

1989

Virgynia Yearsley v. Officer Dean Jensen, et al. : Petition for Writ of Certiorari

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

John T. Caine; Richards, Caine & Allen; Attorney for Plaintiff/Appellant.

Joy L. Sanders; Andrew M. Morse; Dale J. Lambert; Attorneys for Respondents.

Recommended Citation

Legal Brief, *Yearsley v. Washington Terrace Police Department*, No. 890217.00 (Utah Supreme Court, 1989).
https://digitalcommons.law.byu.edu/byu_sc1/2590

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT
(FU
45.9
IS9
DOCKET NO.

UTAH SUPREME COURT

BRIEF

IN THE SUPREME COURT

STATE OF UTAH

890217

VIRGINIA YEARSLEY,

Plaintiff/Appellant. :

vs. :

OFFICER DEAN JENSEN, ET AL., :

Case No. 86880145CA

Defendants/Respondents:

890217

WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI FROM A DECISION
RENDERED BY THE UTAH COURT OF APPEALS

JOY L. SANDERS and
ANDREW M. MORSE
Attorney for Respondents
10 Exchange Place, 11th Floor
P.O. Box 45000
Salt Lake City, Utah 84145

DALE J. LAMBERT
Attorney for Respondents
175 South West Temple
Clark Learning Building
Salt Lake City, Utah 84101

JOHN T. CAINE of
RICHARDS, CAINE & ALLEN
Attorney for Appellants
2568 Washington Boulevard
Ogden, Utah 84401

FILED

MAY 30 1989

Clerk, Supreme Court, Utah

IN THE SUPREME COURT

STATE OF UTAH

VIRGINIA YEARSLEY, :

Plaintiff/Appellant. :

vs. :

OFFICER DEAN JENSEN, ET AL, : Case No. 86880145CA

Defendants/Respondents:

WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI FROM A DECISION
RENDERED BY THE UTAH COURT OF APPEALS

JOY L. SANDERS and
ANDREW M. MORSE
Attorney for Respondents
10 Exchange Place, 11th Floor
P.O. Box 45000
Salt Lake City, Utah 84145

JOHN T. CAINE of
RICHARDS, CAINE & ALLEN
Attorney for Appellants
2568 Washington Boulevard
Ogden, Utah 84401

DALE J. LAMBERT
Attorney for Respondents
175 South West Temple
Clark Leaming Building

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW.....	1
OPINION OF THE COURT OF APPEALS.....	1
JURISDICTION.....	1
CONTROLLING PROVISIONS OF CONSTITUTION, STATUTE AND ORDINANCES.....	5
STATEMENT OF THE CASE.....	5
STATE OF THE FACTS.....	6
ARGUMENT.....	10
 THE COURT OF APPEALS ERRED IN UPHOLDING THE DECISION OF THE TRIAL COURT IN THAT THE MAJORITY FAILED TO ADDRESS THE KEY ISSUE RAISED IN THE APPEAL WHICH WAS THE FAILURE OF THE COURT TO ALLOW THE AMENDMENT TO THE PLEADINGS WHICH WOULD HAVE BROUGHT THE ACTION WITHIN THE APPLICABLE STATUTE OF LIMITATIONS PERIOD	
CONCLUSION.....	13

TABLE OF AUTHORITIES

<u>Buehner Block Company v. Glezos,</u> 310 P.2d 517 (1957)	
<u>Girard v. Appleby,</u> 660 P.2d 245 (1983 Utah).....	12
<u>Kenneth L. Baker v. Burbank Glendale Pasadena Airport Authority,</u> 705 P.2d 866 (1985 California).....	11
<u>Shores v. Branch,</u> 720 P.2d 239 (1986 Montana).....	11

STATUTES AND CONSTITUTIONAL SECTIONS

Section 63-30-13 Utah Code Annotated, 1986.....	4,5
Rule 15 of the Utah Rules of Civil Procedure.....	5,12
Rule 42 of the Utah Rules of Civil Procedure.....	5

IN THE SUPREME COURT

STATE OF UTAH

VIRGINIA YEARSLEY,

:

Plaintiff/Appellant,

:

PETITION FOR WRIT
OF CERTIORARI

:

vs.

:

OFFICER DEAN JENSEN, ET AL,

:

Case No. 86880145CA

Defendants/Respondents:

QUESTIONS PRESENTED FOR REVIEW

Whether the Trial Court erred in failing to allow the Plaintiff to amend her Complaint to include claims for false imprisonment and malicious prosecution which would have made her claim timely under a Notice of Claim requirement of Utah Code Annotated Section 63-30-13.

OPINION OF THE COURT OF APPEALS

The case was appealed to the Utah Court of Appeals and on March 30, 1989, Judge Norman H. Jackson filed an opinion of the Court affirming the Trial Court's decision. The opinion was a two-to-one decision, with Judge Greenwood concurring and Judge Newey dissenting. That opinion is attached hereto as Addendum

"A".

JURISDICTION

This Petition for Writ of Certiorari is brought pursuant to Rule 42 of the Utah Supreme Court Rules. The hearing from which this case was appealed was held in the Second Judicial District Court of Weber County, State of Utah before the Honorable David E. Roth sitting without a jury. The matter was appealed to the Supreme Court of the State of Utah and was thereafter transferred to the Utah Court of Appeals and a decision was made on March 30, 1989.

Prior to the expiration of the thirty (30) day period within in which to file this Petition, an Ex Parte Motion for an Extension of Time was made and a corresponding Order was signed by Chief Justice Gordon Hall of the Utah Supreme Court, extending the time for filing the Writ of Certiorari for an additional thirty (30) days or until May 26, 1989.

Jurisdiction is conferred upon this Court pursuant to Rule 43 of the Supreme Court Rules, State of Utah, in that Appellant contends that the decision of the Court of Appeals in this case is in conflict with other decisions of this Court and in addition, it creates a precedent for denial of Motions to Amend pleadings prior to Trial to conform to the evidences and such a restrictive view is not supportable and would set an improper precedent for practitioners in this State and therefore, a Petition for Writ of Certiorari is proper.

CONTROLLING PROVISIONS OF CONSTITUTION, STATUTES AND ORDINANCES

- 1) Utah Code Annotated, Section 63-30-13, (1986)
- 2) Rule 15 of the Utah Rules of Civil Procedure

STATEMENT OF THE CASE

The Plaintiff originally brought this action against the Defendants who were police officers representing three (3) different jurisdictions, to-wit: the Cities of Washington Terrace, South Ogden and Riverdale, for tortious conduct involved in her detention and arrest on August 28 and 29, 1983.

In a hearing on September 14, 1987 the Plaintiff's claims against the Defendant Cities were dismissed by stipulation and the Court further agreed to consider at a later hearing, Plaintiff's request to Amend the Complaint to include the claims for false imprisonment and malicious prosecution which would defeat Defendant's Motion for Summary Judgment as against the officers on the basis of a statute of limitations violation.

At a subsequent hearing on November 2, 1987, the Motion to Amend the Complaint was denied and the Defendants were granted Summary Judgment against the Plaintiff on the basis that the claim against the Cities and employees, pursuant to Rule 63-30-13 which had been filed on August 29, 1984 was not timely filed. An appeal was taken to the Utah Supreme Court which transferred the matter to the Utah Court of Appeals, who upheld the lower Court ruling in a two-to-one decision on March 30, 1989.

STATEMENT OF THE FACTS

(The following fact statement is taken from the pleadings in the case, including Plaintiff's Affidavit and Memorandum

supplied at the time of the Summary Judgment Hearing. There has been no evidentiary hearing in the case and therefore, citations will not be to an evidentiary transcript, but the facts are based upon the allegations contained in those various proceedings).

In the late evening hours of August 28, 1983 at approximately 10:30 p.m., Plaintiff, along with other friends were returning to her home in Washington Terrace, Weber County, Utah, from a boating excursion at Pineview Reservoir, East of Ogden.

At that time, Plaintiff was a passenger of a motorhome, driven by her boyfriend, Jerry Wells. The motorhome was owned by him and registered to him.

That upon entering Washington Terrace City, a Washington Terrace police officer pulled behind the motorhome as it stopped and parked in front of the Plaintiff's home. Plaintiff exited the motorhome and entered her home.

Shortly thereafter, the officers began to arrest both Jerry Wells and Charlie Schultz, for driving while intoxicated and public intoxication. The Washington Terrace officer apparently called for assistance from officers from South Ogden City and Riverdale City.

The named officers in the Complaint then entered the Plaintiff's home, without knocking and without any authorization and requested that she move the motorhome. After informing the officers that the motorhome did not belong to her, a verbal argument ensued, at which time the Plaintiff refused to move the

motorhome. The officers drug her from her home to the porch and onto the driveway area where she was physically beaten and abused.

At this time, Plaintiff was not arrested, but was then transported by the officers to McKay Dee Hospital approximately ten (10) miles away. Plaintiff was not released from McKay Dee Hospital until 1:00 a.m. on the morning of August 29, 1983. Following her release, she was then handcuffed, placed into a patrol car and taken to the Weber County Jail in Ogden where she was booked at approximately 1:30 a.m. on a number of charges including resisting arrest, interfering with an officer and disturbing the peace. Plaintiff remained incarcerated in the Weber County Jail until she was able to arrange bail at approximately 8:00 a.m. on August 29, 1983.

The officers then contacted the Washington Terrace City Attorney who caused Informations to be filed on Misdemeanor Counts for the above referenced charges.

The Plaintiff initially plead not guilty and some two (2) months later, all charges, but one, was dismissed through a plea bargain. The only charge to which Plaintiff plead guilty was disorderly conduct and there was no agreement on the part of the Plaintiff that she would not take legal action against the City, the various police agencies or the officers involved. Nor was there any factual determination by the Court that the charge of Disorderly Conduct justified any of the officers' action.

The Plaintiff initially filed her Notice of Claim against

all the Cities and named officers in this case on August 29, 1984. Plaintiff contended that none of the parties had specifically responded, either affirmatively or negatively, to the Notice of Claim and the lawsuit was initiated on November 27, 1985 and the three (3) named officers were represented by counsel.

Discovery ensued and Interrogatories were submitted which were answered by the Plaintiff and numerous settlement discussions were entertained, but none came to fruition for a period of almost two (2) years. At this time, Plaintiff filed a Notice of Readiness of Trial. No objection to the Trial was raised, nor were any Motions made following discovery.

Approximately three (3) weeks before the Trial, the Defendants, for the first time, filed Motions for Summary Judgment claiming that the statute of limitations had been violated. The basis of the claim was that the focus of the lawsuit was on the actual assault by Plaintiff and Defendants which occurred at approximately 11:00 p.m. on August 28th and therefore, the Notice of Claim was one (1) day late.

Plaintiff took the position at the initial hearing on September 14, 1987 that she considered the incident as one (1) continuous tort beginning in the late evening hours and continuing until the Plaintiff's release from jail at 8:00 on the morning of the 29th.

Plaintiff further requested that she be allowed to amend her Complaint to conform to the facts, including the offenses of

false imprisonment and malicious prosecution which clearly took place on August 29th and subsequent thereto.

The Court took this matter under advisement and allowed the Plaintiff to prepare and Amended Complaint. Plaintiff then filed an Amended Complaint and at that time, the Judge after reviewing the Plaintiff's Amended Complaint refused to accept it, claiming that it changed the basis of the lawsuit and further found that the conduct, although beginning on August 28th and continued to August 29th was not of such continuous tortious nature that it could be brought into the suit and considered a single act.

Therefore, the Court determined that the matters raised in the initial Complaint were completed and therefore, the claim was outside the statute.

ARGUMENT

THE COURT OF APPEALS ERRED IN UPHOLDING THE DECISION OF THE TRIAL COURT IN THAT THE MAJORITY FAILED TO ADDRESS THE KEY ISSUE RAISED IN THE APPEAL WHICH WAS THE FAILURE OF THE COURT TO ALLOW THE AMENDMENT TO THE PLEADINGS WHICH WOULD HAVE BROUGHT THE ACTION WITHIN THE APPLICABLE STATUTE OF LIMITATIONS PERIOD

This is a case in which a Plaintiff is being denied access to the Courts in a redress of grievance on the basis of a very strict view of both the construction of pleadings and the definition of tortious acts by the Trial Court Judge.

It was unrefuted in this case in any of the prior hearings that police officers began a course of conduct in the late evening hours of August 28, 1983 which continued into the

early morning hours of August 29, 1983 which at various times they physically assaulted the Plaintiff, detained her in a patrol car, a hospital and jail setting and caused her to be arrested and confined and later, prosecuted her for alleged acts.

There is also no question that if any acts in this panoply of tortious conduct took place on August 29, 1983, a Notice of Claim filed on August 29, 1984 would be timely and Defendants' statute of limitations argument would be moot.

The entire focus before the Trial Court in two (2) separate hearings some three (3) weeks prior to Trial was whether the specific allegations of Plaintiff's original Complaint which focused on the assaultive nature of the officers' conduct clearly taking place on the 28th could extend to the 29th as a single tortious act, or whether the Plaintiff should simply be allowed amend the Complaint to allege the other specific acts which naturally flowed from the officers original conduct and which clearly took place on August 29th.

The Court was asked to consider both propositions. The first proposition, that being that the conduct on the 29th was simply an extension or continuation of the conduct on the 28th has been addressed in at least two (2) other jurisdictions in the case of Baker v. Burbank, 705 P.2d 866 (1985) a California case and Shores v. Branch, 720 P.2d 239 (1986) a Montana case which discussed the concept of continuous torts.

The Plaintiff's position was that when viewed in its entirety, the conduct of the police officers was a continuous

tortious act which had its inception on August 28th and did not actually conclude until some months later at the time of the Trial of the Plaintiff for alleged criminal conduct arising out of the incident.

The nature of the officers conduct in originally accosting the Plaintiff, taking her from her home, placing her in a police car, transporting her to a hospital and from there to the jail, booking her and causing criminal complaints to be filed and then prosecuting, all arose as a single tortious episode with different tortious being bid as part of the whole.

The Trial Court gave no specific reason for not adopting that view, but simply denied such an approach. There is no question that if that view of the conduct is adopted, that the statute of limitations issue is moot.

What is even more compelling however, is that Plaintiff requested to amend her Complaint to allege specific incidents of tortious conduct that happened on August 29th, particularly, the false imprisonment and malicious prosecution claims.

This Court has continuously held that amendments to pleadings, even during the Trial of the case should be allowed in order to afford all parties an opportunity to be heard on the merits and secure an appropriate remedy. Such amendments should be allowed liberally unless they would do violence to the process or duly prejudice one party or another. (See Rule 15 of the Utah Rules of Civil Procedure and Girard v. Appleby, 660 P.2d 245 (1983 Utah))

In this case, there was no prejudice to the Defendants as they had been aware for some two (2) years prior to the Motion of the totality of the circumstances surrounding the arrest of the Plaintiff and in fact, the record is void of any claim by the Defendants of surprise or prejudice that would have arisen had the Court granted the Motion.

The Court simply, for some unknown reason, determined that this Plaintiff would not be allowed an opportunity to factually present this case and obtain a remedy. That is the real tragedy of the District Court's decision that was further compounded by the Appellate Court.

The majority of the Appellate Court, in a one line affirmance simply indicated that the Notice of Claim was not timely filed, without addressing the two (2) issues which were raised.

Judge Newey, in his dissent, specifically focuses on the issue of the amendment of pleadings and found that such an amendment should have been allowed and the case should have proceeded to Trial.

The entire purpose of this Writ is for the Court to review the file in accordance with the issues that were raised on appeal at the Appellate Court and to adopt Judge Newey's dissenting view which this Plaintiff believes is the correct view of the law in this case.

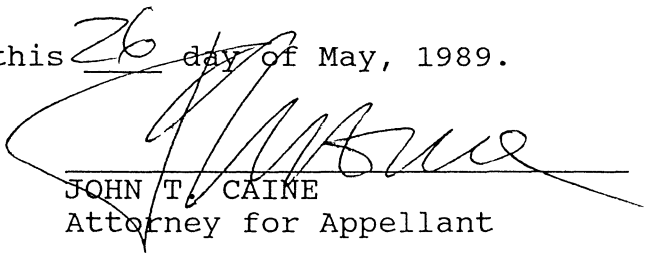
CONCLUSION

The Trial Court erred in this case in failing to either

consider that under the totality of the circumstances that the conduct of the officers on August 29th was part of a continuous tortious act beginning on August 28th, or allowing the Plaintiff to specifically amend her Complaint to reflect specific incidents of conduct on the 29th, either of which would have rendered the statute of limitations argument moot.

The majority of the Appellate Court further compounded the error by failing to address those two (2) issues. The dissenting opinion of Judge Newey addressed the issue and correctly resolved it based upon the current status of the law in this case and it is respectfully requested that his view be adopted by this Court in its review of the Appellate Court decision.

RESPECTFULLY SUBMITTED this 26 day of May, 1989.


JOHN T. CAINE
Attorney for Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Petition For Writ of Certiorari to counsel for the Respondents, Joy L. Sanders and Andrew M. Morse, Attorneys at Law, 10 Exchange Place, P.O. Box 45000, Eleventh Floor, Salt Lake City, Utah 84145 and Dale J. Lambert, Attorney at Law, 175 South West Temple, Clark Leaming Building, Salt Lake City, Utah 84101, postage prepaid this 26 day of May, 1989.

IN THE UTAH COURT OF APPEALS

-----oo0oo-----

Virginia Yearsley,)
Plaintiff and Appellant,)
v.)
Officer Dean Jensen, Officer)
Steven Wallerstein, and)
Officer Steven Smith,)
Defendants and Respondents.)

ORDER OF AFFIRMANCE

Case No. 880145-CA

Before Judges Jackson, Greenwood, and Newey (Retired Juvenile Judge
Sitting by Special Assignment) (On Rule 31 Hearing).

The order and judgment of the trial court is affirmed because
the notice of claim made against defendants, pursuant to Utah Code
Ann. § 63-30-13 (1986), was not timely filed.

Dated this 30th day of March, 1989.

FOR THE COURT:


Norman H. Jackson, Judge

Newey, Judge dissenting:

I dissent because, in my view, the actions upon which
plaintiff has sued continued from August 28th into August 29, 1983,
on the false imprisonment and malicious prosecution claims. The
notice of claim filed under Utah Code Ann. § 63-30-13 (1986) should
be liberally construed to include the issues plaintiff raised in her
proposed amended complaint and was, therefore, timely. Based upon
that notice of claim, the trial court abused its discretion in
rejecting the proposed amended complaint. Consequently, summary
judgment should not have been granted.

CERTIFICATE OF MAILING

I hereby certify that on the 4th day of April, 1989, a true and correct copy of the foregoing Order of Affirmance was mailed to each of the following:

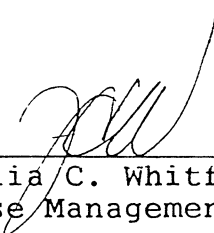
John T. Caine
Attorney for Appellant
2568 Washington Boulevard
Ogden, UT 84401

8809-565
20'9

Joy L. Sanders
Andrew M. Morse
Attorneys for Respondents
10 Exchange Place, Eleventh Floor
P.O. Box 45000
Salt Lake City, UT 84145

Dale J. Lambert
Robert K. Hilder
Attorneys for Respondents
510 Clark Leaming Bldg.
175 South West Temple, Suite #510
Salt Lake City, UT 84101

Honorable David Roth.
Second District
Weber County
#94172



Julia C. Whitfield
Case Management Clerk

FILED

APR 27 1989

IN THE SUPREME COURT OF THE STATE OF ~~UTAH~~
Clerk, Supreme Court, Utah

VIRGINIA YEARSLEY, :
 :
 Plaintiff/Appellant : EXPARTE MOTION FOR
 : EXTENSION OF TIME
 vs. : TO FILE PETITION
 : FOR WRIT OF CERTIORARI
 OFFICER DEAN JENSEN, ET AL, :
 : Case No. _____
 Defendant/Respondent :

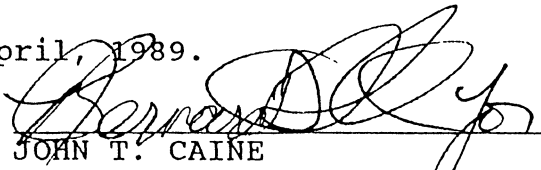
COMES NOW, the Appellant above named, by and through her attorney, John T. Caine, and hereby requests this Court for an ex parte extension of time for the filing of Appellants' Writ of Certiorari for thirty (30) days.

That a two to one decision was rendered by the Utah Court of Appeals affirming the lower Court decision on March 29, 1989.

This Plaintiff believes that the case should be heard by the Supreme Court, but counsel for Plaintiff has been involved in a Capitol Homicide trial during the majority of the month of April and has been unable to complete a Petition. That such a Petition can be completed in thirty (30) days and therefore, an extension is requested to complete the same.

That no previous requests for extension have been made in this case.

DATED this 26 day of April, 1989.


JOHN T. CAINE
Attorney for Appellant
2568 Washington Boulevard
Ogden, Utah 84401
Telephone: (801) 399-4191

ORDER

Based upon the above and foregoing Ex Parte Motion by counsel for the Appellant and with good cause appearing,

IT IS HEREBY ORDERED that Appellant has an additional thirty (30) days, or until May 26, 1989 in which to file her Writ.

DATED this 27th day of April, 1989.


SUPREME COURT JUDGE

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Ex Parte Motion for Extension of Time to counsel for the Respondent, Joy L. Sanders and Andrew M. Morse, Attorneys at Law, 10 Exchange Place, P.O. Box 45000, Eleventh Floor, Salt Lake City, Utah 84145 and Dale J. Lambert, Attorney at Law, 175 South West Temple, Clark Leaming Building, Salt Lake City, Utah 84101, postage prepaid this 25th day of April, 1989.


SECRETARY