Hoyer has made numerous communications and attempts to travel to Utah in order to provide expert assistance and training to Utah DWR for the care of the snakes. Richard Hoyer has offered to provide care for the snakes or provide other expert care by a third party. These offers were declined by Utah

DWR and as a result, most if not all of the snakes eventually died while in the care and possession of Utah DWR.

Appellants filed suit against the State of Utah and the State employees involved in the seizure and subsequent care of the property, alleging negligence among other claims. On September 11, 2007, the State moved for summary judgment on the negligence count, claiming that Appellants' injuries arose from a judicial proceeding (the issuance of the warrant) and the State was therefore immune from suit under Utah Code Ann. §63-30d-301(5)(e) (R. at 304-14). The State argued that but for the warrant, the snakes would not have been in their possession and therefore, no injury could have occurred (R. at 310-14). Appellants timely submitted a memorandum in opposition to the State's motion on September 18, 2007, arguing that Appellants' injuries did not arise out of the issuance of the warrant but rather their negligence, which occurred sometime after, and was not in any way necessitated by, the issuance of the warrant (R. at 342-47, 374-78).

Judge Anthony B. Quinn heard oral argument on the State's motion on November 20, 2007, and granted summary judgment for the State in an order dated December 13, 2007 (R. at 379,380-84). Judge Quinn's order held that the State was immune from suit and stated that "but for the actions taken by the State

pursuant to a judicial proceeding, plaintiffs would not have suffered injury." (R. at 382).

SUMMARY OF ARGUMENT

The purpose of the Government Immunity Act was to allow private citizens to hold the State accountable for its negligence. The district court's application of a "but-for" test in determining whether an injury arises out of an excepted activity or condition under the Government Immunity Act is a flawed interpretation of the Act. It is not only doctrinally incoherent and counter to the stated purpose of the act, it would also free the State from any duty to care for property that it has seized for evidentiary purposes. This interpretation would mean that private citizens must rely on the good graces of the State to safeguard their property. That cannot be what the Legislature intended in passing the Act.

A better test for whether a negligent act is excepted from liability under the Government Immunity Act is a two-part test: first, if the excepted activity or condition is a direct cause of the injury, there is immunity from suit under the Act. Second, if the excepted activity is not the direct cause of the injury, then a court should determine whether the negligent act or omission that a plaintiff claims proximately caused its injuries was integrally related to the excepted activity or condition. This test is similar to the tests for "arises out of"

in other areas of the law and sets limits on liability so that the exceptions do not swallow the rule.

The negligent acts of State employees in this case were not integrally related to the issuance of the search warrant. This Court should hold that the State does not retain immunity under the Government Immunity Act.

ARGUMENT

THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE THE GOVERNMENT IMMUNITY ACT REQUIRES MORE THAN A SHOWING OF "BUT-FOR" CAUSATION FOR THE STATE TO RETAIN IMMUNITY.

As a preliminary matter, it is necessary to address the matter of jurisdiction. Appellants refer the Court to their memorandum in opposition on the matter and choose to rest on the arguments as laid out therein. Appellants reserve the right to make additional arguments in its reply brief if the State includes any additional arguments in its brief.

In order to determine whether a governmental action is shielded from liability, the Court must undertake a three-part test to assess "(1) whether the activity is a governmental function; (2) whether governmental immunity was waived for the particular activity; and (3) whether there is an exception to that waiver." Blackner v. State, 2002 UT 44 at ¶ 10. In this case, both parties have conceded that steps 1 and 2 have been

satisfied (R. at 382); the only question is whether there exists an exception to the waiver of immunity under the Act.

- A. Interpreting the term "arises out of" as requiring only a showing of but-for causation is an incorrect reading of the statute and should be rejected.

As provided in the Utah Code Ann. § 63-30d-301(5),¹ immunity for a negligent act or omission of a governmental employee committed within the scope of employment is not waived if "the injury arises out of, in connection with, or results from" one of several listed activities or conditions. The activity under which the State claims an exception is subsection (5)(e), which excepts from immunity any injury arising out of "the institution or prosecution of any judicial . . . proceeding, even if malicious or without probable cause[.]" The prosecution of a judicial proceeding relied upon by the State in this case is the issuance of a search warrant by the Second District Court (R. at 312, 343, 353). The issuance of the warrant led to its execution

¹ Utah Code Ann. § 63-30d-301 was recently amended by Laws 2007, c.357. While there are no substantive differences in the applicable portions of the law as it currently exists and as it was at the time of the time the action accrued, the 2004 version is the version applicable to this case and all citations in this brief will be to that version. See the Addendum at A-1 through A-3 for the complete 2004 version of the statute.

and the seizure of the snakes from Appellants. But for the seizure of the snakes by the State, the State would not have had them in their possession and so the negligence would not have taken place. Appellants do not challenge that the issuance of the search warrant was a part of a judicial proceeding; Appellants only challenge that their injury "arose out of" the issuance of the search warrant.²

² Appellants have consistently denied that the snakes were actually used as evidence in a criminal proceeding. Ryan Hoyer was tried for violations of the Wildlife Code in Clearfield City v. Ryan Hoyer, case no. 05-8178 in the Clearfield City Justice Court on October 17, 2006, and a trial de novo on his conviction was held on May 3, 2007, case no. 071600163 in the Second District court in and for Davis County. While photographs of the snakes were introduced, the snakes themselves were never introduced into evidence at either trial. Appellants did not challenge the district court's declaration that the snakes were used as evidence in the order (R. at 382) because it was not a factor in either his ruling or the State's argument in favor of summary judgment. The district court's conclusion was plain error and should not be considered as an undisputed fact in deciding this appeal. See State v. Holgate, 2000 UT 74, ¶ 11, 10 P.3d 346.

This Court has previously explained that the phrase "arises out of" in the Government Immunity Act as meaning "originating from, growing out of, or flowing from," and requiring "only that there be some causal relationship between the injury and the risk." Taylor v. Ogden City School Dist., 927 P.2d 159, 163 (Utah 1996); Blackner, 2002 UT 44 at ¶ 15 (stating that the phrase "arise out of" requires only "that there be some causal nexus between the risk and the resulting injury.") While this Court has held that "arises out of" means something less than proximate cause, it has not had occasion to decide or explain how attenuated the causal relationship must be before an injury no longer arises out of a cause that triggers an exception to the waiver of immunity under the Government Immunity Act.³

The district court's interpretation of "arises out of" as requiring only a showing of but-for causation is contrary to the clear purpose of the statute and so should be rejected by this Court. First, only requiring the State to show but-for causation

³ While Blackner contains language suggesting that this Court reads "arises out of" as but-for causation, 2002 UT 44 at ¶ 15, the issue of how to interpret the phrase was never raised by the parties on appeal, and arguments as to the proper interpretation of the phrase "arises out of" have not been heard by this Court so far as Appellants are aware.

would make the statutory waiver of immunity meaningless. As was pointed out by Prosser, a but-for test is no test at all:

At most, [but-for causation] must be a rule of exclusion It should be quite obvious that, once events are set in motion, there is, in terms of causation alone, no place to stop. *The event without millions of causes is simply inconceivable*; and causation alone can provide no clue of any kind to singling out those are to be held legally responsible.

William L. Prosser, *Law of Torts* §41 (4th ed. 1971) (emphasis added). A but-for test sets no limits on the amount of time elapsed, the physical distance, the number of intervening acts, or how remote the causal relationship can be between the act that would give immunity to the State and the injury suffered by the potential claimant. In fact, using a strict but-for causation test, **all** negligent acts of government are immune from suit. But for enabling legislation (which falls squarely within the definition of a discretionary function immunized by subsection (5)(a)) the State would have no power to act. Likewise, a but-for test would allow the State to claim immunity under subsection (5)(h) if it showed that the offending governmental entity was financed by taxes. After all, but for the collection of the tax, the governmental entity could not function and the claimant's injury would not have occurred. While these arguments are taken to the logical extreme, they illustrate the absolute necessity of articulating a standard beyond but-for causation in interpreting the phrase "arises out

of" in this statute. "To do otherwise would allow the exception to swallow the rule." Cf. Johnson, 2006 UT 15 at ¶19.

Other appellate court precedents support the idea that more than but-for causation is required. The definition of "arises out of" used in Taylor comes from National Farmers Union Property & Casualty v. Western Casualty & Surety, 577 P.2d 961, 963 (Utah 1978), a liability insurance case. Subsequent decisions interpreting "arises out of" in the context of liability insurance have held that the "causal nexus requirement is more than 'but-for' causation, but less than legal, proximate cause." Viking Insurance Co. v. Coleman, 927 P.2d 661 (Utah App. 1996). This comports with an ordinary reading of the term "arises out of," and the interpretation of "arises out of" in other contexts. See Estate of Berkemeir v. Hartford Insurance, 2004 UT 104 ¶¶10-11, (interpreting "arises out of" in the Utah Survival Statute and holding that the statute "taken as a whole and in context" should be interpreted more narrowly than applying strict "but for" causation); Commercial Carriers v. Industrial Commission, 888 P.2d 707, 712 (an injury arises out of employment if the conduct that caused the injury is "closely entangled" with the employment.).

Another clue showing that Defendant's interpretation is not what the Legislature intended is found in Utah Code Ann. § 63-30d-301 (2)(c). This subsection provides that immunity is waived

for "any action based on negligent destruction, damage, or loss of . . . property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture" The direct implication of Defendant's interpretation is that governmental entities or employees could not be liable for any negligent damages to property seized pursuant to a warrant. That would mean that the police have a duty of care on property seized for forfeiture, but no duty of care for property seized as evidence. This is an inconsistent and absurd result that could not have been intended by the Legislature.

Finally, the disastrous public policy consequences of Defendant's interpretation can allow us to safely assume that the Legislature did not intend for immunity to apply in this case. As mentioned above, the effect of Defendant's interpretation would be to declare that the government has no duty to care for any property that was seized pursuant to a search warrant. The police would then have no duty to feed animals seized by search warrant; they could essentially lock an animal in a closet if they do need the animal to remain alive as part of presenting their case. While declaring this conduct legal is appalling enough, it could potentially also allow for horrendous abuses of police authority. While an extreme example, one could imagine a scenario in which the police, in seeking to

punish a suspect who "got off on a technicality," could easily destroy property in a way to make it difficult to prove that their conduct was intentional. It is highly unlikely that the Legislature would give the police a tool to subvert the safeguards of criminal procedure.

- B. The proper standard for determining whether an injury arises out of an excepted activity or condition is whether the injury is integrally related to the excepted activity or condition.

To determine what standard should apply to determining whether an injury arises out of an excepted activity or condition, and is thus immune from suit, this Court should look again to the context of insurance contracts. As mentioned earlier, the definition of "arises out of" used in the context of the Government Immunity Act comes from cases interpreting the same phrase in insurance contracts. See Taylor, 927 P.2d at 163 (quoting National Farmers Union, 577 P.2d at 963). The Utah Court of Appeals has already considered the question of the proper standard for whether an accident "arises out of" the ownership, maintenance, or use of a car. Their analysis is a helpful guide in crafting a standard for the context of the Government Immunity Act.

While it is universally accepted that an injury arises out of the use of a car when the injury is sustained while the insured is driving the car (i.e. the use of the car is the

direct cause of the accident), courts have ruled that activities beside operating the vehicle that proximately cause injuries arise out of the use of a car and so are covered by insurance. In Viking, the court of appeals determined that causal nexus required to satisfy "arises out of" was a standard of causation more than but-for causation but more than proximate causation. 927 P.2d at 664. The court held that "the causation test does not require that the insured vehicle itself be the source of the injury, only that the use be integrally related to the claimant's activities and the injury at the time of the accident." Id. At 665 (quoting Aetna Casualty & Surety Co. v. McMichael, 906 P.2d 92 (Colo. 1995)). The court also rephrased the test as whether the act proximately causing the injury was a "natural and reasonable consequence" of the use of the vehicle. Viking, 927 P.2d at 664 (quoting Barry v. Illinois Farmers Ins. Co., 386 N.W.2d 299, 301 (Minn. App. 1986)).

Hawkeye-Security Insurance Co. v. Gilbert, 124 Idaho 953, 866 P.2d 976 (Idaho App. 1994), one of the cases relied upon by the Court of Appeals, provides further instruction. In reviewing cases from sister states, the Idaho court held that an injury does not arise out of the use of a motor vehicle if there is an "event[] of independent significance which broke the causal link between the use of the vehicle and the injuries inflicted." Gilbert, 124 Idaho at 959. This is another way of phrasing the

test in Viking – whether the intervening events between the use of the vehicle and the injury were integrally related to the use of the vehicle. 927 P.2d at 665. An event has independent significance in the insurance context if it is unrelated to the use of the vehicle for transportation purposes. Gilbert, 124 Idaho at 959. Thus, injuries caused by a battery did not arise out of the use of an automobile, even though the events that provoked the battery were committed during the use of an automobile. United Services Automobile Association v. Ledger, 234 Cal. Rptr 570 (1987); Kangas v. Aetna Casualty & Surety Co., 235 N.W.2d 42 (Mich. App. 1975). However, slipping on ice while entering an automobile, Barry v. Illinois Farmers Insurance Co., 386 N.W.2d 299 (Minn. App. 1986), and being struck by a car while in the process of repairing one's own car, Viking, 927 P.2d 661, are not events of independent significance and so the injury would arise out of the use of a vehicle.

This formula can be easily applied to the government immunity context. The test for whether a negligent act is excepted from liability under the Government Immunity Act is a two-part test: first, if the excepted activity or condition is a direct cause⁴ of the injury, there is immunity from suit under

⁴ Here, direct cause refers to the proximate cause of the injury, even if the cause was a foreseeable intervening cause that would

the Act. Second, if the excepted activity is not the direct cause of the injury, then a court should determine whether the negligent act or omission that a plaintiff claims proximately caused its injuries was integrally related to the excepted activity or condition such that the act or omission was a natural or reasonable consequence of the excepted activity or condition, or whether the act or omission constituted an event of independent significance that would break the causal link between the excepted activity or condition and the injury.

The government immunity cases already decided by the Utah appellate courts easily fit within this framework. For example, When a student is injured when he was pushed through a glass window by another student on school property, the injury was directly caused by a battery and therefore, the State is immune from prosecution. See Taylor, 927 P.2d 159. When a person injured by an avalanche caused by the negligent acts of State employees in managing a previous avalanche, the State is immune from liability because (a) the avalanche was a natural condition on the land and the direct cause of the injury, and (b) the negligent act in managing the first avalanche was integrally related to the first avalanche. Blackner, 2002 UT 44.

not cut off liability in a suit for negligence against a private individual.

The judicial proceeding exception listed in Utah Code Ann. § 63-30d-301(5)(e) would immunize the State from acts in which the judicial proceeding was the direct cause of the injury, such as imprisonment, civil fines, or the costs of defending against a frivolous lawsuit, as well as immunizing the State for negligent acts that occurred after the judicial proceeding but were integrally related to the judicial proceeding, such as negligently arresting the wrong person incident to an arrest warrant. However, the Legislature did not intend to give State employees immunity from suit for all negligent acts that are connected, however remotely, to a judicial proceeding.

- C. The negligent acts of State employees in this case were not integrally related to the judicial proceeding and therefore are not immune from suit.

Applying the test explained above to the present case, the negligent acts of State employees are too remote to the judicial proceeding to be integrally related to that proceeding. First, the issuance of the warrant was not the direct cause of Appellants' injuries. The negligent acts of State employees occurred well after the issuance of the warrant. The question then becomes whether the State's activities after the issuance of the search warrant were integrally related to the issuance of the search warrant.

The failure of the State to take reasonable care of the snakes while in their custody is not integrally related to the issuance of the warrant and therefore there is no immunity. State employees had observed the snakes dying, they were offered help and advice in caring for the snakes from either Appellant Richard Hoyer or a third party, and they refused. When a party's negligence is pointed out to her and she persists in her negligence, that act constitutes an event of independent significance that breaks the chain of causation because it constitutes gross negligence. After being put on notice of their failure to properly care for the snakes, any further acts of negligence are willful and reckless and would constitute gross negligence. Because of the willful nature of these grossly negligent acts, they should be deemed to break the chain of causation *per se*. In this way, it would be clear that the State has a minimal standard of care for property in its custody.

Secondly, activities related to the custody of items seized are not integrally related to the issuance of a search warrant. As pointed out before, the Government Immunity Act imposes an ordinary standard of care for the State's handling of property seized for forfeiture purposes under Utah Code Ann. § 63-30d-301 (2)(c). There is no rational basis for distinguishing property held for forfeiture purposes and property held for evidentiary purposes. Therefore, the law should be read to impose an equal

duty of care for property held for forfeiture purposes and evidentiary purposes.

Finally, the negligent acts of State employees in caring for the snakes were too remote in time and place from the issuance in the search warrant to be considered integrally related. While the Act may grant immunity, that immunity cannot last beyond a reasonable timeframe in which the direct consequences of the judicial proceeding would occur. To hold otherwise would give the State no duty to care for a person's property in its custody, no matter how long the State holds that property. As mentioned earlier, this conclusion would allow for police misconduct with no civil recourse. That is something that the Legislature did not intend, and this Court should construe the law in a way to discourage police misconduct.

CONCLUSION

The Government Immunity Act should not be read to give the police no duty to care for property seized as evidence. The Legislature intended for the Act to give private citizens a safeguard for their property beyond the good graces of the State. This Court should reverse the decision of the district court and remand for further proceedings.

RESPECTFULLY SUBMITTED this 20th day of June, 2008.

A handwritten signature in black ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

Nathan Whittaker
Attorney for Plaintiffs/Appellants

CERTIFICATE OF MAILING

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DATED this 20th day of June, 2008.

Nathan Whittaker

ADDENDUM

63-30d-301. Waivers of immunity -- Exceptions.

(As amended by Laws 2004, c.267, §13)

(1) (a) Immunity from suit of each governmental entity is waived as to any contractual obligation.

(b) Actions arising out of contractual rights or obligations are not subject to the requirements of Sections **63-30d-401, 63-30d-402, 63-30d-403, or 63-30d-601.**

(c) The Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety condition that causes a deficiency in the amount of available water.

(2) Immunity from suit of each governmental entity is waived:

(a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;

(b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;

(c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;

(d) subject to Subsection **63-30d-302(1)**, as to any action brought under the authority of Article I, Section 22, of the Utah Constitution, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;

(e) subject to Subsection **63-30d-302(2)**, as to any action brought to recover attorneys' fees under Sections **63-2-405** and **63-2-802**;

(f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees Act.

(3) (a) Except as provided in Subsection (3)(b), immunity from suit of each governmental entity is waived as to any injury caused by:

(i) a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

(ii) any defective or dangerous condition of a public

building, structure, dam, reservoir, or other public improvement.

(b) Immunity is not waived if the injury arises out of, in connection with, or results from:

(i) a latent dangerous or latent defective condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

(ii) a latent dangerous or latent defective condition of any public building, structure, dam, reservoir, or other public improvement.

(4) Immunity is waived as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment.

(5) Immunity from suit of each governmental entity is not waived under Subsections (3) and (4) if the injury arises out of, in connection with, or results from:

(a) the exercise or performance, or the failure to exercise or perform, a discretionary function, whether or not the discretion is abused;

(b) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or violation of civil rights;

(c) the issuance, denial, suspension, or revocation of, or by the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization;

(d) a failure to make an inspection or by making an inadequate or negligent inspection;

(e) the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;

(f) a misrepresentation by an employee whether or not it is negligent or intentional;

(g) riots, unlawful assemblies, public demonstrations, mob violence, and civil disturbances;

(h) the collection of and assessment of taxes;

(i) the activities of the Utah National Guard;

(j) the incarceration of any person in any state prison, county or city jail, or other place of legal confinement;

(k) any natural condition on publicly owned or controlled lands, any condition existing in connection with an abandoned mine or mining operation, or any activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire, and State Lands;

(l) research or implementation of cloud management or

seeding for the clearing of fog;

(m) the management of flood waters, earthquakes, or natural disasters;

(n) the construction, repair, or operation of flood or storm systems;

(o) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section **41-6a-208**;

(p) the activities of:

(i) providing emergency medical assistance;

(ii) fighting fire;

(iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;

(iv) emergency evacuations;

(v) transporting or removing injured persons to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service; or

(vi) intervening during dam emergencies;

(q) the exercise or performance, or the failure to exercise or perform, any function pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources; or

(r) unauthorized access to government records, data, or electronic information systems by any person or entity.

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IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

RYAN HOYER, RICHARDS F HOYER, Plaintiffs, v STATE OF UTAH, JIM KARPOWITZ, RICHARD ASHCROFT, RUDY MUSCLOW, MILES MORETTI (in their official capacity as officials fo the Utah DWR), Defendants.	ORDER GRANTING THE STATE’S MOTION FOR SUMMARY JUDGMENT Civil No 040916063 Judge Anthony B Quinn
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Procedural Background: This case arises out of the State of Utah’s (the “State” or “defendant”) seizure of plaintiffs’ snakes pursuant to a search warrant executed upon plaintiff Ryan Hoyer. Plaintiffs assert that the State was negligent in caring for the snakes and assert damages for the value of the snakes.

On September 11, 2007, the State filed its *Motion for Summary Judgment as to Plaintiffs' Negligence Claim*, along with a supporting memorandum, in which the State asserted that plaintiffs' negligence claim against the State was barred by Utah Code Ann. § 63-30d-301(5)(e) of the Governmental Immunity Act of Utah (Utah Code Ann. §§ 63-30d-101, et. seq. (the "Immunity Act")), because their alleged damages arose out of "the institution or prosecution of [a] judicial proceeding." Plaintiffs filed a responsive memorandum on September 18, 2007. The State filed a reply memorandum on October 1, 2007.

Ruling on the Motion for Summary Judgment. The matter was submitted for decision, and a hearing took place on the State's Motion on November 20, 2007, at 8:30 a.m. Barry G. Lawrence and Matthew D. Bates, Assistant Attorneys General, appeared on behalf of the State; Stephen Spencer appeared on behalf of the plaintiffs. At the conclusion of oral argument, and having considered the pleadings and submissions of the parties, and the argument of counsel, the Court granted the State's Motion.

The Court specifically Rules as follows:

For purposes of the State's motion for summary judgment, the following facts are undisputed:

1. Plaintiffs' snakes were seized by the State pursuant to a search warrant that was issued by Judge Glenn Dawson of the Second District Court.

2. The Snakes were used as evidence in criminal proceedings against plaintiff Ryan Hoyer in both Davis County Justice Court and Clearfield City Justice Court.

3. All of plaintiffs' claimed damages result from the seizure of the Snakes; but for the seizure of the Snakes, plaintiffs would not have suffered any damages.

For purposes of the State's motion for summary judgment, this Court makes the following conclusions of law:

1. The State's actions in seizing plaintiffs' snakes and prosecuting plaintiff Ryan Hoyer were governmental functions for which the State is immune absent a waiver of immunity. This is not disputed by plaintiffs.

2. For purposes of this Motion, the State has admitted a waiver of immunity herein.

3. An exception to that waiver of immunity exists in this case, pursuant to Utah Code Ann. § 63-30d-301(5)(e), because plaintiffs' injuries all arose out of the institution or prosecution of judicial proceedings. The term "arises out of" has been construed broadly by the Utah Supreme Court and only requires that there be some causal nexus between the judicial proceeding and plaintiffs' injuries. But for the actions taken by the State pursuant to a judicial proceeding, plaintiffs would not have suffered injury. Accordingly, an exception to the waiver of immunity exists in this case.

4. Therefore, the State is immune from all of plaintiffs' claims of negligence in this matter pursuant to Utah Code Ann. § 63-30d-301(5)(e) of the Governmental Immunity Act of Utah.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The State's *Motion for Summary Judgment as to Plaintiffs' Negligence Claim* is granted.
2. Accordingly, all of plaintiffs' negligence claims against the State are hereby dismissed, on their merits and with prejudice.
3. As this Order resolves all claims pending between the plaintiffs and the State of Utah, the Court hereby dismisses the State as a defendant in this matter, with prejudice.

DATED this ____ day of November, 2007.

BY THE COURT:

JUDGE ANTHONY B. QUINN
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of November, 2007, pursuant to Rule 7(f), Utah R.

Civ P., I caused to be served by fax transmission, a true and correct copy of foregoing

(Proposed) ORDER GRANTING THE STATE'S MOTION FOR SUMMARY

JUDGMENT, to the following:

Stephen D. Spencer
DAY SHELL & LILJENQUIST, LC
45 East Vine Street
Murray, Utah 84107


