

2010

# William A. Doyle v. Lehi City, Blythe Bray, Daniel Harrison, Amanda Len Mackintosh

Utah Court of Appeals

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Justin D. Heideman; Heideman, McKay, Heugly & Olsen, LLC; Attorney for Appellant.

David C. Richards; Sarah Elizabeth Spencer; Christensen & Jensen, PC; Attorneys for Appellees.

William A Doyle, Plaintiff

Lehi City, Defendant

Blythe Bray, Defendant

Daniel Harrison, Defendant

Amanda Len Mackintosh, Defendant

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IN THE UTAH COURT OF APPEALS, STATE OF UTAH

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WILLIAM A. DOYLE, an individual,  
  
Plaintiff/Appellant,

vs.

LEHI CITY, a Municipal Corporation,  
BLYTHE BRAY, an individual, DANIEL  
HARRISON, an individual, and AMANDA  
LEN MACKINTOSH, an individual,  
  
Defendants/Appellees.

**REPLY BRIEF OF APPELLANT  
WILLIAM A. DOYLE**

**Appellate Case No. 20100420**

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**Appeal from Final Judgment and Order of the Fourth Judicial District Court in  
and for Utah County, State of Utah.**

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Justin D. Heideman (USB 8897)  
HEIDEMAN, MCKAY, HEUGLY &  
OLSEN, LLC  
*Attorney for Plaintiff/Appellant William A.  
Doyle*  
2696 N. University Ave., Suite 180  
Provo, Utah 84604  
Telephone: 801-812-1000  
Facsimile: 801-374-1724  
email: jheideman@hmho-law.com

David C. Richards (USB 6023)  
Sarah Elizabeth Spencer (USB 11141)  
CHRISTENSEN & JENSEN, P.C.  
*Attorneys for Defendants/Appellees Lehi City,  
Blythe Bray, Daniel Harrison, and Amanda Len  
Mackintosh*  
15 W. South Temple, Suite 800  
Salt Lake City, UT 84101  
Telephone: 801-323-5000  
Facsimile: 801-355-3472



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Justin D. Heideman (USB 8897)  
HEIDEMAN, MCKAY, HEUGLY &  
OLSEN, LLC

*Attorney for Plaintiff/Appellant William A.  
Doyle*

2696 N. University Ave., Suite 180

Provo, Utah 84604

Telephone: 801-812-1000

Facsimile: 801-374-1724

email: jheideman@hmho-law.com

David C. Richards (USB 6023)

Sarah Elizabeth Spencer (USB 11141)

CHRISTENSEN & JENSEN, P.C.

*Attorneys for Defendants/Appellees Lehi City,  
Blythe Bray, Daniel Harrison, and Amanda Len  
Mackintosh*

15 W. South Temple, Suite 800

Salt Lake City, UT 84101

Telephone: 801-323-5000

Facsimile: 801-355-3472

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## ARGUMENT

### **1. Bray and Harrison do not possess qualified immunity from Appellant's constitutional –based claims.**

In addressing the legal issue of qualified immunity in their Brief, Appellees first analyze Appellant's 42 U.S.C. §1983 claim for violation of his First Amendment rights. Appellees present two principal arguments in support of their position that the trial court properly granted summary judgment in their favor and against Appellant, namely: (1) It was not clearly established in 2007 that a volunteer is entitled to First Amendment protection because mere dicta is insufficient to create a "clearly established right", and (2) even if volunteers do enjoy such first amendment protection, Bray and Harrison are still entitled to qualified immunity because Appellant's speech does not meet the four-prong standard set forth in *Pickering v. Bd. of Educ.*, 391 U.S. 563, 88 S.Ct. 1731, 75 L.Ed.2d 708 (1983). [Brief of Appellees, pp. 22-33].

Appellees next address whether the trial court correctly ruled that Bray and Harrison are entitled to qualified immunity from Appellant's 42 U.S.C. §1983 claim for violation of his Fourteenth Amendment equal protection claim. Appellees argue three separate grounds in favor of affirmation of the trial court's decision: (1) Appellant's equal protection claim is derivative of his First Amendment claim, (2) Appellant did not show by admissible evidence that he was treated substantially differently from other similarly situated coaches, and (3) Appellant did not show that there was no rational basis for the alleged disparate treatment. [Brief of Appellees, pp. 33-36].

Appellant will first respond to the arguments arising out of his First Amendment claim and then address those related to his Fourteenth Amendment claims.



A. The right of a volunteer to protected free speech was clearly established in 2007 and Appellant's speech does meet the four-prong *Pickering* standard.

i. The *Anderson* court clearly established that volunteers are entitled to *Pickering* protection.

Appellant agrees with Appellees recitation of the general case law concerning the doctrine of qualified immunity, the standard required of a plaintiff who disputes qualified immunity protection, and the requirement that a plaintiff must also meet the second burden of demonstrating that the constitutional right allegedly violated was clearly established at the time of the offending action in question. Also, Appellant does not dispute that courts have discretion in determining which of the two prongs of the qualified immunity analysis should be considered first (i.e. whether a plaintiff's facts articulates violation of a constitutional right or whether the claimed constitutional right was "clearly established" at the time of the alleged violation). [Brief of Appellees, pp. 20-21].

However, Appellant disagrees with Appellees' contention that *Anderson v. McCotter*, 100 F.3d 723 (10<sup>th</sup> Cir. 1996) does not clearly establish a volunteer's first amendment right for qualified immunity purposes. Appellant maintains that the *Anderson* court unequivocally pronounced that non-paid volunteers are entitled to First Amendment protection under *Pickering*. *Id.* at 727. [Brief of Appellant, pp. 24-27].

While the *Anderson* court did state that "[w]e need not to decide whether it was clearly established *before* this case that volunteers had *Pickering* protection, because Ms. Anderson was not a volunteer." (Italics added). *Id.* at 729, the court was merely announcing that because Ms. Anderson was not a volunteer, it need not look at whether early cases had

established a volunteer's right to such protection.<sup>1</sup> This statement does *nothing to counter the fact that Anderson* court announced that the Tenth Circuit does, in fact, believe that volunteers are entitled to First Amendment protection as a matter of law under *Pickering*.

Appellant cites multiple cases in an attempt to argue that the *Anderson* court's express acknowledgment that volunteers have a protected interest in First Amendment free speech is mere dicta. [Brief of Appellees, pp. 23-24]. Appellees' citation to *Hope v. Pelzer*, 536, U.S. 730, 762, 122 S. Ct. 2508, 2527, 153 :. L.Ed.2d 666 (2002) is not helpful because the United States Supreme Court's statement in that matter had to do with reliance by one court on another court's dicta for purposes of establishing the unconstitutionality of the conduct at issue in that case. [Brief of Appellees, p. 24]. In the instant case, Appellant has not cited to a "different court," but has cited directly to a decision by the Tenth Circuit on the issue of whether a volunteer has a "clearly established" protectable interest in free speech under the First Amendment.

Appellees only reference three other federal cases—two from the Eleventh Circuit and one from a federal district court in Pennsylvania—that dicta should not be relied upon in qualified immunity cases. [Brief of Appellees, p. 24]. Appellees admit that several circuit courts have found that dicta concerning the existence of a constitutional right *can* be relied

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<sup>1</sup> At some juncture, courts considering whether a constitutional right has been "clearly established" may determine that such a right has been established even if no prior explicit authority exists for such a determination. In other words, the clear pronouncement of such a right by a court may rest upon application of other cases through inference and extrapolation. See e.g. *Hyland v. Wonder*, 972 F.2d 1129, 1136 (9th Cir. 1992) (holding that volunteer status is a valuable governmental benefit or privilege that may not be denied on the basis of constitutionally protected speech); cert. denied, 508 U.S. 908, 113 S.Ct. 2337, 124 L.Ed.2d 248 (1993); *Janusaitis v. Middlebury Volunteer Fire Dep't*, 607 F.2d 17, 25 (2d Cir. 1979) (holding that the dismissal of a volunteer firefighter for complaining about low morale and inadequate training and discipline can violate the First Amendment)).

upon as precedent to establish that right. [Brief of Appellees, p. 25 (n. 1)] but argue that the Tenth Circuit has not adopted such a standard. Even if such a standard has not been adopted by the Tenth Circuit, Appellees have not cited any case law from the Tenth Circuit that supports *their own* position concerning the limited value of dicta in qualified immunity cases.

In sum, two questions must be answered in order for this Court to determine whether the clear and unambiguous statement by the *Anderson* court that volunteers are entitled to *Pickering* protection may be relied upon by Appellant to meet the “clearly established” prong: (1) whether the statement is dicta, and (2) if the statement is dicta, whether it should be excluded under Tenth Circuit case law for purposes of clearly establishing a constitutional right.

Appellant asserts that the *Anderson* court’s statement is *not* dicta. In *Rohrbaugh v. Celotex Corp.*, 53 F.3d 1181 (10th Cir.1995), the Tenth Circuit indicated that dicta are “statements and comments in an opinion concerning some rule of law or legal proposition not necessarily involved nor essential to determination of the case in hand.” *Id.* at 1184. It is clear that the *Anderson* opinion focuses considerable attention on the question of whether volunteers are entitled to First Amendment protection (despite the fact that the court ultimately determined that Ms. Anderson was not a volunteer). The *Anderson* court’s statement that volunteers *are* entitled to *Pickering* protection was made in the context of the court’s broad affirmation of the constitutional right to free speech. *Anderson*, 100 F.3d at 726-27. It was essential to the court’s analysis to discuss and decide Ms. Anderson’s actual status (i.e. volunteer vs. paid intern) because the defendants in that case had argued that Ms. Anderson was a volunteer, and thus not afforded First Amendment free speech protection.

In other words, the statement that volunteers have *Pickering* protection was “involved with” and “essential to the determination of the case at hand.”

Even if this Court finds that the *Anderson* court’s statement concerning volunteers is dicta, the statement should not be excluded for purposes of determining the “clearly established” prong of qualified immunity analysis. As previously mentioned, the statement itself is “lucid and unambiguous” and was made to emphasize the Tenth Circuit’s overall view of the importance of First Amendment free speech.

For these reasons, this Court should determine that *Anderson* case “clearly established” the constitutional right of volunteers to First Amendment protection.

ii. Appellant has established the four elements of the *Pickering* test.

Appellees correctly outline the four-step analysis set forth in *Pickering* and *Connick v. Myers*, 461 U.S. 138, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983). Those steps are: (1) determining whether the speech touches on matter of public concern, (2) balancing the employee’s interest as a citizen in commenting upon matters of public concern against the interest of the State, as an employer, in promoting the efficiency of the public service it performs through its employees, (3) assuming the balance of establishing the first two steps tips in favor of the employee, the plaintiff has to prove that the protected speech was a motivating factor in the detrimental employment decision, and (4) if the plaintiff makes the required showing under step three, the burden shifts to the employer to show by a preponderance of the evidence that it would have reached the same decision in the absence of the protected activity. [Brief of Appellees, pp. 25-26].

Under the first *Pickering* element, Appellees posit that Appellant’s speech was not related to a matter of political, social, or other concern to the community insofar as it related

only to a small group of players involved in Lehi City's sport's league and because the speech was "internal to the workplace." [Brief of Appellees, pp. 27-28]. Appellant counters that the speech *did* concern the community insofar as participating children and their families were potentially affected by the rule change that Appellant spoke out on, which rule change affected the welfare of the participants.

The threshold question in assessing the free speech claim of a discharged, demoted, or suspended government employee is whether the employee has spoken "as a citizen upon matters of public concern" or merely "as an employee upon matters only of personal interest." *Connick*, 461 U.S. at 147. Speech regarding matters of mere personal interest is not subject to protection under the First Amendment.

Determining whether speech involves a matter of public concern entails an inquiry into the "content, form, and context of a given statement, as revealed by the whole record." *Connick*, 461 U.S. at 147-48. Furthermore, some inaccuracy in the content of the speech must be tolerated. *See Pickering*, 391 U.S. at 570-72.

Appellant has identified five incidents of speech at issue. These include: the Pinto league draft, the Pinto league state tournament and the issue of whether the regular season winner would get an automatic bid, the over pitching rule, the petition to change the league rules for how the draft is conducted and the tournament player selected, and talking to Bray about his altercation with another coach over whether a player was a "slow runner." If some part of the communication addresses an issue of public concern, the First Amendment's protections are triggered even though other aspects of the communication do not qualify as a public concern. *See Connick*, 461 U.S. at 149.

The five incidents of speech at issue are grounded on safety issues as well as bringing

to light areas in the little league program that he felt could be more efficiently run such as fairness. Appellant had an expectation of fairness and expected everyone to play the rules, including city officials. Appellant was voicing his concern on the Pinto league draft and the issue of automatic bids because these rules appeared to have been changed mid-season and thus there was the appearance of arbitrary and unfounded decisions made by Blythe and Harrison reasonably raising suspicion in the community's eye on how their government was operating. Appellant's protest over the over pitching rule is an incident of speech that discussed a matter of public concern regarding the safety of the children. In one of the games where Appellant's team was involved an opposing team utilized a pitcher beyond the allowed number of "outs" for the week. [R. 306]. Appellant raised the issue that the team that engaged in doing this should forfeit the game not only because it was a rule but also due to safety reasons because some overzealous coaches may sacrifice the long-term asset of a boy's pitching arm for the short-sighted goal of the chance of winning a single game. Appellant brought this up with Bray, who was present at the game, but Bray disagreed with Appellant and said the game should continue. [R. 306]. Bray's decision would have prevailed were it not for Steve Shelton overruling Bray's decision. Steve Shelton is the President of the Utah Boy's Baseball Association and was present at the said game. Shelton considered the rulebook and agreed with Appellant and the game was forfeited. [R. 305]. This over-pitching rule impacts the health and safety of the children and therefore Appellant's speech sufficiently touches on a matter of public concern. *See Johnsen v. Independent School Dist. No. 3 of Rule County*, 891 F.2d 1485, 57 Ed.L.Rep 1154 (10th Cir. 1989) (holding that the speech of a school nurse against the school district's medication policy potentially impacted children's health and therefore was a matter of public concern).

Under the second *Pickering* element, Appellees contend that Lehi City's interest in preventing "disruption" of official functions (i.e. the activities sponsored by the Lehi City Recreation Department) outweighed Appellant's interest in commenting about the rule changes. Appellees argue that under the *Rankin v. McPherson* analysis, Bray and Harrison had a superior interest in avoiding disruption of the Lehi City sports programs. [Brief of Appellees, p. 30]. However, many of the statements relied upon by Appellees in support of this argument are mere generalizations inferred from the record and are disputed by Appellant and other witnesses. Even if these assertions could be substantiated, the question remains whether under a summary judgment standard, these assertions are undisputed material facts. The inquiry is entirely too fact specific to provide a legal basis upon which to grant summary judgment, and Appellant has alleged that the actions taken by Bray and Harrison were directly and only a result of Appellant's protesting of the proposed rule changes. The revocation of his volunteer position was not to prevent the disruption of Lehi City's recreational programs, but to punish Appellant for speaking out.

Analyzing the third *Pickering* element, Appellees make a blanket statement that Appellant has provided no evidence that Appellees action to remove him as a volunteer coach was premised on the content or topic of his speech. [Brief of Appellees, pp. 31-32]. Even if Appellant admitted in his deposition that he had become angry with Bray or used the term "bull" in his speech, there is ample evidence in Appellant's affidavit and in the *Amended Verified Complaint* that Bray had verbally represented at the end of the 2006 season that Appellant would be allowed to coach. [R. 58, 305]. It was not until after Appellant expressed his concerns about the 2006 rule changes that Bray took action to compile a list of "offending" actions and Harrison informed Appellant of the decision not to select him as

coach for the 2007 season. Regardless of Appellees' characterization of the facts, there are sufficient facts in dispute to preclude summary judgment on this issue.

Summary judgment is appropriate "when there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Utah R. Civ. P. 56(c). This Court has stated that, "[I]n reviewing a grant of summary judgment, we analyze the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party." *Arnold v. Grigsby*, 2010 UT App 226, ¶ 12, 239 P.3d 294 (alteration in original) (internal quotation marks omitted).

Contrary to these requirements, Appellees have asked this Court to analyze the facts and the reasonable inferences drawn therefrom in the light most favorable to *Appellees' position*. There are numerous disputed facts in this case, and those facts go to the motivations, intentions, and reasons for the parties' actions and behaviors in this case. Appellees cannot simply rely upon their own version of the story and draw inferences therefrom to support their legal contentions for purposes of a summary judgment motion. The trial court erred in placing reliance upon Appellees' version of the facts and using those facts to grant summary judgment in favor of Appellees and against Appellant.

**B. Appellant acknowledges that his Fourteenth Amendment claim is derivative of his First Amendment claim. Appellant has shown by admissible evidence that he was treated substantially differently from other similarly situated coaches and that there was no alleged rational basis for the disparate treatment.**

Appellant agrees that his Fourteenth Amendment equal protection claim is premised on the allegation that he was engaged in protected First Amendment speech and that a legal bar to his First Amendment claim would effectively bar his equal protection claim.

Appellant points this Court to the argument contained in his initial Brief (pp. 31-32)



in response to Appellees' argument that Appellant has not shown he was intentionally treated differently than other similarly situated coached and that there was no rational basis for the alleged disparate treatment.

**2. Appellant has asserted an unconstitutional policy or custom and Lehi City did violate Appellant's constitutional rights.**

Appellees present two principal arguments in favor of affirming the trial court's grant of summary judgment. First, Appellees argue that Appellant did not show that any Lehi City employee "acted pursuant to an unlawful official municipal policy or custom. [Brief of Appellees, pp. 36-37]. Secondly, Appellant asserts that Lehi City did not violate any of Appellant's constitutional rights. [Brief of Appellees, p. 37]. Appellant will address each of these arguments in order.

**A. Lehi City employees did act pursuant to an official municipal policy or custom.**

According to Appellee, a local government can only be subject to the suit for its employees' alleged constitutional violations "if the plaintiff shows that the employees acted pursuant to an unlawful official municipal policy or custom." [Brief of Appellees, p. 36]. Appellee has mischaracterized the legal standard. In fact, the requirement is that the plaintiff show that an employee acted pursuant to a local government's policy or custom and that execution of that policy or custom inflicts the injury. See *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) ("We conclude, therefore, that a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible

under § 1983.”). In other words, the policy or custom itself may not necessarily be illegal or unconstitutional, but execution of that policy or custom by the employee or agent of the local government results in a constitutional violation.

Appellees state that Appellant has not alleged in the *Verified Amended Complaint* or an appeal that Lehi City promulgated an unconstitutional policy or custom and that this failure is fatal to his claims against Lehi City. [Brief of Appellees, p. 37]. However, it is clear from the record that Appellant’s *Memorandum in Opposition to Defendant’s Motion for Summary Judgment* contains a clear statement concerning the “policy or custom” factor and the facts supporting such an allegation. [R. 316-18]. The trial court also briefly addressed this matter in its *Ruling*. [R. 449]. Appellant respectfully points the Court to these documents in assessing the matter of the constitutionality of Bray and Harrison in executing Lehi City’s policies or customs.

**B. Lehi City’s actions were violative of Appellant’s constitutional rights.**

Appellees’ second argument actually contains several sub-arguments that can be summarized as follows:

- (1) Bray and Harrison did not violate Appellant’s first amendment rights because Appellant’s speech does not satisfy the *Pickering* balance test. Furthermore, there is no legal authority to indicate that volunteers (such as Appellant) are entitled to equal protection under the law; and even if there was such authority, Appellant has not shown that Bray and Harrison treated Appellant differently or that there was not a rational basis for such treatment. [Brief of Appellees, p. 38];
- (2) Appellant’s due process rights were not violated because “unpaid seasonal volunteers” do not enjoy a liberty or due process interest in their volunteer

status. [Brief of Appellees, pp. 36-37];

- (3) Even if due process protected extend to volunteers, Appellant did not possess a protected property or liberty interest in his volunteer position because the verbal promise that Appellant might be allowed a coaching position in 2007 is insufficient to establish that Appellant had a legitimate claim to entitlement of a benefit created by an independent state law, rule or understanding. Brief of Appellees, pp. 39-41];
- (4) Appellant does not possess a constitutionally protected liberty interest in his volunteer coaching status and reputation, alone, does not constitute a liberty or property interest. [Brief of Appellees, p. 41];
- (5) Finally, Appellant was afforded all of the process he was due because he was allowed to be heard by Lehi City representatives. [Brief of Appellees, p. 42].

Appellant has already addressed each of these points in his initial Brief [Brief of Appellees, pp. 28-33] and *Memorandum in Opposition to Defendant's Motion for Summary Judgment* [R. 314-19]. Appellant respectfully directs the Court's attention to those portions of the aforementioned documents.

**3. Certain statements contained in the Affidavits of Appellant, Bridget Doyle, James Johnson, Alan Paul, Joyce Olson, Sharon Johnson, Stanley Crump and Roger Dean were improperly struck.**

In his initial Brief, Appellant has explained in detail why certain affidavit statements of Appellant and others offered in opposition to Appellees' *Motion for Summary Judgment* should *not* have been stricken. [Brief of Appellant, pp. 14-22]. While Appellant is content to let this Court review each of the stricken statements from the affidavits and reach a determination as to whether the trial court had a sufficient legal basis to strike those

statements, Appellant wishes to reiterate the following points with respect to Appellant's personal affidavit:

- (1) Appellant's entire affidavit statement was deemed "immaterial" by the trial court in the *March 23, 2010 Ruling*. [R. 452-53];
- (2) Appellant's affidavit is highly material insofar as it directly rebuts many of the Appellees' allegations—allegations that form the basis for the pretext that Appellant was terminated as a coach for reasons other than exercising his right to speak publicly about the baseball program;
- (3) If the trial court was willing to accept the entirety of the affidavit testimony submitted by Appellees in support of their *Motion for Summary Judgment* as material to the legal issues, it should have done the same for Appellant.
- (4) Conversely, if all of the factual matters asserted in Appellant's affidavit (matters directly relating to Appellant's behavior, attitude, interactions, rationale for objecting to certain procedures, tangible benefits derived from coaching, etc.) are "immaterial" to the legal issues, then all of Appellees' affidavit statements relating to those same matters should be deemed immaterial as well.

**4. This Court should reverse the trial court's grant of summary judgment in favor of Appellees on Appellant's defamation and breach of contract claims because Appellant's Amended Notice of Claim was adequate under applicable law.**

In their Brief, Appellees do not take issue with Appellant's analysis of Utah law governing the required elements of a notice of claim. [Brief of Appellees, p. 45]. Appellees also agree that under relevant case law interpreting the notice of claim requirements,

Appellant was not required to list his causes of action by name or to meet the standard

required to state an ordinary claim for relief. [Brief of Appellees, p. 45].

Appellees, however, assert that Appellant *was* required to include enough facts pertaining to his defamation and breach of contract claim in order to notify Lehi City that he would be pursuing those claims. [Brief of Appellees, p. 45]. According to Appellees, because Appellant's *Amended Notice of Claim* did not contain language that could be associated with the concepts of a "contract" or "defamation," Appellant did not provide enough specificity to apprise Appellees of the "nature of the claim." [Brief of Appellees, pp. 45-56]. Appellees cite to *Heideman v. Washington City*, 2007 UT App 12, ¶ 14, 155 P.3d 900 in support of their position.

In his initial Brief, Appellant analyzes *Heideman v. Washington City* in conjunction with other relevant Utah decisions involving notice of claim issues including *Cedar Profl Plaza L.C. v. Cedar City Corp.*, 2006 UT App 36, 131 P.3d 275, *Greene v. Utah Transit Auth.*, 2001 UT 109, 37 P.3d 1156, *Houghton v. Department of Health* 2005 UT 63, 125 P.3d 860, and *Peeples v. State*, 2004 UT App 328, 100 P.3d 254 and (by analogy) *Behrens v. Raleigh Hills Hosp., Inc.*, 675 P.2d 1179 (Utah 1983). [Brief of Appellant, pp. 36-44].

The entire point of Appellant's discussion of these cases is to highlight the conflict between *Heideman v. Washington City* and the other decisions in regards to the quantum of specificity or detail required in a notice of claim concerning each potential cause of action, and to illustrate the uncertainty that results for a plaintiff in formulating the notice of claim. Appellant also outlined the problems with requiring a notice of claim to include every possible cause of action (or even facts that could give rise to an unstated cause of action) vis-à-vis the general rules governing the amending of pleadings and discovery under the Utah Rules of Civil Procedure. [Brief of Appellant, pp. 44-46].

Appellant reasserts that Appellees are incorrect in stating that Appellant must forfeit his defamation and breach of contract claims because such claims (or facts supporting those claims) were not referenced in the *Amended Notice of Claim*. On the contrary, Appellant's general description identifying the broader legal implications of the alleged violations (when read in conjunction with the brief statement of facts and a statement of potential damages) in the *Amended Notice of Claim* is sufficient to strictly comply with Utah Code Ann. § 63G-7-401(3)(a)(ii).

**5. Appellant has not appealed the dismissal of his estoppel claim.**

Appellant indicated in his initial Brief that he did not appeal the dismissal of his equitable estoppel claim. [Brief of Appellant, p. 36, n. 3]. Therefore, this issue is not before the Court.

**6. This Court should *not* affirm summary judgment on Appellant's defamation claim because a reasonable fact-finder could conclude that statements written by Appellee MacKintosh and circulated by Appellees Harrison and Bray were defamatory as a matter of law.**

Appellees propose an alternative basis for affirming the trial court's dismissal of Appellant's defamation claim. Because the trial court dismissed Appellant's defamation claim on grounds that the *Amended Notice of Claim* was deficient, it never addressed Appellees' argument that Appellant had failed to plead facts sufficient to articulate a defamation claim. On appeal, Appellees renew their argument to this Court that the statements made by MacKintosh and circulated by Harrison and Bray were not of a sufficiently offensive nature to meet the legal standard for defamation. [Brief of Appellees, p. 48]. Appellees argue that "no reasonable juror could conclude that the statements alleged are actually defamatory." [Brief of Appellees, p. 47]. Appellant disagrees.

Appellant's *Amended Verified Complaint* contains an allegation that MacKintosh made at least four written statements concerning Appellant's decorum in front of and interaction with children as well as encouraging minor children on his team to "knock kids over." [R. 49]. Bray and Harrison circulated these statements to the Mayor of Lehi City as well as other employees, volunteers and participants in the sports program. [R. 48]. Utah courts have consistently held that summary judgment (even where material facts are undisputed) is only appropriate where no reasonable jury could find in favor of the non-moving party. *See e.g. Raab v. Utah Ry. Co.*, 2009 UT 61, ¶ 54, 221 P.3d 219; *Parduhn v. Bennett*, 2002 UT 93, ¶ 26, 61 P.3d 982; *Ulibarri v. Christenson*, 275 P.2d 170, 172 (Utah 1954).

A reasonable jury *could* determine that the statements made by MacKintosh and circulated by Bray and Harrison impeached Appellant's reputation and integrity. Certainly, for Appellant, such statements were damaging to his standing as a long-term volunteer coach in the community and were of an especially harmful nature where his volunteer position was concerned. Accordingly, this Court should not affirm as a matter of law on alternative grounds that Appellant's articulation of his defamation claim fails.

### CONCLUSION

For the reasons set forth herein and in Appellant's initial Brief, Appellant respectfully requests that this Court reverse the trial court's grant summary judgment in favor of Appellees and against Appellant on his claims.

Submitted this 21<sup>st</sup> day of March 2011.



JUSTIN D. HEIDEMAN,  
**HEIDEMAN, MCKAY, HEUGLY & OLSEN, L.L.C.**,  
Attorneys for Plaintiff/Appellant William A. Doyle

### NOTICE CONCERNING ADDENDA

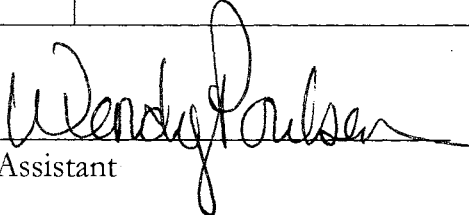
Appellant notes that no additional addenda are included with this Reply Brief.



## CERTIFICATE OF SERVICE

I hereby certify that on this 21<sup>st</sup> day of March 2011, I served two printed copies and an electronic copy of the foregoing **REPLY BRIEF OF APPELLANT WILLIAM A. DOYLE** by the following method on the person(s) listed below:

Party/Attorney	Method
David C. Richards Sarah Elizabeth Spencer CHRISTENSEN & JENSEN, P.C. 15 W. South Temple, Suite 800 Salt Lake City, UT, 84101 Telephone: 801-323-5000 Facsimile: 801-355-3472	<input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Fax Transmission <input type="checkbox"/> Email

  
Assistant