

1989

Jeffery J. Jerz v. Salt Lake County : Reply Brief

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.

Jay Stone; Attorney for Respondent.

Matt Biljanic; Attorney for Appellant.

Recommended Citation

Reply Brief, *Jerz v. Salt Lake County*, No. 890366.00 (Utah Supreme Court, 1989).

https://digitalcommons.law.byu.edu/byu_sc1/2687

This Reply 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
KFU
45.9
.S9
DOCKET NO. 890366

UTAH SUPREME COURT

BRIEF

IN THE SUPREME COURT OF THE STATE OF UTAH

JEFFERY J. JERZ,	:	
	:	
Plaintiff/Appellant,	:	
	:	
vs.	:	
	:	
SALT LAKE COUNTY,	:	Case No. 890366
a political subdivision of	:	
the State of Utah	:	
	:	
Defendant/Respondent.	:	

REPLY BRIEF OF PLAINTIFF-APPELLANT JEFFERY J. JERZ

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH

RAYMOND S. UNO, JUDGE

MATT BILJANIC
Attorney for Appellant
7355 South 9th East
Midvale, Utah 84047

JAY STONE
Attorney for Respondent
2001 South State Street
#S3400
Salt Lake City, Utah 84190-1200

FILED

MAY 18 1990

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

JEFFERY J. JERZ, :
Plaintiff/Appellant, :
vs. :
SALT LAKE COUNTY, : Case No. 890366
a political subdivision of :
the State of Utah :
Defendant/Respondent. :

REPLY BRIEF OF PLAINTIFF-APPELLANT JEFFERY J. JERZ

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH

RAYMOND S. UNO, JUDGE

MATT BILJANIC
Attorney for Appellant
7355 South 9th East
Midvale, Utah 84047

JAY STONE
Attorney for Respondent
2001 South State Street
#S3400
Salt Lake City, Utah 84190-1200

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities Cited.	ii
Introduction	1
Relief Sought on Appeal	1
Facts	1
Argument.	2
Conclusion.	5
Certificate of Mailing.	6

TABLE OF AUTHORITIES

	Page
CASES	
<u>Ewell v. United States</u> 579 F. Supp. 1291 (D. Utah 1984)	3
<u>Ferres v. City of New Rochelle</u> 68 N.Y. 2d 446, 502 N.E. 2d 972, 510 N.Y.S. 2d 57 (1986)	3
<u>O'keefe v. State</u> 104 A.D. 2d 43, 481 N.Y.S. 2d 920 (1984)	3
<u>Otteson v. United States</u> 622 F. 2d 516 (10th Cir. 1980)	3
<u>Sega v. State</u> 456 N.E. 2d 1174 (N.Y. 1983)	3
<u>Seyler v. United States</u> 832 F 2d 120 (9th Cir. 1987)	4
<u>Umpleby v. United States</u> 806 F 2d 812 (8th Cir. 1986).	2
STATUTES:	
Utah Code Ann., §57-14-2 et seq. (1953 as amended)	2

IN THE SUPREME COURT OF THE STATE OF UTAH

JEFFERY J. JERZ,	:	
Plaintiff/Appellant,	:	
vs.	:	
SALT LAKE COUNTY,	:	Case No. 890366
a political subdivision of	:	
the State of Utah	:	
Defendant/Respondent.	:	

REPLY BRIEF OF PLAINTIFF-APPELLANT JEFFERY J. JERZ

INTRODUCTION

This Reply brief addresses points raised in Respondent's brief and seeks to clarify facts and issues presented in this Appeal

RELIEF SOUGHT ON APPEAL

Plaintiff-Appellant, Jeffery J. Jerz, seeks a reversal of the Order and Judgment of the District Court granting Defendant-Respondent's Motion for Summary Judgment. A reversal would enable Plaintiff-Appellant to proceed with his claim against the Defendant - Respondent for negligence.

FACTS

The facts as previously stated in both Appellant

and Respondent's Briefs will not be re-stated herein.

ARGUMENT

In every case cited by the Respondent involving a "road" the road was actually located on the recreational property. In the instant case the Appellant was using the Salt Lake County road to get to the Kennecott Lookout. At the time Appellant struck the rock in the roadway he was not on recreational property nor was he performing a recreational activity as defined in the Statute.

In the Umpleby case, the Recreational Use Statute definitional section contained the language "camping and pleasure driving". Umpleby was travelling to a reservoir to rendezvous with some friends who were camping there. The Utah Statute does not contain the language "pleasure driving" but does contain this language ("and viewing or enjoying historical, archaeological, scenic, or scientific sites. (57-14-2) At the time of Plaintiff's injury he was driving up the Butterfield Canyon road to get to private property to view the valley from the Kennecott Lookout.

The significant difference in Umpleby and this case is, that the reservoir to which he was travelling and the road he was on, were both on federally owned property and constituted the "recreational property".

Respondent in his brief at page 11 refers to Butterfield Canyon road as a "remote mountain road" and yet it begins in Salt Lake Valley just as Emigration, Millcreek and all other canyons situated in the Salt Lake Valley. Clearly, this canyon road was not one that should be covered by the act.

Respondent cites the Sega v. State case on page 10 of his brief for the proposition that government owned roads are covered by the limitation of liability statutes. The viability of Sega is in doubt after a later decision by the same New York Court, Ferres v. City of New Rochelle, 68 N.Y. 2d 446, 502 N.E. 2d 972, 510 N.Y.S. 2d 57 (1986). Sega was also rejected by a lower New York Court in O'keefe v. State, 104 A.D. 2d 43, 481 N.Y.S. 2d 920 (1984). The Court in O'keefe reasoned that the State should be liable for negligent acts in developed recreational areas as contrasted with the undeveloped lands in Sega.

The Otteson case is cited by the Ewell Court in Ewell v. United States, 579 F. Supp. 1291 (D. Utah 1984) aff'd, 776 F. 2d 46 (10 Cir. 1985), for the proposition that since the Federal Land Manager could close portions of the public land to the use of off-road vehicles, it had no obligation to make the land in question available to the

public for recreational vehicles. Consequently, the United States is entitled to immunity under the act. Salt Lake County has no authority to close the road in the instant case but could abandon it to the adjacent property owners.

In Seyler v. United States, 832 F 2d 120 (9th Cir. 1987) the Court held that the recreational use statute did not apply to protect the government from liability for a one-vehicle motorcycle accident that occurred on an Indian Reservation roadway, although the injured party was going for a pleasure ride at the time. The following language in the Seyler case at page 122 clearly applies to the facts in this case:

"The government's contention accepted by the District Court, is that the recreational use statute applies on any road or highway in Idaho. Such a result is absurd. The Idaho legislature cannot have intended to remove tort protection against road defects from all persons who drive for other than business purposes anywhere in Idaho".

Finally, the statute in question was enacted to encourage the opening of remote and pristine lands to the general public. The Butterfield Canyon road although primarily used by many hunters, hikers, bikers and other recreational users has also been used to traverse the Oquirrahs to and from Salt Lake County to Tooele County. The act was meant to apply to roads on recreational property

that are not regularly maintained. The classification of Butterfield Canyon Road as a six on a scale of one to six, with the larger number representing the less maintained road, clearly demonstrates regular maintenance. As such it should not be included under the immunity provided by the limitation statute.

If Defendant's rationale were accepted by this Court, then Millcreek Canyon, Cottonwood Canyon and all other canyons in Salt Lake County would be immunized under the statute. This would be an absurd result.

CONCLUSION


The Summary Judgment granted by the Third District Court should be vacated and the Plaintiff allowed to proceed with its claim.

Respectfully Submitted,


MATT BILJANIC
Attorney for Plaintiff-Appellant

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed,
postage prepaid, 4 true and correct copies of the foregoing
Reply Brief of Plaintiff-Appellant to Jay Stone, Attorney
for Respondent, 2001 South State Street #S3400, Salt Lake
City, Utah 84190-1200, this 14th day of May, 1990.


MATT BILJANIC