

2002

Wills v. Heber Valley Historic Railroad Authority : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT FOR THE STATE OF UTAH

DONALD T. WILLS and RITA WILLS, :

Plaintiffs/Appellees, :

vs. :

Sup Ct. No. 20020170SC

HEBER VALLEY HISTORIC RAILROAD :
AUTHORITY, :

Trial Court No. 010500542

Defendant/Appellant. :

BRIEF OF APPELLANT HEBER VALLEY HISTORIC RAILROAD AUTHORITY

APPEAL FROM AN INTERLOCUTORY ORDER IN THE FOURTH JUDICIAL
DISTRICT COURT IN AND FOR WASATCH COUNTY, STATE OF UTAH,
HONORABLE DONALD J. EYRE

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JUN 21 2002
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LIST OF ALL PARTIES

To the best of Defendant Heber Valley Historic Railroad Authority, all interested parties appear in the caption of this Brief.

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JURISDICTION

This is an interlocutory appeal from an Order denying the defendant's Motion to Dismiss (R. 73-75; Addendum A) the plaintiffs' complaint on jurisdictional grounds. The Utah Supreme Court has jurisdiction over this matter one over which the Utah Court of Appeals does not have original appellate jurisdiction. Utah Code Ann. § 78-2-2(3)(j)(Supp. 2001).

STATEMENT OF THE ISSUES

I. Does the failure to direct and deliver a notice of claim to the Utah Attorney General at his office violate the Utah Governmental Immunity Act?

Standard of Review: This Court "review[s] the district court's denial of defendants' Motion to Dismiss for correctness, granting no deference to the district court's ruling." Pendleton v. State Bar, 2000 UT 96, ¶5, 16 P.3d 1230.

II. Does the failure to strictly comply with the notice of claim provision of the Utah Governmental Immunity Act deny the trial court subject matter jurisdiction?

Standard of Review: This Court "review[s] the district court's denial of defendants' Motion to Dismiss for correctness, granting no deference to the district court's ruling." Pendleton v. State Bar, 2000 UT 96, ¶5, 16 P.3d 1230.

The defendant raised and preserved both issues in its Motion to Dismiss (R. 17-30), which the trial court denied (R. 73-75; Addendum A).

DETERMINATIVE LAW

All relevant text of statutes and rules pertinent to the issues before the court is contained in the body of this brief.

Utah Code Annotated § 63-30-2(9) is determinative and reads in relevant part as follows:

As used in this chapter:

“State” means the state of Utah, and includes any office, department, agency, authority, commission, board, institution, hospital, college university, or other instrumentality of the state.

Utah Code Annotated § 63-30-11(2) is determinative and reads in relevant part as follows:

Any person having a claim for injury against a governmental entity . . . shall file a notice of claim . . . before maintaining an action

Utah Code Annotated § 63-30-11(3)(b)(ii)(E) is determinative and reads in relevant part as follows:

The notice of claim be:
 (ii) directed and delivered to:
 (E) The attorney general, when the claim is
 against the State of Utah.

STATEMENT OF THE CASE

I. Nature of the Case, Course of Proceedings and Disposition Below

The plaintiffs, Donald T. and Rita Wills (“the Wills”), were injured on December 20, 2000, as a result of an automobile/train collision with the defendant Heber Valley

Historic Railroad (“the Railroad”) (R. 3-7). On June 21, 2001, the Wills sent a notice of claim to: “Attorney General, State of Utah, 160 East 300 South, 5th Floor, Salt Lake City, Utah, 84114-0873” (R. 17-21). The Attorney General himself is not officed at this location. On November 30, 2001, the Wills filed their Complaint and served it upon the Attorney General at 236 State Capitol, Salt Lake City, Utah 84114 on December 5, 2001, where his office is located (R. 3-10;14-16).

On December 21, 2001, the Railroad filed its Motion to Dismiss (R. 17-30), pursuant to Rule 12(b)(6) of the Utah Rules of Civil Procedure, arguing that the trial court lacked subject matter jurisdiction because the Wills had failed to comply with the notice provisions of the Utah Governmental Immunity Act (“the Immunity Act”) see Utah Code Ann. § 63-30-11(3)(b)(ii)(E). On January 30, 2002, the trial court heard argument (R. 72) and concluded: (1) the case would not be dismissed on a technicality, and (2) because the statute does not name the Attorney General specifically, sending the notice of claim to a division within the Attorney General’s office constitutes compliance with the Immunity Act.

The Order denying the Motion to Dismiss was entered on February 8, 2002 (R. 73-75; Addendum A). The Railroad filed a timely Petition for Interlocutory Appeal which was granted on April 17, 2002. The Wills then filed a Motion for Summary Disposition on April 25, 2002. This Court deferred decision on the Motion for Summary Disposition by order dated on May 14, 2002.

II. Statement of Relevant Facts

The only facts relevant to the issue before the Court for decision are the procedural facts stated above.

SUMMARY OF ARGUMENT

The trial court erred in denying the Railroad's Motion to Dismiss. As a precondition to suit against the state of Utah or one of its agencies, a notice of claim must be served upon **the** Attorney General. A notice of claim addressed to "Attorney General," but delivered to a remote division within his office does not meet the Immunity Act's requirements.

The plain language of Utah Code Ann. § 63-30-11(3)(b)(ii)(E) requires that a notice of claim be **directed and delivered** to the Attorney General. Implicit in this language is that the notice of claim be delivered to the Attorney General, the actual officeholder, at his physical address, and not to an unnamed or random, division within a satellite office. To conclude otherwise would defeat the purpose of the Immunity Act and violate the legislative intent to create a central and singular recipient for all notices of claim filed against the state of Utah, or its agencies. This result follows logically and consistently from the line of cases requiring strict compliance with the Immunity Act.

The trial court's incorrect conclusion that the Wills complied with the notice of claim requirement must be reversed.

ARGUMENT

I. THE STATUTORY DIRECTION CONTAINED IN THE IMMUNITY ACT IS UNAMBIGUOUS; THE PURPOSE IS CLEAR.

A court's primary objective in interpreting a statute is to give effect to the legislative intent, as evidenced by the plain language of the statute, and in light of the purpose the statute was meant to achieve. State v. Lusk, 2001 UT 102, ¶19, 37 P.3d 1103. The notice of claim provision is unambiguous, mandatory and directive. See Utah Code Ann. § 63-30-11(3)(b)(ii)(E). It specifies to whom the notice of claim is to be directed and delivered. In a recent case, this Court stated that when interpreting a statute, a court determines the statute's meaning first by looking to its plain language, and then by giving effect to the plain language unless the language is ambiguous. Blackner v. State of Utah, 2002 UT 44, ¶12, 446 Utah Adv. Rep. 31. Nothing in the Immunity Act's notice provision is ambiguous. The plain language instructs a claimant to direct **and** deliver a notice of claim to **the** Attorney General. Delivery of a notice of claim to the offices of assistant attorneys general is not compliance with the plain meaning of the Immunity Act.

The Immunity Act establishes a systematic means of receiving and reviewing claims against governmental entities. It permits a claimant to initiate a lawsuit only after he or she follows its requirements, which include filing a notice of claim within one year of the incident giving rise to the claim, filing an undertaking contemporaneous with his or her complaint, and directing and delivering a notice of claim to **the** Attorney General.

The Act's purpose is obvious--to control the receipt of notices of claim by centralizing and directing who may receive, and process, the claim. The Attorney General acts like a registered agent for a corporation--he is the only legal counsel for all state entities, and therefore, may and does direct claims and litigation on behalf of his clients. It is the Attorney General himself who must be served rather than a random office or division. As this Court stated there is no confusion as to "how, what, when and to whom a party must direct a Notice" Greene v. Utah Transit Authority, 2001 UT 109, ¶15, 37 P.3d 1156.

The notice of claim must be directed to the Attorney General **and** delivered to him; both components of the statute must be met in order for the Immunity Act's requirements to be satisfied.

II. THERE IS NO SUBJECT MATTER JURISDICTION WITHOUT STRICT COMPLIANCE WITH THE IMMUNITY ACT.

Compliance with the notice of claim provision of the Immunity Act confers subject-matter jurisdiction upon the trial court. In other words, the proper filing of a notice of claim is a precondition to suit. Madsen v. Borthick, 769 P.2d 245, 248 (Utah 1988); Lamarr v. Utah Dep't. of Trans., 828 P.535, 540 (Utah App. 1992). This Court has repeatedly held that failure to strictly comply with the statutory notice provision of the Act results in the litigation's dismissal. In Greene, this Court affirmed the trial court's dismissal of the suit, holding that "Utah law mandates strict compliance with the Immunity Act." Greene, 2001 UT 109, ¶ 12. Likewise, in Brown v. Utah Transit

Authority, 2002 UT 15, 440 Utah Adv. Rep. 6, a notice of claim received by a transit authority employee was deemed defective because it was sent to the wrong office of the transit authority, and once again the Court affirmed the trial court's dismissal. Finally, in Wheeler v. McPherson, 2002 UT 16, 40 P.3d 632, the trial court dismissed the complaint for lack of subject-matter jurisdiction even though the plaintiffs had provided notice to all three county commissioners, receipt of which was acknowledged by a county employee, but not the county clerk as the statute required. This Court again affirmed the dismissal of the litigation on jurisdictional grounds, stating that:

in conformity with our long established jurisprudence construing the statute— and with our recent interpretation of the 1998 amendment in Greene— we reiterate today that the Immunity Act demands strict compliance with its requirements to allow suit against governmental entities. The notice of claim provision, particularly, neither contemplates nor allows for anything less.

Wheeler, 2002 UT 16, ¶ 13.

This Court has made clear through its established line of cases that strict compliance with the Immunity Act is mandated and failure to so comply denies the trial court subject-matter jurisdiction, thus requiring dismissal of the litigation.

CONCLUSION

The plain language of the Immunity Act's notice provisions directs how, when, where and to whom a notice of claim is to be served. In claims involving the state of Utah or its agencies, the notice of claim must be directed and delivered to the Attorney

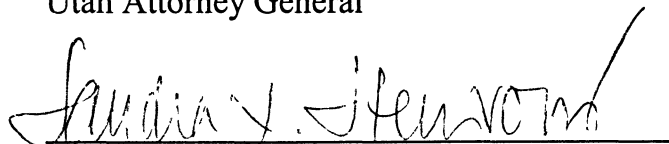
General himself. The Immunity Act does not specify an office within the Attorney General's office because it is the officeholder himself who must receive notice. Substitute service is not acceptable.

In a series of recent cases, this Court has concluded and reiterated that a claimant must strictly comply with the notice requirements of the Immunity Act. Delivery to the wrong office or to the wrong person is not considered compliance, and without compliance, the trial court does not have subject-matter jurisdiction to hear a case.

Given the recent and compelling precedents from this Court, the trial court's denial of the Railroad's Motion to Dismiss must be reversed, and the litigation dismissed for lack of subject-matter jurisdiction.

DATED this 21st day of June, 2002.

MARK L. SHURTLEFF
Utah Attorney General



SANDRA L. STEINVOORT
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Assistant Utah Attorneys General
Attorneys for Defendant/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June, 2002, I caused to be served by U.S.

Mail, postage pre-paid, a true and correct copy of the foregoing BRIEF OF

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ADDENDUM A

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IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
WASATCH COUNTY, STATE OF UTAH

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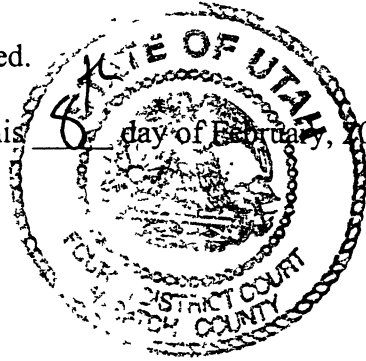
**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS PLAINTIFFS'
COMPLAINT**

Civil No. 010500542

The Court, having carefully considered the memoranda, evidence and oral argument of counsel on this matter,

WHEREFORE IT IS ORDERED that defendant's Motion to Dismiss Plaintiffs' Complaint is denied.

DATED this 09 day of February, 2002.



Handwritten signature

District Court Judge

APPROVED AS TO FORM:

A handwritten signature in cursive script, reading "Sandra L. Steinvooort", written over a solid horizontal line.

Sandra L. Steinvooort
Counsel For Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 30 day of January, 2002, I caused a true and correct copy of the foregoing **ORDER DENYING DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT** to be mailed through United States mail, postage prepaid, to the following:

Sandra L. Steinvoort
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