

1999

Shari Lynn Crisman, and Mark Crisman v. Ted Hallows : Brief of Appellant

Utah Court of Appeals

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Boyd Kimball Dyer; Paul Howard Peters; Attorneys for Appellants.

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ORIGINAL

IN THE UTAH COURT OF APPEALS

SHARI LYNN CRISMAN, and)	
MARK CRISMAN,)	
	)	Case No.'s 990698 - CA and
Plaintiffs and Appellants,)	
vs.	)	990699-CA
)	
TED HALLOWS,)	
	)	Priority 15
Defendant and Appellee)	

ON APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
OF SUMMIT COUNTY, STATE OF UTAH
JUDGE PAT B. BRIAN

BRIEF OF APPELLANTS

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FILED

Utah Court of Appeals

NOV 02 1999

Julia D'Alesandro
Clerk of the Court

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☒ **LENGTH (Excluding Addendum)**

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3. Amicus/Intervenor: 50 pages

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☒ List of all parties

☒ Table of Contents with page references

☒ Table of Authorities

☒ Jurisdictional Statement (Mandatory for Appellant)

☒ Statement of Issues & Standard of Review (Mandatory for Appellant)

- A. Citation to record showing issue preserved in Trial court; or
- B. Statement of grounds for seeking review of issue not preserved in Trial Court

☒ Constitutional or Statutory Provisions

☒ Statement of Case (Mandatory for Appellant)

☒ Statement of Facts

☒ Summary of Argument

☒ Argument

☒ Conclusion

☒ Signature of counsel of record OR party if Pro Se

☒ Proof of Service

☒ Addendum: Findings of fact; memorandum decision; final order; Court of Appeals opinion when Petition for Certiorari is granted (Mandatory for Appellant)

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JURISDICTION

This case was appealed to the Utah Supreme Court which has jurisdiction pursuant to UCA sec. 78-2-2(3)(j). It was then transferred to the Utah Court of Appeals which has jurisdiction pursuant to UCA sec. 78-2A-3(2)(k).

STATEMENT OF ISSUES

I. Grant of Summary Judgment.

The issue is whether Plaintiff raised a “genuine issue” under Utah R. Civ. Pro. 56(c) as to whether Defendant Hallows was acting in the course of his employment as a fish hatchery supervisor working for the Utah Division of Wildlife resources when he shot the dogs “Trooper” and “Kiva” that prevents the granting of summary judgement.

Standard of Review:

Summary judgement is appropriate only if there is no genuine issue concerning any material fact of the case and the moving party is entitled to judgment as a matter of law. See Utah R. Civ. P. 56(c); *S.W. Energy Corp. v. Continental Ins. Co.*, 974 P.2d 1239, 1242 (Utah 1999). In reviewing a grant of summary judgment, the appellate court views the facts and all the reasonable inferences drawn therefrom in the light most favorable to the nonmoving party, *Higgins v. Salt Lake County*, 855 P.2d 231, 233 (Utah 1993). When reviewing conclusions of law on a challenge to summary judgment, the appellate court

reviews those decisions for correctness, according no deference to the trial court's legal conclusions. *Bruer-Harrison, Inc. v. Comb*, 799 P.2d 716, 723 (Utah Ct. App. 1990).

DETERMINATIVE STATUTE AND RULE

Utah Code Ann. Sec. 63-30-4(3) bars an action against an employee of a governmental entity "for an injury caused by an act or omission that occurs during the performance of the employee's duties, within the scope of employment, or under color of authority" except as expressly provided by the Utah Governmental Immunity Act, and Sec. 63-30-15 (2) requires that the action be brought "within one year after the denial of the claim."

Rule 56(c) of the Utah Rules of Civil Procedure provides that for summary judgment to be granted, the depositions, affidavits, etc. must show "there is no genuine issue as to any material fact."

STATEMENT OF THE CASE

A. Nature of Case.

This is an action arising out of Defendant Hallows' shooting two dogs, "Trooper," belonging to Plaintiff's Shari Lynn Crisman and her son, Mark Crisman, and "Kiva," belonging to Plaintiff Paul H. Peters on the morning of April 24, 1996. Hallows killed Trooper, but only wounded Kiva, who was able to escape.

Defendant Hallows admits he shot the dogs, but claims he was acting in the course of his employment as a fish hatchery supervisor working for the Utah Department of Wildlife Resources. If he was so acting, Plaintiff's claims are barred by the Utah Governmental Immunity Act because they were not timely filed.

B. Course of Proceedings and Disposition by Trial Court.

1. The Crisman Plaintiffs filed their complaint against Defendant Hallows on December 24, 1997. No claim was made against his employer, the Utah Division of Wildlife Resources. The theory of the complaint was (1) trespass to chattels, (2) negligent destruction and injury of an animal, (3) intentional infliction of emotional distress, (4) deprivation of civil rights, and (5) negligent infliction of emotional distress. [R 0011-0001]. Although no claim was made against the State of Utah in their action, the Crisman Plaintiffs had filed a timely notice of claim under the Utah Governmental Immunity Act on September 14, 1996. [R0022-0020] The claim was denied on December 13, 1996 [R0017]. This was more than a year before the date the action was filed, December 24, 1997.

2. Hallows did not answer, but filed a motion to dismiss on January 8, 1998. [R 0016-0015] One of the grounds for the motion to dismiss was that Hallows had been acting in the course of his employment as a Fish Hatchery Supervisor for the Utah Division of Wildlife Resources when he shot the dogs, and therefore the

action was not timely filed under the Utah Governmental Immunity Act.

3. In support of his motion to dismiss, Hallows filed an affidavit dated January 7, 1998, in which he swore that when he shot the dogs, they were chasing deer.

[Tab 1, R0029-0025]. This affidavit will be referred to as “Hallows Affidavit I.”

See also Hallows’ counsel’s arguments [R0038, Memorandum in Support, R0067-0066, Reply Memorandum, R0067-0066].

4. Plaintiffs (both the Crismans and Peters) responded that the issue of whether a person is acting in the scope of employment is for the jury [R0076].

5. Judge Nehring heard the motion on February 20, 1998, and on February 26, 1998, denied the motion to dismiss. His order says, in relevant part:

“The disposition of defendant’s Motion to Dismiss turns, however, on the factual question of whether the defendant shot the plaintiff’s dogs within the scope of his employment as a DNR employee. This issue cannot be resolved from the pleadings alone. Furthermore, it is unclear from the pleadings whether defendant was performing his duties as a state employee at the time he shot the dogs. Accordingly, *Nielsen v. Gurley*, 888 P.2d 130 (Utah App. 1994), is not controlling.” [R0090]

[Note: the correct name of the cited case is “Nielson v. Gurley”]

In the same order, Judge Nehring granted Hallows’ motion to dismiss plaintiffs’

claim for deprivation of civil rights and denied Hallows' motion to stay discovery.

6. On March 11, 1998, Hallows filed his answer, raising the affirmative defenses of (1) the Utah Governmental Immunity Act [R0094] and (2) UCA sec. 18-1-3 (permitting any person to kill a dog chasing hoofed protected wildlife, or while such dog is being pursued thereafter) [R0094-0093].

7. On July 21, 1998, Hallows deposition was taken and he changed his story. He said the dogs were not chasing deer when he shot them, but had been chasing deer earlier. He admitted no deer were in sight when he shot the dogs. [R0151-0149, pages 13-25 of Hallows' deposition].

8. On July 23, 1998, the deposition of Plaintiff Shari Lynn Crisman was taken and she testified that Trooper was crippled and would not have been able to run in the way Hallow's had described the dogs as running in Hallows Affidavit I and in his deposition. [Tab 4, R0140 and R0183-0182].

7. On October 15, 1998, Hallows moved for summary judgment, resubmitting Hallows Affidavit I to the effect that the dogs had been chasing deer when he shot them, [R0159-0155]. He also submitted the affidavits of Gary Rice, Tommy Thompson, and Dana Dewey, to the effect that they had seen some dogs chasing some wildlife somewhere near the location of the shootings, but the affidavits do not agree what dogs, what wildlife were being chased, or where the chasing occurred. None of the affiants claimed to have seen Hallows at the

moment he shot the dogs. [R0134 - 0121]. Hallows also submitted the affidavit of John Kimball, the Director of the Utah Division of Wildlife Resources, to the effect that he was prepared to testify of his personal knowledge that “at the time defendant shot plaintiff’s dogs, on or about April 24, 1996, the dogs were chasing and worrying deer and posed a clear and present danger to both deer and elk.” [R0117]. This affidavit will be referred to as “Kimball Affidavit I.”

8. On October 19, 1998, the Crisman Plaintiffs filed their responsive memorandum, pointing out inconsistency between Hallows’ two stories (Hallows Affidavit I and his deposition) to the court and arguing that a jury could rationally decide from Shari Crisman’s deposition with respect to Trooper’s crippled condition that Trooper had not been chasing deer and that Hallows knew it.

They also argued that even if Hallows were acting in the course of employment, the action against him was timely filed because the one-year from denial statute of limitations applied only to “the” action against the state, not to “an” action against an individual [R0183-0176]. They have abandoned this second argument.

9. On January 20, 1999, Judge Pat Brian heard oral arguments on Hallows’ summary judgment motion and continued the hearing for three months to allow for additional submissions. [R0241].

10. On March 29, 1999, the Crisman Plaintiffs moved to strike Kimball

Affidavit I on the grounds that it was not made on personal knowledge. [R0266]
They had previously requested admissions relating to Kimball Affidavit I, and Defendant had admitted that the critical passage in which Kimball asserted he had personal knowledge that the dogs had been chasing deer was false. He also admitted that the affidavit was based on a conversation Kimball had with Hallows. [R0252-0251]. Nevertheless, Hallows argued Kimball Affidavit I should not be struck [R0271-0267].

11. On April 8, 1999, the Crisman Plaintiffs submitted their motion to strike Kimball Affidavit I for decision, but on April 15, 1999, Hallows' counsel asked for a hearing. [R0253]

12. On April 21, 1999, the court scheduled the hearing for the Motion for Summary Judgment and the Motion to Strike for May 17, 1999. [R0278-0277]

13. On April 29, 1999, Hallows' counsel submitted two additional affidavits. The second affidavit of Ted Hallows ("Hallows Affidavit II") shifted his affidavit story so that it followed that of his deposition, but added some assertions as to his subjective state of mind at the time, for example:

"As I climbed the snow laden mountainside towards the Forest Service land to locate the deer, elk and two (2) dogs, I was worried about the deer and elk. That's one of the reasons you take this job. The DWR motto is to protect, enhance, and propagate wildlife; and

the intent is that we are there to help wildlife in any capacity that we can, when we can.” [Tab 2, R0300]

However, Hallows did not withdraw Hallows Affidavit I.

The second new affidavit was “The Second Affidavit of John F. Kimball, Jr.” In this affidavit, Kimball said that based on his reading of the Rice, Thompson, Dewey, and Hallows Affidavits I and II, if they were true, Hallows was acting in the course of employment. [RR0297-0285]. This affidavit will be referred to as “Kimball Affidavit II.” However, Hallows did not withdraw Kimball Affidavit I.

14. On April 30, 1999, Plaintiff Paul Peters submitted his affidavit relating what he was prepared to testify to as happening on April 24, 1996, when the dogs were shot. Peters’ deposition had not been taken, and so this affidavit is the sole relation of the facts in the light most favorable to the Plaintiffs. Peters asserted that “the defendant [Hallows] admitted that they he had shot the dogs because they had disturbed his garden and bothered his horses.” [Tab 3, R0342]. Note: The word “they” between “that” and “he” appears to be a typographical error.

15. On May 17, 1999, the hearing of the motions was resumed. Counsel for the Crisman Plaintiffs attempted to appear by telephone because he was in Vermont, but the court did not want to permit this, so counsel for all the parties submitted the motions for decision on the basis of the memoranda. etc. that had been filed.

Mr. Peters, who represents himself pro se, did not appear, but had authorized Counsel for the Crisman Plaintiffs to appear for him at this hearing. Accordingly, he is bound by the submission.

16. On May 24, 1999, the court (Judge Pat Brian) made “Findings of Fact and Conclusions of Law” to the effect that both Trooper and Kiva had been killed on April 24, 1996 [Tab 5, R0351]. He also found that Hallows had been acting in the course of employment. [R0350] He also found that the Crisman Plaintiffs had filed a timely notice of claim, but that their action had been filed more than a year after the claim was denied, and was barred. [R0350]

17. On June 21, 1999, the court entered its order that defendant’s motion for summary judgment was granted and that plaintiffs’ action was dismissed with prejudice.[R0353]

18. On July 16, 1999, the Crisman Plaintiffs and Peters filed their notices of appeal.

19. On September 27, 1999, the appeal was assigned to the Utah Court of Appeals as No.s 990698-CA and 990699-CA, apparently regarding the one case below as two on appeal.

Counsel for the Crisman Plaintiffs respectfully suggest that the Court of Appeals may want to send this case back to the trial court to have it expressly address the issue of whether Peters’ affidavit raised a genuine issue under Utah R.

Civ. Pro. 56 (c). No one could read Peters' affidavit [Tab 3, R0347-00338] and make the mistake of thinking that Kiva had been killed on April 24, 1996. [R0354] Peters' affidavit describes in detail the efforts he made to save Kiva's life, the trip to the veterinarian, and so on. [R0344-0343]

STATEMENT OF FACTS

The following states the facts in the light most favorable to the Plaintiffs:

In the spring of 1996 the Crisman family were living in Southern California. Their dog, Trooper, a "beagle mix" having the small size and short legs characteristic of a beagle, was crippled by a severe medical problem. He had an adverse reaction to the immunizations which dogs must be given under state law, and it crippled him. Although he was a young dog, he was unable to climb stairs, jump into a car, or run more than a few steps.

The time came for Trooper to have another round of mandatory immunizations, and the Crisman family knew that the California authorities would check up on Trooper. So, the family decided to send Trooper to live with Shari Crisman's brother, Paul Peters, at his home in Kamas, Summit County, Utah. In this way Trooper could avoid the immunizations and, possibly, recover some of his health.

Before that time, Plaintiff Paul Peters had been threatened by a neighbor, Mr. Gary Rice, that if his dogs ran loose, they would be shot. Paul knew that

Defendant Hallows had shot and killed a neighbors' dogs, so he made sure his dogs "Kiva" and "Cody" could not get loose. Kiva and Cody are yellow labradors, large, bulky dogs, much bigger than Trooper. He put Trooper in with Kiva and Cody and they got along.

Paul kept Kiva, Cody, and Trooper surrounded by double fences. The dogs were kept in a fenced pen and the pen was in a fenced yard.

On the morning of April 24, 1996, Paul left for work and then returned home. He found Kiva covered in blood outside the outer fence. Trooper was missing. Paul checked his fences. Cody was still in the pen and the pen was secure. The outer fence was also secure. But, both fences were secured in a different manner than Paul had left them that morning.

Paul took Kiva to the vet and then telephoned Hallows and accused him of shooting Kiva. Hallows freely admitted he had shot Kiva and that he had killed Trooper, and at this point he told his first story, that the two dogs had been messing with his garden and bothering his horses, so he shot them.

THIS CONCLUDES THE FACTS STATED IN THE LIGHT MOST FAVORABLE TO PLAINTIFFS. PLAINTIFFS ARE ENTITLED TO CHALLENGE ALL THE EVIDENCE SUPPORTING HALLOWS' AFFIRMATIVE DEFENSE THAT HE WAS ACTING IN THE COURSE OF EMPLOYMENT.

ARGUMENT

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE PLAINTIFFS' SUBMISSIONS SHOWED THERE WAS A GENUINE ISSUE AS TO WHETHER HALLOWS WAS ACTING IN THE COURSE OF EMPLOYMENT.

The question of whether an employee was acting in the course of employment is a question of fact to be decided by the jury, *Clover v. Snowbird Ski Resort*, 808 P.2d 1037, 1040 (Utah, 1991) (“The scope of employment issue must be submitted to a jury ‘whenever reasonable minds may differ . . .’”). If the jury believes Peters’ testimony that Hallows admitted that he did so because the dogs “disturbed his garden and bothered his horses.” [Peters’ Affidavit, paragraph 41, R0342], the jury could rationally find he was not acting in the course of his employment as a fish hatchery supervisor working for the Division of Wildlife Resources.

Director Kimball’s two affidavits are irrelevant. All Kimball can testify to is that if dogs were chasing deer, it would have been within Hallows’ course of employment to shoot them (Kimball Affidavit I), or, if Hallows were convinced they had been chasing deer, it would still be in the course of employment (Kimball Affidavit II), but there is nothing in the record that makes it within the course of employment of a fish hatchery supervisor to shoot dogs that disturb his garden and

bother his horses.

Parenthetically, it may be that once Director Kimball learns how long a time elapsed between the time Hallows claims he saw the dogs chase the deer and the time of the shooting, he will change his mind. He should hear how Hallows holds up on cross examination before reaching a final conclusion.

A jury could well conclude that Hallows' whole defense is a fraud. It could conclude that Hallows regretted his admission to Peters that he had shot the dogs because they were disturbing his garden and bothering his horses, and decided to fabricate a defense. Initially, the defense was that the dogs were in the act of chasing deer when he shot them. He then asked his friends Tommy Thompson and Gary Rice to tell a "white lie" that they had seen dogs chasing elk or deer that morning. As for Dana Dewey, he works at the fish hatchery under Hallows' direct supervision, so Hallows could practically order him to tell a white lie. The law is clear that Plaintiffs must be given the chance to challenge the testimony of Thompson, Dewey, and Rice by cross examination.

In medieval times a person could win an action by getting a sufficient number of "Oath Helpers" to swear to his truthfulness. 2 SIR FREDERICK POLLOCK AND FREDERICK WILLIAM MAITLAND, THE HISTORY OF THE COMMON LAW 634-637 (2d ed. 1898) This is no longer the law. The court must disregard all the evidence supporting Defendant's version of the facts and look only to Plaintiffs' evidence.

“Trial by jury” means that the jury decides who is telling the truth. Trials are not held on the basis of affidavits. Even though Hallows and his three Oath Helpers are on the one side and Paul and Shari are alone on the other, it is still for the jury to decide the truth.

That is all that Plaintiffs need to say, but they would like to point out some obvious reasons a jury could disbelieve Hallows. First, he has told three different stories of the shooting. The first is that the dogs disturbed his garden and bothered his horses. The second (“Hallows Affidavit I”) was that the dogs were in the act of chasing deer when he shot them. The third (“Hallows Affidavit II”) is that the dogs were not chasing deer, but had been chasing deer (which were no longer in sight), and were trotting towards him.

The jury is entitled to chose which story, if any, to believe.

The affidavits of Thompson, Rice, and Dewey are inconsistent with each other and with Hallows Affidavit I and Hallows Affidavit II. In Hallows Affidavit I, he says “I was informed that **two** dogs were chasing deer” [RR0027 (first submission on January 7, 1999) and R0157 (second submission on October 9, 1998)] But, the Rice affidavit is to the effect that Rice reported to Hallows that there were **three** dogs, two white and one black. [R0133]. The Thompson affidavit is that there were two dogs, a larger one “light colored white” and the smaller “a darker color.” [R0128]. The Dewey affidavit is that there were two

dogs, one of which was a “spotted white dog.” [R0124]. The inconsistencies cry out for cross-examination. For example, Plaintiffs would like Thompson to more precisely describe the color of the smaller dog. All colors are “darker” than white. What was the color of the spots that Dewey saw? White spots on a dark background or dark spots on a white background?

Then there is the undisputed fact of Trooper’s crippled condition [R0182]. How could a dog that could not climb a flight of stairs spend the morning chasing deer up and down a mountain? Plaintiffs should have the opportunity to take the jurors out on that mountainside and see if they, who can climb flights of stairs, can climb that mountain.

Apart from the inconsistencies, Hallows’ Affidavits have elements that are incredible. One is the length of time he says the dogs chased the deer, only to suddenly break off the chase and miraculously appear, trotting towards Hallows, in the little draw just across the highway. How could the dogs lose interest in chasing deer so fortuitously? How could they travel so great a distance so quickly? Why would they come back over the ridge towards the highway when they were doing so well with the deer? Hallows’ Affidavit II does not deal with the passage of time, but time is critical. It seems from Hallows’ affidavits that he took as little as a minute to get from the place where he last saw the deer disappear (with the dogs at their heels) to the place where he shot the dogs. It was a distance

of about 100 yards. How could the dogs have traveled from over the ridge, out of sight, down into Left Hand Canyon, more than 500 yards away, only appear in front of him in one minute or less?

It is absurd to try to decide cases on the basis of affidavits. They are drafted by lawyers. Lawyers literally put the words in the mouths of their clients. When affidavits are proven false (Hallows Affidavit I) or misleading (Kimball Affidavit I), no problem -- just draft more affidavits!

All that can be determined from affidavits is whether there is a genuine issue.

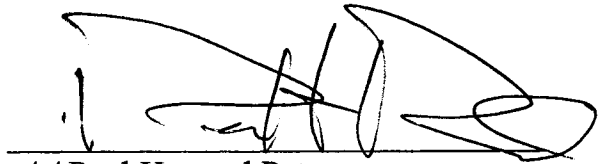
CONCLUSION

Plaintiffs respectfully ask the Court of Appeals to reverse the dismissal of their action and remand the case to the Third District Court for trial.

DATED this 2d day of November, 1999:



/s/ Boyd Kimball Dyer
Attorney for Plaintiffs Sari Lynn Crisman
and Mark Crisman

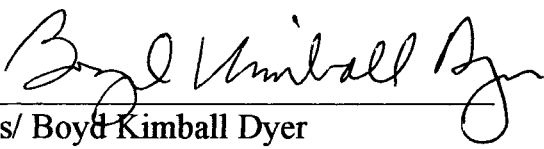


/s/ Paul Howard Peters
Appearing pro se

CERTIFICATE OF MAILING

I certify that on November 2, 1999, I caused two true and correct copies of the foregoing Brief of Appellants to be mailed, postage prepaid, to the following at the following address:

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 November 2, 1999
/s/ Boyd Kimball Dyer (date)

Tab 1

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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SUMMIT COUNTY

STATE OF UTAH

SHARI LYNN CRISMAN, MARK	:	
CRISMAN, and PAUL HOWARD	:	
PETERS	:	AFFIDAVIT OF TED HALLOWS
Plaintiffs,	:	Civil No. 970600218
vs.	:	Judge Ronald E. Nehring
TED HALLOWS,	:	
Defendant.	:	

STATE OF UTAH)
 :
COUNTY OF SALT LAKE)

TED HALLOWS, having first been duly sworn and put under
oath, deposes and states as follows:

1. I am a resident of Summit County, State of Utah, over

the age of 21. I am the Superintendent of the fish hatchery operated by the Division of Wildlife Resources ("DWR") in Kamas, Utah. I have worked in this capacity for 11 years. I am the same Ted Hallows who was involved in the incident which is the subject of the Complaint filed in the above action. I am personally familiar with the facts set forth in this Affidavit and if called to testify as a witness in this action, I would testify as follows:

2. I have been an employee of DWR for 13 years.

3. As part of the duties of my employment, I know State law and procedure concerning wildlife preservation, protection, and management.

4. According to State law, it is the duty of DWR to "protect, propagate, manage, conserve, and distribute protected wildlife throughout the state." Utah Code Ann. § 23-14-2.1. Accordingly, the mission statement and policy of DWR is to protect and help conserve and propagate all wildlife and to take any lawful action to achieve these goals.

5. Being familiar with the law regarding wildlife

protection, I understood that Utah Code Ann. §18-1-3, provides that "any person may kill a dog while it is attacking, chasing or worrying any . . . hoofed protected wildlife, . . . , or while such dog is being pursued thereafter." (Emphasis added).

6. On April 24, 1996, I was helping other DWR personnel build a fence around the aquarium at the hatchery.

7. There was a large herd of elk feeding on the hillside above the hatchery.

8. I was informed that two dogs were chasing deer and the elk on the hillside near the hatchery.

9. At about 11:30 a.m. that morning, I observed two white dogs chasing eight deer in the area of the elk.

10. The dogs chased the deer over the ridge of the hill.

11. I got my rifle and crossed the street toward the hillside.

12. The dogs came back over the hill chasing ten deer.

13. I first shot the larger white dog, hitting and wounding it.

14. I shot and killed the smaller white dog.

15. I chased the wounded dog across DWR property, but did not see it again.

16. The dogs were not wearing licenses or tags of any kind.

17. Later that day, Paul Peters called me and asked if I knew anything about his dog that had been shot. I told him that I shot and killed one dog and had taken a shot at another one. He threatened me over the phone, stating that if I shot his dog, he would shoot me.

18. Paul Peters came to the hatchery and yelled and swore at me. I showed him where the dead dog was and helped him load up the dead animal. He was still angry and continued swearing at me.

19. I explained to Mr. Peters that the dogs were chasing the deer and elk and indicated that I had the authority to shoot the dogs. I showed him a copy of Utah Code Ann. § 18-1-3, and explained that according to DWR policy and mission statement, I had an obligation to protect the deer and elk. I indicated to him

that I had authority to shoot the dogs.

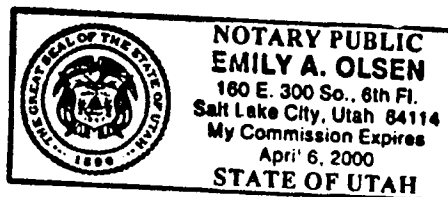
20. I acted well within the scope of my duties as an employee of DWR.

Dated this 7 day of January, 1998.


TED HALLOWS

SUBSCRIBED AND SWORN to before me, a notary public, on the
7th day of January, 1998.


NOTARY PUBLIC



Tab 2

PEGGY E. STONE (6658)
Assistant Attorney General
JAN GRAHAM (1231)
Attorney General
Attorneys for Defendant
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Salt Lake City, Utah 84114-0856
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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SUMMIT COUNTY,

STATE OF UTAH

SHARI LYNN CRISMAN, MARK
CRISMAN, and PAUL HOWARD
PETERS,

Plaintiffs,

vs.

TED HALLOWS,

Defendant.

**SECOND AFFIDAVIT OF
TED HALLOWS**

Civil No. 970600218

Judge Pat B. Brian

COUNTY OF SUMMIT)
) ss.
STATE OF UTAH)

TED HALLOWS, having first been duly sworn and put under oath, deposes and states as follows:

1. I am a resident of the State of Utah, County of Summit, City of Kamas, and am over the age of twenty-one (21) years.
2. I am competent to testify to the matters stated herein.
3. I have been employed by the State of Utah, Department of Natural Resources, Division of Wildlife Resources ("DWR") for approximately fourteen (14) years.
4. For the past eleven (11) years I have been employed as the Superintendent of the DWR Fish Hatchery, located at 2722 East Mirror Lake Highway, Kamas, Utah 84036, County of Summit.

Factual Chronology of Events.

5. On April 24, 1996, at or about 8:00 a.m., I was conducting chores in and about the fish hatchery. I watched, as was my custom, a large herd of elk feeding on the snow covered, northerly mountainside, across Mirror Lake Highway, above the hatchery. Both deer and elk traverse this terrain on a regular basis at this time of year.
6. At approximately 8:30 a.m. I commenced to assist other DWR personnel with the erection of a pole fence encircling the outdoor aquarium at the fish hatchery.
7. Around 10:30 a.m., while laboring on the fence construction, I heard the hatchery office phone ringing. The office phone is equipped with a loudspeaker that enables office personnel to hear the phone ring when they are outside and in the proximity of the hatchery office.

8. I continued working on the fence as I knew that if the call were important a message would be left on the office answering machine; and when I got sufficient time I would go to the office and pick up any message.

9. At approximately 10:45 a.m. I headed to the office to retrieve any phone message that may have been left. Upon arriving at the office I played back the voice mail. The caller identified himself as Gary Rice, a local resident and neighbor. Mr. Rice stated that he had witnessed some dogs chasing deer and elk on the mountainside above the hatchery.

10. After listening to Rice's message I picked up a pair of binoculars and scanned the mountainside to the north from the office window. About seven hundred (700) yards up the snow laden mountainside I saw a herd of elk high up in the pass. I then observed approximately eight (8) deer below the elk. The deer were being chased through the trees to the northeast, towards the elk up in the pass, by two (2) white dogs.

11. I observed the deer and dogs for thirty (30) seconds or so. Both the deer and dogs were moving at a fast pace. I promptly exited the office and trotted up the hill to my nearby home. En route to my residence I informed the DWR employees constructing the aquarium fence (Dana Dewey, Terry Howck and Phil Douglas) that there were some dogs chasing deer and elk on the mountainside.

12. When I reached the house I ran downstairs and picked up a partially loaded, Remington 25-06, high powered rifle.

13. I left the house, trotted across the DWR property, crossed Mirror Lake Highway, and scaled the mountainside up to the Forest Service land. I slowly walked up the draw to see if I could relocate the two (2) dogs, deer and elk.

14. I saw the elk high up in the pass. They were nervously bunched together and started to take off to higher ground to the northeast.

15. The deer then came back over the hill to the west. The two (2) white dogs were chasing them from behind in the snow pack. The deer descended into the two (2) and three (3) foot drifts while the dogs ran atop the snow. The dogs pace was such that they were keeping up with the deer. The deer and dogs angled down the southerly side of the mountainside at a fast rate of speed.

16. I temporarily lost sight of the deer and dogs from where I was standing. I moved further up the draw and relocated the two (2) dogs, as they were coming down the draw towards me from the north.

17. There were no deer in front of the dogs at this time. The two (2) dogs were nervously trotting around, searching. Dogs that are chasing deer, as in the instant case, are nervous and they're always kind of trotting.

18. I laid down in a prone position to obtain a "dead rest" firing position. The larger white dog stopped on a trail about a hundred (100) yards away. I fired a shot at the larger dog. It

immediately took off at an angle to my right, running very fast to the east. The smaller white dog took off running behind the larger dog, also in an easterly direction.

19. When the two (2) dogs took off running I had to stand up in order to fire a second shot. The larger dog disappeared into a bunch of trees before I could fire at it again. Since the larger dog had gotten into the trees, I fired a shot at the second (smaller) dog which was rapidly following behind the first (larger) dog. I hit the smaller dog in the neck, just at the base of the head, and killed it.

20. I went over the ridge in an easterly direction in pursuit of the larger dog. I wanted to make sure that I hadn't hit or wounded it, as I follow up on all my shots to insure that I don't cause an animal to suffer. During this pursuit I walked past the smaller, dead dog. I observed that it was not wearing a license or tag of any kind. I had no idea as to who the dead white dog or the larger white dog belonged to.

21. The larger dog had left the Forest Service land and ran upon DWR property. I searched the draws for approximately forty-five (45) minutes but could not locate the animal.

22. I returned to the fish hatchery and was informed by DWR personnel working on the aquarium fencing that they had seen the larger white dog running over the hill and then cutting across the valley towards the south.

23. I reported the incident to my immediate supervisor, Tim Miles, later that afternoon (April 24, 1996). Mr. Miles is the DWR Fish Hatchery Coordinator and his office is located in Salt Lake City. I informed Miles that I had shot and killed a dog that was chasing deer.

24. I received a phone call from Paul Peters ("plaintiff") at approximately 1:30 p.m. Plaintiff inquired if I knew anything about his dog being shot. I told plaintiff that I had shot and killed one (1) dog and taken a shot at another.

25. Plaintiff threatened me over the phone and said; "If I shot his dog, he would shoot me."

26. Plaintiff came to the fish hatchery shortly thereafter and yelled and swore at me. I showed plaintiff where the smaller dead dog was on the Forest Service land and helped him load up the animal. He remained angry and continued to swear at me.

27. I explained to plaintiff that the dogs were chasing the deer and elk and indicated that I had the authority to shoot the dogs. I showed plaintiff a copy of Utah Code Unannotated § 18-1-3 (¶ 35), and explained that according to DWR policy and the mission statement, that I had an obligation to protect the deer and elk.

28. After concluding my conversation with plaintiff, I called a neighbor who resides northwest of the hatchery, Tommy Thompson. I asked Mr. Thompson if he had seen any dogs, deer or elk that morning. He replied that he had seen elk bunched up nervously and running deer and dogs that morning on the easterly hillside.

Education and Employment History.

29. I graduated from Southern Utah State College in 1985, Magnum Cum Laude, with a Bachelor's Degree in Zoology. Upon graduation I went to work for the DWR as a Wildlife Technician at the Egan Fish Hatchery in Bicknell, Utah. I occupied this position for approximately one (1) year, when I was promoted to Assistant Superintendent at the DWR fish hatchery in Kamas, Utah. In or about 1987, I was promoted to Fish Hatchery Superintendent at the Fisheries Experiment Station in Logan, Utah. In 1988 I became the Superintendent at the Kamas Fish Hatchery.

Wildlife Codes and Protocols.

30. When I initially became an employee of the DWR I agreed to abide by the mission statement and applicable wildlife codes. My duty is to manage and protect all wildlife in trust for the state. I take appropriate actions to accomplish these goals and to uphold the wildlife code. The DWR Mission reads as follows:

The mission of the Division of Wildlife Resources is to assure the future of protected wildlife for its intrinsic, scientific, educational and recreational values through protection, propagation, management, conservation and distribution throughout the state.

Utah Code Unannotated § 23-14-1(2)(a) states in pertinent part:

Subject to the broad policymaking authority of the Wildlife Board, the Division of Wildlife Resources shall protect, propagate, manage, conserve, and distribute protected wildlife throughout the state.

DWR Training, Ongoing Education and Field Operations.

31. As a DWR employee I am obligated to participate in continuous training, education, field operations, and periodic interfacing with DWR personnel outside the perimeters of the Kamas Fish Hatchery, to include:

(a.) Annual or biannual weaponry training and certification by a certified instructor with shotgun, rifle and pistol. This training is necessitated by the fact that there are occasions when I am obligated to use a firearm to help or dispatch wildlife in and about the Kamas area. Additionally, a DWR Conservation Officer (“CO”) is not always available to handle threats to wildlife, thereby allowing me to have a firearm at work and to be able to carry such in a state vehicle for wildlife incident purposes.

(b.) Taking and passing the State of Utah’s Hunter Safety course. This course offers instructions in the proper safety and use of firearms, and allows me to use a firearm for wildlife related incidents in every state in the United States, upon the purchase of a permit from the applicable state.

(c.) Assisting in the training of youth in Hunter Safety courses in the proper use of firearms in the hunting of wildlife.

(d.) Interfacing with Forest Service and Wildlife biologists in working out bear problems in the Kamas ranger district.

(e.) Working with DWR biologists: deer and elk aerial counts; trapping of elk; radio collaring elk; deer classifications; beaver and bear problems; bear trappings; and moose counts.

(f.) Teaming up with DWR CO's in gathering poaching information, checking stations, salvaging wildlife, dogs chasing wildlife, and illegal wildlife activities.

Factual Analysis of Actions Taken

32. On April 24, 1996, while assisting other DWR personnel with the construction of a pole fence around the outdoor aquarium at the fish hatchery (§ 6), I was on duty in full DWR uniform, and acting in the performance of my duties, within the scope of my DWR employment and under color of that authority.

33. When I followed up on Gary Rice's phone message (§ 9) and subsequently shot and killed a white dog that was chasing deer and took a shot at another (§§ 11-21), I was on duty in full DWR uniform, and acting in the performance of my duties, within the scope of my DWR employment and under color of that authority.

34. When Mr. Rice initially observed dogs chasing deer and elk on the mountainside (§ 9) he had several options. Rice could have contacted the Sheriff's Department in Coalville or the Animal Regulation authorities. Both these agencies, however, are located several miles away from the Kamas Fish Hatchery. Rice could also have opted to procure a rifle, scale the mountainside, and shoot the dogs that were chasing the deer and elk himself.

35. The authority for Rice, or any of the local citizenry, to shoot the dogs under the instant circumstances is incorporated in Utah Code Unannotated § 18-1-3, Dogs attacking domestic animals, hooved protected wildlife or domestic fowls. The Code specifically states:

Any person may kill a dog while it is attacking, **chasing** or worrying any domestic animal having a commercial value, or, any species of **hooved protected wildlife**, while attacking domestic fowls, **or while such dog is being pursued thereafter.**
(Emphasis added.)

36. Gary Rice phoned the fish hatchery (§ 9) because he operated out of the belief that it was our job to respond to situations of this nature. The populace in Kamas do not differentiate between the various sections of the DWR and as a consequence look upon hatchery personnel as being tantamount to law enforcement officers.

37. At all times relevant to the claims raised in plaintiff's complaint, the nearest DWR CO--DWR's equivalent to law enforcement officers--worked out of Salt Lake City, approximately one (1) hour away.

38. It would be fallacious for one to assume that Kamas Fish Hatchery employees merely maintain the hatchery proper and have no vested authority to venture off the premises for purposes of addressing threats to wildlife in an about the Kamas community.

39. The Kamas Fish Hatchery is the sole DWR entity in the Kamas area and the only DWR phone number listed in the local directory. As a consequence, hatchery personnel receive a myriad of citizenry calls, to include: down deer, elk, moose and eagles; dogs chasing deer, elk

and domestic fowl; bear and beaver incidents; and the gathering of information on a host of law violations. Therefore, hatchery employees make every effort to accommodate local residents in wildlife related instances whenever possible.

40. Moreover, as the fish hatchery superintendent, I have personally been caused to respond to citizenry calls in and about the Kamas region, and more particularly described as follows: assisting deer and moose with broken legs; tending deer caught in fences and window wells; sick and blind moose incidents; retrieving injured eagles and hawks; dogs chasing deer and elk; shooting and killing a dog that had cornered a young, wounded moose; shooting and killing two (2) dogs that were chasing deer; removing road killed deer, elk and moose; untagged deer incidents; responding to bears occupying picnic tables and tops of automobiles; beavers damming rivers; and moose snagged in beaver traps.

41. At the time of the instant incident, there was no DWR CO stationed in the Kamas area (§§ 31(a) & 37). Had there been, I would have contacted such officer and informed him that I had seen dogs chasing deer on the mountainside, through binoculars from the hatchery office window (§§ 10 & 11), and requested that the CO respond forthwith.

42. Since "time was of the essence," I hastened to my nearby residence to procure my rifle (§§ 11 & 12). Since CO's are not always available to handle threats to wildlife, I am vested with the authority to possess a firearm at work and to be able to carry such in a state vehicle (§ 31(a)).

43. As I climbed the snow laden mountainside towards the Forest Service land to locate the deer, elk and two (2) dogs (§§ 13-16), I was worried about the deer and elk. That's one of the reasons you take this job. The DWR motto is to protect, enhance, and propagate wildlife; and the intent is that we are there to help wildlife in any capacity that we can, when we can.

44. I shot and killed the smaller white dog (§ 19) and fired a shot at the larger white dog (§ 18) because I felt the dogs were endangering the deer and elk. By April the deer and elk are coming off the harshness of winter and as such are in a stressed and weakened condition. The energy reserves of the deer and elk are further diminished, as in the instant case, when they must labor through two (2) and three (3) foot snow drifts to flee pursuing dogs.

45. Additionally, left unattended, the dogs in this case could conceivably have chased and/or spooked the deer and elk down to Mirror Lake Highway, thereby posing an additional threat to the deer, elk and motorists alike.

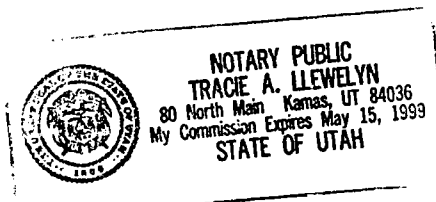
46. The mountainous area where I fired two (2) shots at the two (2) white dogs (§§ 18 & 19) is sparsely populated. However, and at all times relevant, I would not have fired at either dog if my actions would have endangered human life, i.e. the proximity of houses or other dwellings in my line of sight and/or fire.

Further affiant saith naught.

DATED this 16 day of April, 1999.

Ted Hallows
TED HALLOWS

SUBSCRIBED AND SWORN to me this 16 day of April, 1999.



Trace A. Llewelyn
NOTARY PUBLIC

My Commission Expires:

5-15-99

Tab 3

Paul Howard Peters #6967
P.O. Box 980903
Park City, Utah 84098-0903
(801) 640-0903

FILED

APR 30 1999

By Third District Court
Deputy Clerk, Summit County

[Signature]

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SUMMIT COUNTY, SUMMIT COUNTY, STATE OF UTAH

**SHARI LYNN CRISMAN, MARK
CRISMAN, and PAUL HOWARD
PETERS**

Plaintiffs,

vs.

TED HALLOWS,

Defendant.

**AFFIDAVIT OF
PAUL HOWARD PETERS:
SUPPLEMENT TO
PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

CIVIL NO. 970600218

Judge Pat B. Brian

I, Paul Howard Peters, state the following to be true and on my personal knowledge:

1. I am a citizen and resident of the United States of America and the State of Utah, and I am over the age of eighteen (18) years.
2. I am competent to testify to the matters stated herein for they are within my personal knowledge.
3. On or about the morning of April 24, 1996, I left my home which was within the Samak Country Estates Subdivision, Summit County to go to work in Synderville, Summit County.

4. Prior to leaving, I locked three dogs, Cody, Kiva and a small beagle, Trooper (Cody and Kiva are Labradors), within the dog run adjacent to my house. The dog run is located within an outside perimeter fence, that surrounds the front yard of the residence.

5. With the three dogs inside the dog run, I locked the gate to the dog run making sure that it was secure.

6. I also observed that the outside perimeter fence was not damaged. I reviewed the fence to determine that there was no way that the dogs could escape by digging. There were no openings in the fence.

7. Additionally, I observed that the row of large stones I had placed in front of and behind the fence had not been disturbed.

8. I knew from experience that the dogs can not escape when they are locked within the dog run.

9. I took great care to secure the dogs because Gary Rice told me that dog the defendant, Ted Hallows, had been killing dogs.

10. Gary Rice was my neighbor to the South and the defendant was my neighbor to the North. Rice told me in my front yard about a week before my dogs, the defendant killed two of the neighborhood dogs.

11. He said that the defendant had killed many other dogs and to watch out. Rice said that the defendant would kill any dogs that were loose in the neighborhood.

12. I sensed Rice's warning was an implied threat against my dogs; because I knew that Rice was a friend of the defendant.

13. The defendant visited Rice frequently at Rice's residence.
14. I thought it was better not to challenge Rice on his implied threat that the defendant would kill my dogs.
15. Rather, I responded to Rice that that I thought the dogs that he told me the defendant had killed were docile and it was a shame they were killed.
16. Rice told me that the two neighborhood dogs (the dogs were owned by a family that just moved into the neighborhood) had been on his property and had disturbed the fish in his hatchery ponds.
17. My conversation with Mr. Rice concerned me because, although he is a nice fellow in terms of demeanor, he was telling me the defendant would kill any dogs running loose.
18. I knew that I was considered a newcomer and an outsider by my conversations with Rice and the neighbors of the defendant.
19. I felt that the defendant would be inclined to kill my dogs to make a point to the neighborhood.
20. Therefore, I was very diligent to check each day that my dog run and perimeter fences were secure and my dogs were safe.
21. As I have said above, when I left my residence on the morning of April 24, 1996, I knew my dogs and Trooper were safe from the defendant for they were enclosed in the dog run and further enclosed in an outer fence that surrounds the front yard and the dog run.

22. The hinged gate was held secure by a metal wire and blue and red bungee cords that firmly hold the gate flush against the corner of the house. The fence abutted the house on the east and the neighbor's fence to the east. The entire perimeter of the fence not abutting the house was reinforced with heavy gauge wire fence comprising of 4x2 inch rectangles. The wire fence perimeter to the dog run was buried underground and reinforced with rocks set in consolidated soil in a manner that prevented dogs from burrowing under the fence.

23. Neither before or after April 24, 1996, had the dogs escaped from the dog run enclosure.

24. Cody and Trooper's physical condition was such that they were unable to jump high enough to escape the dog run or the outer fence. Kiva's physical condition was such that she could jump the dog run fence but had never done so.

25. I then left for work. The dogs were secure.

26. Later that day I returned to my home to find my dog Kiva, covered in blood waiting outside the perimeter fence that surrounds my front yard. Kiva was in shock and disoriented.

27. I opened the ranch gate drove inside my yard and took Kiva into the house.

28. I noticed on my way into the house that the dog Cody was in the dog run; but the small beagle Trooper was not.

29. Before I went into the house I called for Trooper and ran the perimeter of the fence calling out for Trooper.

30. I placed Kiva within the bath tub in the bathroom and washed three wounds.

31. A gunshot wound above the neck and another gunshot entry and exits wounds one on her rear. All the wounds appeared to be bullet wounds.

32. I cleaned the wounds and departed for the veterinarian in Park City, Utah.

33. On my way out of the house I again inspected the dog run and I found the gate secure and that there was no breach of the fence; however, I noticed that the gate was secured differently than I had secured the gate that morning.

34. It appeared that the dogs had been released purposely by another individual; Cody would have remained in dog run for she is shy and disciplined.

35. I then drove Kiva to the veterinarian. Kiva was too unstable to perform surgery that day so she was held over night. Surgery was performed on her the next morning. Before I left the house for the vet, I again searched for Trooper and called out for him. I inspected the dog run and saw no signs of escape.

36. I saw that the bungee and wire were tightly secured; but in a different manner than I had done that morning.

37. I then immediately returned to my house hoping to find Trooper. Trooper was nowhere to be found.

38. I then concluded that the defendant had carried out the threat to kill my dogs. It appeared the dogs were released by someone; and the defendant shot them.

39. I contacted the defendant on the telephone and I told him that I knew he shot my dogs.

40. The defendant acted surprised to hear from me. He was particularly concerned how I knew he shot my dogs. The defendant asked me how I knew he shot the dogs.

41. The defendant admitted that they he had shot the dogs because they had disturbed his garden and bothered his horses.

42. I then told the defendant that I was coming over to speak to him personally.

43. I drove over to his residence and had a long conversation with him on the driveway to the east of his house.

44. He said that he knew the dogs belonged to me when he shot them. I asked him, why he did not do the neighborly act of discussing with me his concerns with the dogs before shooting them. He did not reply.

45. He refused to respond; he was enjoying the sense of hopelessness and frustration I was feeling.

46. As I neared tears in my pleas with the defendant for some explanation, the defendant appeared more empowered with my sense of grief. He was enjoying himself.

47. After I told him I was going to call the Sheriff, he told me that the dogs where chasing deer when he shot them.

48. He told me that he killed Trooper when he was in the act of chasing deer.

49. I quickly noticed that he had changed his previous statement, to me that the dogs had been in his garden and bothered his horses as the reason he shot the dogs.

50. I asked him to show me where Trooper was, expecting that he had brought the beagle down to his compound.

51. The defendant told me that he left the dog up there and that he had no intention of retrieving Trooper. The defendant, also stated that he made no attempt to search for Kiva after having shot at her.

52. I was disturbed at this point with the defendant's lie and his demeanor, I told him that I would pursue this matter with his employer.

53. The defendant asked me not to make any complaints, because his employer, "will not stand by me" for shooting the dogs.

54. The defendant stated to me that he was not acting as their employee when he shot the dogs; but, that he had a right as a "citizen" to shoot the dogs because they were chasing deer.

55. At that point I knew that the defendant was acting out of personal motives.
17.4 If he shot the dogs on behalf of the Fish Hatchery among the things he should have done included: he would not have left Trooper lying there; he would have filed a report regarding the killing and the discharge of a firearm; and, he would have attempted to contact me since he knew he killed one of my dogs.

56. Instead, the defendant asked me not to make trouble for him with his employer.

57. We discussed many other matters and then the defendant walked me across Mirror Lake Highway to show me where Trooper was killed.

58. The defendant showed me where he lied down on the ground in an area very close to the highway (approximately 100 yards from the highway) and took a shot at Kiva. According to the defendant, after he shot at Kiva, she then fled down the hill toward the highway.

59. I searched the area for any rifle cartridge cases, but did not find any. The defendant then said that after he shot at Kiva, that Trooper followed chasing deer and elk. The defendant boasted how he aimed at Trooper's head and dropped Trooper with one shot.

60. Defendant described Trooper's bounding after deer and elk. I knew Trooper was very weak and unable to run; so he was physically unable to chase deer as claimed by the defendant.

61. The defendant then walked the hill about fifty yards to where Trooper was lying.

62. The small dog was dead with a gunshot behind the head.

63. I looked in the vicinity in the snow and mud for any sign of deer or elk that the defendant said the dogs had been chasing. I found no sign of deer or elk tracks. There was no sign of deer or elk as the defendant claimed. I was sure that defendant was lying about the deer or elk.

64. At that point, I told the defendant I did not believe him that the dogs where chasing deer as he claimed. I told him that he killed Trooper out of personal motivations.

65. The defendant then became more distressed because I took pictures of the scene with a camera.

66. The following day, April 25, 1999, I returned to the defendant's residence with Kenneth and Melanie Alleavitch and we met with the defendant.

67. During the conversations we had with defendant, he claimed that a provision in the Utah Code permitted him to kill the dogs because they were chasing deer when he shot them.

68. The defendant now claimed, contrary to his admissions to me the prior day, that there was no personal motivation in his actions. The defendant now claimed that he was fulfilling the mission statement of the Utah Department of Wildlife Resources.

69. The defendant admitted to us that he had not filed any reports, nor had he attempted to contact his supervisor or any conservation officer prior to shooting the dogs.

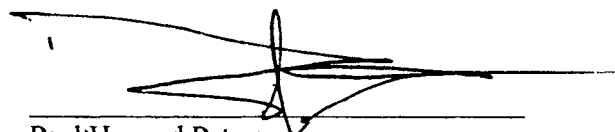
70. The defendant's own statements to me were that he acted outside the scope of employment as a fish hatchery employee and for personal motivations.

71. I ended my conversation with the defendant the day with the inquiry, "Do you enjoy shooting dogs?."

72. The defendant responded with a smile and said, "I've been shooting dogs all my life."

Further affiant saith naught.

DATED this 30th day of April, 1999.


Paul Howard Peters

STATE OF UTAH)

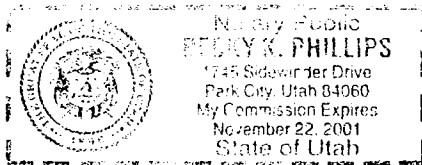
SUMMIT COUNTY)

On the 30th day of April 1999, personally appeared before me Paul Howard Peters, the
signer of the above instrument, who duly acknowledged to me that he executed the same.


NOTARY PUBLIC

Residing at: _____

My Commission Expires: 11-22-01



Tab 4

No.
FILED
OCT 19 1998
Third District Court
By Deputy Clerk, Summit County

BOYD KIMBALL DYER, ESQ., Utah Bar #944
Attorney for Plaintiffs
Shari Lynn Crisman and Mark Crisman
664 Northcliffe Circle
Salt Lake City, Utah 84103
(801) 581-6034

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SUMMIT COUNTY, STATE OF UTAH

SHARI LYNN CRISMAN, MARK	)	PLAINTIFFS SHARI LYNN CRISMAN
CRISMAN, and PAUL HOWARD	)	AND MARK HUNTER CRISMAN'S
DEFENDANT'S FIRST SET	)	RESPONSE TO DEFENDANT'S
PETERS, Plaintiffs	)	MOTION FOR SUMMARY
	)	JUDGMENT
vs.)	
)	
TED HALLOWS, Defendant.	)	Civil No. 970600218
	)	Judge Pat B. Brian
)	

Plaintiffs Shari Lynn Crisman and Mark Crisman make the following response to Defendant Ted Hallows' Motion for Summary Judgment dated October 9, 1998.

An undisputed material fact omitted from Defendant Ted Hallows' motion for summary judgment is that the dog Trooper was too infirm to have done what Ted Hallows said he saw the dogs doing -- chasing deer that were moving "very fast" with the dogs "right behind them. On their heels." [Hallows Deposition, p. 21, l. 8, attached to Defendant's Motion as Exhibit "B"].

In Plaintiff Shari Crisman's deposition she testified at length on Trooper's physical condition. The first pages of her

testimony are included in Exhibit "C" to Defendant's Motion, but the Exhibit cuts off just when she was saying: "He was a 13-pound animal, and Trooper, given his illnesses, he **could never seek and track down a deer.** I mean, he could walk at a fast pace, but he could never run. I mean, he could do a moderate mild jaunt. And it's just absurd what transpired that day and what your client is saying happened.

"Knowing Trooper all my whole life, knowing animals my whole life, I can't imagine a 13-pound dog tracking a mule deer in that fashion."

Question [by Ms. Stone]: "You are aware that dogs are pack animals, correct?"

Answer [by Ms. Crisman]: "Sure, but Trooper was not in a pack, and he didn't have a pack mentality because he was domesticated. And, then, given his illnesses, there's really no way. He couldn't withstand the daily treatment of my son who is two and a half years old, and it was a loving, amorous relationship that they had. With just the physicalness of it, he could not take it, and that's why Trooper was sent to Utah, so -- and I have -- there are many people that, you know, could collaborate as to his condition. Trooper would walk places but he could never run."

Tab 5

No. _____
FILED
JUN - 2 1999
By _____ Third District Court
Deputy Clerk, Summit County

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SUMMIT COUNTY, STATE OF UTAH

SHARI LYNN CRISMAN, et. al,	:	FINDINGS OF FACT AND
	:	CONCLUSIONS OF LAW
Plaintiffs,	:	
vs,	:	
TED HALLOWS, et. al.	:	Case #970600218
Defendants,	:	JUDGE PAT B. BRIAN

This motion for Summary Judgement having come before the Court through written memoranda of all parties. The Court, after having reviewed all memoranda and considered the arguments submitted therein, enters Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The dogs, Trooper and Kiva were killed by the Defendant, Ted Hallows (Hallows) on April 24, 1996.
2. Hallows was an employee of the Utah Department of Wildlife Resources on April 24, 1996.
3. Gary Rice and Hallows both observed the dogs chasing deer and elk on April 24, 1996.
4. After personally observing the dogs chasing deer and

elk, Hallows shot the dogs.

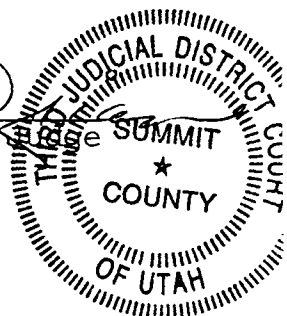
5. Hallows was acting within the scope of his employment when he shot the dogs on April 24, 1996.
6. Plaintiffs Shari and Mark Crisman's claim was denied on December 13, 1996. Crismans filed their civil action on December 24, 1997.
7. Plaintiff Paul Howard Peters did not file a notice of claim prior to the commencement of the civil action.

CONCLUSIONS OF LAW

1. Utah Code Section 63-30-15(2) requires that a civil action must be filed within one year following the denial of the claimant's notice of claim. Since the Crismans did not file their civil action within one year after the notice of claim was denied, they are barred from bringing this action.
2. Utah Code Section 63-30-12 requires claims against the State, based upon acts or omissions of employees while acting within the course and scope of their employment, are barred unless a notice of claim is filed within one year of the alleged act or omission. Peters failed to file a claim within one year of April 24, 1996 and is therefore barred from bringing the present action.

DATED this 24 day of May, 1999.


Pat B. Brian, District



CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the following Findings of Fact and Conclusions of Law was mailed to on the attorneys listed below this 28 day of May, 1999.

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Dana L. Farnsworth

Copy Hand Delivered to Paul Howard Peters 6/3/99.

*Joye D. Ovard
Deputy Clerk.*