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Hoyer v. State of Utah : Reply Brief

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

APPELLANTS' REPLY BRIEF

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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TABLE OF CONTENTS

Table of Authorities	iii
Argument	1
<u>THE GOVERNMENT IMMUNITY ACT REQUIRES THAT THE STATE SHOW MORE THAN BUT-FOR CAUSATION TO RETAIN IMMUNITY FROM LIABILITY.</u>	<u>1</u>
A. <i>Plaintiffs' "integrally related" test is the best way to determine whether an injury arises out of a condition or activity that is excepted from liability under the Act</i>	<i>2</i>
B. <i>The plain language of the statutory text does not support the State's interpretation of "arises out of" as only requiring a showing of but-for causation</i>	<i>5</i>
C. <i>The court is not bound to accept the State's interpretation under the doctrine of stare decisis</i>	<i>8</i>
Conclusion	14
Proof of Service	16

TABLE OF AUTHORITIES

CASES

<u>Commercial Carriers v. Industrial Commission</u> , 888 P.2d 707 (Utah App. 1994)	6
<u>Daniels v. Williams</u> , 474 U.S. 327, 330 (1986)	4
<u>Estate of Berkemeir v. Hartford Insurance</u> , 2004 UT 104, 106 P.3d 700	6
<u>Gull Laboratories v. Utah State Tax Commission</u> , 936 P.2d 1082 (Utah App. 1997)	5
<u>Hackford v. Utah Power & Light</u> , 740 P.2d 1281 (Utah 1987)	13
<u>Jacobellis v. Ohio</u> , 378 U.S. 184 (1964)	7
<u>Johnson v. Utah Dept. of Transportation</u> , 2006 UT 15, 133 P.3d 402	4
<u>National Farmers Union Property & Casualty v. Western Casualty & Surety</u> , 577 P.2d 961 (Utah 1978)	6, 12
<u>Payne v. Tennessee</u> , 501 U.S. 808 (1991)	10, 13
<u>Planned Parenthood of Southeastern Pennsylvania v. Casey</u> , 505 U.S. 833, (1992)	10-11
<u>Taylor v. Ogden City School District</u> , 927 P.2d 159 (Utah 1996)	6, 9, 12
<u>State v. Menzies</u> , 889 P.2d 393 (Utah 1994)	10
<u>Viking Insurance Co. v. Coleman</u> , 927 P.2d 661 (Utah App. 1996) ..	6

STATUTES AND RULES

42 U.S.C. § 1983	4
Utah Code Ann. § 24-1-2	3
Utah Code Ann. § 63-30d-301	6

OTHER SOURCES

20 Am. Jur. 2d <u>Courts</u> § 134 (2005)	9
<u>Black's Law Dictionary</u> (8th ed. 2004)	9

ARGUMENT

THE GOVERNMENT IMMUNITY ACT REQUIRES THAT THE STATE SHOW MORE THAN BUT-FOR CAUSATION TO RETAIN IMMUNITY FROM LIABILITY.

Before examining the State's arguments, it is important to note what the State does not argue in its brief. The State does not dispute Plaintiffs' contention that their interpretation of "arises out of" as a but-for test provides no meaningful limit to the exceptions from waiver in the Government Immunity Act, therefore creating an unworkable test (Pls. Br. at 14-15). The State does not dispute that "arises out of" is not viewed as but-for causation in the rest of the Utah Code (Pls. Br. at 15). The State does not dispute that Plaintiffs' interpretation is conceptually coherent, provides limits, and is more in line with the policy goals of the Act. Instead, the thrust of the State's argument is that, notwithstanding the general superiority of Plaintiffs' approach, the plain language rule and stare decisis demand that this Court endorse the State's interpretation of "arises out of" as only requiring only a but-for causal link between the injury and one of the exceptions to the general waiver of immunity in the Act. This argument is fundamentally incorrect. The State's interpretation is not endorsed by the plain language of the phrase "arises out of." The State's interpretation does not have stare decisis force, and even if it does, there is sufficient reason to overturn the precedent.

- A. *Plaintiffs' "integrally related" test is the best way to determine whether an injury arises out of a condition or activity that is excepted from liability under the Act.*

As explained in Plaintiffs' opening brief, the "integrally related" test put forth by Plaintiffs is the best way to determine whether an injury arises out of one of the conditions or activities listed in subsection (5) of the Act. The first reason for this is that the alternate but-for test provides no clear limits to cut off the application of the exceptions listed in subsection (5) and is therefore conceptually incoherent as a test. Because the only limit for a but-for test is whether an excepted activity or condition was somewhere within the never-ending chain of events, the exceptions overcome the basic policy of the Governmental Immunity Act: to allow individuals to recover damages caused by the negligent acts or omissions of the State and municipal governments. The State does not respond to this argument.

The second reason for preferring Plaintiffs' interpretation is that the "integrally related" test is consistent with the other parts of the Utah Code and so is more likely to be the interpretation intended by the Legislature. The State argues that the plain language of the statute supports its interpretation, but this view is incorrect, as will be explained in Part B of this brief.

Yet another reason to prefer Plaintiffs' interpretation is that the but-for interpretation would mean that property seized for forfeiture purposes is subject to an ordinary duty of care, while property seized for evidentiary purposes is not subject to any duty of care. This is an inconsistent and absurd result. The State responds to this on page 11 of its brief, but misunderstands Plaintiffs' argument: the but-for test does not nullify the forfeiture statutes; however, the but-for test creates wildly different standards of care for property seized for different purposes without a rational basis for distinguishing between the two. The State fails to articulate a basis as to why the Legislature might think that property held by the State for civil or criminal forfeiture proceedings¹ should be subject to an ordinary standard of care, while property held for evidentiary purposes should not be subject to any standard of care whatsoever. Plaintiffs can think of none. Absent a showing that the Legislature intended this result, the but-for interpretation leads to absurd results and so should be rejected by this Court.

1. Contrary to the State's assertions, Title 24 applies to both civil and criminal forfeiture proceedings. Utah Code Ann. § 24-1-2(1).

Finally, this Court should prefer Plaintiffs' interpretation because the but-for test excuses total indifference on the part of government officials in caring for property of private citizens, including live animals. Though the State argues that the willful conduct of government officials is not immune from suit and that a § 1983 suit is an available remedy for violations of an individual's constitutional rights,² that misses the point. Endorsing the but-for test sends a message to government officials that they will not be held accountable for any damage to property in their possession so long as they do not intentionally destroy or damage the property. To read the law this way would be to "cloak the ancient doctrine of sovereign immunity in modern garb." Johnson v. Utah Dept. of Transportation, 2006 UT 15, ¶ 19, 133 P.3d 402. Moreover, the practical effect of this ruling is easy to predict: when the incentive to care for an item decreases, a person will be less inclined to expend effort in taking care of that item. If the Court holds that government officials are immune from suit for negligent handling of items in their care if not held for forfeiture, then government officials have less of an incentive to take care of items in their possession. In

2. 42 U.S.C. § 1983 does not create a cause of action for negligence. Daniels v. Williams, 474 U.S. 327, 330 (1986).

short, Plaintiffs' interpretation preserves the accountability function of the Governmental Immunity Act and so this Court should prefer it to the State's but-for interpretation.

- B. *The plain language of the statutory text does not support the State's interpretation of "arises out of" as only requiring a showing of but-for causation.*

In pages 9-13 of its brief, the State makes the argument that the plain language of the statutory text supports their interpretation. Utah appellate courts have long held that "in construing any statute, we first examine the statute's plain language and resort to other methods of statutory interpretation only if the language is ambiguous." Gull Laboratories v. Utah State Tax Commission, 936 P.2d 1082, 1086 (Utah App. 1997). If the term to be interpreted is not defined in the statute itself, the Court should rely on the dictionary to decide the usual meaning of the term. Id.

In this case, both parties agree that the issuance of the search warrant was a "judicial proceeding." The lower court relied on only the issuance of the search warrant as the basis for its ruling. The term to be interpreted is therefore "arises out of." This phrase is not defined in the statute itself, and the State provides no dictionary definition of the phrase. Plaintiffs have not found any dictionary definitions of the phrase in its entirety. The State's argument also seems to

contradict the many times that this Court and the Utah Court of Appeals have relied on interpretive methods to divine the meaning of this term. See, e.g., Estate of Berkemeir v. Hartford Insurance, 2004 UT 104, ¶¶ 10-11, 106 P.3d 700; Viking Insurance Co. v. Coleman, 927 P.2d 661, 664-65 (Utah App. 1996); Taylor v. Ogden City School District, 927 P.2d 159, 163 (Utah 1996); Commercial Carriers v. Industrial Commission, 888 P.2d 707, 712 (Utah App. 1994); National Farmers Union Property & Casualty v. Western Casualty & Surety, 577 P.2d 961, 963 (Utah 1978). Prior cases make clear that the phrase "arises out of" is a legal term of art and not a term that has a plain meaning apart from case law. As explained in Plaintiffs' opening brief, Plaintiffs' interpretation of the phrase "arises out of" is more consistent with prior case law, and so should be preferred over the State's interpretation.

The State also argues in the conclusion of its plain language argument that "when the facts are looked at in their entirety and when giving effect to each term in Section [63-30d-301(5)(e)], Plaintiffs' claimed injury plainly 'arose out of' the institution and prosecution of the judicial proceedings against Plaintiff Ryan Hoyer." Br. of State at 13. This conclusion is conceptually incoherent and only serves to confuse the issue. First, the lower court limited the operative judicial proceeding to the issuance of the search warrant. The State's

reference to some sort of other event that would have constituted a judicial proceeding was not decided upon below—the Court only found the cause of the damages arose from the search warrant: “but for the seizure of the snakes, plaintiffs would not have suffered any damages.” (R. at 382). Second, The basis of Plaintiffs’ appeal is the proper interpretation of “arises out of”: if the phrase only requires a showing that but for the issuance of the search warrant, Plaintiffs’ injury would not have occurred, then the lower court decided correctly. If, as the Plaintiffs suggest, the phrase requires more than that, then the Court should remand for the district court to apply the proper legal standard. The State’s conclusion quoted above ignores the interpretive question entirely in favor of an intuitive, vague, “I know it when I see it”³ kind of test. With apologies to Justice Stewart, a clear interpretation of “arises out of” is needed for uniform application of the law and to reduce, rather than increase, litigation.

However, it is possible that what the State meant in the quoted statement is that it would prevail under Plaintiffs’ standard. The State does not analyze Plaintiffs’ interpretation to argue why this is the case, and this would be unlikely given

3. See Jacobellis v. Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

the paucity of the findings in the lower court and the fact-bound nature of the "integrally related" test.⁴ Regardless of the findings of the lower court, there are facts that would be relevant under the Plaintiffs' standard that have not yet been reviewed by the district court.

C. *The court is not bound to accept the State's interpretation under the doctrine of stare decisis.*

4. The only finding that might support this argument would be that "the snakes were used as evidence against plaintiff Ryan Hoyer in both Davis County Justice Court and Clearfield City Justice Court." (R. at 382). As Plaintiffs have said in their previous brief, this finding is untrue, and was consistently denied by the Plaintiffs. It is a matter of public record that only the photographs of the snakes were entered into evidence. The State does not dispute this in footnote 3 of its brief. There was no evidence for this finding but only the State's assertion that this was an uncontested fact. Since this finding was not relevant for purposes of the State's motion or the lower court's order, this Court should not consider this finding, but rather remand the case to the district court to determine if the snakes were actually used as evidence along with instructions for the lower court to apply the correct standard.

On pages 14-17 of its brief, the State argues that stare decisis compels this Court to apply the but-for standard in determining the interpretation of "arises out of." The passage the State claims has stare decisis effect is from Taylor: "But for the assault, Zachary's injuries would not have occurred." 927 P.2d at 163. Plaintiffs have two responses to this argument: first, this statement is dicta and has no binding weight under the principles of stare decisis. Second, even if this quotation carries the weight of stare decisis, there is good cause for this court to overturn that precedent.

The quoted passage from Taylor is not binding authority; it is merely dicta. *Obiter dicta* (or just dicta) is "[a] judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential." Black's Law Dictionary 1102 (8th ed. 2004). A passage in a judicial opinion is dicta if it was not an issue that was raised and briefed by the parties. 20 Am. Jur. 2d Courts § 134 (2005).

As explained in Note 3 of Plaintiffs' opening brief, the issue of the scope of the phrase "arises out of" has not been raised or briefed by the parties on previous cases. Indeed, the degree of separation both in time and physical location between the injury and the act that the State relies upon for immunity is unprecedented for a case of this type. Because this Court has

never had the opportunity to interpret "arises out of" beyond ruling that it meant something broader than proximate causation, this Court should not feel bound by a simple mention of but-for causation in previous decisions.

Also, as noted on page 20 of Plaintiffs' brief, but-for causation has not been a necessary element of previous cases decided by this Court. Previous cases would not have had a different result under Plaintiffs' standard than under a but-for standard. This not only shows that but-for causation was not a necessary part of the decision; it also shows that the Court has not had the necessity of considering the question presented by the Court in this case. Because of these reasons, the passage relied upon by the State is dicta and the Court should not give the passage stare decisis authority.

But even if the Court decides that the passage relied upon by the State constitutes binding precedent, this does not end the inquiry. "Stare decisis is not an inexorable command; rather, it is a principle of policy and not a mechanical formula of adherence to the latest decision." Payne v. Tennessee, 501 U.S. 808, 828 (1991). Therefore, when the Court is "clearly convinced that a rule was originally erroneous or is no longer sound because of changing conditions and that more good than harm will come by departing from precedent" it is justified in overturning that precedent. State v. Menzies, 889 P.2d 393, 399

(Utah 1994); See also Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 855 (1992) (items to consider in over ruling precedent include: workablility, the effect of the overturning of the precedent on those who rely upon it, whether the legal framework the precedent was based on has developed in such a way as to make the precedent an anachronism, and whether the factual framework of the precedent has changed to the extent that reliance on the precedent would be unjustifiable). To the extent that the but-for standard constitutes precedent, this Court should abandon that precedent and adopt Plaintiffs' standard.

Even if the court concludes that the but-for standard has some precedential basis, it should abandon the but-for standard because it was erroneous in the first instance and unworkable in the present. As shown in pages 13-15 of Plaintiffs' opening brief, a but-for test does not work to limit the scope of the exceptions listed in the Act. A but-for test would explode the exceptions in the Act to the point that they would overwhelm the general waiver of liability. A causation standard that does not limit causation in any meaningful way is *per se* incorrect and fails as a workable standard to judge causation.

Also, the fact pattern of the present case is so far removed from previous cases that it would be unjustifiable to rely on the precedent from those cases. In previous cases, the

injury was suffered in the same location and at about the same time as the excepted activity or condition. There was no question as to the remoteness of the exception. There was also no briefing by the parties about the question of remoteness. In the present case, the injury took place well after the issuance of the search warrant, and far removed from the point of the warrant's issuance or execution. Because the facts are so different from those used in concluding that but-for causation was appropriate in the former cases, a re-examination of this standard is appropriate.

Furthermore, the law relied upon in articulating the interpretation for "arises out of" has been refined. As explained in pages 17-19 of Plaintiffs' opening brief, case law regarding the interpretation for "arises out of" has developed substantially since the interpretation in National Farmers that was subsequently relied upon by the Court in Taylor. Subsequent case law has shown the flaws of using but-for causation as a standard, and state courts have moved the law forward on a more equitable basis. The Court should be responsive to these developments and take the opportunity to refine the law in this context.

Also, applying the but-for standard leads to results that are counter to good public policy, as explained on pages 15 and 16 of Plaintiffs' opening brief and in part A of this brief. The

Court's continued endorsement of the but-for test would send a signal to government officials that they have no duty of care for property held as evidence. The consequences of such a signal must be considered by this Court in determining the standard that it will endorse.

The countervailing interest of the State in preserving any potential precedents is slight. While overturning precedent necessarily prejudices the interest of those who have relied on the prior interpretation of the law, it would be difficult for the State to show such an interest in this case. This interest is at its highest in interpreting contract law, where parties negotiate in good faith and rely upon the stable meaning of the terms that they have chosen in planning a deliberate course of action. Payne, 501 U.S. at 828. In this case, the State has no reliance interest when the immunity is only for acts that are not intentional. In other words, the State cannot claim a reliance interest in the standard governing an accident. The State's interest in retaining precedent is therefore marginal to nonexistent.

Finally, while it is true that it is usually left to the Legislature to overturn existing statutory interpretation, this Court has departed from previous interpretations of statutes upon good cause. Hackford v. Utah Power & Light, 740 P.2d 1281, 1283 (Utah 1987). The question for determining whether existing

statutory interpretation is so settled that it has become "has been woven into the fabric of the law." Id. at 1285. The interpretation in question has not achieved such status. As mentioned earlier, there are no decisions interpreting "arises out of" that have implicated the but-for test. This means that the Legislature has not relied upon such cases when considering whether revision was necessary. Also, this means that the Legislature has not relied on the stability of that decision in developing the surrounding statutory scheme. Finally, it is doubtful that previous cases have put the Legislature on notice of the potential problems with the but-for test. Therefore, their failure to act should not be viewed as deliberate inaction.

The State's argument for stare decisis fails, both because the passage that it relies upon is dicta, and because there is good cause to overturn precedent in this case. The Court should adopt Plaintiffs' interpretation of "arises out of" in its interpretation of the Government Immunity Act.

CONCLUSION

Plaintiffs' "integrally related" test is the best way to determine whether an injury arises out of an excepted activity or condition under the Governmental Immunity Act. This test is in line with the intent of the Legislature in passing the Act, is consistent with prior precedent, and is not foreclosed by

stare decisis. This Court should reverse the decision of the lower court and remand for further proceedings consistent with the correct legal standard.

RESPECTFULLY SUBMITTED this 22d day of August, 2008.

/s/

Nathan Whittaker
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CERTIFICATE OF MAILING

I hereby certify that I am an employee or partner of Day
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151

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