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Joann Tsakolas v. Ogden City, Cowles Mallory, John Sampson, Stephen Denkers, Lynn Cottrall : Brief of Respondent

Utah Supreme Court

ORIGINAL

IN THE SUPREME COURT OF THE

STATE OF UTAH

19656

JOANN TSAKOLAS,

Plaintiff and Appellant,

v.

OGDEN CITY, a body politic, COWLES MALLORY, Ogden City Manager; JOHN SAMPSON, STEPHEN DENKERS, and LYNN COTTRALL, Ogden City Civil Service Commissioners;

Defendant and Respondents

and

OGDEN CITY, a Municipal Corporation,

Third Party Plaintiff,

v.

STATE OF UTAH,

Third-Party Defendant

Case No. 19656

BRIEF OF RESPONDENTS JOHN SAMPSON, STEPHEN DENKERS, AND LYNN COTTRELL, OGDEN CITY CIVIL SERVICE COMMISSIONERS AND THE STATE OF UTAH

APPEAL FROM A JUDGMENT OF THE SECOND JUDICIAL DISTRICT, JUDGE OMER J. CALL, PRESIDING

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IN THE SUPREME COURT OF THE

STATE OF UTAH

JOANN TSAKOLAS, Plaintiff and Appellant, v. OGDEN CITY, a body politic, COWLES MALLORY, Ogden City Manager; JOHN SAMPSON, STEPHEN DENKERS, and LYNN COTTRALL, Ogden City Civil Service Commissioners; Defendant and Respondents and OGDEN CITY, a Municipal Corporation, Third Party Plaintiff, v. STATE OF UTAH, Third-Party Defendant	Case No. 19656

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from the judgment of Judge Omer J. Call allowing the Judges of the Third Circuit Court to direct that an employee not be allowed to return to the Court Clerk's Office to perform work there.

DISPOSITION IN THE LOWER COURT

The Court ruled that the ex parte order of the Judges of the Third Circuit Court directing Appellant to the personnel office and not allowing her to continue in her position where she had access to court records was proper and that the order of Cowles Mallory, the City Manager, as modified by the Ogden City Civil Service Commission, was proper.

RELIEF SOUGHT ON APPEAL

Respondents, Ogden City Civil Service Commissioners, and the State of Utah seek this court to sustain the decision of the lower court as well as ruling that Appellant did not become an employee of the State of Utah on July 1, 1983.

STATEMENT OF FACTS

Prior to March 21, 1983, the Appellant, JoAnn Tsakolas, served as lead clerk in the Third Circuit Court Clerk's Office in Ogden City (T. 19). The Appellant was a Range 15, Step 5 civil service employee (T. 148).

On February 28, 1983, the Appellant attended a meeting in the office of the Trial Court Executive, Margaret Satterthwaite (T. 22). While there, the Appellant received a letter containing several allegations of missing court records, which was signed by both Mrs. Satterthwaite and Mr. K. D. Miller, Director of Community Services (T. 22).

When questioned about the allegations, the Appellant stated that she <u>was</u> aware that "points" or tickets were withheld from the Driver's License Division (T. 23, 63).

Thereafter, however, the Appellant refused to cooperate any further either by telling what she knew, or by giving the names of others involved (T. 23, 24). This was the situation irrespective or the fact that the Appellant held a supervisory position (T. 20, Exhibit 3-P).

On March 4, 1983, the Acting City Manager, Jack Richards, suspended the Appellant pending an investigation and hearing before the City Manager (T. 25, Exhibit 2-P). The Appellant was again made aware of the allegations against her, including the fact that in Utah, destroying public records is a third degree felony (T. 39, Exhibit 2-P). A hearing was held before the Ogden City Manager, Cowles Mallory, on March 18, 1983 (T. 26). Evidence brought to light at the hearing was made known in Mr. Mallory's decision letter of March 21, 1983 (T. 27, Exhibit 3-P).

Included were the following:

1. A traffic citation received by Appellant in the fall of 1980 and indexed by the Court noted "bail forfeited", however, the Driver's License Division showed no report of conviction and the case is now missing from the court files.

2. In 1979, Appellant's sister received a traffic citation. The case was not reported to the Drivers License Division and is now missing from court files.

3. In 1980, Appellant's sister again received a traffic citation and bail was posted. However, the Driver's License Division has no record of conviction.

4. In 1981, Appellant's brother received a citation which was indexed and filed by the court. Now both the case and index card are missing from court files, and the Driver's License Division shows no record of conviction.

5. The appellant had received a citation and had asked the Disposition Clerk in the Circuit Court not to send the citation to the State, thereby keeping the citation off Appellant's record. The disposition Clerk did send in the citation, and the Appellant admits to having reprimanded the clerk for sending the ticket in. (Exhibit 3-P).

The City Manager determined that the Appellant had "been involved in failing to notify the Driver's License Division or traffic offenses thereby keeping "points" from being assessed against the violators as required by law." (Exhibit 3-P). These findings resulted in the Appellant receiving a fifteen day suspension without pay and a demotion which would be effective upon her return to work (Exhibit 3-P).

Upon receiving a copy of Mr. Mallory's decision, the Board or Judges of the Third Circuit met and reviewed the findings and its concerns relative to Appellant's returning to the Clerks office (T. 140-143). Thereafter, the Judges

unanimously issued an Ex Parte Order "In the Interest of: SECURITY OF COURT RECORDS" (T. 142, Exhibit 4-P).

The order was based on the Judges' belief that the "integrity of the (court) records had been . . . compromised", because of the Appellant's actions (T. 142, Exhibit 4-P).

The Judges based their authority for such an action on the statutory and implied powers of the court (T. 129) to oversee court personnel and records (T. 130). The Judges' actions were not intended to terminate the Appellant's employment (T. 131); they were meant only to safeguard court records.

The Order stated: ". . . upon her return to city employment . . . report to the personnel department of the City. Under no circumstances is she to be allowed to perform any function in the Circuit Clerk's Office." (Exhibit 4-P).

Mr. Mallory issued an amended order on April 7, 1983, reaffirming his decision of demotion and suspension but telling Appellant that she could not return to the Clerk's Office. Mr. Mallory, not the Judges, placed Appellant on unpaid, inactive status stating that she would remain in that status until she obtained other city employment, the Judges lifted their order or July 1, 1983 arrived (T. 42, Exhibit 5-P).

On April 7, 1983, the Appellant received a letter from the City Manager which effectuated the Judges' ex parte order. The letter stated that following the expiration of her

sick leave, compensatory and vacation time, the Appellant would be placed on unpaid inactive status; and such status would remain until other city employment was secured, or the Judges order was lifted (T. 42, Exhibit 5-P).

The Appellant appealed to the Ogden City Civil Service Commission. In an order dated May 25, 1983, the Ogden Civil Service Commission, sustain two separate actions: (1) The Judges Order which directed that Appellant could not return to work in the Clerk's Office, and (2) the decision of the city manager except that part of the decision which appeared to transfer Appellant to the State of Utah come July 1, 1983, which was overturned with Appellant retaining City employee status (T-45, Exhibit 6-P).

Appellant appealed to the Second District Court for the State of Utah, and after trial, the Court ruled against Appellant's position.

ARGUMENT

POINT ONE

THE ACTION OF THE JUDGES OF THE THIRD CIRCUIT WAS APPROPRIATE IN LAW AND WAS NOT THE CAUSE OF APPELLANT'S CURRENT CONDITION

Appellant desires this Court to believe that somehow the action of the Third Circuit Judges caused the current condition of her with Ogden City. In fact, Appellant admits that the relationship is at most tenuous and attempts in a feeble way to put the blame on the Judges. In her Brief on

page nine, she states: "Despite several attempts by Appellant for other city employment, she had been effectively fired." (Emphasis added).

There is no question that the action taken by the Judges set in motion a series of events that places Appellant where she is now, but the record is devoid of any evidence that the Judges either intended, attempted or succeeded in terminating her from city employment.

On the contrary, the record speaks clearly to the fact that no attempt was made to do what Appellant claims was a result of the Judges' Order. Judge Stanton M. Taylor, in testimony, acknowledged that the Judges had no such authority. He said:

> JoAnn was a City employee and we are not saying, hey, you have got to fire her. That's obviously not within our perogative. What we were saying is we don't want her back in our Clerk's Office.

The Ex Parte Order (Exhibit 4-P) also sets forth clearly that the Judges were directing the City to place her in a position outside of the clerk's office. The Order reads:

> YOU ARE HEREBY SPECIFICALLY ORDERED AND DIRECTED by the Court to inform Ms. JoAnn Tsakolas, upon her return to city employment as she was instructed to do by the city manager in his missive dated March 21, 1983, to report to the personnel department of the City. (Emphasis added)

The order points out a couple of major items: First, the Judges acknowledged that she was returning to "city

employment"; second, the personnel department was to work out the details of placing her in a different position from the clerks office; third, she should in essence be assigned away from the clerks office.

In viewing each of these areas, it is clear that the Judges were acting appropriately under authority given to them by both statutory and inherent power.

Utah Code Annotated § 78-7-5 describes the powers of every court established in the State of Utah. This statute empowers the courts to control the conduct of their ministerial officers and all persons connected with any judicial proceeding. In part, it reads:

> Every court has power . . . (5) to control in furtherance of justice the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it in every matter pertaining thereto. UCA § 78-7-5.

As an employee in the Third Circuit Court Clerk's Office, the Appellant qualified under this statute as a person in any matter connected with a judicial proceeding. Hence, this statute applied directly to the ability of the Judiciary to control the presence or involvement of plaintiff in matters pertaining to any judicial proceeding.

Appellant's access to Court records which directly led to the circumstances here presented is clearly under the jurisdiction of the Court.

Additionally, Utah Code Annotated § 78-7-6 allows "[e]very court of record may make rules, not inconsistent with law, for its own government and the government of its officers . . . ." Respondent Commissioners and the State of Utah would respectfully submit that the protection of court records by the court itself is or such fundamental importance that to not take action as done in this case would be violative of the most basic trust and ethics of the Judiciary.

The Order as referred to previously is not a termination order, but an order "In the Interest of: SECURITY OF COURT RECORDS." The protection of records was paramount, fundamental and the sole basis of the Order (T-131). The court may issue orders encompassing who, when, and where, etc., records may be accessed. To not have such authority would play havoc with the ability of the courts to control and protect records and judicially sensitive areas.

The Utah Supreme Court has held that it is "fundmental that the court may supervise its officers." Callister v. Callister, 393 P.2d 477 (Utah 1964). In this case, the Supreme Court determined that a probate judge must be allowed the discretion of supervising his officers in order that the court be able to enjoy the public confidence. The court further determined that the executrix of an estate is an officer of the court.

This case illustrates two important points. First, where the public confidence in a court is threatened by the actions of any officer of the court, the court can and must supervise the conduct of that officer. Second, if the executrix of an estate is considered an officer of the court, then surely someone employed in the Court Clerk's Office is considered an officer of the court.

Under this Utah Supreme Court standard, then, Judge Taylor was acting within his authority in prohibiting the plaintiff's working in the Clerk's Office because of the greater interest of preserving the public confidence in the court.

The City Manager's initial decision maintained intact "city employment". The Judges' Order recognized that position and acknowledged "city employment", just not to be in the Clerk's Office. As Judge Taylor testified:

> Q. [Mr. Schwendiman] Were you attempting to terminate her from employment?
>
> A. No. I don't think we had the power to terminate her from her employment. I think the only thing we had power to say was, you can't come into our office" (T-131).

That was totally appropriate as the Judges acted in issuing their order from the Findings of Cowles Mallory. How the Judges desired their decision to affect the court records was discretionary with the Judges, not Mr. Mallory.

The Indiana Supreme Court also held in Knox County Council v. State ex. rel McCormick, 217 Ind. 493, 29 N.E.2d 405 (1940) that:

> The Constitution of this state vests the judicial power in the courts. The judicial is an independent and equal coordinate branch of the government. Courts were established for the purpose of administering justice judicially, and it has been said that their powers are coequal with their duties. In other words, they have inherent power to do everything that is necessary to carry out the purpose of their creation. . . . A court of general jurisdiction, whether named in the Constitution or established in pursuance of the provisions of the Constitution, cannot be directed, controlled, or impeded in its functions by any of the other departments of the government. (Emphasis added)

See also Drew v. County Attorney, Tulsa County, 394 P.2d 246, (Okla. 1964) (quoting Inverarity v. Zumwalt, 97 Okla. Cir. 294, 262 P.2d 725 (1953)).

The existence of a City Civil Service System "cannot interfere with the ultimate power of the judiciary to administer its own affairs." Zylstra v. Pia, 85 Wash. 2d 743, 539 P.2d 823, 827 (1975).

The appellant had duties which were an integral part of the judicial function. A clerk's duties involve the performance or a "public trust" which in the present case the Appellant has violated. The court, therefore, cannot "relinquish either its power or its obligation to keep its own house in order." Id., at 826.

The court in In re Opinion of the Justices, 14 N.E. 2d 465 (Mass. 1938), discussed the nature of the relationship between the court and the clerk.

> This power of removal is judicial in the sense that it is incidental to the performance or the judicial functions of the court . . . . As to these officers, [court clerks] removal may be made as an administrative act without judicial process or without explicit requirement for hearing. The validity of such removal rests upon the intimate relationship between the duties of these officers and the performance of service essential to the courts . . . . Officers who perform work in connection with the courts may be removed as an incident of the judicial function.

Finally, the Nevada Supreme Court held the same way in a fact setting somewhat similar to the case at bar. In City of North Las Vegas v. Daines, 550 P.2d 399, a municipal court relieved the plaintiff of her duties as municipal court administrator. The Nevada Supreme Court held that the municipal judge acted within his inherent authority in relieving the municipal court administrator of her duties in the absence or evidence establishing an arbitrary or capricious exercise of that power. Id., at 401. The rationale of the court was that "the judiciary, as a co-equal branch of government, has the inherent power to protect itself and to administer its affairs." Id., at 400.

Though several or the above cited cases involve individuals without any "civil service" protections, it should be pointed out that in the present situation, the judges only

restricted appellants access to one segment of city employment. The Court's Order did not in any way terminate Appellant's employment rights with the city - only that she was not to go back to the clerks orfice. This decision was based on findings already entered by the City Manager. The court had authority both statutorily and inherently to act as it did.

If Appellant has any claim in this matter at all, it is in relation to the decision of Mr. Cowles Mallory in placing her on inactive status instead of placing her in another position. Appellant has not appealed the decision of Mr. Mallory which is what placed her in her present condition.

Mr. Mallory himself admits that he had authority to place her in another area of city government and comply both with the intent of the original order of retaining her city employment and the Judges order saying she should not work in the clerk's orfice. On cross examination by Mr. Schwendiman, the following dialogue took place:

> Q. Well, I mean prior to placing her on this Civil Service list. As a City employee who you put on inactive status, did you make any attempt to say, all right, here is an opening in this area. You are being placed in this position?
>
> A. Well, I don't run the City administration that way in placing employees (T. 96).
>
> * * *
>
> Q. (By Mr. Schwendiman) I believe the last question was you did not make an attempt to transrer her after you learned that the

Judges weren't going to issue some kind of mass order; is that correct?

A. Yes, sir.

Q. You did not remove her from inactive status and place her in another position on active; is that correct?

A. That's correct, but I just simply don't run the Personnel system of the City to the point where we place employees without the consent of the department (T-97).

Mr. Mallory's admission confirms that it is not against the Civil Service System to place her, he just chose not to do so. That is not the fault of the Judges or the order issued by them. This was purely a decision made by him without the knowledge of the Judges. Judge Taylor testified that the Judges were not involved in any of Mr. Mallory's decisions and only after the fact did they receive a copy of a letter placing her on inactive status (T-134).

The above certainly vindicates the Judges of any improper action. Mr. Mallory chose not to place her somewhere else. This decision is the sole basis of any claim to city employment she might have. This decision of Mr. Mallory has not been appealed, and is not before the court. However, Appellant confused the actual bifurcation of the process and cannot hold the Judges responsible for her present condition.

POINT TWO

THE ORDER ISSUED BY THE THIRD CIRCUIT JUDGES DID NOT DENY DUE PROCESS TO APPELLANT AND DID NOT VIOLATE HER CIVIL SERVICE RIGHTS

Without undue repetition, Mr. Mallory's action and not the action of the Judges is the catalyst to the problems presently before this Court. The express intent of the Judges' Order as verified by the evidence presented at trial was to have Ms. Tsakalos transferred to a different Department of City Government and did not constitute termination. Mr. Mallory's own decision and not that of the Judges placed Appellant on inactive status.

The District Court for the District of Columbia was involved in an actual termination case wherein some of the current issues were discussed. In Hadigen v. Board of Governors, Federal Reserve System, 463 F.Supp. 437 (D.C. 1978), the Court said:

> There is no requirement that an agency provide an employee with the procedural rights triggered by an adverse action merely because it changes his work assignment or restricts his use of equipment. Such a change or restriction is not a removal . . . ." (Emphasis added.)

Appellant argues that the Judges' Order was a removal. Not so. It was a directive for reassignment to a different area of city government. This is not a denial of due process, for if an employee is transferred or changed between jobs at the same salary and benefits, etc., that is totally allowed by civil service rules as well as the right of management. Appellant has presented no evidence that such a transfer is unconstitutional or that due process is denied through transfer. This is likewise sustained in Hadigen.

The failure of Cowles Mallory to effectuate a transfer as he admitted he did not attempt to do (T. 95-6) is the only issue that can possibly be challenged and that issue has not been appealed.

The demotion and suspension of the Appellant is a separate issue, separate and apart from the present claims. This also was not appealed. Any claim for a denial of due process has been directed to the wrong party.

The record is replete with substantiation that Appellant received due process in her hearing before the Ogden City Manager. Appellant was notified of the charges, was granted a hearing where evidence was taken and where she was represented by counsel, a decision rendered which listed findings or fact and conclusions. She appealed both to the City Civil Service Commission and ultimately the District Court all of which sustained the findings.

The Judges issued their order based on the findings and conclusions of Mr. Mallory. In fact, Appellant admitted to many of the serious allegations, all of which happened when she was a supervisor. Her major contention before the Commission and the District Court was not that she was innocent of serious charges (for she freely admitted involvement) but was the perceived disparity in treatment between herself and other employees.

Because of the unique nature of the court's authority to protect its records as was discussed in Point I, above, the Court had every right to issue the order to protect its records based on its interpretation of findings of Mr. Mallory. The Court was adding no further punishment and was not disciplining Appellant. It was solely ordering that the city transfer her away from the Clerk's Office for the protection of the Court's records.

Appellant has not established that the court could not do what it did. In fact, that portion of the Civil Service Rules and Regulations cited by Appellant help establish that there was nothing out of the ordinary as to this directive by the court except that Mr. Mallory chose not to transfer her.

The rule cited by Appellant does not prohibit transfer or reassignment to other equivalent classes or levels. There has been no showing or evidence presented either by the Appellant or the city that this was an impossibility. In fact, Appellant testified that she had been interviewed several times for openings (T. 44). Her not being placed in one of those openings is a matter of contention between her and the city and has no bearing on the order issued by the Judges.

The only authority Appellant cites this Court in support or its broad assertions is Gabe v. County of Clark, 701 F.2d 102 (9th Cir., 1983). Gabe is not applicable in this situation because it stands for that which has already

been complied with -- at least as it relates to the Order of the Judges. Gabe stands for the proposition that the status of an employee's position cannot be changed without giving the employee adequate notice of the change.

In the present case, the plaintiff received the required notice, as well as, a hearing before the City Manager. The Appellant was not denied due process to which she was entitled. See, e.g. Webb v. Dillon, 593 F.2d 656 (5th Cir. 1979). The Appellant, however, received more than minimum protection.

The Order of the Judges did not change "status." The demotion and suspension already were based on the due process she had received. That was the "status" change. The order only mandated that reassignment consistent with the decision of Mr. Mallory be effectuated. Transfer, as already discussed in relation to Hadigen, supra, was totally appropriate.

In Gabe the plaintiff was an employee in the Clark County Clerk's Office from June 1971 to September 1976. In September of 1976 Ms. Gabe was transferred to the Eighth Judicial District as a legal secretary for Judge Keith Hayes. New personnel rules were adopted in April 1978 stating that the judges' secretary served at the pleasure of the judges and were not entitled to "the normal termination procedures of notice and hearing accorded regular County employees." Ms. Gabe had

no notice or the rule and upon her discharge was given neither written notice nor a hearing.

The facts of Gabe are completely inappropriate to the present case. The Appellant was never treated as an "at will" employee by the judges; their ex parte order restricted Appellant's access to court records, but did not terminate her. In fact, the language of the order states "upon her return to employment" she be reassigned. Such is not the language one uses to terminate someone as claimed by Appellant.

The results of the ex parte order are the doing of Ogden City and not the Board of Judges. If there was a denial of due process or a violation of Civil Service Rules, it was not through the actions of the Judges, but through the actions of Mr. Mallory. This has not been appealed. In fact, Exhibit 6-P, the Order of the Ogden City Civil Service Commission expressly states that the Ogden City Manager's actions were in compliance with its Rules wherein it says: "IT IS ORDERED that the Order of the Ogden City Manager dated April 7, 1983, is sustained except . . ." The District Court also sustained that Order of the Commission and Mr. Mallory. This was handled as a separate item by the Commission who separately sustained the right of the Judges to not allow her to go back to the clerk's office.

It appears that what Appellant is trying to do is appeal the Decision of the City Manager dated April 7, 1983,

under the guise of there being a violation by the Judges. The two are separate and distinct. This attempt to "bandaid" causes of action to somehow "stick" them together is inappropriate. In light of such serious findings of fact by the City Manager, a mere demotion would not protect the records. The Appellant would still have access to the records and, therefore, a continuing opportunity to breach her fiduciary duty. The Judge's order was designed to deny such access to the Appellant, but not designed to terminate the Appellant's job. Therefore, Gabe as supporting authority, misses the mark.

There was no denial of due process on the part of the Judges in issuing their order and there was no denial of Appellant's civil service rights by the Judges or their order.

POINT THREE

APPELLANT DID NOT BECOME A STATE EMPLOYEE AS OF JULY 1, 1983. THE ORDER OF THE OGDEN CITY CIVIL SERVICE COMMISSION TO THAT EFFECT WAS CORRECT.

Ogden City, as a third party plaintiff, alleges that the Appellant should be considered a state employee as of July 1, 1983, because of Utah Code Ann. 78-4-21(2). However, such a result would be an injustice and would be inconsistent with the true interpretation and meaning of 78-4-21(2).

Statute 78-4-21(2) reads in pertinent part as follows:

> As of July 1, 1983, circuit court support staff and clerical personnel in primary circuit court locations as certified by the state court

> administrator shall be employees of the State of Utah. Persons employed as circuit court support staff and clerical personnel as of January 1, 1983, shall automatically be designated employees of the State of Utah.

It has long been the policy of the courts to refrain from the use of statutory construction when the language used in a disputed statute is clear and unambiguous. This principle was emphasized in the case of State v. Archuletta, 526 P.2d 911 (Utah 1974) where the court stated:

> The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction. [citing United States v. Wiltberger, 5 Wheat. 76, 95; 5 L.Ed. 37; (1920) (at 912)]

The wording of Utah Code Annotated § 78-4-21(2) appears clear and unambiguous at first glance. Applying this statute as it reads on its face (as urged by the City), the Appellant should be deemed a state employee as of July 1, 1983, because she was employed among the clerical personnel in a primary circuit court location as of January 1, 1983. Thus, the city contends she should automatically become a state employee as of July 1, 1983.

However, applying this same reading of this supposedly clear and unambiguous statute, any person who was employed as clerical personnel as of January 1, 1983, who subsequently retired in the interim between January 1, and July 1, would also be deemed a state employee as of July 1, 1983. The same situation would apply to anyone so employed who was

subsequently terminated from his or her position or transferred to a different agency in city government. And if these examples are not adequate illustration of the potential absurdities resulting from application of the "clear" meaning of the statute, it is also true, according to the words of the statute on its face, that any person so employed as of January 1, 1983, who subsequently died between January 1 and July 1, would nevertheless be automatically deemed a state employee as of July 1, 1983 even though that person may now be dead.

It is ridiculous to believe the legislature intended that retired, transferred, fired or expired people automatically become state employees. A statute subject to interpretation is presumed not to have been intended to produce absurd consequences, but to have the most reasonable operation that its language permits. Uphoff v. Industrial Board, 217 Ill. 312, 111 N.E. 128. If possible, doubtful provisions should be given a reasonable, rational, and sensible construction. Alexander v. Cosden Pipe Line Co., 290 U.S. 484. In the case of Hernandez v. Frothmiller, 204 P.2d 854 68 Ariz. 242 (1949), the Arizona Supreme Court said:

> We recognize the rule that, when giving the literal meaning to language of a statute results in an absurdity or impossibility, courts will under some circumstances alter, modify, or supply words in order to give effect to the plain intention of the lawmaker.

Since absurd results will occur through applications of the Utah statute as it reads on its face, it is appropriate for the court in this case to search for the true intent of the legislature. In seeking the true meaning of the statute, one must "assume that every statute contains a logical and complete legislative scheme . . . It is this legislative scheme that should be regarded as the purpose, object, intent, spirit, of the act." 4 Sutherland Statutory Construction 26. The logical meaning of the statute is that the legislature intended that those who were employed as support staff or clerical personnel in primary circuit locations as of January 1, 1983, should automatically become state employees as of July 1, 1983 -- provided however, that they continued in their employment through June 30, 1983.

This likely meaning is supported by language found within the same statute. U.C.A. 78-4-21(2) goes on to say that "compensation for circuit court personnel employed as municipal employees prior to July 1, 1983, and who become state employees after July 1, 1983, shall not be less than the compensation received as municipal employees prior to January 1, 1983. Circuit court personnel employed as municipal employees prior to July 1, 1983, shall become state employees without loss of tenure or other benefits . . . ." This passage evidences the intent of the legislature that the provisions of the statute apply to those who are employed prior to July 1, or in other words, up to and through June 30, 1983.

As was argued before in this Brief, the status of whether Mr. Mallory was correct in his decision to place Appellant on inactive status has really not been appealed. The Ogden City Civil Service Commission in essence ruled that Appellant maintain "city" employee status, but not "court clerk" status. There are many Ogden City employees who did not become state employees on July 1, 1983. Appellant is no different from these. Though she was employed in the Clerks office on January 1. 1983, she was not working there on June 30, 1983 and, and had not been working there since March, 1983.

The Civil Service Commission acknowledged in its Order that she maintain city status. This is wholly consistent with the statutory language cited above, as well as the actualities of what happened.

CONCLUSION

Appellant has appealed issues that have no ripeness to be before this Court. The action taken by the Judges did not violate Appellant's rights but merely mandated a change in assignment. The proper party has not been named or "appealed" for what Appellant seeks in relief.

Judges of the Third Circuit, as do other judges, have not only the right, but the duty to oversee the court records. The action of the Board of Judges was pursuant to both that

right and duty. There was no violation of the Appellant's rights. The judges restricted the Appellant's access to court records they did not terminate her.

All the process due the Appellant she received. It would be inequitable to allow the Appellant to rely on civil service rules to retain a position of trust which she blantantly and repeatedly violated.

The decision of the District Court as it relates to the Order of the District Court should be affirmed in its entirety.

Appellant did not become a state employee on July 1, 1983. The City's limited argument is not convincing or correct.

DATED this 26th day of March, 1984.

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I hereby certify I mailed a true and exact copy of the foregoing Brief of Respondents, first-class, postage prepaid to:

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DATED this 26th day of March, 1984.