

2004

# Machelle Canfield v. Layton City : Reply Brief

Utah Supreme Court

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Brad C. Smith; Benjamin C. Rasmussen; Stevenson & Smith; Attorneys for Plaintiff.

Stanley J. Preston; Camille N. Johnson; Judith D. Wolferts; Maryalyn M. Reger; Snow, Christensen & Martineau; Attorneys for Defendant.

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BEFORE THE UTAH SUPREME COURT

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MACHELLE CANFIELD,

Plaintiff/Appellant,

vs.

LAYTON CITY, a Utah Municipality,

Defendant/Appellee.

Supreme Court Case  
No. 20040681-SC

---

On Writ of Certiorari to the Utah Court of Appeals

---

REPLY BRIEF OF APPELLANT

---

Brad C. Smith, No. 6656  
Benjamin C Rasmussen, No. 9462  
Stevenson & Smith, P.C.  
3986 Washington Boulevard  
Ogden, Utah 84403  
Telephone: (801) 394-4573

*Attorneys for Appellant*

Stanley J. Preston, No. 4119  
Camille N. Johnson, No. 5494  
Judith D. Wolferts, No. 7023  
Maralyn M. Reger, No. 8468  
Snow, Christensen & Martineau  
10 Exchange Place, Eleventh Floor  
P.O. Box 45000  
Salt Lake City, Utah 84145-5000  
Telephone: (801) 521-9000

*Attorneys for Appellee*

UTAH SUPREME COURT  
BRIEF

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MAR 21 2005

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Brad C. Smith, No. 6656  
Benjamin C Rasmussen, No. 9462  
Stevenson & Smith, P.C.  
3986 Washington Boulevard  
Ogden, Utah 84403  
Telephone: (801) 394-4573

*Attorneys for Appellant*

Stanley J. Preston, No. 4119  
Camille N. Johnson, No. 5494  
Judith D. Wolferts, No. 7023  
Maralyn M. Reger, No. 8468  
Snow, Christensen & Martineau  
10 Exchange Place, Eleventh Floor  
P.O. Box 45000  
Salt Lake City, Utah 84145-5000  
Telephone: (801) 521-9000

*Attorneys for Appellee*

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## **Argument**

### **I. Plaintiff's Complaint States a Claim for Breach of Contract.**

In its brief, Defendant Layton City relies on red herrings in an attempt to get away from the applicable standard of review in this matter. In attempting to argue that no claim for breach of contract has been pled, Defendant argues that the word "contract" was never used in the Complaint and that no copy of any written contract or personnel policy was attached to the Complaint, nor specific language cited from the policies at issue. (Br. of Appellee at 13-15.)<sup>1</sup> However, this argument disregards the liberal pleading standard established by the Rules of Civil Procedure and has no support in the Governmental Immunity Act.

Utah Code Ann. §63-30-5(1)(2003) stated, "Immunity from suit of all government entities is waived as to any contractual obligation. Actions arising out of contractual rights or obligations shall not be subject to the requirements of [this act.]" The Governmental Immunity Act waives the notice requirement for actions arising out of contractual obligations without setting forth specific pleading requirements. It does not require specific words in the complaint, nor does it require citation to contractual language, nor attachment of specific contractual

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<sup>1</sup>Defendant also asserts that Plaintiff acknowledged in interrogatory responses that her claims were tort based. (Br. of Appellee at 15.) To the contrary, the footnote merely argued that even if both tort and contract damages were sought, the contract damages should still be permitted absent a Notice of Claim under the Governmental Immunity Act. Moreover, nowhere in Plaintiff's interrogatory responses from federal court does she suggest that her claims are based in tort. (Exhibit A, Interrogatory Responses.)

provisions. The act simply eliminates the notice requirements when a claim arises out of contractual rights or obligations.

Absent any indication that the act requires more, the standard pleading rules under the Utah Rules of Civil Procedure apply. Under these rules, a pleader need only provide “a short and plain statement of the claim showing that the pleader is entitled to relief.” Utah R. Civ. P. 8(a)(1). These rules have been interpreted “to afford parties ‘the privilege of presenting whatever legitimate contentions they have pertaining to their dispute,’ subject only to the requirement that their adversary have ‘fair notice of the nature and basis or grounds of the claim and a general indication of the type of litigation involved.’” Williams v. State Farm Ins. Co., 656 P.2d 966, 971 (Utah 1982)(Citations omitted.)

The liberal nature of the pleading rules are further illustrated by the standard of review employed by the appellate court in reviewing motions to dismiss under Utah R. Civ. P. 12. In its review, this Court “assume[s] the allegations to be true” and “liberally construe[s] all reasonable inferences arising therefrom in determining whether a claim for relief has been stated.” Despain v. Despain, 682 P.2d 849, 850 (Utah 1984). This Court reviews the dismissal assuming the allegations in the Complaint are true and drawing all reasonable inferences in the light most favorable to the plaintiff. See, Patterson v. American Fork City, 2003 UT 7, ¶9, 67 P.3d 466. Dismissal is only appropriate where “the plaintiff ... would not be entitled to relief under the facts alleged or under any state



of facts they could prove to support their claim.” Prows v. State, 822 P.2d 764, 766 (Utah 1991). Accordingly, a Complaint must give the opposing party a “general indication of the type of litigation involved” and allege sufficient facts to support their claim.

The Complaint filed by Plaintiffs in this matter meets the liberalized pleading standards of the Rules of Civil Procedure in setting forth a claim for relief arising from a contractual obligation. Indeed, Plaintiff’s Complaint is abundantly clear in setting forth the nature and basis of the claim for relief. After setting forth the factual background of Plaintiff’s employment and the controversy in ¶¶4-11; 14-15, Plaintiff clearly sets forth that her Complaint sounds in violation of written city policy. Plaintiff states claims in ¶¶12, 13, and 17 that Defendant Layton City’s actions violated its own written policies. These allegations fairly apprised Defendant of the nature of the claims and have contractual significance under Utah law, as set forth in Plaintiff’s opening brief.

The question which therefore remains is whether these facts as alleged, when deemed true and viewing all reasonable inferences in the light most favorable to Plaintiff give rise to a contract claim. In Utah, an employer’s written

personnel policies can create an implied employment contract.<sup>2</sup> See, e.g., Berube v. Fashion Centre, Ltd., 771 P.2d 1033, 1044 (Utah 1989). Plaintiff's Complaint expressly alleges constructive termination in violation of written city policy. If proved, these facts give rise to a contract claim against Defendant Layton City.

Defendant also suggests that Plaintiff's Complaint is insufficient for failure to allege facts that would support a determination either that Plaintiff performed under the contract, or that Defendant breached the contract. This argument rests on Defendant's contention that Plaintiff freely resigned. However, the allegations of the Complaint are plainly different. The Complaint alleges performance by virtue of paragraph 4, which states that Plaintiff worked for Defendant Layton City in excess of thirteen (13) years. Likewise, Plaintiff's allegation in paragraph 14 that she was forced to resign does not negate her prior performance, but alleges a breach on the part of the city in the nature of her constructive termination. This, in addition to several allegations of failure to comply with written city policy, is one of several allegations establishing breach of the city's contractual obligations.

For these reasons, the district court and Court of Appeals erred in

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<sup>2</sup>Defendant suggests that this policy is inapplicable in the case at bar because none of the reported cases from Utah involve public employees. However, Defendant cites no caselaw that creates such a distinction, nor any argument as to why such a distinction should be made. Indeed persuasive authority, such as Garcia v. Middle Rio Grande Conservancy District, 918 P.2d 7, 11 (N.M. 1996), cited in Plaintiff's initial brief, stands for the proposition that no such distinction should be made.

concluding that the Complaint did not state a cause of action for breach of contract. Plaintiff having stated a claim for breach of contractual obligations in its Complaint was not required to comply with the notice provisions of the Governmental Immunity Act. Therefore, the decisions of the lower courts should be reversed.

## **II. Plaintiff's Employment Rights Were Not Grounded in Statute.**

Defendant Layton City argues alternatively that even if the Complaint sets forth a contract claim, by virtue of Utah Code Ann. § 10-3-815, any rights Plaintiff may have had were statutory, as opposed to contractual. Utah Code Ann. § 10-3-815 states, "The governing body of each municipality shall prescribe rules and regulations which are not inconsistent with the laws of this state, as it deems best for the efficient administration, organization, operation, conduct, and business of the municipality." It is ironic, given Defendant's urging of this Court to so closely scrutinize Plaintiff's Complaint for details and particular words, that Defendant would read so much into a one sentence statute.

Section 10-3-815 makes no reference to employment rights of city employees. The section contains no language which limits the contractual significance or effects of a city's actions. It does no more than authorize a city to establish rules or regulations, where otherwise the statutory authority would not exist. The statute's language is plain and unambiguous and Defendant cites no

caselaw that would give the statute a more expansive interpretation. Moreover, Plaintiff's research reflects that not so much as one case has ever cited to this statute since its adoption by the Legislature in 1977.

Defendant appears to be using Utah Code Ann. § 10-3-815 in an effort to relate this matter to distinguishable Court of Appeals decisions. See, Knight v. Salt Lake County, 2002 UT App 100, 46 P.3d 247; Hom v. Utah Dep't. of Public Safety, 962 P.2d 95 (Utah Ct. App. 1998). As set forth more fully in Plaintiff's opening brief these cases differ fundamentally because the statutes at issue in Knight and Hom contain extensive language dealing with employees' rights and providing for statutory, as opposed to contractual appeals procedures.<sup>3</sup>

Nevertheless, this caselaw recognizes that an agreement which alters or adds to the terms and conditions of public employment can create contractual responsibilities. See, Knight, at ¶8.

In this case, the Complaint alleges that the city's written personnel policies created specific rights, which are not embodied in Utah Code Ann. § 10-3-815, nor in the Utah Municipal Code. These include regulations related to sick time benefits (paragraph 12), city regulations related to equal treatment of employees (paragraph 13), and city regulations related to proportionate punishment and discipline (paragraph 14). These allegations, accepted as true on review of a

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<sup>3</sup>See, Utah Code Ann. §§ 17-33-1, et seq.; Utah Code Ann. §§ 67-19a-1, et seq.

Motion to Dismiss, establish alterations or additions to the at-will terms and conditions of public employment, and in turn contractual rights and responsibilities. Accordingly, Plaintiff's claim is not statutory, but arises from contractual obligations, and therefore is not subject to dismissal for failure to provide a notice of claim.

### **III. Plaintiff's Claim Is Not Subject to Dismissal Under the Doctrine of Res Judicata.**

Defendant Layton City cannot properly raise the defense of res judicata at this stage of the proceedings. This Court has stated, "Review on certiorari is limited to examining the court of appeals' decision and is further circumscribed by the issues raised in the petitions." Coulter & Smith, Ltd. v. Russell, 966 P.2d 852, 856 (Utah 1998). Issues raised in the petitions are further limited to those included in the order granting certiorari. See, DeBry v. Noble, 889 P.2d 428, 443 (Utah 1995). Only issues so limited, or those fairly contained in the issues so identified, are considered on certiorari. See, Coulter & Smith, at 856.

In this case, Plaintiff's Petition Writ for Certiorari identified three questions for review: (1) whether Plaintiff's claims were subject to the notice provisions of the Governmental Immunity Act, (2) whether the Court of Appeals erred in determining that public employees' rights generally spring from statute, not contract, and (3) whether dismissal with prejudice was proper without allowing

Plaintiff the opportunity to amend her Complaint. No further issues were raised in Defendant's response to the petition, nor was a cross-petition filed.

Subsequently, this Court limited the issues for review to the following: "Whether petitioner's complaint stated a sufficient claim for the existence of, and violation of, a contract with the respondent that was not subject to the immunity and notice of claim provisions of the Utah Governmental Immunity Act." (Exhibit B, Order granting petition.) Defendant's arguments concerning res judicata are not encompassed in the issue before this Court on certiorari, nor are they fairly contained within that issue. The arguments should be accordingly disregarded.

Defendants arguments are further limited by Rule 8. Under Utah R. Civ. P. 8(c), "In pleading to a preceding pleading, a party shall set forth affirmatively ... res judicata ..." Under Utah R. Civ. P. 12(h), with limited exceptions, "A party waives all defenses and objections not presented either by motion or by answer or reply..." If res judicata is not raised in the pleadings, the defense may not be raised at trial or on appeal. See, e.g., Merrilees v. Treasurer, State of Vermont, 618 A.2d 1314, 1315 (Vt. 1992).

In this case, Defendant did not raise the doctrine of res judicata as an affirmative defense in its Motion to Dismiss. In its motion, Defendant relied solely on failure to comply with the notice requirements of the Governmental Immunity Act. Having never raised res judicata before the trial court, Defendant cannot raise the issue before this Court on appeal. Because the defense of res judicata

was not raised in the Motion to Dismiss, nor at any other time in the lower court proceedings, this Court should not consider the issue now.

In addition, even if the issue of res judicata were properly before this Court, Plaintiff's action is not barred. Before the doctrine of res judicata applies, there must be a final judgment on the merits. See, Buckner v. Kennard, 2004 UT 78, ¶13, 99 P.3d 842; Salt Lake City v. Silver Fork Pipeline Corp., 913 P.2d 731, 733 (Utah 1995). The federal court dismissal of Plaintiff's claim did not result in an adjudication on the merits. Defendant asserts that the case was dismissed with prejudice under Fed. R. Civ. P. 41. However, the very exhibits Defendant cites to support its defense disproves such an assertion. In their motion and memorandum to dismiss the complaint in federal court, while Defendant sought dismissal for failure to comply with a court order, no mention of Rule 41 was ever made. (See, Br. of Appellee, Exhibit 9.) Likewise, Judge Kimball's order did not refer to Rule 41, nor was the case dismissed with prejudice, but merely dismissed without specifics. (See, Br. of Appellee, Exhibit 10.) As such, dismissal of the case did not result in a final adjudication on the merits, and res judicata does not apply.

#### **IV. Plaintiff Was Not Required to Exhaust Administrative Remedies.**

##### **A. The Exhaustion Issue Is Not Properly Before This Court on Certiorari Review.**

Like its defense of *res judicata*, Defendant's defenses regarding failure to exhaust are not properly before this Court on certiorari. This Court did not grant certiorari with respect to this issue, it was not raised in the Petition for Cert or response thereto, and exhaustion of administrative remedies is not fairly contained within the limited issue before this Court. Accordingly, this Court should disregard Defendants' arguments on that issue. See, Coulter & Smith, at 856.

##### **B. Defendant Layton City's Policy Manual Is Not Properly Before This Court.**

Even assuming *arguendo* that Defendant's exhaustion argument is properly before this Court, Defendant's argument rests entirely on evidence that is not properly part of this Court's record. Defendant Layton City argues that Plaintiff deprived the district court, and concomitantly this Court, of subject matter jurisdiction by failing to exhaust internal administrative remedies prior to bringing suit. In support of this assertion, Defendant attached two excerpts appearing to be from a city personnel policy, and argued that they created an absolute requirement for Plaintiff to appeal her constructive termination through the city's appeal procedures. (Br. of Appellee, Ex. 12, 13.) No such evidence was ever



presented to the trial court below, nor was it ever properly introduced into the record in this case.

An appellate court should not consider evidence outside of the record on appeal. For example, in Chapman v. Chapman, 728 P.2d 121, 122-23 (Utah 1986), the defendants urged the Utah Supreme Court to overturn a summary judgment order based on responses to interrogatories and requests for admission, which were attached to the appellate brief to support the existence of factual issues. The court wrote, "Because these 'answers' are outside the record, we cannot consider them." Id. at 123.

In Cooper v. Foresters Underwriters, Inc., 257 P.2d 540 (Utah 1953), the Court was referred to an unsigned stipulation presented to the lower court. It wrote:

The record in this case is extremely brief, and the facts presented therein so fragmentary and incomplete as to make it impossible for this court to render a decision without looking dehors the record,--a process we cannot indulge. ... We cannot consider facts stated in the briefs which may be true but absent in the official record.

These decisions are consistent with other Utah caselaw rejecting consideration of evidence outside the record. See, e.g., Pratt v. Hollow Irrigation Co., 813 P.2d 1169, 1172 (Utah 1991)(Court would not consider facts alleged in appellate brief, which had no substantiation in the record); Watkins v. Simonds, 385 P.2d 154, 155 (Utah 1963)(Court would not consider facts alleged in appellate brief, where facts before trial court were stipulated to in chambers without preservation of a

record).

In the appeal before the Court, Defendant Layton City has attempted to circumvent its obligation to present evidence and establish any issues for appeal through the record. Indeed, it is attempting to create an ad hoc record on appeal, without basis for doing so. Given the improper inclusion of the policy manual excerpts in the Appellee's Brief, this Court should give the evidence no consideration. As such, there is no evidence in the record to suggest that Plaintiff should have exhausted administrative remedies, and this defense should not be used to uphold an otherwise improper dismissal of Plaintiff's claims.

**C. Defendant Layton City's Policy Manual Does Not Create an Exhaustion Requirement.**

Even assuming *arguendo* that the policy manual excerpts provided by Defendant are properly before this Court, they do not establish exhaustion as a prerequisite. First, exhaustion of administrative remedies in this case would have been futile and useless. In Beard v. Baum, 796 P.2d 1344 (Alaska 1990), the State of Alaska alleged that a constructively discharged employee could not sue absent exhausting contractual remedies, as is alleged by Defendant Layton City in the case at bar. The Beard Court found that because the grievance procedure required the cooperation of the plaintiff's supervisors, a constructively discharged employee could not be required to exhaust such remedies, as such an attempt

would have been futile. Id. at 1349. Similarly, in Utah, exhaustion of administrative remedies may be excused when it would serve no useful purpose. See, Nebeker v. Utah State Tax Comm'n, 2001 UT 74, ¶14, 34 P.3d 180.

In this matter, Plaintiff's constructive discharge was the result of coercive threats by supervisors who would have had extensive influence over any contractual city appellate procedures. Under that policy, the very supervisors who coerced Plaintiff into resigning bore the responsibility of advising Plaintiff of her appeal rights. (Br. of Appellee, Ex. 13.) No evidence suggests Plaintiff's supervisors so advised her. Furthermore, those same supervisors who forced Plaintiff into resigning would no doubt exert significant influence over the internal appellate procedure. Given these facts, requiring Plaintiff to exhaust these local contractual remedies would be futile, and would serve no useful purpose.

Furthermore, failure to exhaust administrative remedies does not deprive the courts of subject matter jurisdiction, when resort to the administrative remedies is not mandatory. In Heinecke v. Dep't. of Commerce, 810 P.2d 459 (Utah Ct. App. 1992), the Respondent claimed that the court lacked subject matter jurisdiction because of failure to exhaust administrative remedies. The Petitioner did not take an extra review step, which was permitted him, but not required, under the statute. The Heinecke court concluded that because the administrative remedy was not mandatory, failure to exhaust did not deprive the court of subject matter jurisdiction.

In the instant case, even though Defendant may have statutory authority to create rules and regulations, Defendant's rules do not make appeal with city appellate processes mandatory. Defendant's policy states, "In all cases where an appointive officer or regular full time employee, other than the City Manager and heads of departments, is discharged or transferred to a position with less remuneration for any reason, the officer or regular full-time employee ***shall have the right*** to appeal such discharge or transfer in accordance with this chapter." (Br. of Appellee, Exh. 13, p.2.)(Emphasis added.) Defendant's policy does not state that the employee "shall" appeal the discharge, or that the employee "must" appeal the discharge prior to taking legal action. Instead, Defendant's policy makes an internal appeal an option, stating the "employee shall have the right to appeal" the termination. Because use of Defendant's appellate procedure was not mandatory under their own policies, Defendant cannot now complain that this Court and the trial court lack subject matter jurisdiction over the case at bar.

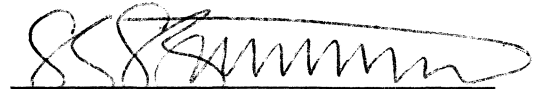
### **Conclusion**

As set forth herein, Plaintiff's Complaint sets forth sufficient factual allegations to sustain a claim for breach of contractual obligations, exempt from the notice requirements of the Governmental Immunity Act. Plaintiff's claims do not arise from statute. Furthermore, Defendant Layton City's arguments regarding exhaustion of administrative remedies and res judicata are not properly

before this Court on certiorari. For these reasons, Plaintiff respectfully requests that this Court reverse the decision of the Court of Appeals and district court.

DATED this 21st day of March, 2005.

STEVENSON & SMITH, P.C.

A handwritten signature in black ink, appearing to read 'B. C. Smith', written over a horizontal line.

Brad C. Smith  
Benjamin C Rasmussen  
Attorneys for Machele Canfield

### **Certificate of Mailing**

I hereby certify that on this 21<sup>st</sup> day of March, 2005, I mailed, postage prepaid, two true and correct copies of the foregoing Reply Brief, to the following individuals:

Stanley J. Preston  
Camille N. Johnson  
Judith D. Wolferts  
Maralyn M. Reger  
Snow, Christensen & Martineau  
10 Exchange Place, Eleventh Floor  
P.O. Box 45000  
Salt Lake City, Utah 84145-5000

A handwritten signature in black ink, appearing to read "S. S. Symm", written over a horizontal line.

Tab A

Brad C. Smith, NO. 6656  
STEVENSON & SMITH, P.C.  
3986 Washington Boulevard  
Ogden, Utah 84403  
Telephone: (801) 394-4573

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DIVISION, STATE OF UTAH

---

MACHELLE CANFIELD,	:	
	:	PLAINTIFF'S ANSWER TO
Plaintiff,	:	DEFENDANT'S FIRST SET OF
	:	INTERROGATORIES
vs.	:	
	:	Civil No. 1:02-CV-00041 K
LAYTON CITY, a Utah	:	
municipality,	:	Judge: Dale A. Kimball
	:	
Defendant.	:	

---

Comes now Plaintiff, by and through counsel, and answers  
Plaintiff's First Set of Interrogatories as follows:

**Interrogatory No. 1:** Identify each person whom you  
anticipate that you will call or may call as a witness at the  
time of trial of this matter and state the topic or subject  
matter upon which each such witnesses will testify, the substance  
of the testimony of each witness with respect to each topic or  
subject matter, and the identity of all documents which relate to  
or concern any such testimony.

**Answer to Interrogatory No. 1:** Plaintiff has not yet  
determined who she will call as witnesses at the time of trial,



when this determination is made, Plaintiff will supplement this interrogatory. Plaintiff anticipates that her witnesses may include: Debbie Pettijohn, Layton Police Dispatch; Laree Hopkins, Layton Police Dispatch; Debbie Joubert, Layton Police Dispatch; Blake Haycock, Layton Police Officer; Lt. Quinn Moyes, Layton Police; and Lisa Murdock, Layton Police Dispatch. The above named individuals have knowledge of the circumstances of my separation with Layton City, my "Garritty" hearing, my use of sick leave, and my job performance.

**Interrogatory No. 2:** Identify all documents that you anticipate presenting to a witness or the trier of the fact at the trial of this matter, whether as an exhibit or otherwise.

**Answer to Interrogatory No. 2:** Machelle Canfield's Leave Time Sheet, Memorandum to Lt. Quinn Moyes from Plaintiff Machelle Canfield, Certificate to return to work or school from IHC Health Center. Plaintiff has not yet determined who she will call as witnesses at the time of trial, when this determination is made, Plaintiff will supplement this interrogatory.

**Interrogatory No. 3:** Describe with specificity all damages Ms. Canfield claims she has suffered as a result of the actions of the City complained of in her Amended Complaint, and all information concerning any such damages, including, without limitation: the precise nature of the damages suffered, the amount of any such damages, how each damages amount was

calculated or estimated, and identify each person involved in calculating such damages or who otherwise has knowledge of the basis for and method of calculation for such damages and summarize each such person's involvement and/or knowledge.

**Answer to Interrogatory No. 3:**

Past Wages

2 July 2001 - 9 January 2002

unemployed:

at Layton:

$17.26/\text{hr.} \times 40 \times (211 \text{ days} / 7)$   
 $= \$20,810.63$

15 January 2002 - 5 July 2002

IRS

$(17.26 - 11.50) \times 40 \times (171 / 7)$   
 $= \$5,628.34$

Future Wages

5 July 2002 - 2022

$(17.26 - 11.50) \times 40 \times 52 \times 20 = \$239,616.00$

Plaintiff is also entitled to general damages for suffering and humiliation. Plaintiff anticipates claiming an amount equal to front and back pay for general damages.

The following individuals would have knowledge of the basis for and method of calculation for economic damages as they were her superiors and they participated in her performance reviews and have knowledge of her hourly wage, etc.:

Lt. Quinn Moyes, Layton Police Dept., 429 N. Wasatch Dr, Layton  
801-546-8300

Chief Terry Keefe, Layton Police Dept., 429 N. Wasatch Dr, Layton  
801-546-8300

Capt. Dave Nance, Layton Police Dept., 429 N. Wasatch Dr, Layton  
801-546-8300

**Interrogatory No. 4:** Identify any and all documents, including the financial data of Ms. Canfield and any other data or information whatsoever used, relied upon, or referred to by you in evaluation, calculating or estimation the amount of damages you have suffered as a result of the conduct of the City complained of in your Amended Complaint, or which otherwise supports such claim of damages.

**Answer to Interrogatory No. 4:** W-2 forms, tax returns, employment evaluations.

**Interrogatory No. 5:** Have you contacted or interviewed any persons concerning the facts alleged in your Amended Complaint? If so, identify each person contacted or interviewed, the substance of what was said during such contact or interview, when and where such contact or interview occurred; and identify all documents evidencing, memorializing or relating to each such contact or interview.

**Answer to Interrogatory No. 5:** No

**Interrogatory No. 6:** Identify each expert witness that you will call or may call to give opinion testimony at the trial of this matter, and, for each individual identified, state the following: Name, address and telephone number of his or her employer and/or organization(s) with which he or she is

associated in any professional capacity; the field in which he or she is offered as an expert or to give opinion testimony; a summary of his or her qualifications within the field in which he or she is expected to testify; the substance of the opinions to which he or she is expected to testify and a summary of the grounds for each such opinion; all reports and/or publications rendered by such expert and all documents relating to or concerning such reports and/or publications of such expert's opinions; and list and describe each document, photograph or other tangible thing with respect to which each such expert is expected to testify.

**Answer to Interrogatory No. 6:** No experts have presently been retained.

**Interrogatory No. 7:** Identify each person or entity for whom you have performed any work since the termination of your employment with the City, and, for each person or entity: state the position you held and the dates and hours worked; describe all compensation to which you were entitled when performing that work, including, but not limited to, salary or other rate of pay, overtime compensation, car, travel allowance, meal allowance, health insurance, life insurance, disability, other insurance, pension or retirement benefits, profit sharing, bonuses, and commissions; and identify all documents that support to answer to Interrogatory No. 7.

ATTORNEYS AT LAW  
3986 WASHINGTON BLVD  
OGDEN UTAH 84403  
TELEPHONE (801) 394-4573  
OR (801) 399-9910

**Answer to Interrogatory No. 7:** Department of Workforce Services - July 2001 to January 2002 - Unemployment benefits. Internal Revenue Service - January 2002 to Present. IRS offers health insurance, life insurance, disability insurance and retirement benefits.

**Interrogatory No. 8:** Since the termination of your employment with the City, have you been self-employed in any manner? If so, state the nature of the work you performed in your self-employment and the dates or time periods of your self-employment; the amount you have earned as a result of such self-employment; and the identity of all documents that support your answer to Interrogatory No. 8.

**Answer to Interrogatory No. 8:** No.

**Interrogatory No. 9:** Itemize all income and other compensation you have received since the termination of your employment with the City, including in your itemization each date you received income, the amount, and the source of that income.

**Answer to Interrogatory No. 9:** See tax records attached in response to Request for Production of Documents No. 9.

**Interrogatory No. 10:** Identify each employer, employment service or agency, or other individual or entity with whom you have been in contact regarding potential employment since the termination of your employment with the City, and, for each such person or entity state the date(s) of each such contact, state

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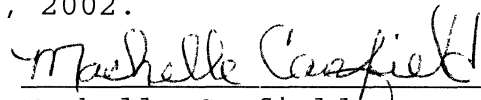
the nature of the employment sought, identify each person you communicated with, identify all documents that refer or relate to contact with that person or entity, and describe the outcome of your contact with that individual or entity.

**Answer to Interrogatory No. 10:** See response to Request for Production of Documents No. 13.

**Interrogatory No. 11:** If you are aware of the existence of any written or recorded statement made by any party or potential witness, identify the person making the statement, the date of the statement, a summary of the contents of the statement, the name, address, telephone number and occupation of the person or persons taking the statement, and the name, address and telephone number of the person now in possession of the original statement.

**Answer to Interrogatory No. 11:** Plaintiff is aware that her "Garrity" hearing was partially recorded.

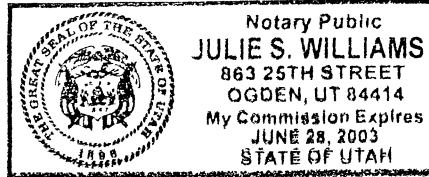
DATED this \_\_\_\_ day of August, 2002.

  
Machelle Canfield  
Plaintiff

Plaintiff's Address:  
3552 W. 5000 S.  
Roy, Utah 84067

STATE OF UTAH )  
 )  
 :SS.  
COUNTY OF WEBER )

On the 3 day of ~~August~~ <sup>Sept</sup>, 2002, at Ogden, Utah, personally appeared before me Machelie Canfield, the signer of the within instrument, who duly acknowledged to me that she executed the same.



Julie S. Williams  
NOTARY PUBLIC  
Residing at Ogden, Utah

My Commission Expires:

6-28-03

ATTORNEYS AT LAW  
3986 WASHINGTON BLVD  
OGDEN UTAH 84403  
TELEPHONE (801) 394-4573  
OR (801) 395-9910

Tab B



FILED  
UTAH APPELLATE COURTS  
OCT 19 2004

IN THE SUPREME COURT OF THE STATE OF UTAH

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Machelle Canfield,

Petitioner,

v.

Case No. 20040681-SC

Layton City, a Utah Municipality,

Respondent.

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ORDER

This matter is before the court upon a Petition for Writ of Certiorari, filed on August 12, 2004.

IT IS HEREBY ORDERED, pursuant to Rule 45 of the Utah Rules of Appellate Procedure, the Petition for Writ of Certiorari is granted only as to the following issue:

Whether petitioner's complaint stated a sufficient claim for the existence of, and violation of, a contract with the respondent that was not subject to the immunity and notice of claim provisions of the Utah Governmental Immunity Act.

FOR THE COURT:

October 19, 2004

Date

Christine M. Durham

Christine M. Durham  
Chief Justice

CERTIFICATE OF MAILING

I hereby certify that on October 20, 2004, a true and correct copy of the foregoing ORDER was deposited in the United States mail to the party(ies) listed below:

BRAD C. SMITH  
BENJAMIN C. RASMUSSEN  
STEVENSON & SMITH PC  
3986 WASHINGTON BLVD  
OGDEN UT 84403

STANLEY J. PRESTON  
CAMILLE N. JOHNSON  
MARALYN M REGER  
SNOW CHRISTENSEN & MARTINEAU  
10 EXCHANGE PL 11TH FLOOR  
PO BOX 45000  
SALT LAKE CITY UT 84145-5000

and a true and correct copy of the foregoing ORDER was deposited in the United States mail to the trial court listed below:

SECOND DISTRICT, FARMINGTON  
ATTN: LINDA WOODWARD  
PO BOX 769  
800 W STATE ST  
FARMINGTON UT 84025

By   
Deputy Clerk

Case No. 20040681-SC  
SECOND DISTRICT, FARMINGTON, 020700620