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Judy Snell, Leroy Snell v. Salt Lake County, Utah County, Utah Department of Transportation, City of Draper, Utah, City of Lehi, Utah : Brief of Appellee

Utah Court of Appeals

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JUDY SNELL and LEROY SNELL,
Guardians and Conservators of
the Estate of Kenneth Read
Snell,

v.

SALT LAKE COUNTY; UTAH COUNTY;
UTAH DEPARTMENT OF
TRANSPORTATION; CITY OF DRAPER,
UTAH; and CITY OF LEHI, UTAH,

Case No. 970201-CA

Priority No. 15

APPEAL FROM ORDER GRANTING DEFENDANT DRAPER CITY'S
MOTION FOR SUMMARY JUDGMENT
THIRD DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH
THE HONORABLE WILLIAM B. BOHLING PRESIDING

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IN THE UTAH COURT OF APPEALS

JUDY SNELL and LEROY SNELL,	:	
Guardians and Conservators of	:	
the Estate of Kenneth Read	:	
Snell,	:	
	:	
Plaintiffs and Appellants,	:	
	:	Case No. 970201-CA
v.	:	
	:	Priority No. 15
SALT LAKE COUNTY; UTAH COUNTY;	:	
UTAH DEPARTMENT OF	:	
TRANSPORTATION; CITY OF DRAPER,	:	
UTAH; and CITY OF LEHI, UTAH,	:	
	:	
Defendants and Appellees.	:	

BRIEF OF APPELLEE CITY OF DRAPER

APPEAL FROM ORDER GRANTING DEFENDANT DRAPER CITY'S
MOTION FOR SUMMARY JUDGMENT
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ISSUE ON APPEAL

The narrow issue presented by this appeal is whether Draper City had a duty to Kenneth Snell to place a 40 mph speed limit sign on the east side of a one-mile stretch of road between its southern-most boundary and the intersection where Kenneth Snell collided with another vehicle. Appellants seek to establish an exception to the well-established Utah rule that a municipality does not have a duty to erect traffic control devices in the first instance, but only to properly place and maintain those that it does erect. Appellants argue that, by acting to place a speed limit sign in one location on a highway, Draper City thereby obligates itself to erect signs in other locations on the same highway. Appellants also seek to have this Court reverse recent rulings and abandon the public duty doctrine.

STATEMENT OF MATERIAL FACTS

Draper City was granted summary judgment in this case on the basis that it had no legal duty to erect a speed limit sign. The undisputed facts set forth by Draper City in its Motion for Summary Judgment were not disputed by appellants in the trial court below and it properly adopted them in determining there was no legal duty. In their Brief, appellants correctly set forth six of the seven undisputed facts, but omit one aspect of finding of fact number 7. This finding is set forth here, with the omitted portion highlighted:

7. Prior to the accident, Draper had posted a 40 mph speed limit sign on the west side of the frontage road which was visible to southbound traffic. Draper City had not placed on the east side of the frontage

road any speed limit signs, or other signs warning of the intersection, **along the one mile stretch from its southern-most border to the gravel facility road.**

SUMMARY OF ARGUMENT

On October 13, 1993 Kenneth Snell was returning from a Lehi animal shelter, where he had picked up a load of animals to take to the University of Utah. While traveling northbound on the frontage road to Interstate 15, he collided with a truck owned by Cazier Excavation, as it was turning eastbound from its southern route onto the dirt road accessing Geneva Rock's sand and gravel yard. Appellants' sole argument on appeal is that Draper City had a duty to place a 40 mph speed limit sign somewhere on the one mile stretch of road from its southern-most boundary to the intersection with the private road.

Summary judgment was properly granted by the trial court on the grounds that Draper City owed no legal duty to Kenneth Snell to erect such a speed limit sign. While a governmental entity has a non-delegable duty to maintain streets within its boundaries, it has no duty to erect speed limit signs in the first instance. Additionally, any duty Draper City owed to erect speed limit signs is a duty that runs only to the public at large. Because there exists no special relationship between Draper City and Kenneth Snell, there is no individual, legal duty upon which appellants could base a negligence claim. Finally, even if appellants could establish a legal duty, Draper City would be immune from suit because it did not have control over both the roads upon which the allegedly dangerous condition existed.

ARGUMENT

I.

DRAPER CITY HAD NO DUTY TO ERECT A TRAFFIC SIGN CONTROLLING SPEED OR WARNING OF AN INTERSECTION WITH A PRIVATE ROAD

Appellants agree that under Utah law a municipality has "no common law duty to place a sign . . . warning motorists of [an] approaching intersection." *De Villiers v. Utah County*, 882 P.2d 1161, 1167 (Utah App. 1994); see also, *Jones v. Bountiful City Corp.*, 834 P.2d 556, 560 (Utah App. 1992).¹ In *De Villiers*, plaintiff alleged that a subdivision road had been built by a private developer and placed at a location that made it difficult for motorists traveling the county road to see. No signs had been posted on the county road advising drivers of the allegedly dangerous intersection. The Court in *De Villiers* held that, even assuming the intersection posed an unreasonable risk of danger, Utah County had no duty to erect warning signs:

Even if the placement of Oakview Drive created a dangerous condition on 6000 West, Utah County still has no duty to erect warning signs, even though it has a duty to maintain that road in a condition reasonably safe for travel. See *Jones*, 834 P.2d at 560. Thus, Utah County had no common law duty to place a sign at 6000 West warning motorists of the approaching intersection.

De Villiers, 882 P.2d at 1167. The parallel between the allegations in *De Villiers* and this case is obvious.

Also analogous are the facts in *Jones v. Bountiful City Corp.*, *supra*, in which the plaintiff claimed, *inter alia*, that he was injured in an intersection collision because Bountiful City

¹See page 9 of Appellants' Brief.

failed to place signs at the intersection despite its knowledge of prior accidents. In discussing the duty issue, the Utah Court of Appeals recognized that the duty of a municipality to exercise due care in maintaining streets within its corporate boundaries "is limited in that 'a city is not generally liable for failure to install signs or signals.'" *Jones*, 834 P.2d at 560, citing 19 *Eugene McQuillin, The Law of Municipal Corporations* § 54.02, at 12 (3d ed. 1985). The *Jones* court went on to state "rather than placing a duty on a municipality to erect traffic control devices, the common law requires only that once the municipality takes action to install such devices, it must do so in a non-negligent manner." Thus, the Court held that Bountiful City had "no common law duty to control the intersection with traffic signs, even if Bountiful was on notice that . . . foliage obstructed a clear view of the intersection." *Jones*, 834 P.2d at 560.

While acknowledging this rule, appellants argue for an exception that would swallow it. They argue that because Draper City placed a speed limit sign at one spot on the roadway, it must answer to Mr. Snell for not placing a similar sign elsewhere on the roadway. The duty to erect a speed limit sign, appellants argue, is part of its general duty to "regulate the flow of traffic" undertaken by having placed a speed limit sign elsewhere. Semantics cannot cloak the true nature of appellants' argument -- that Draper City should have placed a speed limit sign on the east side of the frontage road and south of the

intersection with the private dirt road in question in order to warn Mr. Snell of the impending intersection. Indeed, this is the duty the Court would have to legally impose on Draper City in order for appellants to be able to proceed with their negligence claim.

There is simply no Utah precedent to support appellants' tortured argument. The only supporting cases cited by appellants are *Bowan v. Riverton City*, 656 P.2d 434 (Utah 1982) and *Richards v. Leavitt*, 716 P.2d 276 (Utah 1985), both of which involved previously erected stop signs that had been knocked down and claims that the governmental entities were negligent in failing to replace them in a timely manner. Obviously, these cases are distinguishable from this case, in which appellants argue that Draper City should have erected a speed limit sign in the first instance.

II.

EVEN IF DRAPER CITY HAD A DUTY TO INSTALL A SPEED LIMIT SIGN IN THE FIRST INSTANCE, IT IS A DUTY TO THE GENERAL PUBLIC, NOT A DUTY OWED INDIVIDUALLY TO KENNETH SNELL

Recent cases from Utah appellate courts reiterate the rule that a governmental entity has no duty to a member of the general public who suffers injury as a result of the entity's alleged failure to control the conduct of others, unless the injured person can show a relationship special enough to establish an individual duty. *Ledfors v. Emery County School District*, 849 P.2d 1162 (Utah 1993); *Higgins v. Salt Lake County*, 855 P.2d 231 (Utah 1993); *Lamarr v. Utah State Department of Transportation*,

828 P.2d 535 (Utah App. 1992); *Cannon v. University of Utah*, 866 P.2d 586 (Utah App. 1993). The essence of the public duty doctrine is that "a duty to all is a duty to none". *Rollins v. Peterson*, 813 P.2d 1156, 1165 (Utah 1991). Unless a plaintiff is owed an individual duty by a governmental entity apart from its duty to the general public, there is no legal duty upon which the plaintiff may base a negligence claim. *Madsen v. Borthick*, 850 P.2d 442, 445 (Utah 1993); *Lamarr*, 828 P.2d at 539.

The cases of *Lamarr* and *Cannon* demonstrate the applicability of the "public duty doctrine" to the activity of traffic control. In *Lamarr*, a pedestrian who was struck while walking across an overpass brought action against Salt Lake City and the Utah Department of Transportation alleging that Salt Lake City owed him a duty to maintain a sidewalk on the overpass or to place signs that would have prevented him from walking on the roadway and/or that the City had a duty to control the transient population beneath the overpass so that he was not forced to use the allegedly dangerous overpass. The Utah Court of Appeals held that these allegations failed to allege a duty upon which a negligence claim could be based. This Court found that *Lamarr* had failed to establish that the City had any reason to distinguish him from the general public. There was no allegation nor evidence that the City had any knowledge whatsoever of *Lamarr's* trip across the overpass. Similarly, in this case, there is no allegation that Draper City had some special

relationship with Mr. Snell or knowledge of Mr. Snell's activities which would give rise to an individual duty.

In *Cannon*, plaintiffs had parked at a University of Utah parking lot and were proceeding to the Huntsman Center to a University of Utah basketball game. While walking north across South Campus Drive (a State-owned road, maintained by the Utah State Department of Transportation), plaintiffs were struck in a crosswalk. Two University police officers had been assigned to the crosswalk. Summary judgment was granted to the University of Utah under the public duty doctrine and the Utah Court of Appeals affirmed, rejecting plaintiffs' argument that they were a distinguishable sub-group of "pedestrians" narrower than the "general public". This Court reasoned that the duty of the police officers was to ensure the safety of pedestrian travel to the entire public, not just those pedestrians on their way to the basketball game.

In their Brief, Snells argue that it does not apply to this case because "the public duty doctrine governs situations where the question is whether or not to impose an affirmative duty to act (or protect) for the benefit of a particular plaintiff. It does not govern situations where the governmental entity has affirmatively undertaken the duty." Appellants' Brief, p. 12. This interpretation is not justified by current case law and it is not surprising that appellants cite no legal authority for their proposition. By contrast, *De Villiers* speaks to the identical issue presented in this case and holds that there is no

duty by a governmental entity to erect a sign warning of an intersection.²

Although Snells decline to discuss *De Villiers* anywhere in their Brief on appeal, they apparently would argue that their case is different, because their case involves a "speed limit" sign as distinguished from a sign warning of an impending intersection. Any such distinction, however, is one without a difference in the context of this case. Logically, the only reason for appellants to argue that a speed limit sign should have been placed on the east side of the frontage road and south of the intersection in question would be to reduce the speed of travelers in light of the impending intersection. Thus, in order for it to mean anything, Snells are forced to argue that the speed limit sign was necessary because of the intersection. Placement of a speed limit sign on the east side of the frontage road but north of the intersection would have been irrelevant to Mr. Snell on the day of the accident. Obviously, Snells' argument in this case is no different than the arguments presented and rejected in *De Villiers* and *Jones*.

Finally, appellants argue that this Court should now abrogate the public duty doctrine and hold that it does not apply to duties related to traffic regulation. This Court has recently and frequently had opportunity to examine the public duty doctrine in the context of traffic regulation. See, e.g. *Cannon v. University of Utah*, *supra*; *Lamarr v. Utah State Department of*

²See discussion of *De Villiers* herein, at page 3.

Transportation, supra. The policy behind the public duty doctrine is sound. To abandon it would subject every governmental entity to potential liability and require it to defend every case where a plaintiff or co-defendant argued that placement of a sign would have prevented third parties from driving negligently.

III.

DRAPER CITY IS IMMUNE FROM SUIT ALLEGING NEGLIGENT SIGNAGE AT THE INTERSECTION OF A PUBLIC ROAD WITH A PRIVATE ROAD

The trial court appropriately considered the legal duty issue prior to reaching the issue of governmental immunity proposed by Draper City as an additional grounds for summary judgment. As this Court and the Utah Supreme Court have repeatedly pointed out, the appropriate analysis is to first look at the question of duty. If no common law duty exists, there is no need to reach a governmental immunity issue. Even so, Utah law is clear that immunity would exist in this case, even if legal duty could be established.

Utah Code Ann. § 63-30-8 waives governmental immunity for any injury caused by "defective, unsafe or dangerous condition of any highway. . . ." In *De Villiers*, the Utah Court of Appeals specifically held that the waiver of governmental immunity for unsafe conditions of a highway does not apply unless the governmental entity has control over the roads or highways upon which the dangerous condition exists. *De Villiers*, 882 P.2d at 1165. In *De Villiers*, as in this case, one of the streets in

question was privately owned. Thus, the waiver of immunity provision does not apply to the circumstances of this case.

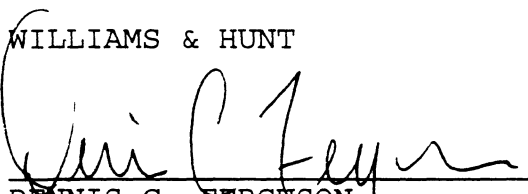
CONCLUSION

As a matter of law, appellants cannot establish a legal duty owed to Kenneth Snell by Draper City. Draper City had no duty to erect speed limit or warning signs in the one-mile stretch between its southern border and the intersection with the private dirt road in question. Additionally, any duty which it might have owed to erect a speed limit sign was a duty owed to the general public and not to Kenneth Snell, who has neither alleged nor proven a special relationship with Draper City. Beyond the duty issue, *De Villiers v. Utah County* clearly establishes that Draper City would be protected by governmental immunity. The trial court's summary judgment in favor of Draper City should be affirmed.

DATED this 14 day of July, 1997.

WILLIAMS & HUNT

By

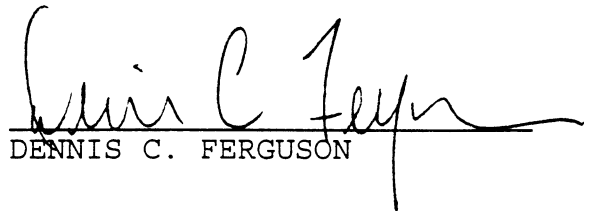

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CERTIFICATE OF MAILING

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