

2008

# Michael Wilden v. Duchesne County : Brief of Appellant

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

MICHAEL WILDEN,

Plaintiff/Appellant,

v.

DUCHESNE COUNTY,

Defendant/Appellee.

CASE NO. 20080276-CA

**BRIEF OF APPELLANT**

Appeal from a Judgment of Eighth Judicial District Court  
of Duchesne County, State of Utah  
Honorable John R. Anderson

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CLERK OF COURT

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## **JURISDICTION**

The Utah Court of Appeals has jurisdiction in this matter pursuant to U.C.A. §78-2a-3(2)(j)(2001)(pour-over civil jurisdiction).

## **ISSUES ON APPEAL**

The following issue is presented on appeal:

Whether a driver of an emergency vehicle which has its lights activated and siren engaged, but is nonetheless driving negligently, is immune from suit? The standard of review is *de novo*. *Grappendorf v. Pleasant Grove City*, 173 P.3d 166; 2007 UT 84.

## **DETERMINATIVE STATUTES AND RULES**

The determinative statutes are:

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(2), (3) and (5)(2004):

- (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 sign, but only after slowing down as may be necessary for safe operation;
  - (c) exceed the maximum speed limit;
  - (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 the front of the vehicle.

- (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.

## **STATEMENT OF THE CASE**

### **1. Nature of the Case**

This is an appeal from a summary judgment by the Eighth District Court, J. John R. Anderson, in favor of Defendant/Appellee Duchesne County dismissing Plaintiff/Appellant Wilden's claims for personal injuries.

### **2. Course of Proceedings and Disposition in the Court Below**

Wilden sued Duchesne County for injuries he received when a Monte May, a Duchesne County Sheriff Deputy, tried to pass him on a blind curve, and suddenly returned into Wilden's lane, forcing him off the road, causing Wilden to crash his motorcycle. Duchesne County made a motion for summary judgment based upon two grounds: 1) the immunity for "emergency medical assistance", and 2) immunity for emergency vehicles. The trial court denied summary judgment as to the first ground, but granted it as to the second ground. This appeal followed.

### **3. Statement of Relevant Facts on Appeal**

On August 7, 2004, Wilden was driving eastbound on SR 35 on his Harley Davidson motorcycle. (R. 75, Statement of Undisputed Facts ¶1). Wilden was driving in a group of other motorcyclists at a safe and reasonable speed. (Id., ¶2). 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., ¶3). Deputy May had both his flashing lights and his siren displayed as he was driving eastbound on SR 35. (Id., ¶4). 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. (R. 75, 76, ¶5).

In addition to being a police officer, Deputy May is also a trained emergency medical technician (“EMT”). (R. 76, ¶6). Dispatch had also attempted to send other EMT’s 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., ¶7).

As Deputy May approached the pack of motorcycles that Wilden was driving in, he passed them on the left at a higher rate of speed. (Id., ¶8). As Deputy May passed Wilden, he had his flashing lights displayed and his siren was continually sounding. (Id., ¶9). As Deputy May passed him, Wilden slowed down, hit the soft shoulder and crashed his motorcycle. (Id., ¶10). Deputy May saw Wilden crash his motorcycle in his rearview mirror. (Id., ¶11). Deputy May then cancelled his response to the emergency call and turned around to offer assistance to Wilden. (Id., ¶12).

For purposes of summary judgment only, Duchesne County “stipulate[d] that Deputy May’s negligence caused Wilden’s injuries”. (R. 74).

### **SUMMARY OF ARGUMENT**

The Governmental Immunity Act of Utah (GIAU) grants immunity for drivers of emergency vehicles, provided that they comply with U.C.A. §41-6-14. Section 14 requires a number of things, two of which are most relevant here: 1) use of sirens and lights; and 2) that the driver “act as a



reasonably prudent emergency vehicle operator in like circumstances”. It was undisputed that Deputy May complied with 1). Duchesne County stipulated that he did not comply with 2). Therefore, immunity did not apply, and the matter should have been sent to a jury.

The trial court improperly decided that driving in compliance with U.C.A. §41-6-14 actually only meant compliance with §41-6-14(3), requiring use of sirens and lights, but not compliance with §41-6-14(5), which requires the driver of the emergency vehicle “to act as a reasonably prudent emergency vehicle operator in like circumstances”. Summary judgment should not have been granted.

## **ARGUMENT**

### **A.**

#### **THE GIAU REQUIRES COMPLIANCE WITH ALL OF SECTION 41-6-14**

It is fundamental that the first rule of statutory construction is to consider the “plain language” of the statute:

"Under our rules of statutory construction, we look first to the statute's plain language to determine its meaning." *State v. Gallegos*, 2007 UT 81, ¶ 12, 171 P.3d 426 (internal quotation marks omitted). "We presume that the legislature used each word advisedly and give effect to each term according to its ordinary and accepted meaning." *State v. Holm*, 2006 UT 31, ¶ 16, 137 P.3d 726.

*State v. Low*, 2008 UT 38, ¶23. See also *State v. Palmer*, 2008 UT App 206 (5/30/08)(majority and dissent disagree on the “plain meaning” of DUI statute); *Grappendorf v. Pleasant Grove City*, 173 P.3d at 169; 2007 UT 84 at ¶10; *Kouris v. Utah Highway Patrol*; 70 P.3d 72; 2003 UT 19, ¶12 (all provisions of 41-6-14 “to be read as a whole, and its provisions interpreted in harmony with other provisions in the same statute”).

The GIAU plainly states that immunity is waived if the emergency vehicle operator does not comply with “the requirements of Section 41-6-14”. The GIAU plainly does not say “41-6-14(3)”. It plainly does not say “41-6-14(4)” for vehicle pursuit cases. It plainly requires compliance with the entire section 41-6-14 of the Motor Vehicle Code. To judicially add “(3)” or “(4)” to the statute would be judicial legislating. See *Pacific States Cast Iron Pipe Co. v. Industrial Comm.*; 118 Utah 46; 218 P.2d 970 (1950)(court “powerless to re-write the statute”).

B.

**THE LEGISLATURE PLAINLY GRANTED IMMUNITY ONLY TO  
REASONABLY PRUDENT EMERGENCY VEHICLE OPERATORS**

The Legislature plainly granted immunity ONLY to reasonably prudent emergency vehicle operators. The Legislature also dictated the standard of care for these cases: the standard of a reasonably prudent emergency vehicle operator in like circumstances. The trial court somehow concluded that it was illogical for the Legislature to define immunity and the standard of care to be co-extensive. But it is completely logical for the Legislature to define the standard of care, and to incorporate that into the GIAU. This is apparent by looking at 41-6-14(4), which details the standards that an authorized emergency vehicle operator must follow to be immune while conducting a high-speed vehicle pursuit. The Legislature plainly defined the standard of care for all emergency vehicle response situations, in either 41-6-14(3), (4) and (5).

To adopt the reasoning of Duchesne County would result in an absurd result. To separate the standard of care from the immunity would result in alternative possibilities. For example, to adopt the position of Duchesne County in the case of a high-speed vehicle pursuit would lead to: 1) an

emergency vehicle operator in a high-speed chase which does not comply with 41-6-14(4), but is still immune by complying with 41-6-14(3), and 2) an emergency vehicle operator in a high-speed pursuit who does not comply with 41-6-14(3) but does otherwise comply with 41-6-14(4), and yet is not immune.

Finally, to separate the immunity and standard of care concepts would make the entire Legislative point of passing 41-6-14(4) and (5) superfluous. An emergency vehicle operator would be immune provided that either lights or siren were on, regardless of whether the operator complied with 41-6-14(4) or (5). If that were the Legislative intent, why pass 41-6-14(4) and (5) at all? Or, as a driver of an emergency vehicle, why comply at all?

Instead, to avoid these illogical results, the GIAU should be construed in a seamless, consistent fashion.

### C.

#### **PRIOR UTAH CASE LAW REQUIRES COMPLIANCE WITH 41-6-14(5)**

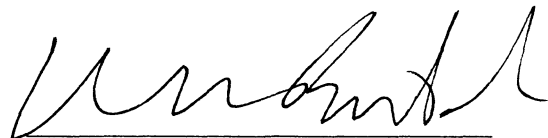
Prior Utah case law has uniformly assumed that the immunity for emergency vehicles applied only when they were operated in compliance with all subsections of 41-6-14. For example, in *Lyon v. Burton*, 5 P.3d 616; 2000 UT 19, the Utah Supreme Court conditioned immunity with compliance with 41-6-14(2). *Lyon* stated that “the operator of an authorized vehicle may . . . proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation . . . .” *Id.* § 41-6-14(2)(b) (1988). *Lyon* clearly understood that the emergency vehicle operator was only immune under §41-6-14 if he complied with subsection (2), not just subsection (3).

## CONCLUSION

Because Duchesne County stipulated that Deputy May did not comply with §41-6-14(5) for purposes of the motion, the trial court should have assumed he was not driving as a reasonable emergency vehicle operator in like circumstances. Therefore, the trial court should have concluded that he might not be immune, subject to the fact question of whether that was proven at trial. If a jury agrees that Deputy May was not driving as a reasonable emergency vehicle operator, this disqualifies him from the benefit of governmental immunity. Summary judgment should not have been granted.

DATED THIS 6th day of August, 2008.

BERTCH ROBSON

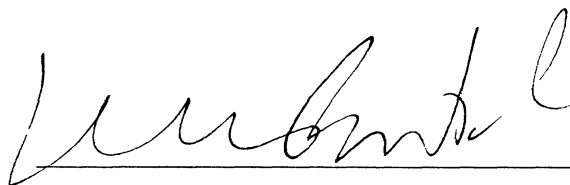
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Daniel F. Bertch  
Kevin K. Robson

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6 day of August, 2008, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, and by deposit in first class mail, postage prepaid to the following counsel of record:


Kristin A. VanOrman  
STRONG AND HANNI  
3 Triad Center, Suite 500  
Salt Lake City, UT 84180  
Attorney for Defendant/Appellee

A handwritten signature in black ink, appearing to read "Kristin A. VanOrman", is written over a horizontal line.

ADDENDUM  
A  
RULING AND ORDER

FILED  
DISTRICT COURT  
DUCHESNE COUNTY, UTAH

MAR 11 2008

JOANNE WICKEE, CLERK  
BY  DEPUTY

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

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Michael Willden,  Plaintiff,  vs.  Duchesne County,  Defendant.	RULING AND ORDER   Case No. 050800022  Judge JOHN R. ANDERSON
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This matter is before the court on the Defendant's Motion for Summary Judgment.

The Plaintiff's injury occurred while he was riding his motorcycle on state road 35 in Duchesne County. Deputy Monty May was responding to an emergency medical situation in the county when he approached the Plaintiff from behind in his patrol car. Deputy May had his siren and flashing lights on and was driving at a high rate of speed. The Plaintiff attempted to pull over and lost control of his motorcycle on the soft shoulder as Deputy May passed him. The Plaintiff wrecked his motorcycle and suffered injuries. The Plaintiff claims that Deputy May negligently approached and passed him which caused him to crash. The Defendant moved for summary judgment on the basis that governmental immunity applies.

"Summary judgment is appropriate only when no genuine issue of

material fact exists and the moving party is entitled to judgment as a matter of law." *Hill v. Allred*, 28 P.3d 1271 (Utah 2001); see also Utah R. Civ. P. 56(c). The court views the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party. *Kouris v. State of Utah*, 70 P.3d 72 (Utah 2003).

#### I. Governmental Immunity Analysis

In *Ledfors v. Emery County Sch. Dist.*, the court outlined the procedure for determining whether a governmental entity is immune from suit. 849 P.2d 1162, 1164 (Utah 1993). The first question is whether the governmental entity was performing a governmental function and immune from suit. *Id.* Next, if it was a governmental function, whether immunity was waived by another section of the Utah Governmental Immunity Act. *Id.* Finally, if the immunity was waived, whether there is an exception that results in retention of immunity. *Id.*

Here, both parties agree that the Defendant is a governmental entity performing a governmental function. Therefore, governmental immunity applies.

Next, governmental immunity is waived under Utah Code Ann. § 63-30d-301(4) (2004)<sup>1</sup> if the injury was caused by the negligence of a government employee acting within the scope of employment. The

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<sup>1</sup> All citations to the Utah Code Annotated refer to the 2004 edition.



Defendant stipulates for purposes of the motion for summary judgment that Deputy May's negligence caused the Plaintiff's injuries. Therefore, governmental immunity is waived unless there is an exception to the waiver.

## II. Exceptions (O) and (P) to the Waiver of Governmental Immunity

Utah Code Ann. § 63-30d-302(5) provides exceptions to the waiver of immunity if the injuries resulted from:

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

- (p) the activities of:

- (i) providing emergency medical assistance;

The Defendant argues that exceptions (o) and (p) apply here. The Defendant argues that exception (p) applies because Deputy May was driving to an emergency medical situation which is part of providing emergency medical assistance.

A statute that specifically deals with a particular issue prevails over a general statute that deals with the same issue. See *Madsen v. Brown*, 701 P.2d 1086, 1090 (Utah 1985).

Here, only exception (o) applies to the facts of this case. Exception (o) specifically deals with injuries caused while operating an emergency vehicle. Officer May was operating an emergency vehicle at the time of the accident. Exception (p) is more general and applies to the activities of providing emergency medical assistance. Exception (o) applies more specifically and it should govern.

Also, courts avoid interpreting a statute in a way that renders a portion of the statute meaningless. See *Schurtz v. BMW of N. Am., Inc.*, 814 P.2d 1108, 1112 (Utah 1991). Exception (o) requires that the emergency vehicle be driven in accordance with Section 41-6-14. Exception (p) does not impose the same requirement. If exception (p) applied when a person was driving an emergency vehicle, the requirement in exception (o) that it be driven in accordance with Section 41-6-14 would be meaningless.

Because exception (o) applies, the issue is whether Deputy May was operating his emergency vehicle in accordance with Section 41-6-14.

### III. Operating an Emergency Vehicle in Accordance with § 41-6-14

The Plaintiff argues that Deputy May was not driving in accordance with Section 41-6-14 because he violated Subsection (5) of that statute. Utah Code Ann. § 41-6-14(5) states:

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.

The Plaintiff argues that an emergency vehicle operator must drive in a reasonably prudent manner to be in accordance with Section 41-6-14. The Plaintiff argues that Deputy May was not driving in a reasonably prudent manner because he was negligent.

The Defendant argues that an emergency vehicle operator is in

accordance with Section 41-6-14 if the emergency lights and siren are activated. Also, the Defendant argues that the Plaintiff's interpretation that a driver must operate the vehicle in a reasonably prudent manner to be in accordance with § 41-6-14 is wrong. The Defendant argues that interpretation would lead to the absurd result that an officer is immune from negligence when operating an emergency vehicle, unless he was operating the vehicle negligently.

"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).

Reading Utah Code Ann. § 63-30d-301 and § 41-6-14 as the Plaintiff suggests would produce the absurd result that an officer is immune from negligence when operating an emergency vehicle, unless he was operating the vehicle negligently. This interpretation is to be avoided.

Utah Code Ann. § 41-6-14 grants operators of emergency vehicles certain privileges concerning the traffic laws. The privileges granted apply when the operator is responding to an emergency call. Utah Code Ann. § 41-6-14(1). Also, the privileges apply to the operator of an authorized emergency vehicle when the siren or emergency lights are used. Utah Code Ann. § 41-6-14(3)(a)-(b). The siren must be audible from a distance of not less than 500 feet. Utah

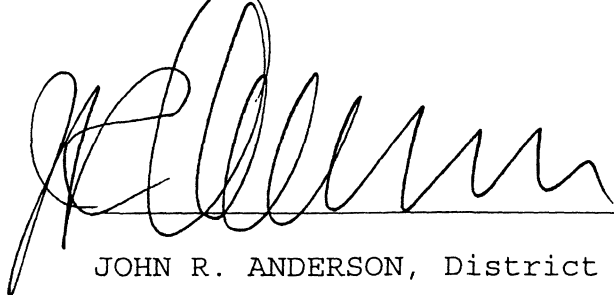
Code Ann. § 41-6-146.

Here, Deputy May was responding to an emergency call at the time of the accident. Deputy May was driving his patrol car which is an authorized emergency vehicle. Deputy May had both his siren and flashing lights on as he approached and passed the Plaintiff. Therefore, Deputy May was driving the vehicle in accordance with the requirements of Section 41-6-14. Consequently, Subsection (o) applies and governmental immunity is retained.

The Defendant's Motion for Summary Judgment is granted.

Dated this 10th day of March, 2008.

BY THE COURT:

A handwritten signature in black ink, appearing to read "John R. Anderson", is written over a horizontal line.

JOHN R. ANDERSON, District Court Judge

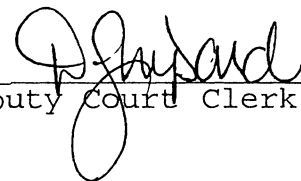
CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 050800022 by the method and on the date specified.

METHOD	NAME
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Dated this 11 day of March, 2008.

  
Deputy Court Clerk