2009

Sidney Ewing, Cathie Ewing v. State of Utah, Utah Department of Transportation : Brief of Appellee

Utah Court of Appeals

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NO. 20090566-CA

IN THE UTAH COURT OF APPEALS

SIDNEY EWING and CATHIE EWING,
individually and on behalf of the Estate of Rayn Ewing, deceased,
Plaintiffs/Appellants,

vs.

STATE OF UTAH, UTAH DEPARTMENT OF TRANSPORTATION;
and Does 1 through 10,
Defendants/Appellees.

STATE OF UTAH'S AND UTAH DEPARTMENT OF TRANSPORTATION'S ANSWER BRIEF

Appeal from a final order granting a motion for summary judgment of the Third Judicial District Court, Salt Lake County, the Honorable Joseph C. Fratto presiding

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LIST OF ALL PARTIES

All of the parties involved in this appeal are listed on the cover of this Answer Brief.

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Defendants/Appellees.

STATE OF UTAH'S AND UTAH DEPARTMENT OF TRANSPORTATION'S ANSWER BRIEF

JURISDICTION

This appeal arises from the Ewings' wrongful death suit against the State of Utah and the Utah Department of Transportation, collectively "UDOT." The district court entered an order granting UDOT's motion for summary judgment and certifying it as final. Case No. 080925951, R. 101-03.[1] The Ewings timely appealed. R. 131-32. This Court has jurisdiction

[1] The district court consolidated the Ewings' case (Case No. 090902418) with Case No. 080925951. Unless otherwise indicated, all record cites refer to the consolidated case, No. 080925951.

over this appeal under Utah Code Ann. § 78A-3-102(4) (West Supp. 2009), providing this Court with jurisdiction over cases transferred from the Utah Supreme Court.

ISSUE PRESENTED

The Savings Statute

The savings statute provides that if a timely-filed action fails on non-substantive grounds, and if "the time limited either by law or contract for commencing the action has expired," a plaintiff may file a second action within one year after the first action failed. Here, the Ewings' first action failed on non-substantive grounds *before* the statute of limitation expired, but they filed their second suit *after* it expired. Did the district court correctly dismiss the second suit because it was time barred?

A. Standard of review

Summary judgment is proper if "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Utah R. Civ. P. 56(c). This Court "review[s] the trial court's

summary judgment for correctness, considering only whether the trial court correctly applied the law and correctly concluded that no disputed issues of material fact existed." *Hermansen v. Tasulis*, 2002 UT 52, ¶ 10, 48 P.3d 235. The Court reviews a district court's interpretation of a statute for correctness. *Blackner v. Dep't of Transp.*, 2002 UT 44, ¶8, 48 P.3d 949.

B. Preservation of issue

The Ewings raised this issue in opposition to UDOT's motion for summary judgment, R. 65-69, and in a supplemental memorandum. R. 78-82. UDOT responded in its reply memoranda. R. 72-74, R. 88-90. After argument, R. 142 (Transcript of hearing), the district court entered an order granting UDOT's motion for summary judgment and certifying it as final. R. 101-103. A copy of that order is attached as Addendum A.

DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Utah Code Ann. § 78B-2-111, which provides:

> (1) If any action is timely filed and the judgment for the plaintiff is reversed, or if the plaintiff fails in the action or upon a cause of action otherwise than upon the merits, and the time limited either by law or contract for commencing the action has expired, the plaintiff, or if he dies and the cause of action survives, his representatives, may commence a new action within one year after the reversal or failure.

(2) On and after December 31, 2007, a new action may be commenced under this section only once.

STATEMENT OF THE CASE

Nature of the Case

The Ewings filed a wrongful death action against UDOT claiming that UDOT's negligence caused their daughter's death. The district court ruled that the applicable statute of limitation barred the Ewings' complaint and that the savings statute did not apply. The Ewings appeal that ruling.

Course of the Proceedings and Disposition Below

The Ewings sued UDOT on February 12, 2009. Case No. 090902418. R. 1. The district court consolidated the case with *Paget v. State of Utah, et al.*, No. 080925951, by order entered on March 30, 2009. R. 53-55.

After consolidation, UDOT moved for summary judgment against the Ewings. R. 56. The Ewings opposed the motion, and it was fully briefed. R. 58-60, R. 65-69, R. 72-74, R. 78-82; R. 88-90. The district court heard oral argument on May 29, 2009, and granted UDOT's summary judgment motion. R. 93, R. 142 (Transcript of hearing p. 24). The district court entered

an order granting the motion and certifying the judgment as final on June 23, 2009. R. 101-03.

The Ewings timely appealed on July 2, 2009. R. 131-32. The Utah Supreme Court transferred the case to this Court by order effective August 3, 2009. R. 139-141, R. 143.

STATEMENT OF FACTS

On January 21, 2007, Rayn Ewing, plaintiffs' daughter, was driving on Interstate 80 in Parley's canyon. Case No. 090902418, R. 3. At the same time, Suzanne Graser was driving on I-80 in the opposite direction. Graser lost control of her car, crossed the center median, and entered the opposite lanes. Graser collided with Rayn Ewing's car and another car operated by Annette Paget. R. 3, Case No. 090902418, R. 3. Rayn sustained serious injuries and later died.[2] Case No. 090902418, R. 3.

Rayn's parents, plaintiffs here, filed a notice of claim on December 11, 2007. R. 59, Case No. 090902418, R. 2. Subsequently, on June 10, 2008, the Ewings filed a wrongful death suit against UDOT in Third District Court in

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[2] Annette Paget also suffered serious injuries and her passenger, daughter Alexis, died. R. 4.

Summit County. R. 59, 64. The Ewings claimed that UDOT was negligent in failing to provide a median barrier and in maintaining a safe road. Case No. 090902418, R. 1-8.

UDOT moved to dismiss the Summit County suit for improper venue, and the Ewings voluntarily dismissed that suit on September 4, 2008. R. 59, 64. At the time the Summit County court dismissed the case, neither the two-year statute of limitation for wrongful death nor the one-year statute of limitation for actions under the governmental immunity act had run. R. 59.

The Ewings then filed a second action against UDOT in Salt Lake County on February 12, 2009. Case No. 090902418, R. 1. At the time of filing, both statutes of limitation had run. R. 59.

SUMMARY OF THE ARGUMENT

Binding precedent from this Court holds that the savings statute operates to save causes of action that would otherwise be untimely if three requirements are met: 1) the first action must have been timely filed; 2) the first action must have failed on non-substantive grounds; and 3) the statute of limitation for the first action must have expired before it failed. Here, the savings statute did not apply because the third requirement is not satisfied.

The Ewings' first wrongful death suit was timely filed and failed on non-substantive grounds, but the court dismissed that action before the applicable statute of limitation expired. But, when the Ewings filed their second action against UDOT, nearly five months later, the time had run. The district court correctly dismissed the second untimely suit.

ARGUMENT

The statute of limitation barred the second complaint because the savings statute did not apply.

The district court properly dismissed the Ewings' complaint because they filed it after the expiration of the applicable statute of limitation. Despite the Ewings' characterization of this case as an improper application of the immunity act's limitation period, this case is not an immunity case at all. Although the statute of limitation comes, in part, from the immunity act,[3] the case turns on the application of the savings statute. UDOT has never argued that the savings statute does not apply to actions brought under the

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[3]Utah Code Ann. § 63G-7-403(2)(b) (West Supp. 2009), provides that a plaintiff must file an action within one year after the denial of the notice of claim.

immunity act. Instead, UDOT's position is that the savings statute did not apply in this particular case.

This appeal addresses only when the savings statute, Utah Code Ann. § 78B-2-111, operates to save an otherwise untimely action. The case thus turns on the proper statutory interpretation. The district court correctly found that the savings statute did not apply, and this Court should affirm.

A. Stare decisis compels the conclusion that the savings statute does not apply.

Prior cases from this Court have already held that the savings statute applies only when the applicable statute of limitation expired *before* the court dismissed the case. *Callahan v. Sheaffer*, 877 P.2d 1259, 1262 (Utah App. 1994); *Hansen v. Dep't of Fin. Inst.*, 858 P.2d 184, 187 (Utah App. 1993); *Moffitt v. Barr*, 837 P.2d 572, 573 (Utah App. 1992). The district court was bound to follow that precedent. *See, e.g., State v. Thurman*, 846 P.2d 1256, 1269 (Utah 1993). The rule of stare decisis is a cornerstone of American jurisprudence that is "crucial to the predictability of the law and fairness of adjudication." *State v. Menzies*, 889 P.2d 393, 399 (Utah 1994). As a result,

"[t]hose asking [courts] to overturn prior precedent have a substantial burden of persuasion." *Id.* at 398.

Here, the Ewings fail to acknowledge that prior, controlling precedent, except to cite *Hansen* and to state that the "authority appears to be misplaced." Aplt's Brief at p. 7. But for this Court to reverse the district court here would require it to overrule three prior cases. Such a step is never done lightly and is done only when the "decision is clearly erroneous or conditions have changed so as to render the prior decision inapplicable." ***Menzies***, 889 P.2d at 399 n.3 (quoting *State v. Dugan*, 718 P.2d 1010, 1014 (Ariz. 1986)).

The Ewings have not adequately argued or explained why the Court should overrule the prior line of cases. Their passing mention that reliance on *Hansen* might be misplaced "does not even approach the high bar required to override stare decisis." *City of Hilldale v. Cooke*, 2001 UT 56, ¶ 36, 28 P.3d 697. *See also State v. Bisner*, 2001 UT 99, ¶ 61, 37 P.3d 1073 (court would not disturb stare decisis when argument was merely that manslaughter instruction was "confusing"); *Staker v. Ainsworth*, 785 P.2d 417, 427 (Utah 1990) (overruling precedent unlikely where briefing is inadequate and facts do not demand it).

This Court's prior decisions bound the district court. The Ewings have not satisfied their substantial burden of overcoming stare decisis. That being the case, this Court need go no further in order to affirm the district court.

B. The statute's plain language compels the conclusion that the savings statute does not apply.

Should this Court decide to review its prior precedent, the district court correctly construed the savings statute to conclude that it did not apply here. When this Court interprets any statute, the Court seeks "to give effect to the purpose and intent of the legislature." *Hoyer v. State*, 2009 UT 38, ¶ 22, 212 P.3d 547. The rules of statutory construction require the Court to look first "to the statute's plain language, and give effect to the plain language, unless the language is ambiguous." *Blackner*, 2002 UT 44 at ¶ 12. And the Court gives "effect to each term according to its ordinary and accepted meaning." *Pace v. St. George City Police Dep't*, 2006 UT App. 494, ¶ 6, 153 P.3d 789; *Hoyer*, 2009 UT 38 at ¶ 22.

Here, the savings statute's plain wording did not operate to save the Ewings' untimely complaint. That statute is designed to protect plaintiffs from dismissals without prejudice because the limitation period has expired

before the court enters the dismissal. In other words, despite being a dismissal without prejudice, the plaintiff would be barred from re-filing the action because the limitation period expired:

> If any action is timely filed and . . . the plaintiff fails in the action or upon a cause of action otherwise than upon the merits, and the time limited either by law or by contract for commencing the action has expired, the plaintiff . . . may commence a new action within one year after the reversal or failure.

Utah Code Ann. § 78B-2-111 (West Supp. 2009). Put differently, an otherwise untimely action is "saved" when three requirements are satisfied: 1) the original action was timely filed; 2) the action failed for reasons not on the merits; and 3) the limitation period for the action expired before the original action failed.

This Court has explained that the "savings statute 'permits a plaintiff whose action has been dismissed on non-substantive grounds to file a new complaint within one year of the date of dismissal, if the dismissal had occurred *after the statute of limitations for plaintiff's action has run.*'" *Callahan v. Sheaffer*, 877 P.2d 1259, 1262 (Utah App. 1994) (quoting *Moffitt v. Barr*, 837 P.2d 572, 573 (Utah App. 1992)) (emphasis added). Accordingly, failure of the first action "*before* the [ ] statutory limitation had expired,

prevent[ed] the invocation of the savings statute." *Hansen v. Dep't of Fin. Inst.*, 858 P.2d 184, 187 (Utah App. 1993) (emphasis added).

The Ewings neither cite to nor acknowledge *Callahan* and *Moffitt*. And without explanation, the Ewings argue that reliance on *Hansen* is unwarranted. But this Court's recognition in those cases of the statute's function is more than mere dicta. Instead, and in each case, the Court interpreted the statute to determine whether and how it applied. Both UDOT and the district court applied the statute in this case consistent with this Court's prior case law.

Here, the savings statute does not apply to the Ewings' action. Although their first action was timely filed and failed on a ground other than the merits, neither the statute of limitation for wrongful death actions nor the statute of limitation for filing an action under the immunity act had expired before the Summit County court dismissed the first action. *See* Utah Code Ann. §§ 78B-2-304(2), 63G-7-403(2)(b). Thus, the Ewings did not satisfy the savings statute's third requirement. They still had time under both statutes of limitation to file their second action. As that was the case, the Ewings' action did not need to be "saved."

Even were there no precedent for interpreting the statute,[4] the Ewings' construction renders the saving statute's third requirement effectively inoperative or superfluous. "[A]ny interpretation which renders parts or words in a statute inoperative or superfluous is to be avoided." *State v. Hunt*, 906 P.2d 311, 312 (Utah 1985). If, as the Ewings argue,[5] "the time

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[4] Courts from other jurisdictions interpret their savings statutes the same way. In *Bruner v. Sobel,* 961 P.2d 815 (Okla. 1998), the court interpreted the statute to apply only "in those situations where the applicable statute of limitations expired or ran during the pendency of the first action." *Bruner*, 961 P.2d at 817. The court explained *why* it interpreted the statute that way: "The obvious reason this Court had so ruled was because the language of § 100, 'and the time limited for the same shall have expired', modified the immediately preceding phrase of the statute, i.e. that language stating the first action failed otherwise than upon the merits." *Id.* The Oklahoma statute, prior to amendment, was virtually identical to Utah's statute:

> If any action be commenced within due time, and a judgment thereon for the plaintiff be reversed, or if the plaintiff fail in such action otherwise than upon the merits, *and the time limited for the same shall have expired*, the plaintiff, or, if he die, and the cause of action survive, his representatives [,] may commence a new action within one year after the reversal or failure.

12 O.S. 1971, § 100 (emphasis added); *see also Bloom v. Medill*, 2007 WL 4206604, *2 n.3 (D. Kan. 2007) (savings statute not applicable because time had not expired when the state court dismissed the plaintiff's claims without prejudice."); *Elzea v. Perry*, 12 S.W.3d 213, 216 (Ark. 2000) (since original statute of limitations had not expired, savings statute was "simply irrelevant.").

[5] The Ewings have not previously argued that the wrongful death statute of limitation controlled or that the language "time limited either by law or contract has expired" referred to the date the second complaint was

limited either by law or contract for commencing the action has expired" refers not to the date that the case is dismissed, but instead to the date that the second action is filed, that language has no meaning. If the first action was timely and dismissed on non-substantive grounds, then the plaintiffs would have a year from the dismissal to re-file. Put differently, the limitation period would be tolled for one year. But the statute is not a tolling statute and to construe it that way runs contrary to the statute's plain wording. If the legislature intended to enact a tolling statute, the statute could have been written without the third requirement.

"It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute . . . No clause [,] sentence or word shall be construed as superfluous, void or insignificant if the construction can be found which will give force to and preserve all of the words of the statute." *State v. Anderson*, 2007 UT App. 304, ¶ 11, 169 P.3d 778 (quoting *State v. Maestas*, 2002 UT 123, ¶ 52, 63 P.3d 621)(alterations in original); *see also Hoyer*, 2009 UT 38 at ¶ 22. This Court will thus avoid constructions that render words or parts of statutes meaningless. But the

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filed. Arguments made for the first time on appeal will not be considered by the Court. *Smith v. Four Corners Mental Health Ctr., Inc.*, 2003 UT 23, ¶ 9, 70 P.3d 904; *Turtle Mgmt. v. Haggis Mgmt.*, 645 P.2d 667, 672 (Utah 1982).

Ewings' construction does precisely that. The district court correctly recognized at oral argument that "[i]n order to reach the result [Ewings' counsel] urges, I would have to essentially, I believe, ignore the language that we focused in here on and that is 'and the time limited either by law or contract for commencing the action has expired.'" R. 142 (Transcript of hearing at p. 23).[6]

The district court properly followed the controlling law and the statute's plain wording to determine that it did not apply to the Ewings' second complaint. The applicable statute of limitation, whether that for wrongful death or that for filing an action under the immunity act, had not expired before the Ewings' first action failed. The Ewings' had time under both limitation periods to timely file the second action. Thus, the Ewings could not invoke the protections of the savings statute to save their second

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[6] At argument, the Ewings' counsel chose to ignore the third requirement: "if we take out the one line, '[a]nd the time limited by law or contract for commencing the action has expired.'" R. 142 (Transcript of hearing at p. 17), and continued, "The legislature said, look, if you file timely and something happens that's not on the merits - the judge hasn't said I'm dismissing it on the merits, a jury hasn't decided it on the merits, it fails for another reason like voluntary dismissal – then we're going to give you an extra year of time. . . . "The State is trying to say, well, that is qualified by this one little language that talks about the commencing of the action." R. 142 (Transcript of hearing at p. 18). Indeed, counsel was right, that "one little language" adds a third requirement to the statute's application that cannot be ignored.

untimely complaint. Their brief's discussion about the reasons for the savings statute are neither relevant nor helpful. By its very terms, the savings statute did not apply here. The district court correctly found that the Ewings' action was untimely when filed and that court properly granted UDOT's motion for summary judgment. This Court should affirm the district court's decision.

C. Without the savings statute, the complaint is barred.

Having correctly concluded that the savings statute did not apply here, the district court properly dismissed the Ewings' complaint as untimely. The Ewings spend much of their brief discussing general immunity act provisions and argue that because their notice of claim was proper and timely filed, the district court erred by not allowing their complaint to proceed. The discussion and that argument miss the mark.

This case involves the simple application of a limitation period. Specifically, one of two found in the immunity act. A person who has a claim against a governmental entity must strictly comply with each critical deadline. First, the claimant must file a pre-suit notice of claim within one year after the claim arose. Utah Code Ann. § 63G-7-402 (West Supp. 2009).

If the governmental entity fails to approve or deny the claim sixty days after its filing, the claim is deemed denied by operation of law at the end of that period. *Id.* at § 63G-7-403(1)(b). The second deadline requires the claimant to file suit within one year after the denial of the claim. *Id.* at § 63G-7-403(2)(b).

This Court addressed and strictly applied those deadlines in *Harward v. Utah County*, 2000 UT App. 222, ¶¶ 7-8, 6 P.3d 1140. There, the plaintiff timely filed a notice of claim on June 6, 1996. *Id.* at ¶ 5. The county neither approved nor denied the claim by the end of the 90-day period in effect at the time, so the claim was deemed denied on September 4, 1996. *Id.* The plaintiff filed suit on September 5, 1997, one year and one day after the date that the claim was denied. *Id.* The trial court held that the lawsuit was time-barred and granted summary judgment. *Id.* This Court affirmed because the plaintiff failed to file suit on or before the one-year deadline. *Id.* at ¶ 8.

Harward controls here because the savings statute does not apply. The Ewings filed their notice of claim on December 11, 2007. Neither UDOT nor its insurer responded to the notice and it was deemed denied by operation of law on February 9, 2008. Utah Code Ann. § 63G-7-403(1)(b). Accordingly, the one year limitation provision required the Ewings to file suit against

UDOT no later than February 8, 2009. But they commenced this action on February 12, 2009, after the limitation period expired.

Any reliance on *Whitaker v. Salt Lake City Corp.*, 522 P.2d 1252 (Utah 1974) and *Rice v. Granite Sch. Dist.*, 23 Utah 2d 22, 456 P.2d 159 is misplaced. In those cases, the court refused to apply the immunity act's one-year statute of limitation because the governmental entity lulled the plaintiffs into missing the limitation period. Neither applies here. UDOT did nothing to lull or trick the Ewings into filing late. *See also Morales v. State*, 2007 UT App. 250, No. 20060593 (July 19, 2007) (per curiam) (unpublished decision) (state not estopped from raising limitation defense). The district court correctly dismissed the complaint because it was barred by the statute of limitation. This Court should affirm that decision.

The result remains the same even if the Court applies the wrongful death statute of limitation as the Ewings now advocate. The limitation period for wrongful death is two years. Utah Code Ann. § 78B-2-304(2). The accident occurred on January 21, 2007. The limitation period therefore expired on January 20, 2009. The Ewings' second action was undisputedly filed after that time. *See* Aplt's Brief at p. 7. Thus, the time for the Ewings

to sue expired under either limitation period.[7] The district court correctly ruled that the Ewings' complaint was untimely. This Court should affirm the district court in all respects.

CONCLUSION

The district court correctly found that the Ewings' action was barred by the statute of limitation. Binding precedent compels that conclusion. But even if there were no precedent interpreting the savings statute, it did not apply here because the court dismissed the Ewings' first action before the statute of limitation for their cause of action expired. The Ewings' could not invoke the savings statute's protection because their action did not need to be saved. This Court should affirm.

Dated this 5th day of November, 2009.

Peggy E. Stone

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[7] Case law suggests that the Ewings were required to comply with both limitation periods. *See, e.g., Hall v. Utah State Dep't of Corr.*, 2001 UT 34, 24 P.3d 958 (plaintiff had to comply with time periods under both Whistleblower statute and governmental immunity act).

CERTIFICATE OF SERVICE

This is to certify that two copies of the foregoing, **STATE OF UTAH'S AND UTAH DEPARTMENT OF TRANSPORTATION'S ANSWER BRIEF**, and an electronic copy (searchable pdf) of the brief on computer disk were mailed by U.S. Mail, postage prepaid, to the following this 5 day of November, 2009:

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ADDENDUM A

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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

TIMOTHY PAGET, et al., Plaintiffs, vs. STATE OF UTAH, UTAH DEPARTMENT OF TRANSPORTATION and JOHN DOES 1 through 10, Defendants.	ORDER GRANTING UDOT'S MOTION FOR SUMMARY JUDGMENT AGAINST THE EWING PLAINTIFFS Case No. 080925951 Judge Joseph C. Fratto, Jr.
SIDNEY EWING, et al., Plaintiffs, vs. STATE OF UTAH, UTAH DEPARTMENT OF TRANSPORTATION, and DOES 1-10, Defendants.	

Defendant State of Utah, Utah Department of Transportation ("UDOT") moved for summary judgment against plaintiffs Sidney Ewing, Cathie Ewing and the Estate of Rayn Ewing ("the Ewing plaintiffs"). The parties filed supporting and opposing memoranda and the Court heard argument on the motion. The Court granted the motion for the reasons stated in its May 29, 2009 bench opinion.

It is ordered:

1. UDOT's Motion for Summary Judgment Against the Ewing Plaintiffs is granted.

2. The action filed by plaintiffs Sidney Ewing, Cathie Ewing and the Estate of Rayn Ewing against defendant State of Utah, Utah Department of Transportation (UDOT) is dismissed with prejudice and on the merits.

3. This order is certified as a final judgment pursuant to Utah R. Civ. P. 54(b). There is no factual overlap between the certified and remaining claims because the certified claims are dismissed based on the Ewing plaintiffs' failure timely to commence their separate, but now consolidated, action against UDOT. There is no just reason to delay entry of a final order because UDOT's final legal status in the Ewing action need ~~not remain~~ indefinite while the Paget action is litigated.

DATED this 17 day of June, 2009.

HONORABLE JOSEPH FRATTO
District Court Judge

Approved as to Form:

James McConkie
Attorney for the Ewing Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the June 1, 2009 a copy of the foregoing ORDER GRANTING UDOT'S MOTION FOR SUMMARY JUDGMENT AGAINST THE EWING PLAINTIFFS was served on James McConkie and Bradley Parker, 5664 South Green St., Salt Lake City, UT 84123.

I hereby certify that on June 15, 2009, a copy of the foregoing ORDER GRANTING UDOT'S MOTION FOR SUMMARY JUDGMENT AGAINST THE EWING PLAINTIFFS was served on the following in the manner indicated:

By United States mail, first class, postage prepaid:

David Biggs
Rachel Sykes
Attorneys for the Paget Plaintiffs
5664 S. Green Street
Murray, UT 84123

By hand delivery:

Barry Lawrence
Attorney for UDOT as to the Paget Plaintiffs
160 East 300 South 6th Floor
Salt Lake City, Utah 84114-0856

Dated this 15 day of June, 2009.

REED STRINGHAM
Assistant Utah Attorney General
Attorney for Defendant UDOT as to
the Ewing Plaintiffs