

1999

Linda Ilott v. University of Utah : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

| | | |
|----------------------|---|--------------------|
| LINDA ILOTT, | : | |
| Plaintiff/Appellant, | : | Case No. 990788-CA |
| v. | : | |
| UNIVERSITY OF UTAH, | : | Priority No. 15 |
| Defendant/Appellee. | : | |

BRIEF OF DEFENDANT - APPELLEE

Appeal from a Final Order of Dismissal of the Third Judicial
District Court, Salt Lake County, State of Utah, the Honorable
Ronald E. Nehring presiding

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Utah Court of Appeals
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ORAL ARGUMENT AND PUBLISHED OPINION NOT
REQUESTED BY DEFENDANT - APPELLEE

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LIST OF ALL PARTIES

To the best of Defendant's knowledge, all interested parties appear in the caption of this Brief.

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BRIEF OF DEFENDANT - APPELLEE

STATEMENT OF JURISDICTION

The instant action comes within the original jurisdiction of the Supreme Court of the State of Utah under Utah Code Ann. § 78-2-2(3)(j) (1996). On December 1, 1999, this matter was transferred to this Court by the Supreme Court of Utah pursuant to Utah Code Ann. §§ 78-2-2(4) and 78-2a-3(2)(j) (1996). R. 231-33.

STATEMENT OF THE ISSUES

1. The duty of a property owner to exercise reasonable care in keeping its premises safe for business invitees is a duty to inspect for dangerous conditions.

This issue was raised by the defendant's motion for summary judgment. R. 48-49.

STANDARD OF REVIEW: This matter was decided below upon the defendant's motion for summary judgment. Reviewing the trial court's grant of a motion for summary judgment "includes a determination of whether the trial court correctly

applied governing law, affording no deference to the trial court's determination or conclusions of law." Burton v. Exam Ctr. Indus. & Gen. Med. Clinic, Inc., 2000 UT 18, ¶4, 387 Utah Adv. Rep. 21; Gardner v. Perry City, 2000 UT App 1, ¶6, 994 P.2d 811. "In matters of pure statutory interpretation, an appellate court reviews a trial court's ruling for correctness and gives no deference to its legal conclusions." Stephens v. Bonneville Travel, Inc., 935 P.2d 518, 519 (Utah 1997).

2. The trial court correctly determined that the defendant was immune due to its alleged failure to make an adequate inspection.

This issue was raised by the defendant's motion for summary judgment. R. 48-49.

STANDARD OF REVIEW: This issue is considered under the same standard of review as is the first issue.

3. The defendant is entitled to immunity because the alleged injuries of the plaintiff arose from a latent defect for which immunity has not been waived.

This issue was raised by the defendant's motion for summary judgment. R. 48-49.

STANDARD OF REVIEW: This issue is considered under the same standard of review as is the first issue.

DETERMINATIVE STATUTES

Utah Code Ann. § 63-30-10 **Waiver of immunity for injury caused by negligent act or omission of employee - Exceptions.** (1996) (partial)
Immunity from suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of employment except if the injury arises out of, in connection with, or results from: . . .

(4) a failure to make an inspection or by making an inadequate or negligent inspection; . . .

(17) a latent dangerous or latent defective condition of any public building, structure, dam, reservoir, or other public improvement; . . .

STATEMENT OF THE CASE

Linda Ilott filed her complaint against the University of Utah on September 4, 1996. R. 1-13. In it, she alleged that she was injured by the dangerous condition of a bleacher seat at Rice Stadium on October 29, 1994, and that the University had either actual or constructive notice of this dangerous condition and was negligent in not repairing or warning of the danger. R. 2. Defendant filed its motion for summary judgment on March 24, 1998. R. 35-81. After oral argument on May 18, 1999 (R. 192), the trial court entered its Memorandum Decision on July 19, 1999 granting the defendant's motion. R. 210-20. The trial court's Order of Dismissal was filed on August 23, 1999. R. 221-22. Plaintiff's notice of appeal was filed on September 2, 1999. R. 223-24.

STATEMENT OF RELEVANT FACTS

On October 29, 1994, near the end of a University of Utah football game at Rice Stadium, Linda Ilott, a business invitee, was injured while she was walking on a wooden bleacher seat that gave way under her weight. R. 2-3, 59, 69-70. Plaintiff testified that the bleacher appeared to be safe and that there was no outward evidence to indicate that the wooden bleacher would not support her weight. R. 69-70.

Each summer before football season begins, the University did a visual and weight inspection of all of the bleachers and seats in Rice Stadium. University employees were to walk up and down each row and each aisle in Rice Stadium doing a visual and weight inspection of every seat and bleacher in Rice Stadium. As part of that inspection, University employees stood on every bleacher seat and every seat in the Stadium. The visual and weight inspection was done to locate seats or bleachers which might be a hazard and/or that needed to be repaired or replaced. Any seats or bleachers which the inspection determined might constitute a hazard for those attending activities at Rice Stadium were either replaced or repaired before the next public event in the stadium. A pre-season inspection was done by the University, including an inspection of the bleacher seat which Ilott complains about, prior to the 1994 football season. This inspection did not show that the bleacher seat in question was hazardous, unreasonably dangerous or that it needed to be replaced. R. 83-84.

Before each game during the football season, University employees made a visual inspection of each bleacher and seat in Rice Stadium. Again, any bleacher or seat that was determined might be dangerous was replaced or repaired before the next public event. Such a pre-game inspection was done before the October 29, 1994, football game at which the plaintiff was injured. R. 84. If the University's inspections had shown any danger from the wooden bleacher seat in question, it would have been repaired or replaced before the game. Id.

SUMMARY OF ARGUMENT

Plaintiff's claim is that the University of Utah failed to exercise reasonable care in keeping the wooden bleacher that gave way under the plaintiff's weight in a safe condition. But plaintiff then claims that this cause of action does not involve an inspection in any manner. Under Utah law, the duty of an owner to a business invitee, such as the plaintiff, is to make reasonable inspections to discover any dangerous conditions. Plaintiff does not claim that the University of Utah had actual notice of the dangerous condition of this particular wooden bleacher, but rather that it should have known. Such a claim is barred by the defendant's retention of immunity for a claim that it failed to make an inspection or that it made an inadequate or negligent inspection.

Plaintiff's own testimony was that the wooden bleacher seat in question did not appear dangerous and that it seemed safe and capable of supporting her weight. Defendant performed ongoing inspections of the seating in Rice Stadium to discover any dangerous conditions and remedy them. The evidence before the trial court was undisputed that the defective condition of the wooden bleacher seat in question was a latent defect for which the University of Utah has retained its immunity.

ARGUMENT

I. THE UNIVERSITY'S DUTY THAT ILOTT CLAIMS WAS VIOLATED WAS A DUTY TO INSPECT

Plaintiff's claim that no duty to inspect on the part of the University is contained in her cause of action is based on a misperception of Utah law. Ilott correctly states that the

standard of care for an owner of land to a business invitee for a dangerous condition permitted to exist on the land is that the defendant “knew or in the exercise of reasonable care should have known of said condition, and failed to exercise reasonable care to remedy said condition” Erickson v. Walgreen Drug Co., 120 Utah 31, 232 P.2d 210, 212 (1951). See also Deats v. Commercial Security Bank, 746 P.2d 1191, 1192-93 (Utah App. 1987). This language was adopted by the Utah Supreme Court from Restatement of Torts § 343. The duty of the owner to exercise reasonable care to learn of dangerous conditions is a duty to inspect the premises. A business invitee is:

entitled to expect such care not only in the original construction of the premises, and any activities of the possessor or his employees which may affect their condition, but also in inspection to discover their actual condition and any latent defects, followed by such repair, safeguards, or warning as may be reasonably necessary for his protection under the circumstances.

Restatement (Second) of Torts § 343 cmt. b (1964).

“The occupier must not only use care not to injure the visitor by negligent activities, and warn him of latent dangers of which the occupier knows, but he must also inspect the premises to discover possible dangerous conditions of which he does not know, . . .” William L. Prosser, *Law of Torts* § 61 at 392-93 (4th ed. 1971) (footnotes omitted). In Rogalski v. Phillips Petroleum Co., 3 Utah 2d 203, 208, 282 P.2d 304, 307 (1955) the court expressly held that: “[t]he duty owed by an owner of land to a business visitor is to inspect and maintain his premises in a reasonably safe condition or to warn the visitor of any dangerous conditions existing thereon.” This duty is greater than that

due a licensee. The difference between a business invitee and a licensee under Utah law is that the owner of land does not owe this duty to inspect his land to discover possible dangers to a licensee, only to a business invitee. Stevens v. Salt Lake County, 25 Utah 2nd 168, 172, 478 P.2d 496, 498-99 (1970). See also Darrington v. Wade, 812 P.2d 452, 458 (Utah App. 1991) (“Based on this standard, Wades, as owners of property intended to be leased for public admission, had a duty to inspect the property and either take reasonable measures to correct conditions creating a reasonably foreseeable risk of harm, or to ensure that their tenant corrected such conditions before admitting the public onto the property.”)

The duty of the University of Utah to inspect Rice Stadium is an integral part of the plaintiff’s tort claim. Ilott has not alleged that Rice Stadium was defective in its design or construction. Rather she claims that the negligence of the defendant was in permitting the wooden bleacher in question to become defective and not repairing, replacing or warning of the danger. The duty to discover a danger that has arisen on the property is a duty to inspect. If an inspection would not have discovered the latent defect, then no cause of action has been stated. Gregory v. Fourthrow Investments, Ltd., 754 P.2d 89, 91 (Utah App. 1988) (“Further, plaintiff did not present evidence establishing whether defendant did or did not routinely inspect his buildings, or whether such inspection would have put defendant on notice that a dangerous condition existed. Even if we assume that defendant had a duty to inspect, that duty would not require discovery of a latent defect.”)

The trial court correctly determined that “the crux of the plaintiff’s case is in fact premised on the defendant’s negligent or inadequate inspection.” R. 214. That decision should be affirmed on appeal.

Plaintiff also claims that there was an independent duty to warn of the alleged dangerous condition. Again, plaintiff misconstrues Utah’s law. The above cited cases make it clear that the duty of the landowner is to either correct a dangerous condition or to give adequate notice of the same. A landowner has no duty to do either until it becomes aware that such a dangerous condition exists.

II. THE UNIVERSITY OF UTAH IS IMMUNE FROM THIS CLAIM FOR INJURIES ARISING OUT OF AN INADEQUATE OR NEGLIGENT INSPECTION

Utah law placed upon the University of Utah a duty to inspect Rice Stadium for the benefit of the safety and health of the members of the public who attended public activities there as business invitees of the University. This duty was met by the University through a massive pre-season inspection and lesser pre-game inspections to discover and correct any dangerous conditions in the stadium. Plaintiff’s claim is that the University’s inspections failed to discover and correct the dangerous state of the wooden bleacher that gave way under her weight while she was walking on it.

It is undisputed that the University of Utah is a governmental entity that was performing a governmental function. Ledfors v. Emery County Sch. Dist., 849 P.2d 1162, 1164 (Utah 1993). Nor is it disputed that the applicable waiver of immunity under

which the plaintiff sues is conditioned upon the retentions of immunity found in Utah Code Ann. § 63-30-10 (1996). Plaintiff has not challenged these steps of the immunity analysis either on appeal or in the trial court. Plaintiff's only claim is that the inspections at issue in this action do not qualify as inspections under the express retention of immunity for making an inadequate or negligent inspection.

This action does not involve negligent conduct by the inspector during the course of the inspection, such as was involved in Erickson v. Salt Lake City Corp., 858 P.2d 995 (Utah 1993). Instead, the plaintiff seeks recovery from the defendant because the inspections at issue failed to uncover the dangerous condition of the wooden bleacher. This is the type of claim that this retention of immunity was intended to protect from liability. It was intended "to immunize only the conclusions and results of an inspection where the inspector may have overlooked something or made a faulty judgment in deciding whether to approve or reject the subject of the inspection." Erickson, 858 P.2d at 998.

Nor does this action involve a question of routine maintenance like that raised in Nixon v. Salt Lake City Corp., 898 P.2d 265 (Utah 1995). This is indeed a case "where an inspector failed to determine that a particular building or piece of equipment was unsafe for the public as a whole." Nixon, 898 P.2d at 271. The Utah Supreme Court has not held, as plaintiff suggests, that only "professional" building inspectors are covered

under the retention of immunity for inspections. Nor is this immunity limited to government inspections of private property.

In Velasquez v. Union Pacific R.R. Co., 24 Utah 2d 217, 469 P.2d 5 (1970), the court applied this retention of immunity to an alleged failure to adequately inspect the safety devices at a railroad crossing. The State of Utah was found to be immune because this involved an inspection and because the challenged actions had involved a discretionary function. The trial court correctly held that plaintiff's claims were barred by the retention of immunity for inspections.

First, the plaintiff's injuries stem from the incorrect conclusion reached by the individuals who inspected the bleachers that all of the bleachers were safe for the public using Rice Stadium. In other words, the plaintiff's injuries resulted directly from an alleged oversight related to the actual inspection process. The second component of public duty is also met because the University's inspectors allegedly failed to determine that at least one of the bleachers, which collapsed when the plaintiff stood on it, was unsafe for public use. It is evident that the inspection of the bleachers was undertaken to insure public health and safety. Since the plaintiff's injuries arose as a result of incorrect conclusions and results of an inspection which was undertaken for the public in general, the exception to the waiver of immunity found in § 63-30-10(4) applies to bar the plaintiff's action.

R. 218. For this reason, the trial court's dismissal of this action should be affirmed.

III. THE UNIVERSITY OF UTAH IS IMMUNE FROM INJURIES ARISING FROM A LATENT DEFECT

The University of Utah's immunity has also been retained for any injury arising out of a "latent dangerous or latent defective condition of any public . . . structure." Utah Code Ann. § 63-30-10(17) (1996). A latent defect is "[a] defect which reasonably careful

inspection will not reveal.” Vincent v. Salt Lake County, 583 P.2d 105, 107 (Utah 1978); Gregory v. Fourhwest Investments, Ltd, 754 P.2d 89, 91 n.1 (Utah App. 1988).

While the plaintiff challenges the quality of the defendant’s inspections, she presented no evidence to contradict the undisputed fact that the defect in the bleacher in question was latent and not patent. Ilott’s own testimony is that she saw nothing wrong with the wooden bleacher in question and had no reason to believe that it was defective.

Q. When you walked on those benches going up and down to visit with your nephew and return, did you notice that any of the planks on the benches appeared to be worn or weak or –

A. I didn’t – with stepping, I didn’t feel anything give way. They were just – they all looked the same. I – you know, they’re kind of weathered, and they’ve been out in the weather. I wasn’t really expecting anything to happen. I was quite surprised when my foot went down through. It really took me by surprise. I didn’t really notice anything going up. And I didn’t feel anything going down. And I didn’t notice any cracks or anything.

R. 59.

Q. As you walked along the bleachers to meet your nephew and then back to the – where you were sitting, did the bleachers appear to be safe to stand on?

A. Yes.

Q. Did you observe anything in the condition of the bleachers that made you suspect that they wouldn’t support your weight?

A. No.

R. 69.

Q. Okay. Anything else? I’m just asking you about your own inspection. Could you see that from your inspection of the bleachers as you elected to walk up those bleachers that they were weathered and worn and likely to collapse?

A. They looked – they didn't look dangerous. They didn't look like they would collapse. I certainly was surprised when they did. They just – how would you describe it? They're bleachers that are out there.

Q. Okay.

A. I didn't observe anything that looked like it wouldn't support my weight. I didn't observe anything that looked like it would be unsafe.

Q. Okay. That was both on your way up and on your way back down?

A. Yeah.

R. 70

Just as the plaintiff could see no patent defect in the wooden bleacher before the accident, the defendant's inspections also found no such defect. No evidence was presented that showed that a reasonably careful inspection would have led to the discovery of the latently dangerous or defective condition of the wooden bleacher in question. The duty to inspect does not include the duty to discover a latent defect. Gregory, 754 P.2d at 91. Without such evidence the University of Utah's motion for summary judgment was well taken under § 63-30-10 (17) and the dismissal of this action should be affirmed on these ground as well.

CONCLUSION

For the above stated reasons, defendant University of Utah asks this Court to affirm the dismissal of this action.

DEFENDANT DOES NOT DESIRE ORAL ARGUMENT OR A PUBLISHED OPINION

The defendant-appellee does not request oral argument and a published opinion in this matter. The questions raised in this appeal are not such that oral argument or a

published opinion are necessary, though the defendant desires to participate in oral argument if such is held by the Court.

Respectfully submitted this 5th day of April, 2000.

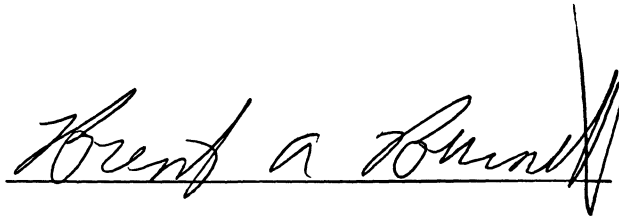


BRENT A. BURNETT
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CERTIFICATE OF SERVICE

I hereby certify that I mailed two true and exact copies of the foregoing Brief of Defendant-Appellee, postage prepaid, to the following on this the 5th day of April, 2000:

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ADDENDUM “A”

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

| | | |
|---------------------|---|---------------------|
| LINDA ILOTT, | : | MEMORANDUM DECISION |
| Plaintiff, | : | CASE NO. 960906196 |
| vs. | : | |
| UNIVERSITY OF UTAH, | : | |
| Defendant. | : | |

This case came before me for hearing on defendant University of Utah's Motion for Summary Judgment on May 18, 1999. I then took the matter under advisement. Since then, I have examined the legal authorities cited by counsel in support of their respective positions and considered counsels' oral argument. For the reasons stated below, I grant defendant's motion based on my conclusion that the conduct of the defendant claimed to be actionable arose from an inspection for which the University, as a governmental entity, is immune from suit.

FACTUAL BACKGROUND

The plaintiff alleges that on October 29, 1994, she attended a football game at Rice Stadium, a facility owned by the defendant. The plaintiff was returning to her seat when one of the planks used as bleacher seats in the north end-zone collapsed as she stepped on it, injuring her.

In support of their Motion, the University presents the Affidavit of Gary Ratliff, who notes that "[e]ach summer before football season begins, the University does a visual and weight inspection of all of the bleachers and seats in the Rice Stadium." (Affidavit of Gary Ratliff at para. 1). The plaintiff contests Mr. Ratliff's assertion that each of the three planks of every bleacher was visually or weight inspected by citing to the deposition testimony of Steven Pyne that he did not have specific recollection of conducting any inspections and repairs immediately prior to the October 29, 1994, football game. (Deposition of Steven Pyne at pp. 32-33). Mr. Pyne's deposition testimony creates an issue of fact concerning the scope of the defendant's inspection, but it is an issue which is rendered immaterial by Utah Code Annotated §63-30-10(4).

LEGAL ANALYSIS

The defendant contends that the governmental immunity provisions of Utah Code Annotated §63-30-10(4) and (17) bar the plaintiff's lawsuit. Section 63-30-10(4) provides as follows:

Immunity from suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of employment except if the injury arises out of:

. . . .

(4) a failure to make an inspection or by making an inadequate or negligent inspection.

The defendant asserts if its inspection should have disclosed a defective bleacher, then it is immune under subsection 4 because the plaintiff's injuries arose out of its "failure to make an inspection or by making an inadequate or negligent inspection."

In response to the defendant's immunity argument, the plaintiff suggests, unfortunately without discussion or analysis, that paragraph (4) does not apply because her claims do not involve a failure to inspect or negligent inspection. After reviewing the plaintiff's Complaint and the record developed pursuant to the

University's Motion, I am persuaded when the plaintiff's claim that the University breached its duty to keep Rice Stadium safe and well-maintained is coupled with the undisputed fact that the University conducted regular inspections of the bleacher planks, inspection immunity bars plaintiff's suit as a matter of law.

The plaintiff herself supplies the primary impetus for my determination that her claims are subject to inspection immunity in her Memorandum in Opposition to Defendant's Motion for Summary Judgment ("Memorandum"). The legal authority cited by plaintiff as "most instructive with respect to the issues before this Court" is quoted with emphasis for the proposition that "[The defendant] was in the actual possession of the building and had a duty to search out defects in the premises in order that they be reasonably safe for the presence of business visitors." Memorandum, at 9,10, citing Erickson v. Walgreen Drug Co., 232 P.2d 210 (Utah 1951). The inspections of the bleachers conducted by the University were undertaken in clear recognition of the duty articulated in Erickson. Since the weakened condition of the plank that failed beneath Ms. Ilott was not apparent, she could only establish the

University's negligence by proving that a reasonable inspection would have revealed its true condition. Accordingly, the crux of the plaintiff's case is in fact premised on the defendant's negligent or inadequate inspection.

Having determined that the plaintiff's claims are based on the theory of negligent inspection, I turn to the question of whether the defendant's inspection of the bleachers falls within the ambit of immunity granted under paragraph (4). The Utah Supreme Court has addressed the scope of paragraph (4) in two cases: Ericksen v. Salt Lake City Corp., 858 P.2d 995 (Utah 1993), and Nixon v. Salt Lake City Corp., 898 P.2d 265 (Utah 1995). Each of these cases pares back the application of inspection immunity in different ways.

In Ericksen, the court decided whether immunity should be granted when the negligent conduct complained of occurred incidental to the actual inspection. The court indicated that "[t]he question of whether a governmental entity is liable for the negligent inspection of property most frequently arises when the entity undertakes inspections to assure compliance with building,

fire, electric and other safety codes." Id. at 997 (citing 57A Am.Jur.2d Negligence §376 (1989)). The court also noted its belief that "the legislature intended to preserve a narrow immunity for inspections to allow inspectors to perform their work without fear that an oversight which later causes injury would give rise to liability on the part of a governmental entity." Id. at 998. The court held that immunity related to negligent inspection "was intended to immunize **only the conclusions and results of an inspection** where the inspector may have overlooked something or made a faulty judgment in deciding whether to approve or reject the subject of the inspection." Id. (emphasis added). Therefore, under Ericksen, the first component of immunity for negligent inspection is that inspectors who conduct themselves negligently while making an inspection are not immunized - the Ericksen inspector negligently opened the wrong overhead door while conducting the inspection of a building under construction dislodging a ladder which was placed against the door and injuring the worker who occupied it - while inspectors that reach incorrect conclusions and results from an inspection enjoy immunity.

In Nixon, court restricted the reach of inspection immunity by denominating the failure to identify and repair faulty cleaning equipment as a shortcoming in maintenance and not inspection. The court determined that this was not a case "where an inspector failed to determine that a particular building or piece of equipment **was unsafe for the public as whole.**" Id. at 269. In reaching this decision, the court discussed the genesis of immunity for negligent inspection as being the "public duty doctrine" which "'operates to disallow recovery by individuals for such inspections on the ground that the [inspection] was **intended to protect the general public**, and to provide a means of enforcing a third-party's duty to repair defects, rather than to protect a particular individual or class of individuals.'" Id. (citing 57A Am. Jur. 2d Negligence §376) (Emphasis added). Therefore, while the Ericksen court reiterated its view that the inspection immunity is to be parceled out parsimoniously, it is properly invoked where the inspection is undertaken to safeguard the general public.

Various rationales for the public duty doctrine exist. Foremost among them is the notion that the governments interest in

safeguarding the public interest predominates over the interests of any one individual. The Utah Supreme Court in Gillman v. Department of Financial Institutions, 782 P.2d 506, 513 (Utah 1989), discussed the reasoning behind the public duty doctrine in the context of immunity granted in connection with the issuance, denial, suspension, or revocation of licenses. The court quoted 4 California Law Revision Comm'n, Reports, Recommendations and Studies 817-18 (1963):

"Public entities and public employees should not be liable for failure to make arrests or otherwise to enforce any law. They should not be liable for failing to inspect persons or property adequately to determine compliance with health and safety regulations. Nor should they be liable for negligent or wrongful issuance or revocation of licenses and permits. The government has undertaken these activities to insure public health and safety. To provide the utmost public protection, governmental entities should not be dissuaded from engaging in such activities by the fear that liability may be imposed if an employee performs his duties inadequately. Moreover, if liability existed for this type of activity, the risk exposure to which a public entity would be subject would include virtually all activities going on within the community. There would be potential governmental liability for all building defects, for all crimes, and for all outbreaks of contagious disease. No private person is subjected to risks of this magnitude.... Far more persons would suffer if government did not perform these functions at all than would be benefitted by permitting recovery in those cases

where the government is shown to have performed inadequately.'"

Id. at 513.

Pursuant to the analytical model established in Ericksen and Nixon, I conclude that the defendant has established both components of immunity for inspection. First, the plaintiff's injuries stem from the incorrect conclusion reached by the individuals who inspected the bleachers that all of the bleachers were safe for the public using Rice Stadium. In other words, the plaintiff's injuries resulted directly from an alleged oversight related to the actual inspection process. The second component of public duty is also met because the University's inspectors allegedly failed to determine that at least one of the bleachers, which collapsed when the plaintiff stood on it, was unsafe for public use. It is evident that the inspection of the bleachers was undertaken to insure public health and safety. Since the plaintiff's injuries arose as a result of incorrect conclusions and results of an inspection which was undertaken for the public in general, the exception to the waiver of immunity found in §63-30-10(4) applies to bar the plaintiff's action.

Counsel for the defendant is to prepare an Order consistent with this Memorandum Decision.

Dated this 19 day of July, 1999.



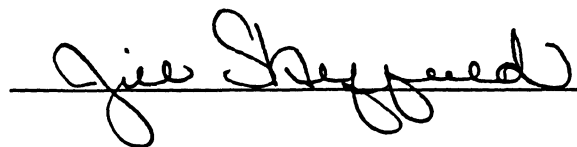
RONALD E. NEHRING
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, to the following, this 19 day of July, 1999:

James E. Morton
Attorney for Plaintiff
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Salt Lake City, Utah 84107

Valden P. Livingston
Assistant Attorney General
Attorney for Defendant
160 East 300 South
P.O. Box 140856
Salt Lake City, Utah 84114-0856

A handwritten signature in cursive script, appearing to read "J. E. Morton", is written over a horizontal line.

J. Wesley Robinson - 6321
Assistant Attorney General
JAN GRAHAM - 1231
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FILED IN CLERK'S OFFICE
Salt Lake County Utah

AUG 23 1999

Palmer
Deputy

IN THE THIRD DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

| | | |
|---------------------|---|-----------------------------|
| LINDA ILOTT, | : | |
| | : | |
| Plaintiff, | : | ORDER ON DEFENDANT'S MOTION |
| | : | FOR SUMMARY JUDGMENT |
| | : | |
| v. | : | |
| | : | |
| UNIVERSITY OF UTAH, | : | Civil No. 960906196 PI |
| | : | |
| Defendant. | : | Judge Ronald E. Nehring |
| | : | |
| | : | |

Defendant University of Utah's Motion for Summary Judgment was heard by the court on May 18, 1999 at 9:00 a.m. before the Honorable Ronald E. Nehring. Plaintiff was represented by Peter Collins, and Defendant was represented by J. Wesley Robinson.

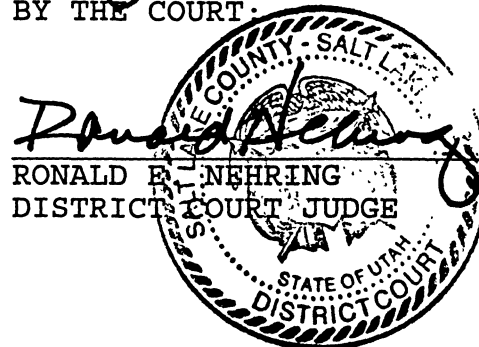
Having considered the pleadings, record, and other documents submitted, and hearing the arguments of counsel for the parties,

IT IS HEREBY ORDERED:

1. For the reasons set forth in the court's Memorandum Decision dated July 19, 1999, Defendant's Motion for Summary Judgment is granted, and Plaintiff's action is dismissed with prejudice and on the merits.

DATED this 23 day of August, 1999.

BY THE COURT:



APPROVED AS TO FORM:

Peter Collins
PETER COLLINS
Attorney for Plaintiff

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of
the foregoing **ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**,
this 10 day of August, 1999 to the following:

Peter Collins
BUGDEN, COLLINS & MORTON, L.C.
4021 South 700 East, #400
Salt Lake City, Utah 84107

A. Grismold