

2008

Michael Willden v. Duchesne County : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MICHAEL WILLDEN,

Plaintiff-Appellant

vs.

DUCHESNE COUNTY,

Defendant-Appellee.

APPELLEES' ANSWER BRIEF

Case No. 20080276-CA

On Appeal from the Eighth Judicial District Court of Duchesne County
The Honorable Judge John R. Anderson
Civil No.050800022

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Oral Argument Requested

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STATEMENT OF JURISDICTION

This appeal comes from the summary judgment order issued by the Eighth Judicial District Court, Duchesne County, dated March 10, 2008. The Utah Court of Appeals has jurisdiction pursuant to Utah Code Ann. § 78-2a-3(a)(j).

STATEMENT OF THE ISSUES

Whether Duchesne County is immune from a suit for negligence under the Governmental Immunity Act of Utah for the actions of one of its deputies in connection with the operation of an emergency vehicle.

STATUTES OF CENTRAL IMPORTANCE TO APPEAL

U.C.A. §63-30d-301(4) and (5)(2004)

- (4) Immunity from suit of each governmental entity 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 is not waived under Subsections (3) and (4) if the injury arises out of, in connection with, or results from:
- (o) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6-14;

U.C.A. §41-6-14 (2004)

- (1) Subject to Subsections (2) through (5), the operator of an authorized emergency vehicle may exercise the privileges granted under this section when:
- (a) responding to an emergency call;
 - (b) in the pursuit of an actual or suspected violator of the law; or
 - (c) responding to but not upon returning from a fire alarm.
- (2) The operator of an authorized emergency vehicle may:
- (a) park or stand, irrespective of the provisions of this chapter;
 - (b) proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
 - (c) exceed the maximum speed limits; or
 - (d) disregard regulations governing direction of movement or turning in specified directions.
- (3) Privileges granted under this section to the operator of an authorized emergency vehicle, who is not involved in a vehicle pursuit, apply only when:
- (a) the operator of the vehicle sounds an audible signal under Section 41-6-146; or
 - (b) uses a visual signal as defined under Section 41-6-132, which is visible from in front of the vehicle.
- (4) Privileges granted under this section to the operator of an authorized emergency vehicle involved in any vehicle pursuit apply only when:
- (a) the operator of the vehicle:
 - (i) sounds an audible signal under Section 41-6-146; and
 - (ii) uses a visual signal as defined under Section 41-6-132, which is visible from in front of the vehicle;

(b) the public agency employing the operator of the vehicle has, in effect, a written policy which describes the manner and circumstances in which any vehicle pursuit should be conducted and terminated;

(c) the operator of the vehicle has been trained in accordance with the written policy described in Subsection (4)(b); and

(d) the pursuit policy of the public agency is in conformance with standards established by the Department of Public Safety, Division of Peace Officer Standards and Training, which shall adopt minimum standards that shall be incorporated into all emergency pursuit policies adopted by public agencies authorized to operate emergency pursuit vehicles.

(5) The privileges granted under this section do not relieve the operator of an authorized emergency vehicle of the duty to act as a reasonably prudent emergency vehicle operator in like circumstances.

(6) Except for Sections 41-6-13.5, 41-6-44, and 41-6-45, this chapter does not apply to persons, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway. However, the entire chapter applies to those persons and vehicles when traveling to or from the work.

STATEMENT OF THE CASE

Nature of the Case

Plaintiff's appeal from summary judgment granted to defendant Duchesne County by Judge John R. Anderson of the Eighth Judicial District Court.

Course of Proceedings and Disposition of Lower Court

Plaintiff sued Duchesne County for injuries he sustained after crashing his Harley Davidson motorcycle while riding in a pack of other motorcycles. Plaintiff claims that deputy Monty May (a Duchesne County law enforcement officer) negligently approached and passed him while operating his emergency vehicle.

Upon its motion, the trial court granted summary judgment in favor of Duchesne County ("the County"). In so ordering, the trial court held that the county was entitled to

immunity under the Governmental Immunity Act of Utah as Deputy May was operating his emergency vehicle in accordance with Utah Code Ann. § 41-6-14. It was further held that Plaintiff's interpretation of the applicable portions of the Utah Code would produce an absurd result as it would entitle a government entity to immunity from a negligence suit arising out of an employee's operation of an emergency vehicle, unless that employee was acting negligently.

Statement of Relevant Facts

1. On August 7, 2004, Plaintiff was driving eastbound on SR 35 on his Harley Davidson motorcycle. (Complaint at ¶9.)

2. Plaintiff was driving in a group of other motorcyclists at a safe and reasonable speed. (Id. at ¶10.)

3. At the same time, Deputy May was driving his patrol truck in the same direction on SR 35 at a high rate of speed. (Id. at ¶¶7-8.)

4. Deputy May had both his flashing lights and his siren displayed as he was driving eastbound on SR 35. (Monty May Dep., p. 10:8-21.)

5. Deputy May was responding to an emergency call he received from dispatch which indicated that there was an elderly man having chest pains in a remote area who needed immediate medical assistance. (Id. at pp. 8:22-9:9.)

6. In addition to being a police officer, Deputy May is also a trained emergency medical technician ("EMT"). (Id. at pp. 8:22-9:19.)

7. Dispatch had also attempted to send other EMTs to aid the man having chest pains, but they were volunteer and were not responding to the call; Deputy May was advised of this fact. (Id.)

8. As Deputy May approached the pack of motorcycles that Plaintiff was driving in, he passed them on the left at a higher rate of speed. (Complaint at ¶11; Plaintiff Dep., pp. 29:2-32:8.)

9. As Deputy May passed Plaintiff, he had his flashing lights displayed and his siren was continually sounding. (Plaintiff's Dep., pp. 32:3-6, 34:12-17; May Dep., pp. 10:8-21, 13:22-14:14, 22:8-19; Cindy Foster Dep., pp. 27:10-28:10.)

10. As Deputy May passed him, Plaintiff slowed down, hit the soft shoulder and crashed his motorcycle. (Plaintiff Dep., pp. 29:2-32:8; Foster Dep., pp. 19:17-21:20.)

11. Deputy May saw Plaintiff crash his motorcycle in his rearview mirror. (May Dep., p. 14:14.)

12. Deputy May then cancelled his response to the emergency call and turned around to offer assistance to Plaintiff. (Id. at p. 33:11.)

13. Plaintiff admitted that the above stated facts were true and undisputed. (See Defendant's Memo. Supp. Mot. Sum. J. and Plaintiff's Opp. Memo, attached as Addendum.)

SUMMARY OF THE ARGUMENT

Section 63-30d-301(3)(a) of the The Governmental Immunity Act of Utah (“the Act”) grants Duchesne County immunity from suit for negligence for any injury arising out of the operation of an emergency vehicle. However, Plaintiff claims that this immunity from a suit for negligence is not applicable if the operator was driving negligently. Plaintiffs’ interpretation would render the negligence waiver portion of the statute inoperative and would therefore create an absurdity in the law. Utah law instructs that this result should be avoided. In the alternative, Section 63-30d-301 of the Act is unconstitutionally vague and therefore void, giving Duchesne County blanket immunity from Plaintiff’s suit.

ARGUMENT

Utah courts use a three-part analysis to determine whether a governmental entity is entitled to immunity under the Act:

(1) Was the activity undertaken by the entity a governmental function and therefore immunized from suit under the general grant of immunity contained in Utah Code [section] 63-30-3? (2) If the activity undertaken was a governmental function, has another section of the Act waived that blanket immunity? (3) If immunity has been waived, does the Act contain an exception to that waiver resulting in a retention of immunity against the claim asserted?

Sandberg v. Lehman, Jensen & Donahue, L.C., 2003 UT App 272, P9, 76 P.3d 699

(quoting Keegan v. State, 896 P.2d 618, 619-20 (Utah 1995))

The Governmental Immunity Act gives a government entity immunity from suit for the actions of its agents. This blanket immunity from suit of each governmental entity

is waived as to any injury proximately caused by the negligent act or omission of an employee committed in the scope of employment. Utah Code Ann. § 63-30d-301(4). However, there are several very specific exceptions to this waiver and the Act makes clear that immunity is not waived under Subsection (4) if:

(5) If the injury arises out of, in connection with, or results from:

....

(r) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6-14;

Utah Code Ann. § 63-30d-301(5)(r).

Utah Code Ann. § 41-6-14 reads as follows:

(1) Subject to Subsections (2) through (5), the operator of an authorized emergency vehicle may exercise the privileges granted under this section when:

- (a) responding to an emergency call;
- (b) in the pursuit of an actual or suspected violator of the law; or
- (c) responding to but not upon returning from a fire alarm.

(2) The operator of an authorized emergency vehicle may:

- (a) park or stand, irrespective of the provisions of this chapter;
- (b) proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
- (c) exceed the maximum speed limits; or
- (d) disregard regulations governing direction of movement or turning in specified directions.

(3) Privileges granted under this section to the operator of an authorized emergency vehicle, who is not involved in a vehicle pursuit, apply only when:

- (a) the operator of the vehicle sounds an audible signal under Section 41-6-146; or
- (b) uses a visual signal as defined under Section 41-6-132, which is visible from in front of the vehicle.

(4) Privileges granted under this section to the operator of an authorized emergency vehicle involved in any vehicle pursuit apply only when:

- (a) the operator of the vehicle:
 - (i) sounds an audible signal under Section 41-6-146; and
 - (ii) uses a visual signal as defined under Section 41-6-132, which is visible from in front of the vehicle;
- (b) the public agency employing the operator of the vehicle has, in effect, a written policy which describes the manner and circumstances in which any vehicle pursuit should be conducted and terminated;
- (c) the operator of the vehicle has been trained in accordance with the written policy described in Subsection (4)(b); and
- (d) the pursuit policy of the public agency is in conformance with standards established by the Department of Public Safety, Division of Peace Officer Standards and Training, which shall adopt minimum standards that shall be incorporated into all emergency pursuit policies adopted by public agencies authorized to operate emergency pursuit vehicles.

(5) The privileges granted under this section do not relieve the operator of an authorized emergency vehicle of the duty to act as a reasonably prudent emergency vehicle operator in like circumstances.

(6) Except for Sections 41-6-13.5, 41-6-44, and 41-6-45, this chapter does not apply to persons, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway. However, the entire chapter applies to those persons and vehicles when traveling to or from the work.

Utah Code Ann. § 41-6-14(2004)

A. Plaintiff's Interpretation Creates an Absurd Result.

Despite the fact that Deputy May was speeding at the time of the accident, there is no dispute that he was responding to an emergency call and that he had both his overhead lights and his siren on when he passed the Plaintiff. Therefore, Deputy May was operating his vehicle in accordance with § 41-6-14 of the Utah Code and Duchesne

County is immune for his negligence, if any. Plaintiff asserts that Deputy May must also drive in a reasonable and prudent matter for Duchesne County to have immunity for negligence, but this interpretation of the statute produces an absurd result in its application.

If this Court were to read the statute as Plaintiff suggests, the Act would be rendered moot, as it would instruct that a government entity is immune from a suit for negligence in connection with the operation of an emergency vehicle, unless the emergency vehicle operator was not acting as a reasonably prudent emergency vehicle operator in like circumstances. Plaintiff asserts that Deputy May's negligence is evidence that he did not act as a reasonably prudent emergency vehicle operator, disqualifying Duchesne County for immunity. In other words, Plaintiff would have the law endow the County with immunity from a suit for negligence as long as there is no evidence of negligence. To read the statute in this manner is contrary to reason, creates an absurd result and undermines the legislative intent behind the Governmental Immunity Act of Utah.

When interpreting a statute, the Court's goal is to give effect to the legislature's intent and purpose. State v. Ireland, 150 P.3d 532 (Utah 2006). To that end, courts will often begin with the statute's plain language. Blackner v. State Dep't of Transp., 48 P.3d 949 (Utah 2002). In conducting a textual analysis, the court must consider the literal meaning of each term but "avoid interpretations that will render portions of a statute

superfluous or inoperative.” Hall v. State Dep't of Corr., 24 P.3d 958 (Utah 2001). The plain language of any specific provision should always be read in harmony with other provisions in the same statute. Lyon v. Burton, 5 P.3d 616 (Utah 2000); Roberts v. Erickson, 851 P.2d 643, 644 (Utah 1993) (per curiam). “Statutory enactments are to be construed as to render all parts thereof relevant and meaningful, and . . . interpretations are to be avoided which render some part of a provision nonsensical or absurd.” Millett v. Clark Clinic Corp., 609 P.2d 934, 936 (Utah 1980). Plaintiff’s proposed interpretation renders the provision granting immunity for the operation of emergency vehicles nonsensical and absurd.

Moreover, when two statutory provisions conflict in their operation, the provision more specific in application governs over the more general provision. Id. The Governmental Immunity Act grants broad, immunity to the state and its subdivisions in their roles as public servants. This immunity is further broadly waived by the Act for all negligent acts. However, there is an explicit and very specific exception to the broad waiver for acts of negligence by any state actor operating an emergency vehicle. Consequently, allowing a plaintiff to sue a state actor for negligence while operating an emergency vehicle would nullify a very specific statutory provision at the expense of preserving a much more general one; it would render the Act’s explicit exception to negligence entirely inoperative at the expense of preserving a more general waiver of negligence to immunity. Utah case law dictates that courts avoid such a tradeoff, and the

court should not make it here. See Platts v. Parents Helping Parents, 947 P.2d 658, 662 (Utah 1997); State v. Hunt, 906 P.2d 311, 312 (Utah 1995); Millet, 609 P.2d at 936.

B. Utah Code Ann. § 63-30d-301(2004) Is Unconstitutionally Vague.

If Plaintiff's interpretation of § 63-30d-301 is correct, the statute is rendered void for vagueness. Plaintiff's brief asserts that the legislature excluded negligence from the waiver of immunity, excepting emergency vehicle operators and then simply defined the standard of care by adding (5) to 41-6-14, which "is completely logical." (Appellant Brief at p. 6.) However, the standard of care defined by the legislature in (5) is the exact standard of care imposed on emergency vehicle operators under common law elements of negligence. See White v. Pinney, 108 P.2d 249 (Utah 1940) (holding that the standard of care for negligence is what careful and prudent men would have exercised under the circumstances); see also Hutchinson v. Boston Gas Light Co., 122 Mass. 219, 222; American Brewing Ass'n v. Talbot, 141 Mo. 674, 42 S.W. 679, 64 Am. St. Rep. 538; Suburban Electric v. Nugent, 58 N.J.L. 658, 34 A. 1069, 32 L.R.A. 700.

If Plaintiff's assertion is true and 41-6-14 (5) simply defined the standard of care for emergency vehicle operators, the legislature nullified a portion of the Immunity Act and created an unconstitutionally vague statute, in addition to an absurdity in the law. See State v. Germonto, 73 P.3d 978, 981 (Utah Ct. App. 2003)(holding that a statute is unconstitutionally vague if it . . . fails to provide a "person of ordinary intelligence a reasonable opportunity to know what is prohibited.")

In Chris & Dick's Lumber and Hardware v. Tax Com'n of State of Utah, the court found it has a duty to construe a statute to avoid constitutional infirmities whenever possible. 791 P.2d 511, 516 (Utah 1990); see also, e.g., Blue Cross and Blue Shield v. State, 779 P.2d 634, 637 (Utah 1989); Provo City Corp. v. Willden, 768 P.2d 455, 458 (Utah 1989); State v. Lindquist, 674 P.2d 1234, 1236-37 (Utah 1983). Accordingly, a statute will be found unconstitutionally vague when it is not sufficiently explicit and clear to inform the ordinary reader of common intelligence what conduct is proscribed. E.g., State v. Frampton, 737 P.2d 183, 192 (Utah 1987); State v. Hoffman, 733 P.2d 502, 505 (Utah 1987); State v. Theobald, 645 P.2d 50, 51 (Utah 1982); State v. Pilcher, 636 P.2d 470, 471 (Utah 1981).

In Chris & Dick's Lumber and Hardware v. Tax Com'n of State of Utah, the court held the questioned statute was not void for vagueness because, although possible fines were ambiguous, the statute clearly stated the prohibited conduct. 791 P.2d at 516 . However, this is distinguishable from the case at bar where the legislators left the proscribed conduct general and undefined in § 63-30d-301. Indeed, reading § 63-30d-301 as Plaintiff insists would leave a reader of ordinary intelligence completely confused; governmental entities are given broad immunity from suit, except when it is a suit for negligence, unless that suit arises from the operation of an emergency vehicle, but only if there is no negligence. Interpreting the waiver statute as Plaintiff suggests would make it too vague to give a governmental entity a reasonable opportunity to know which conduct


is immune from suit and which is prohibited. If § 63-30d-301 is to be interpreted as Plaintiff urges, then it should be void for vagueness and Duchesne County should have blanket immunity.

CONCLUSION

Based on the foregoing, Duchesne County's Motion for Summary Judgment was properly granted and should be affirmed on appeal.

DATED this 3 day of October, 2008.

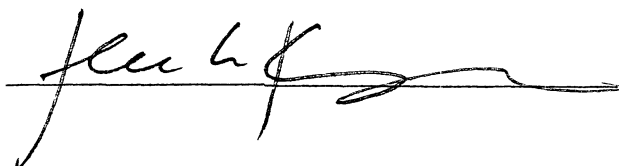
STRONG & HANNI

By: 
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3 day of October, true and correct copies of APPELLEE'S ANSWER BRIEF was served by mail, postage fully prepaid, upon the following:

Daniel F. Bertch
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A handwritten signature in dark ink, appearing to read "Daniel F. Bertch", written over a horizontal line.

ADDENDUM

A

TRIAL COURT BRIEFS

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IN THE EIGHTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY
STATE OF UTAH

MICHAEL WILLDEN,

Plaintiff,

vs.

DUCHESNE COUNTY,

Defendant.

**MEMORANDUM IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

Civil No.050800022

Judge John R. Anderson

Defendant, Duchesne County, by and through counsel of record submits the following
Memorandum in Support of its Motion for Summary Judgment.

INTRODUCTION

This case arises from an unfortunate motorcycle accident that occurred on state road 35
("SR 35") in Duchesne County, Utah. Plaintiff was driving his 2002 Harley Davidson
motorcycle in a pack of other motorcycles that were all heading eastbound on SR 35. At

approximately the same time, deputy Monty May was dispatched to the emergency call of a seventy-one year-old man in the Blue Bench area of Duchesne County who was having chest pains. Deputy May was particularly needed in this dispatch because he was an emergency medical technician as well as a police officer and while the paramedics were also called, they are volunteer and were not responding.

As Deputy May was in route to this emergency medical situation, he came upon several packs of bikers on SR 35. Deputy May approached and passed these packs of bikers before he came up to the plaintiff driving in a staggered formation with the other bikers in one of the groups. As the deputy approached Plaintiff, he had both his flashing lights and his siren displayed. Plaintiff acknowledged the officer's presence and began to slow down and pull to the side of the road. As Deputy May passed him on the left, Plaintiff lost control of his motorcycle in the soft shoulder of the road and was ejected. Realizing the greater potential seriousness of the situation, Deputy May cancelled his response to the emergency call he had been dispatched to, and turned around to administer emergency medical care to the plaintiff.

Plaintiff claims that despite the fact that Deputy May had a right to disregard certain traffic rules in this situation, he negligently approached and passed him while he was on his motorcycle and caused him to crash. Defendant emphatically denies that Deputy May was negligent when he approached and passed Plaintiff. However, for purposes of this motion only, Defendant stipulates that Deputy May's negligence caused Plaintiff's injuries. Despite this

stipulation, summary judgment in favor of Duchesne County is warranted because the Utah Code demands immunity in this particular situation.

Even if Deputy May was negligent and completely responsible for causing Plaintiff's injuries, Duchesne County is immune from his negligent actions per the legislature's directive in the Utah Code §63-30d-301(4). Under the Utah code, Defendant is immune for Deputy May's actions for two reasons: (1) May was operating an emergency vehicle in accordance with the particular provisions of the Utah Code and (2) May was responding to a call to offer emergency medical assistance. As such, Plaintiff's complaint must be dismissed with prejudice and as a matter of law.

STATEMENT OF UNDISPUTED FACTS

1. On August 7, 2004, Plaintiff was driving eastbound on SR 35 on his Harley Davidson motorcycle. (See Complaint at ¶9, attached as Exhibit A.)
2. Plaintiff was driving in a group of other motorcyclists at a safe and reasonable speed. (Id. at ¶10.)
3. At the same time, Deputy May was driving his patrol truck in the same direction on SR 35 at a high rate of speed. (Id. at ¶¶7-8.)
4. Deputy May had both his flashing lights and his siren displayed as he was driving eastbound on SR 35. (Monty May Dep. p. 10:8-21, attached as Exhibit B.)
5. Deputy May was responding to an emergency call he received from dispatch

which indicated that there was an elderly man having chest pains in a remote area who needed immediate medical assistance. (Id. at pp. 8:22-9:9.)

6. In addition to being a police officer, Deputy May is also a trained emergency medical technician (“EMT”). (Id. at pp. 8:22-9:19.)

7. Dispatch had also attempted to send other EMTs to aid the man having chest pains, but they were volunteer and were not responding to the call. Deputy May was advised of this fact. (Id.)

8. As Deputy May approached the pack of motorcycles that Plaintiff was driving in, he passed them on the left at a higher rate of speed. (Ex. A, ¶11; Plaintiff Dep. pp. 29:2-32:8, attached as Exhibit C.)

9. As Deputy May passed Plaintiff, he had his flashing lights displayed and his siren was continually sounding. (Ex C at pp. 32:3-6, 34:12-17; Ex. B, pp. 10:8-21, 13:22-14:14, 22:8-19; Cindy Foster Dep. pp. 27:10-28:10, attached as Exhibit D.)

10. As Deputy May passed him, Plaintiff slowed down, hit the soft shoulder and crashed his motorcycle. (Ex. C, pp. 29:2-32:8; Ex. D pp. 19:17-21:20.)

11. Deputy May saw Plaintiff crash his motorcycle in his rearview mirror. (Ex. B, p. 14:14.)

12. Deputy May then cancelled his response to the emergency call and turned around to offer assistance to Plaintiff. (Id. at p. 33:11.)

SUMMARY JUDGMENT STANDARD

Summary judgment is proper if there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(c); see also Hamblin v. City of Clearfield, 795 P.2d 1133, 1135 (Utah 1990); American Nat'l Fire Ins. Co. v. Farmers Ins. Exch., 927 P.2d 186 (Utah 1996).

"[A]n adverse party may not rest upon the mere allegations or denials of his pleading, but his response . . . must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Utah R. Civ. P. 56(e); see also Winter v. Northwest Pipeline Corp., 820 P.2d 916, 919 (Utah 1991) ("Allegations of a pleading or factual conclusion of an affidavit are insufficient to raise a genuine issue of fact.").

ARGUMENT

Utah courts use a three-part analysis to determine whether a governmental entity is entitled to immunity under the Act:

(1) Was the activity undertaken by the entity a governmental function and therefore immunized from suit under the general grant of immunity contained in Utah Code [section] 63-30-3? (2) If the activity undertaken was a governmental function, has another section of the Act waived that blanket immunity? (3) If immunity has been waived, does the Act contain an exception to that waiver resulting in a retention of immunity against the claim asserted?

Sandberg v. Lehman, Jensen & Donahue, L.C., 2003 UT App 272, P9, 76 P.3d 699 (quoting Keegan v. State, 896 P.2d 618, 619-20 (Utah 1995))

The Government Immunity Act gives the government immunity from suit for the actions of its agents. This blanket immunity from suit of each governmental entity is waived as to any injury proximately caused by a negligent act or omission of an employee committed in the scope of employment. Utah Code Ann. § 63-30d-301(4). However, there are exceptions in this waiver and immunity is not waived under Subsection (4) if:

(5) If the injury arises out of, in connection with, or results from:

. . . .

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

(s) the activities of:

(i) providing emergency medical assistance;

Utah Code Ann. § 63-30d-301(5)(r)-(s)(i)

POINT I. SECTION 63-30D-301(5)(R) OF THE UTAH CODE GUARANTEES GOVERNMENTAL IMMUNITY FOR NEGLIGENCE ARISING OUT OF A COUNTY EMPLOYEE’S USE OF AN EMERGENCY VEHICLE.

Even if Plaintiff’s allegations are true and Deputy May negligently passed him and caused him to crash, the county is immune from suit based on Section 63-30d-301(5)(r) of the Utah Code because Deputy May was operating his emergency vehicle in accordance with Section 41-6a-208 of the Utah Code.

Section 63-30d-301(5)(r) of the Utah Code grants an exception to the immunity waiver as long as Deputy May was driving in accordance with Section 41-6a-208. Section 41-6a-208 reads as follows:

Regulatory powers of local highway authorities -- Traffic-control device affecting state highway
-- Necessity of erecting traffic-control devices.

(1) The provisions of this chapter do not prevent a local highway authority for a highway under its jurisdiction and within the reasonable exercise of police power, from:

- (a) regulating or prohibiting stopping, standing, or parking;
- (b) regulating traffic by means of a peace officer or a traffic-control device;
- (c) regulating or prohibiting processions or assemblages on a highway;
- (d) designating particular highways or roadways for use by traffic moving in one direction under Section 41-6a-709;
- (e) establishing speed limits for vehicles in public parks, which supersede Section 41-6a-603 regarding speed limits;
- (f) designating any highway as a through highway or designating any intersection or junction of roadways as a stop or yield intersection or junction;
- (g) restricting the use of a highway under Section 72-7-408;
- (h) regulating the operation of a bicycle and requiring the registration and inspection of bicycles, including requiring a registration fee;
 - (i) regulating or prohibiting:
 - (i) certain turn movements of a vehicle; or
 - (ii) specified types of vehicles;
- (j) altering or establishing speed limits under Section 41-6a-603;
- (k) requiring written accident reports under Section 41-6a-403;
- (l) designating no-passing zones under Section 41-6a-708;
- (m) prohibiting or regulating the use of controlled-access highways by any class or kind of traffic under Section 41-6a-715;
- (n) prohibiting or regulating the use of heavily traveled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic;
- (o) establishing minimum speed limits under Subsection 41-6a-605(3);
- (p) prohibiting pedestrians from crossing a highway in a business district or any designated highway except in a crosswalk under Section 41-6a-1001;
- (q) restricting pedestrian crossings at unmarked crosswalks under Section 41-6a-1010;
- (r) regulating persons upon skates, coasters, sleds, skateboards, and other toy vehicles;
- (s) adopting and enforcing temporary or experimental ordinances as necessary to cover emergencies or special conditions;
- (t) prohibiting drivers of ambulances from exceeding maximum speed limits; or
- (u) adopting other traffic ordinances as specifically authorized by this chapter.

(2) A local highway authority may not:

(a) in accordance with Title 72, Chapter 3, Part 1, Highways in General, erect or maintain any official traffic-control device at any location which regulates the traffic on a highway not under the local highway authority's jurisdiction, unless written approval is obtained from the highway authority having jurisdiction over the highway; or

(b) prohibit or restrict the use of a cellular phone by the operator or passenger of a motor vehicle.

(3) An ordinance enacted under Subsection (1) (d), (e), (f), (g), (i), (j), (l), (m), (n), or (q) is not effective until official traffic-control devices giving notice of the local traffic ordinances are erected upon or at the entrances to the highway or part of it affected as is appropriate.

Utah Code Ann. § 41-6a-208.

Section 41-6a-208 clearly gives regulatory powers to local highway authorities, which includes the Duchesne County Sheriff's Department. Deputy May was operating his patrol vehicle on a highway in an emergency situation, with both his lights and his siren activated, as authorized by § 41-6a-208. A close application of § 41-6a-208 to the undisputed facts indicates that the deputy did nothing that is prohibited by § 41-6a-208. Indeed, the purpose of § 41-6a-208 is ensure that the provisions of the Code do not prevent a local highway authority for a highway under its jurisdiction and within the reasonable exercise of police power from responding to an emergency call. Deputy May was responding to an emergency call from dispatch to a area within his jurisdiction. As such, the Utah Code demands that Duchesne County be immune from Plaintiff's negligence suit arising from the actions of Deputy May as he was operating his vehicle en route to an emergency medical situation.

**POINT II. SECTION 63-30D-301(5)(S)(I) OF THE UTAH CODE ALSO
GUARANTEES GOVERNMENTAL IMMUNITY FOR
NEGLIGENCE ARISING OUT OF COUNTY EMPLOYEE'S
ACTIONS IN RENDERING EMERGENCY MEDICAL CARE.**

Even if it is somehow determined that Duchesne County is not immune from suit as to Deputy May's operation of his patrol car, the county is certainly immune for any activities of its employees providing emergency medical assistance under Section 63-30d-301(5)(s)(i) of the Utah Code.

Section 63-30d-301(5)(s)(i) of the Utah Code states that waiver of immunity for negligence of a government employee is not effective:

(5) If the injury arises out of, in connection with, or results from:

....

(s) the activities of:

....

(i) providing emergency medical assistance;

Utah Code Ann. § 63-30d-301(5)(s)(i)

There is no dispute that Deputy May was on his way to a emergency medical situation, as he was responding to offer assistance to a person having chest pains, he is a trained EMT and he was the only one with medical training who was responding to the emergency dispatch. Section 63-30d-301(s)(i) provides an exception to the waiver of immunity for negligence arising out of providing emergency medical assistance and Deputy May was in the process of providing emergency medical assistance when the accident occurred. Duchesne County is thus immune

from any possible negligence of Deputy May as he was responding to an emergency call to provide critical medical assistance.

CONCLUSION

Based on the foregoing points and authorities, Duchesne County is entitled to summary judgment in this matter and the Court should dismiss Plaintiff's complaint on the merits, as a matter of law and with prejudice.

Dated this 18th day of September, 2007.

STRONG & HANNI

Electronically signed by KAV on 9/18/07

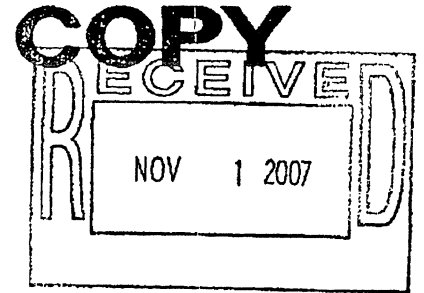
By _____
Kristin A. VanOrman
Jeremy G. Knight
Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of September, 2007, a true and correct copy of the foregoing document was served by mail, postage fully prepaid, upon the following:

Daniel F. Bertch
Bertch Robson
1996 East 6400 South, Suite 100
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Electronically signed by mas on 9/18/07



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Attorneys for Plaintiff

IN THE EIGHTH JUDICIAL DISTRICT COURT,
IN AND FOR DUCHESNE COUNTY, STATE OF UTAH

MICHAEL WILLDEN,
Plaintiff,

v.

DUCHESNE COUNTY AND MONTY
MAY,
Defendants.

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO SUMMARY
JUDGMENT**

Civil No. 050800022

Judge John R. Anderson

Plaintiff Willden submits the following points and authorities in opposition to the Motion for Summary Judgment filed by Defendants in this matter:

FACTS

Willden responds to the factual statement of Defendants (hereafter, "Duchesne County") as follows:

1. Admit.

2. Admit.
3. Admit.
4. Admit.
5. Admit.
6. Admit.
7. Admit.
8. Admit.
9. Admit.
10. Admit.
11. Admit.
12. Admit.

ARGUMENT

I

DEPUTY MAY HAD A DUTY TO DRIVE IN A REASONABLY PRUDENT MANNER DESPITE THE IMMUNITIES GRANTED BY U.C.A. §41-6- 14(2004) OF THE UTAH GOVERNMENTAL IMMUNITY ACT

Duchesne County's memorandum concedes, for purposes of the motion, that Deputy May negligently caused Willden's injuries. See Memo. p. 2. However, Duchesne County relies upon U.C.A. 63-30d-301(5)(2004)¹ of the Utah Governmental Immunity Act, asserting that May's

¹Duchesne County cites to the current version, while this writer cites to the version in effect at the time of the accident.

negligent conduct is immune. Duchesne County misreads Section 301(5). That immunity is granted to “the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6-14”. Section 41-6-14, in turn, grants certain immunities from violating applicable traffic laws, but “do not relieve the operator of an authorized emergency vehicle of the duty to act as a reasonably prudent emergency vehicle operator in like circumstances”. U.C.A. 41-6-14(5)(2004). Here, it is conceded for this motion that May was not driving in a reasonably prudent manner, passing a group of motorcyclists at a high rate of speed around a blind curve. The immunity of U.C.A. 63-30d-301(5)(2004) does not apply, because May was not in compliance with U.C.A. 41-6-14(5)(2004) requiring him to drive as a reasonably prudent emergency responder. Summary judgment should be denied as to the first ground advanced by Duchesne County.

II

DEPUTY MAY WAS NOT IMMUNE BECAUSE HE WAS NOT “PROVIDING EMERGENCY MEDICAL ASSISTANCE” AT THE TIME OF THE CRASH

Duchesne County over-reads the immunity for “providing emergency medical assistance”. U.C.A. §63-30d-301(5)(s)(i)(2004). Plainly, that provision would have covered Deputy May had he reached the person who needed medical attention, and had Deputy May provided that emergency care in a negligent fashion. Otherwise, any accident while driving, in an emergency situation, would be immunized. One might similarly argue that every automobile accident that a doctor or nurse was involved in while driving to the hospital would be subject to the Medical Malpractice Act. U.C.A. §78-14-1 et. seq (1976).

To read the “emergency medical assistance” immunity so broadly would intrude into the

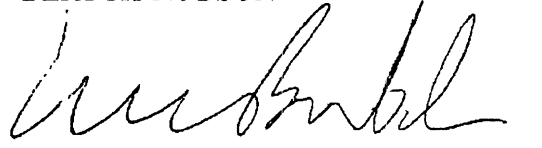
scope of the emergency vehicle driving statute. The driving statute being more specific, it would govern over the broad "emergency medical assistance" statute, which would cover all aspects of medical assistance, whether roadside or elsewhere.

CONCLUSION

Deputy May's immunities extend only so far as he was driving in a reasonably prudent manner. That question is obviously a disputed issue of fact for the jury. The motion for summary judgment should be denied.

DATED this 29th day of October, 2007.

BERTCH ROBSON



Daniel Bertch
Attorney for Plaintiff

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 29th day of October, 2007 I mailed a true and correct copy of the foregoing PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO SUMMARY JUDGMENT, first class mail, postage prepaid to:

Kristin A. VanOrman
STRONG AND HANNI
3 Triad Center, Suite 500
Salt Lake City, UT 84180

