

2001

Lois Crowder v. Salt Lake County & John Does I through X : Brief of Appellant

Utah Supreme Court

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BRIEF

PREME COURT

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Lois Crowder,

Plaintiff-Respondent,

vs.

Salt Lake County, a body
politic,

Defendant-Appellant,

and John Does I through X,

Defendants.

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

Case No. 14405

BRIEF OF
DEFENDANT-APPELLANT SALT LAKE COUNTY

Appeal from Order Entered by Bryant
H. Croft, Judge in the District Court
of Salt Lake County, State of Utah

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT
OF THE STATE OF UTAH

LOIS CROWDER,

Plaintiff and
Respondent,

vs.

SALT LAKE COUNTY, a
body politic,

Case No. 14405

Defendant and
Appellant,

and JOHN DOES I
through X,

Defendants.

BRIEF OF DEFENDANT-APPELLANT

NATURE OF THE CASE

This is an action for personal injury caused by
an automobile accident in Salt Lake County.

DISPOSITION IN THE LOWER COURT

Defendant filed a Motion to Dismiss on the
ground that Plaintiff failed to file notice of claim
within 90 days as required by the Utah Governmental

Immunity Act, Utah Code Ann. §63-30-13 (1967). Plaintiff filed an Amended Complaint, admitted that notice had not been timely filed, but alleged that the notice provisions of the Utah Governmental Immunity Act are unconstitutional as applied to counties.

The trial court denied the Motion to Dismiss and filed a Memorandum Decision declaring that the 90 day notice requirement violates equal protection of the laws and is unconstitutional.

RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of the trial court's Order denying its Motion to Dismiss.

STATEMENT OF FACTS

Plaintiff was injured when the automobile she was operating collided with a bridge abutment owned by Salt Lake County. The accident occurred October 28, 1974.

Plaintiff did not give written notice of her claim to Salt Lake County until April 3, 1975, 65 days beyond the 90 day notice period. Subsequently, Plaintiff

filed this action alleging that the county highway was negligently designed and lacked proper signs, markers, reflectors and lighting.

ARGUMENT

POINT I. DISTINCTIONS BETWEEN GOVERNMENTAL ENTITIES ARE RATIONALLY RELATED TO A LEGITIMATE GOVERNMENTAL OBJECTIVE.

Both the Utah Supreme Court and the United States Supreme Court have consistently held that legislation may discriminate between classes of individuals if the classification is reasonable and has some rational relation to a legitimate legislative objective. E.g., San Antonio Independent School v. Rodriguez, 411 U.S. 1, 40 (1973); Reed v. Reed, 404 U.S. 71, 75-76 (1971); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78-79 (1911); State v. Warwick, 11 Utah 2d 116, 355 P.2d 703 (1960); Wein v. Crockett, 115 Utah 301, 195 P.2d 222 (1948).

In recent years the courts have applied a two-tiered approach to analysis of equal protection claims. If the classification is based on a "suspect criterion",

or affects a "fundamental interest", the statute will be scrutinized closely and will not be upheld unless necessary for a "compelling state interest".

Suspect criteria include race, Loving v. Virginia, 388 U.S. 1, 9 (1967); alienage, Graham v. Richardson, 403 U.S. 365, 371-72 (1971); and national origin, Korematsu v. United States, 323 U.S. 214, 216 (1944).

Fundamental rights include the right to vote, Kramer v. Union Free School District No. 15, 395 U.S. 621, 626-27 (1969), the right to travel, Shapiro v. Thompson, 394 U.S. 618, 629-31 (1969), the right to procreate, Skinner v. Oklahoma, 316 U.S. 535, 541 (1942), and the right to marry, Boddie v. Connecticut, 401 U.S. 371 (1971).

Conversely, if the classification is not "suspect" and the right affected is not "fundamental", all doubts will be resolved in favor of the legislation and it will be upheld unless the classification is wholly irrelevant to the purpose of the statute. As the United States Supreme Court held in McGowan v. Maryland, 366 U.S. 420, 425-26 (1961):

Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. (emphasis added)

The Court should, therefore, look to the purposes of the notice statute. If any set of facts can be conceived which would justify a discrimination between different governmental entities, the statute should be upheld.

Generally, the notice provisions require that a claim be filed within a specified time. The time is one year for the state¹, and 90 days for other governmental

¹ Utah Code Ann. §63-30-12: A claim against the state or any agency thereof as defined herein shall be forever barred unless notice thereof is filed with the attorney general of the state of Utah and the agency concerned within one year after the cause of action arises.

entities², except that suits against a city for a defective, unsafe or dangerous condition of any highway, road, etc., can be filed within six months³.

After the claim is filed the entity has 90 days to allow or reject the claim. If the claim is rejected or the 90 day period expires, the individual may then bring suit within one year after the rejection or the end of the 90 day period.

² Utah Code Ann. §63-30-13: A claim against a political subdivision shall be forever barred unless notice thereof is filed within ninety days after the cause of action arises; . . .

³ Utah Code Ann. §10-7-77: Every claim against a city or incorporated town for damages or injury, alleged to have been caused by the defective, unsafe, dangerous or obstructed condition of any street, alley, crosswalk, sidewalk, culvert or bridge of such city or town, or from the negligence of the city or town authorities in respect to any such street, alley, crosswalk, sidewalk, culvert or bridge, shall within six months after the happening of such injury or damage be presented to the board of commissioners or city council of such city, or board of trustees of such town, . . .

There are numerous purposes for notice statutes.

Among them are the following:

1. A requirement of notice provides the governmental entity with the opportunity to settle meritorious claims before suit is instituted, thus avoiding needless litigation and legal expense.

2. A requirement of notice provides the governmental entity with an opportunity to investigate claims while the evidence is still fresh and thereby to avoid stale and fraudulent claims.

3. A requirement of notice allows the governmental entity to make prompt repairs of dangerous defects, thereby avoiding other injuries and resultant suits.

4. A requirement of notice facilitates budgeting and tax planning.

5. Notice requirements generally facilitate the orderly and expeditious administration of public business.

Some of these purposes were discussed by this Court in Gallegos v. Midvale City, 27 Utah 2d 27, 492 P.2d 1335 (1972), where the Court pointed out the problems in not requiring notice:

The unsatisfactory aspects of such a situation: Deprivation of the city of an opportunity to make a prompt investigation of the particular case, and if any defect is found to exist to remedy it; the possibility that changes may have occurred in the material circumstances; and the carry-over to subsequent city administrations of responsibility for accidents that may have previously occurred, are sufficiently obvious not to require further elaboration.

492 P.2d at 1335.

The need for each of these objectives may vary between governmental entities. Some of the differences between these entities may be classified as follows:

A. Geographical and Population Differences

The state's responsibility extends over a large geographical area and its affairs are administered through numerous rather complex agencies, involving thousands of employees. Although a rural county may extend over a large area, it may have a smaller population and fewer employees involved in the administration

of governmental affairs. A county, therefore, may reasonably require a shorter notice period since there may be no other way for the county personnel to promptly discover and correct defective conditions.

Although a city is geographically more compact than a county, it may have more miles of roadway to maintain, a more extensive water and sewer service, expanded welfare and health services, more numerous schools, etc., and, therefore, require more complex agencies to administer its duties to a larger population, than a large sparsely populated county whose governmental functions are less complex, in which case a shorter notice period would be reasonable.

B. Differences in Services

The services performed by different governmental entities vary greatly in nature and complexity. The state performs such services as employment security, industrial regulation, higher education, insurance regulation, National Guard, liquor control, Highway Patrol, fish and game regulation, and a host of other services not provided by any other governmental entity.

Because of the complexity of the state government a citizen may reasonably require a longer period to formulate and present a claim. A citizen of a small city can easily present a claim to the city when it has only a few employees and the city hall is in close proximaty to the citizen's home; conversely, if the citizen is injured by an agency of the state he may reasonably require a somewhat longer period to identify the involved agency and to present and process his grievance. Practical experience demonstrates that it necessarily requires considerably longer for the citizen to attempt an administrative solution to his problem where the state bureaucracy is involved than where a local governmental entity is concerned. The legislature undoubtedly took into account the fact that distances usually involved in dealing with the state governmental agencies generally prevent the personal and more expeditious handling of citizens' grievances.

C. Differences in Budgeting and Revenues

The budgeting problems of the state, the various

counties, and the cities and towns are wholly different. The state's broad tax base and annual budget sessions permit financial projections on an annual basis. Cities and counties have considerably more restricted sources of revenue and so their problems in projecting budgetary needs are different. The impact of a large claim or judgment upon the state as compared to a school district, a small city or rural county is different. The variation in notice requirements materially assists the various governmental entities to take into account the potential financial requirements to satisfy claims which have been timely filed.

D. Differences in Manpower

The state with its large manpower force is in a position to more easily avoid fraudulent claims through thorough investigation of claims than can the small city. The shorter claim period applicable to a city or county with more limited facilities is entirely appropriate and necessary to permit an earlier identification of the claims and investigation, which can be

done more economically and effectively than after a lapse of a longer period.

Similarly, the cost and impact of litigation is more significant to the school district or a small city which has no staff attorney, or the rural county where no attorney resides, than would the same litigation to the state which maintains the largest single staff of attorneys in Utah.

Although it would be impossible for the legislature to take into account every possible variation or difference between the numerous governmental entities within the state, those noted demonstrate the reasonableness of providing different notice periods for the general categories of governmental entities.

In fact, the legislature would have been justified in establishing further refinements in notice requirements as between different cities based on population, geographical area, and so forth. That the legislature did not choose to do so was its prerogative. The classification relating to the various notice requirements rests upon relevant considerations to achieve

legitimate state purposes. The United States Supreme Court stated in Williamson v. Lee Optical Co., 348 U.S. 483, 489 (1955):

The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think . . . Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. . . The legislature may select one phase of one field and apply a remedy there, neglecting the others . . . The prohibition of the Equal Protection Clause goes no further than the invidious discrimination. (citations omitted)

POINT II. THE LEGISLATURE MAY IMPOSE REASONABLE RESTRICTIONS IN WAIVING GOVERNMENTAL IMMUNITY.

The doctrine of sovereign immunity predates the founding of the State of Utah, and the founding of the United States. See e.g., Black v. Rempublicam, 1 Yeates 140 (Pa. 1792).

This doctrine is part of the common law and has been consistently followed by this Court. Holt v. Utah State Road Commission, 30 Utah 2d 4, 511 P.2d 1286 (1973); Hampton v. State, 21 Utah 2d 342, 445 P.2d

708 (1968); Springville Banking Co. v. Burton, 10 Utah 2d 100, 349 P.2d 157 (1960); Jopes v. Salt Lake County, 9 Utah 2d 297, 343 P.2d 728 (1959); State v. Tedesco, 4 Utah 2d 21, 286 P.2d 785 (1955); Hojorth v. Whittenburg, 121 Utah 324, 241 P.2d 907 (1952); Bingham v. Board of Education, 118 Utah 582, 223 P.2d 432 (1950); Campbell Building Co. v. State Road Commission, 95 Utah 242, 70 P.2d 857 (1937); State Road Commission v. Fourth District Court, 94 Utah 384, 78 P.2d 502 (1937); Wilkinson v. State, 42 Utah 483, 134 P. 626 (1913).

Although frequently called upon to do so, the Court forbore altering this doctrine because to do so is a legislative matter. As the Court held in Hojorth v. Whittenburg, 121 Utah 324, 241 P.2d 907, 909 (1953):

This phase of our law is well established and of long standing. If it is to be changed, that must come through the sovereign power of this commonwealth, the people, speaking through the Legislature.

In 1965 the legislature responded by enacting

the Utah Governmental Immunity Act, Utah Code Ann. §63-30-1, et seq. (1967).

This Act waives governmental immunity, subject to limitations in amount, §63-30-34; reservations as to types of actions, §§63-30-5 to 10; the procedural requirements of notice, §§63-30-11 to 15, and the filing of an undertaking, §63-30-19.

The plaintiff now wishes to take advantage of the waiver of immunity as provided in the Act, without complying with the procedural requirements of the Act. It is fair to assume that the legislature did not intend one to be operative without the other. This Court, in Gallegos v. Midvale City, 27 Utah 2d 27, 492 P.2d 1335 (1972), acknowledged the application of this concept in the following language:

The Doctrine of Sovereign Immunity which would ordinarily protect the City from such a suit was part of the common law and thus part of the body of law which was assimilated into the law of this jurisdiction at statehood. The allowance of a claim against the city for injuries which may be suffered because of the ". . .defective, unsafe, dangerous . . . condition of any street . . ." is a statutorily

created exception to the Doctrine of Sovereign Immunity. Inasmuch as the maintenance of such a cause of action derives from such statutory authority, a prerequisite thereto is meeting the conditions prescribed in the statute. A party seeking to obtain the benefit thereof should not be entitled to claim the favorable aspects which confer the rights, and disavow the conditions upon which the rights are predicated. (emphasis added)

27 Utah 2d 27, 492 P.2d 1335, 1337-38 (1972). See also, Brown v. Board of Trustees, 303 N.Y. 484, 104 N.E.2d 866 (1952); Brantley v. Dallas, 498 S.W.2d 452 (Tex. Cir. App. 1973), cert. denied, 415 U.S. 983 (1974).

POINT III. DIFFERING NOTICE REQUIREMENTS
BETWEEN GOVERNMENTAL ENTITIES
HAVE BEEN DECLARED CONSTITU-
TIONAL.

Defendant has been unable to find any reported case in which notice requirements were found unconstitutional because they differed as between governmental entities.

The only case which has ever treated the exact issue raised here is Bleamaster v. County of Los Angeles, 11 Cal. Rptr. 214 (Cal. App. 1961). There the Court held:

The distinction between a county and a city is a sufficient basis for a distinction in classification for the purpose of establishing a procedure for the enforcement of the right of a property owner to recover compensation for the taking or damaging of property for public use. Sections 29702 and 29704 of the Government Code apply equally to all persons who have claims against a county, and said sections apply equally to all counties. The sections are not within the prohibitions of the state Constitution or the federal Constitution upon the asserted basis that they apply only to claims against counties or upon the asserted basis that they do not apply to similar claims against cities.

In other contexts most states have held that distinctions between cities and counties, as well as distinctions between governmental entities based on population are reasonable. E.g., Lockwood v. State, 462 S.W.2d 465 (Ark. 1971); People v. Public Building Comm'n., 238 N.E.2d 390 (Ill. 1968); Dortch v. Luger, 266 N.E.2d 25 (Ind. 1971); Pinchback v. Stephens, 484 S.W.2d 327 (Ky. 1972).

It is true that three state courts, Michigan, Nevada, and Washington, have overturned notice statutes, but on an entirely different basis: that any discrimination between individuals injured by governmental tort-feasors

and those injured by private tort-feasors is constitutionally impermissible. Reich v. State Highway Dept., 386 Mich. 617, 194 N.W.2d 700 (1972); Turner v. Staggs, 510 P.2d 879 (Nev. 1973); Hunter v. North Mason High School, 539 P.2d 845 (Wash. 1975).

These three cases, however, share a common error. Each assumes that the purpose of their respective legislative schemes is to put governments on an equal footing with private tort-feasors. For example in Hunter the Washington Court said:

The state's waiver of tort immunity is unbridled by procedural conditions pertaining to the consent to be sued.

539 P.2d at 850.

And in Turner, the Nevada Court said:

The stated object of NRS 41.031 is to waive the immunity of governmental units and agencies from liability for injuries caused by their negligent conduct, thus putting them on an equal footing with private tort-feasors.

510 P.2d at 882.

In Reich, the Michigan court said:

[C]ontrary to the legislature's intention to place victims of negligent conduct on an equal footing, the notice requirement . . . bars the actions of victims of governmental negligence after only 60 days.

194 N.W.2d at 702.

The error of this analysis is obvious: If the legislature had intended to place governmental tortfeasors and private tort-feasors on an exactly equal basis, they would not have adopted the notice requirement in the first place.

The Idaho Supreme Court very recently considered this problem in Newlan v. State, 535 P.2d 1348 (Ida. 1975) and held:

We find the opinion in Reich to be highly conclusory without any consideration of the rationale for such notice statute, nor any real analysis of the equal protection problem. We are not persuaded by that authority.

We find Turner v. Staggs, 510 P.2d 879 (Nev. 1973) to be equally unpersuasive. . .

We believe the opinions of the Michigan and Nevada courts are contrary to the weight of authority. Most states have consistently rejected similar constitutional attacks.

535 P.2d at 1352.

Other cases upholding notice requirements are Artukovich v. Astendorf, 131 P.2d 831 (Cal. 1942); and Lunday v. Vogelmann, 213 N.W.2d 904 (Iowa 1973).

It should also be noted that if the analysis of the Reich, Hunter and Turner cases is adopted, then any discrimination between governmental and private tort-feasors is impermissible and the entire Governmental Immunity Act is invalid; the Court would have to overrule a long line of cases upholding governmental immunity; even a different statute of limitations or venue provision would be unconstitutional.

As this Court held in Wilcox v. Salt Lake City, 26 Utah 2d 78, 484 P.2d 1200 (1971):

[P]laintiffs . . . seem to say that . . . we should judicially abolish the doctrine altogether as being archaic and doing so judicially to legislate our Governmental Immunity Act out of existence. This last contention we are not inclined to espouse, in spite of a claimed trend in that direction, noted by plaintiffs' adversions to scholarly papers written by eminent educators, and the judicial pronouncements of some sister states.

POINT IV. THIS COURT HAS PREVIOUSLY UPHELD
THE APPLICABILITY OF EACH OF THE
NOTICE PROVISIONS.

The Constitutionality of the notice provisions of the Utah Governmental Immunity Act has been assumed by this Court as each of the provisions has been applied without question.

In Scarsborough v. Granite School District, 531 P.2d 480 (Utah 1975), the 90 day requirement was upheld as to school districts; in Varoz v. Sevey, 29 Utah 2d 158, 506 P.2d 435 (1973), the 90 day requirement was applied to a county.

In Roosendall Const. & Mining Corp. v. Holman, 28 Utah 2d 396, 503 P.2d 446 (1972), the one-year notice provision was applied.

In Gallegos v. Midvale City, 27 Utah 2d 27, 492 P.2d 1335 (1972), the 30 day notice provision was upheld against a challenge on equal protection grounds. Section 10-7-77 has since been amended so as to make the filing time six months rather than 30 days.

These statutes were explained and clarified in Parrish v. Layton City Corp., 542 P.2d 1086 (Utah 1975).

POINT V. THE COURT SHOULD NOT SUBSTITUTE ITS OWN JUDGMENT FOR THAT OF THE LEGISLATURE.

The trial judge's Memorandum Decision, without citation of a single authority, held that:

The differences between state, counties and cities are not, in my opinion, such as to require different periods for filing notice of claim. Their respective needs for investigating such claims and correcting defects do not differ.

Unfortunately, the trial judge's Opinion does not provide guidance as to which one, if any, of the time periods does apply. Rather, the judge says:

It is not for this Court to fix a time period within which such claims must be filed, as such is for legislative determination.

If only the difference in time periods is unconstitutional, why should the 90 day provision be struck down? If all governmental entities must use

the same notice period, how can this Court determine whether the period should be 90 days, six months, or one year?

It is respectfully suggested that only the legislature, who studied this problem carefully, is in a position to determine which time period applies, and they have already spoken in enacting the three separate periods. It should be noted that the trial court found the notice provisions unconstitutional without relying on any evidence or any case dealing directly with the subject. The trial court's ruling is one opinion to be weighed against that of the entire legislature of this state.

The Indiana Supreme Court said, in sustaining legislation that distinguished between cities and towns:

Legitimate reasons for a different treatment between cities and towns can often arise and it is not the function of this Court to ferret out the motive of the legislature in passing this legislation.

Crider v. State, 282 N.E.2d 819, 823 (Ind. 1972).

CONCLUSION

In waiving governmental immunity the legislature had the right to impose reasonable limitations and procedural restrictions. After careful study the legislature determined that three separate notice provisions should be used for different governmental entities. It is not the function of this Court to second-guess the legislature or to substitute its own judgment for that of the legislature. Rather this Court should enforce the legislation unless distinctions made are wholly irrelevant to the object of the legislation.

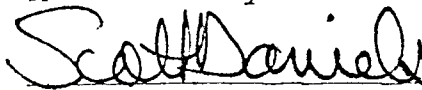
There are good and valid reasons why different governmental entities require a different time for notice. Consequently, the legislation should be upheld.

Respectfully submitted,

WORSLEY, SNOW & CHRISTENSEN



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CERTIFICATE OF SERVICE

I hereby certify that I served two copies of the foregoing Brief of Defendant-Appellant by mailing same, postage prepaid, respectively to Mr. Gerald G. Gundry, 610 East South Temple, Salt Lake City, Utah 84102, and Mr. Warren M. Weggeland, 560 South 300 East, Suite 100, Salt Lake City, Utah 84111, Attorneys for Plaintiff-Respondent, this ^{1st}~~2nd~~ day of March, 1976.

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