

1989

Jeffery J. Jerz v. Salt Lake County : Brief of Appellant

Utah Supreme Court

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890366

IN THE SUPREME COURT OF THE STATE OF UTAH

JEFFERY J. JERZ,

:

:

vs.

:

SALT LAKE COUNTY,
a political subdivision of
the State of Utah

: Case No. 890366

:

Defendant/Respondent.

:

BRIEF OF APPELLANT

APPEAL FROM ORDER OF THE THIRD

JUDICIAL DISTRICT COURT GRANTING

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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STATEMENT OF JURISDICTION

The proceedings from which Plaintiff/Appellant appeals was a hearing on the Defendant's Motion for Summary Judgment in the Third Judicial District Court, Salt Lake County, State of Utah, the Honorable Raymond Uno presiding, which Motion for Summary Judgment was granted.

STATEMENT OF ISSUES PRESENTED ON APPEAL

I. Whether the Utah "Limitation of Landowner Liability" statute, Utah Code Ann. §57-14-1 et. seq. (1979) should be applied to bar Plaintiff's claim against Defendant.

- (A) Whether Butterfield Canyon road is properly covered by the statute.
- (B) Whether the Plaintiff's activity at the time of his injury was properly considered to be a "recreational activity" within the purview of the statute.

Utah Code Ann. §57-14-1 LEGISLATIVE PURPOSE

The purpose of this act is to encourage public and private owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for those purposes.

STATEMENT OF THE CASE

Plaintiff/Appellant brought an action against Salt Lake County for negligent maintenance of the roadway commonly known as Butterfield Canyon, located in the Southwest corner of Salt Lake County, State of Utah.

The Defendant moved for a Summary Judgment and a hearing was held before the Honorable Raymond Uno, District Judge, Third Judicial District Court, Salt Lake County, State of Utah. From a grant of Defendant's Motion for Summary Judgment, Plaintiff/Appellant files this appeal.

STATEMENT OF FACTS

On August 18, 1987, Butterfield Canyon Road was maintained by Salt Lake County as part of its public road system. (R74) The road was a narrow mountain road that traversed the Oquirrh Mountains from Salt Lake Valley to Tooele Valley. The road is used primarily as access to recreation areas and secondarily to get to and from Tooele and Salt Lake County.

The Plaintiff and his brother at some time after 1:30 A.M. August 18, 1987, were driving up the Butterfield Canyon Road enroute to the Kennecott Lookout, when the vehicle Plaintiff was driving struck a large rock protruding up from under the normally travelled portion of the road. The rock and excessive speed caused the vehicle to be thrown over the side of the canyon. The Plaintiff at the time of his injury was traveling on a public road enroute to the Kennecott Lookout for purposes of sightseeing, but never entered those premises.

(Deposition Tracy Jerz p. 5 L. 11-16)

SUMMARY OF ARGUMENT

The Utah "Limitation of Landowner Liability Act" has recently been reviewed in the case of Crawford v. Tilley 118 Utah Adv. Rep. 32. The Court's holding, represents a narrow application of the Statute, in that landowners who do not make their property available to some members of the public for recreation may not invoke protection of the act. Protection is granted only under circumstances that would encourage the landowner to make land available to the public without compensation.

The public road where Plaintiff suffered his injuries is not protected by a statute designed to promote outdoor recreation because the road in any event, would remain open for traversing the Oquirrhys from Tooele to Salt Lake County. Further, the Plaintiff while driving on the canyon road enroute to the Kennecott Lookout and at the time of his injuries was not engaged in a recreational activity.

ARGUMENT

I. THE UTAH "LIMITATION OF LANDOWNER LIABILITY" STATUTE SHOULD NOT BE APPLIED TO BAR PLAINTIFF'S ACTION.

In the District Court the Defendant's motion for Summary Judgment argued that the Plaintiff's action was barred by the Utah "Limitation of Landowner Liability" Act (Utah Code Ann. §57-14-1 et seq. (1953 as amended (hereinafter referred to as the "statute")). The main argument made by Defendant was that Plaintiff was sightseeing at the time of the accident and Salt Lake County is exempt from liability because the "road" constituted "land" as defined in U.C.A. 57-14-2. Section 57-14-1 U.C.A. requires that the recreational user enters the property for those purposes. In the instant case the Plaintiff was simply traversing the canyon road to get to the Kennecott Copper Lookout.

This Court, in Crawford v. Tilley, 118 Utah Adv. Rep. 12 has interpreted and applied the statute narrowly requiring a land owner to allow use of his property to a part of the general public before the exemption can be claimed. As this Court did, nearly all Courts in states with statutes protecting landowners from liability for injuries to recreational users have interpreted and applied those statutes narrowly, offering guidance on the lands, users and activities which should be covered. (See, e.g.,

Harrison v. Middlesex Water Co., 403 A.2d 910, (N.J. 1979) ("Statutes such as the Landowner's Liability Act, granting immunity from tort liability, should be given narrow range."). See generally, 47 ALR 4th Effect of Statute Limiting Landowner's Liability for Personal Injury to Recreational User 262 (1986). It is true that reading of certain landowner liability statutes in some jurisdictions is broader than in others. However, a careful reading of the relevant and applicable cases) (i.e., an injury on a public road to a person not engaged in a recreational activity at the time supports Appellant's position that the rational and commonly - accepted interpretation of the Utah Statute does not preclude Appellant's recovery for Defendant's negligent maintenance of the roadway.

A. THE DEFENDANT'S PROPERTY IS NOT COVERED
BY THE STATUTE

The Utah Statute defines "land" broadly to include "roads, water, water courses, private ways and buildings". Utah Code Ann. §57-14-2(1) (1953 as amended). Nevertheless, the statute must be construed in a manner consistent with its avowed purpose. The purpose of the statute is explicitly stated in Section 57-14-1:

... to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for those purposes.
(emphasis added)

In this case, the Plaintiff did not enter upon the Butterfield Canyon road for recreational purposes. The "use" was solely for the purpose of getting to the Kennecott Copper Lookout. The recreational "use" must be on the land of the owner claiming the exemption of the act. A public road, commonly used as such, does not come within the purview of the act.

B. THE PLAINTIFF'S ACTIVITY WAS NOT A
"RECREATIONAL ACTIVITY" WITHIN THE
PURVIEW OF THE STATUTE

The Utah Landowner Liability Statute defines "recreational purpose" to include viewing or enjoying historical, archeological, scenic or scientific sites and a list of other common outdoor recreational activities. Utah Code Ann. § 57-14-1 (3). The Defendant in the lower court argued that the Plaintiff was sightseeing and consequently his activity came within the statute. However, the record discloses that Plaintiff at the time of his injuries was driving on the public road and had not reached his objective, the Kennecott Lookout. At the time Plaintiff's vehicle struck the large rock on the canyon road he was simply driving to the recreation area.

If the injured party is not engaged in a recreational activity the statute should not apply notwithstanding the fact that the property itself might be

termed "recreational". In Smith v. Southern Pacific Transp. Co. 467 So. 2d 70 (La. Ct. App. 1985), the Plaintiff was injured when the top of his van struck a railroad overpass in a city park. The City argued that since the park was recreational property and the road frequently used by recreational users, the Louisiana landowner liability statute should bar the Plaintiff's action. The Court disagreed, holding that "where persons are allowed to use the property for purposes not associated with recreational activities, the statutes should not apply." Id. at 73.

It is also apparent that the statute should not apply unless the injured party is engaged in a recreational activity at the time of the injury. In Smith v. Scrap Disposal Corp., 158 Cal. Rptr. 134 (Cal, Ct. App. 1979), the Plaintiff had been fishing with friends on property adjacent to the Defendant's land. As they were leaving, the Plaintiff and his friends attempted to operate a bulldozer on the Defendant's property, resulting in serious injury. The California court rejected the Defendant's contention that the statute should apply because fishing was the "main purpose" of the trip: "The underlying purpose of the trip could not be used to shield (Defendant) from liability...Plaintiff...entered Scrap's property to do something other than to fish." Id. at 137.

In this case, the Plaintiff and his brother were

traveling on Butterfield Canyon Road enroute to the Kennecott Copper Lookout to check the scenic views of Tooele and Salt Lake Counties. If the Plaintiff had arrived at the Kennecott property and been sightseeing at the time of his injuries and had not paid for those privileges then one could claim a factual basis upon which to assert the statutory exemption. Extending the statutory protection for the act of driving on a public road to another property for sightseeing is improper because it does not serve the purpose of the statute. This extension does nothing to increase public recreational access to land and water areas.

If the statute applies to this case then what about the individual who simply uses Butterfield Canyon Road to travel to Tooele from Salt Lake County? Since there is no recreational purpose would the statute apply to bar any claim he may have for damages? This kind of an absurd result was rejected in Delta Farms Reclamation District v. Superior Court of San Joaquin County, 33 Cal. 3d 699, 660 P. 2d 1168. In this case, the court rejected the statute's application to public entities giving two reasons for the limitation. First, immunity under the recreational use act would conflict with other California statutes expressly assigning liability for certain actions. (id at 1172-74). Second, "application of (the act) to public entities would

lead to some patently absurd results. For example, the Court reasoned that because the act included "structures", it could be applied to city streets. "Therefore, an improved but dangerously rutted street would expose a city to liability to a bicyclist who commutes to work, even though it was under "no duty" to keep the same street safe for the recreational rider right behind him". ID at 1173. California Courts do not apply the statute to public entities, but the absurd result cited in the Delta Farm's case applies in the instant case if Salt Lake County is granted immunity.

Even when the Plaintiff has performed one of the activities listed in the statute, the courts have looked beyond the list to the purpose and intent of the Plaintiff's actions. In Gerkin v. Santa Clara Valley Water District, 95 Cal. App 3d 1022, 157 Cal. Rptr. 612 (1979) the Plaintiff was injured when she fell from a bridge while walking her bicycle across the Defendant's property. The California Appellate Court reversed the lower court's finding that Plaintiff was "hiking" and limited the statute to "only those cases which could justifiably be characterized as "recreational in nature." The evidence indicated the Plaintiff was not hiking for pleasure but was going to a market. ID at 616. A similar result was obtained in Dominque v. Presley of Southern Cal., 243 Cal. Rptr.312, 315

(1988) where the Court held "the mere fact that the boy was riding his bicycle to his friend's house (across Defendant's property) does not make this trip...a recreational use."

To extend the statutory protection for the act of sightseeing to include a person injured while driving on a public road enroute to a recreation area is inappropriate for two reasons. First, the person is not at that time on recreational property. Secondly, extending immunity to Salt Lake County under those facts does nothing to contribute to increased public recreational access to land and water areas. The statute's application should be limited to those instances where the injured party is on recreational property and engaged in a recreational activity at the time of the injury, not merely planning for such activity or traveling to or from the recreational place.

CONCLUSION

Based upon the foregoing authorities and reasons this Court should find no immunity under the "Limitation of Landowner Liability Statute," reverse the lower court decision and remand the case back for trial on the merits.

DATED this 9th day of March, 1990.



MATT BILJANIC
Attorney for Appellant

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed,
postage prepaid, 4 true and correct copies of the
foregoing Brief of Appellant to Jay Stone, Attorney for
Respondent, 2001 South State Street #S3400, Salt Lake
City, Utah 84190-1200, this 9th day of March, 1990.

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

JEFFERY J. JERZ,)	
Plaintiff,)	SUMMARY JUDGMENT
v.)	
SALT LAKE COUNTY,)	890366
a political subdivision of)	
the State of Utah,)	Civil No. C88-5634
Defendant.)	Judge Raymond Uno

On April 20, 1989, the above court made and filed its minute entry directing that summary judgment be entered in favor of defendant and against plaintiff,

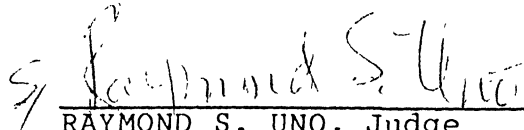
NOW, THEREFORE, on motion of Jay Stone, attorney for defendant, and in accordance with the minute entry of the court,

IT IS ORDERED, ADJUDGED, and DECREED that summary judgment be, and it hereby is, entered in favor of defendant and that plaintiff have and recover nothing against defendant by his suit herein.

DATED this 25th day of April, 1989.

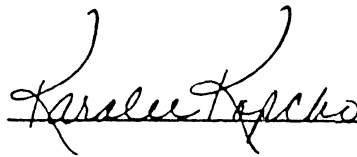
SUMMARY JUDGMENT
Civil No. C88-5634
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BY THE COURT:


RAYMOND S. UNO, Judge

MAILING CERTIFICATE

On the 25th day of April, 1989, I caused to be mailed, postage prepaid, a true and correct copy of the foregoing Summary Judgment, to Matt Biljanic, Attorney for Plaintiff, 7355 South 900 East, Midvale, Utah 84047.


Karalee Kopcho