

2001

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

Utah Supreme Court

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Timothy Blackburn; Ogden City Attorney's Office; David L. Wilkinson; Stephen G. Schwendiman; Attorneys for Respondents.

Brian R. Florence; Florence & Hutchinson; Attorney for Appellant.

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

19656

JO ANN TSAKALOS,  
Plaintiff and Appellant,

vs.

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

Case No. 19656

and

OGDEN CITY, a Municipal Corporation  
Third-Party Plaintiff,

vs.

STATE OF UTAH,  
Third-Party Defendant.

---

BRIEF OF RESPONDENT, OGDEN CITY

---

APPEAL FROM A FINAL JUDGMENT OF THE SECOND JUDICIAL  
DISTRICT COURT, HONORABLE OMER J. CALL PRESIDING

OGDEN CITY CORPORATION  
TIMOTHY W. BLACKBURN  
2549 Washington Boulevard  
Ogden, UT 84401  
Attorney for Respondents Ogden City  
and Mallory

UTAH STATE ATTORNEY GENERAL  
DAVID L. WILKINSON  
STEPHEN G. SCHWENDIMAN  
Room 124, State Capitol  
SALT LAKE CITY, UT 84114  
Attorney for Respondents Civil Service  
Commissioners and State of Utah

FLORENCE AND HUTCHISON  
BRIAN R. FLORENCE  
818-26th Street  
Ogden, UT 84401  
Attorney for Appellant

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MAR 23 1984

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OGDEN CITY CORPORATION  
TIMOTHY W. BLACKBURN  
2549 Washington Boulevard  
Ogden, UT 84401  
Attorney for Respondents Ogden City  
and Mallory

UTAH STATE ATTORNEY GENERAL  
DAVID L. WILKINSON  
STEPHEN G. SCHWENDIMAN  
Room 124, State Capitol  
SALT LAKE CITY, UT 84114  
Attorney for Respondents Civil Service  
Commissioners and State of Utah

FLORENCE AND HUTCHISON  
BRIAN R. FLORENCE  
818-26th Street  
Ogden, UT 84401  
Attorney for Appellant

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BRIEF OF RESPONDENT, OGDEN CITY

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STATEMENT OF THE KIND OF CASE

Ogden City cross-appeals from the Honorable Omer J. Call's order whereby he declined to rule whether appellant became an employee of the State of Utah on July 1, 1983.

DISPOSITION IN LOWER COURT

The trial court held that the Civil Service Commission's decisions in sustaining the city manager's order and the order of the Circuit Court Judges was not arbitrary or capricious and upheld those orders.

RELIEF SOUGHT ON APPEAL

Ogden City requests this Court to rule that appellant became an employee

of the State of Utah on July 1, 1983, and the City further requests that this Court uphold the decision of the District Court Judge whereby he upheld the Ogden City Manager's order and the Circuit Court Judges' order holding that said orders were not arbitrary or capricious.

#### STATEMENT OF FACTS

The respondent agrees with the facts as stated in appellant's brief.

#### ARGUMENT

##### POINT I

THE CITY MANAGER'S ORDER DEMOTING APPELLANT FROM LEAD CLERK, RANGE 15, STEP 4, TO A SENIOR CLERK, RANGE 9, STEP 7, WAS NOT ARBITRARY OR CAPRICIOUS AND WAS BASED ON DUE PROCESS.

The City Manager gave the appellant notice, she appeared at her hearing and, pursuant to that hearing the City Manager found that the appellant had been involved in failing to notify the Driver's License Division of traffic offenses, thereby keeping "points" from being assessed against the violation as required by law. He also found that she failed to cooperate with the City's investigation to the extent expected by a supervisory employee.

The City Manager's findings were supported by the evidence at the hearing. The appellant admitted that she ask a subordinate not to send one of her abstracts to the State Driver's License Division, thus keeping points off her record. She was also aware that this activity of "keeping points" off driving records had been going on and appellant, as a supervisor, had not done anything to stop it.

The hearing conducted by the City Manager afforded appellant due process of law, and the manager's decision was based upon admitted facts and was not arbitrary or capricious.

POINT II

THE APPELLANT BECAME AN EMPLOYEE OF THE STATE OF UTAH ON JULY 1, 1983.

Section 78-4-21 (2) Utah Code Annotated 1953, as amended, 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.

There are no cases that have interpreted this section. The section is clear on its face, and the legislature intended for these employees of the circuit court system to become State employees.

Appellant was an employee on January 1, 1983, was still an employee on June 30, 1983 and, therefore, became an employee of the State on July 1, 1983.

CONCLUSION


The Civil Service Commission ruling upholding the City Manager's decision was not arbitrary or capricious. The City observed all of the appellant's due process rights.

The appellant became a State employee on July 1, 1983.

DATED this 22nd day of March, 1983.

Respectfully submitted,

OGDEN CITY, a Municipal Corporation

By   
Timothy W. Blackburn  
Assistant Corporation Counsel

MAILING CERTIFICATE

I hereby certify that I mailed two true and correct copies of the foregoing Brief of Respondent, Ogden City, postage prepaid, to each of the following individuals at the addresses listed below on this 22nd day of March, 1984.

David L. Wilkinson  
Stephen G. Schwendiman  
Attorneys for Respondents Civil  
Service Commissioners and State  
of Utah  
Room 124, State Capitol  
Salt Lake City, UT 84114

Brian R. Florence  
Florence & Hutchison  
818-26th Street  
Ogden, UT 84401  
Attorney for Appellant

  
Deanna Donaldson, Secretary