

1989

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

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *Jerz v. Salt Lake County*, No. 890366.00 (Utah Supreme Court, 1989).
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UTAH SUPREME COURT

BRIEF

890366

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.	:	Priority No. 14(b)

BRIEF OF RESPONDENT

APPEAL FROM THE ORDER OF THE THIRD
JUDICIAL DISTRICT COURT GRANTING
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
HON. RAYMOND S. UNO, JUDGE

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FILED

APR 6 1990

Clerk, Supreme Court, Utah

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STATEMENT OF JURISDICTION

This is an appeal from a grant of summary judgment by the district court trial judge. This court has jurisdiction of this matter pursuant to Utah Code Ann., Section 78-2-2.

STATUTE

LIMITATION OF LANDOWNER LIABILITY - PUBLIC RECREATION

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.

Utah Code Ann. § 57-14-2. Definitions.

As used in this act:

(1) "Land" means any land within the territorial limits of the state of Utah and includes roads, water, water courses, private ways and buildings, structures, and machinery or equipment when attached to the realty.

(2) "Owner" includes the possessor of any interest in the land, whether public or private land, a tenant, a lessee, and an occupant or person in control of the premises.

(3) "Recreational purpose" includes, but is not limited to, any of the following or any combination thereof: hunting, fishing, swimming, skiing, snowshoeing, camping, picnicking, hiking, studying nature, waterskiing, engaging in water sports, using boats, using off-highway vehicles or recreational vehicles, and viewing or enjoying historical, archaeological, scenic, or scientific sites.

(4) "Charge" means the admission price or fee asked in return for permission to enter or go upon the land.

(5) "Person" includes any person, regardless of age, maturity, or experience, who enters upon or uses land for recreational purposes.

Utah Code Ann. § 57-14-3. Owner owes no duty of care or to give warning - Exceptions.

Except as specifically provided in Subsections (1) and (2) of Section 57-14-6, an owner of land owes no duty of care to keep the premises safe for entry or use by any person using the premises for any recreational purpose, or to give any warning of a dangerous condition, use, structure, or activity on those premises to those persons.

Utah Code Ann. § 57-14-4. Owner's permitting another to use land without charge.

Except as specifically provided in Subsection (1) of Section 57-14-6, an owner of land who either directly or indirectly invites or permits without charge any person to use the land for any recreational purposes does not thereby:

- (1) make any representation or extend any assurance that the premises are safe for any purpose;
- (2) confer upon the person the legal status of invitee or licensee to whom a duty of care is owed;
- (3) assume responsibility for or incur liability for any injury to persons or property caused by an act or omission of the person or any other person who enters upon the land; or
- (4) owe any duty to curtail his use of his land during its use for recreational purposes.

Utah Code Ann. § 57-14-5. Land leased to state or political subdivision for recreational purposes.

Unless otherwise agreed in writing, the provisions of Sections 57-14-3 and 57-14-4 of this act are applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes.

Utah Code Ann. § 57-14-6. Liability not limited where willful or malicious conduct involved or admission fee charged.

- (1) Nothing in this act shall limit any liability which otherwise exists for:
 - (a) willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity;
 - (b) deliberate, willful, or malicious injury to persons or property; or
 - (c) an injury suffered where the owner of land charges a person to enter or go on the land or use the land for any recreational purpose, except that where land is leased to the state or a subdivision of the state, any consideration received by the owner for the lease is not a charge within the meaning of this section.
- (2) Any person who hunts upon a posted hunting unit, as authorized by Title 23, Chapter 23, is not considered to have paid a fee within the meaning of this section.

Utah Code Ann. § 57-14-7. Person using land of another not relieved from duty to exercise care.

Nothing in this act shall be construed to relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this act to exercise care in his use of the land and in his activities thereon, or from the legal consequences of failure to employ such care.

STATEMENT OF THE CASE

Jerz brought this action against Salt Lake County for negligent maintenance of Butterfield Canyon Road, a county road located in the Oquirrh Mountains. Salt Lake County's motion for summary judgment was granted. This is an appeal from the lower court's order granting summary judgment.

FACTS

1. Butterfield Canyon Road is a narrow, dirt, mountain road that goes from the Salt Lake valley floor to the summit of the Oquirrh Mountains, and is owned by Salt Lake County. (Record, 71).

2. Mountain canyon roads in Salt Lake County are classified according to the level of maintenance the county performs on them. The classification is established by written policy in accordance with ordinances adopted by the board of county commissioners. There are six categories, or levels, of maintenance, with category one being the most extensive and category six being the least extensive. (Record, 71-89).

3. Of all the canyon roads in Salt Lake County, only two have been designated as category six roads: Burr's Fork Lane (a dirt road off Killyon Canyon Road) and Butterfield Canyon Road. (Record, 71, 79, and 89).

4. Butterfield Canyon Road is used primarily as an access road to remote recreational areas in the Oquirrh Mountains by hunters, campers, hikers, and sightseers. (Record, 71).

5. All of Salt Lake County, including the mountainous areas, is zoned. Butterfield Canyon is (and was in 1987) zoned Forestry and Recreation - 20 (FR-20). One of the purposes of the forestry and recreation zone is to protect the natural and scenic resources of the area for the continued benefit of future generations. The FR-20 zone is (and was in 1987) the most restrictive existing forestry and recreational zone in Salt Lake County, with a minimum lot size of 20 acres--the largest in Salt Lake County. (Record, 90-92).

6. On August 17, 1987, at approximately 8:00 P.M. (deposition of Tracy Jerz, P.11 L.1), Jerz and his brother went to a bar (deposition of Tracy Jerz, P.11 L.13) where they drank and socialized until the bar closed at approximately 1:00 or 1:30 A.M. (deposition of Tracy Jerz, P.23 L.21-25).

7. After leaving the bar, Jerz and his brother decided to go into the Oquirrh Mountains via Butterfield Canyon Road for some sight-seeing. (Deposition of Tracy Jerz. P.5 L.11-16).

8. Jerz drove into the Oquirrh Mountains on Butterfield Canyon Road and stopped to show his brother a cave. (Deposition of Tracy Jerz, P.25 L.17-22).

9. After about 15 minutes of spelunking, Jerz continued up Butterfield Canyon Road for the purpose of reaching the summit and observing the city's lights. (Deposition of Tracy Jerz, P.26, L.17).

10. Jerz drove too fast (deposition of Tracy Jerz, P.40, L.13 to P.41, L.9), went off the road, and sustained injuries.

SUMMARY OF ARGUMENTS

A. The express purpose of the Landowner Limitation of Liability Act is to encourage landowners, both governmental and private, to make their land, including roads, available to the public for recreational activities by limiting their liability toward persons entering on their land. Butterfield Canyon Road is situated in the most restrictive recreational zone; is maintained for remote recreational uses; and is used primarily by recreationists for activities such as camping, hunting, hiking and sight-seeing.

B. Jerz's purpose was a "recreational purpose" within the purview of the statute. His purpose for being on Butterfield Canyon Road was for spelunking and sight-seeing.

ARGUMENT

A. BUTTERFIELD CANYON ROAD IS COVERED BY THE LIMITATION OF LANDOWNER LIABILITY ACT.

It is clear from the language of the Limitation of Landowner Liability statute that the legislature intended to include roads such as Butterfield Canyon Road within the protection of the act. Land is defined as "any land within the territorial limits of the state of Utah and includes roads. . . ." § 57-14-2(1). The act was amended to include public roads in the 1987 amendments to §§ 57-14-1 and 57-14-2(2) where the words "public or private" were added to the definitions of owners and land.

Several courts have held government owned roads are covered under limitation of liability statutes,¹ including, the 10th circuit in Otteson v. U.S., 622 F.2d 516 (10th Cir. 1980).

The purpose of the statute is stated at 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.

This purpose would be served by including Butterfield Canyon Road in its protection. The rationale of the 10th circuit in Otteson, Id., at page 519, is apropos:

The Forest Service regulations allow each Forest Supervisor, among others, to close or restrict the use of forest areas and roads. If liability were imposed upon the government in cases such as this one, the Forest Service might well choose to close the forests to public use rather than bear the heavy burden of maintaining logging roads as public thoroughfares.

Salt Lake County has left Butterfield Canyon Road open to the public.

However, if subjected to liability, the county might be forced to close this, and other roads which it cannot afford to maintain as regular thoroughfares. This is precisely the result the legislation was attempting to avoid. Finding in favor of

¹ Von Tagen By and Through Von Tagen v. United States, 557 F.Supp 256 (1983), auto accident on road in national recreation area; Umpleby v. United States, 806 F.2d 812 (8th Cir. 1986), Army Corps of Engineers road to recreational area; McClain v. United States, 445 F.Supp. 770 (D.Or. 1978), auto accident on federal land; Gaeta v. Seattle City Light, 774 P.2d 1255 (Wash.App. 1989), motorcycle accident on city road over dam; Sega v. State, 456 N.E.2d 1174 (N.Y. 1983), all-terrain vehicle accident on state gravel road.

the county will support the purpose of this legislation by providing a means whereby the county can continue to allow public access to these remote recreational areas.

B. JERZ'S ACTIVITY WAS A "RECREATIONAL ACTIVITY" WITHIN THE PURVIEW OF THE STATUTE.

Jerz claims that because he drove off the road after he had been spelunking, but before he had reached the vantage point where he intended to view the city's lights, he was not using the road for a recreational purpose, and therefore, the statute does not apply. However, Jerz's use of this remote mountain road was totally in furtherance of his recreational purposes. Every known fact about his activities and intentions leads to this conclusion.

The courts that have applied similiar statutes to roadway injuries have refused to let the subjective intent of the injured person determine the applicability of the statute. In Iannotti v. Consolidated Rail Corp., 544 N.Y.S.2d 308 (Ct.App. 1989), the court found no merit in the contention that the statute should not apply because when the trail bike accident happened, plaintiff was returning to his home from shopping. The court stated, at page 312:

Obviously, that the bike was being used for transportation would not mean that its use was not also recreational. There is nothing in the statute or its history suggesting that the Legislature intended that its application should turn on the subjective intent of the injured person when engaging in one of the enumerated activities.

In Gaeta v. Seattle City Light, 774 P.2d 1255 (Wash.App. 1989), Gaeta was on a sight-seeing tour, but claimed he was not engaged in recreational activity at

that point in time as he was crossing the dam to get gas at a resort on the other side. The court held that the determination of applicability of the recreational use statute is based upon the viewpoint of the landowner.

We find the proper approach in deciding whether or not the recreational use act applies is to view it from the standpoint of the landowner or occupier. If he has brought himself within the terms of the statute, then it is not significant that a person coming onto the property may have some commercial purpose in mind. By opening up the lands for recreational use without a fee, City Light has brought itself under the protection of the immunity statute, and it therefore is immaterial that Gaeta may have driven across the dam in search of gasoline at the resort.

Gaeta, Id., at 1258.

In Umpleby v. U.S., 806 F.2d 812 (8th Cir. 1986), Umpleby was involved in a one-vehicle accident on a government road while returning from a recreation area and the court found he was engaged in a recreational activity. Nor did the 10th circuit question a plaintiff's "recreational" status when she was injured in a jeep returning from a pleasure trip. Otteson, supra.

Jerz was engaged in recreational activities the entire time he was driving on Butterfield Canyon Road. He had just finished spelunking and was going to the summit for sight-seeing when he was injured.

CONCLUSION

The facts before the trial court were clear and uncontested. Jerz did not dispute, nor did he file affidavits in opposition to those filed by Salt Lake County in support of its motion for summary judgment. The plaintiff, Jeffery Jerz, drove himself and his brother, Tracy Jerz, into Butterfield Canyon on Butterfield Canyon Road to investigate a

cave and to sightsee. Reasonable minds must conclude that the evidence establishes Jerz was on Butterfield Canyon Road for a recreational purpose.


Butterfield Canyon Road is a narrow, dirt, mountain road. It is located in the most restrictive forestry and recreational zone in the county--including the wilderness areas. In accord with county ordinances, it receives the lowest level of maintenance of any canyon road. Its purpose, and its use, is recreational. If there is a public road in the state of Utah that deserves the protection of the Limitation of Landowner Liability Act, it is Butterfield Canyon Road.

Without the protection afforded in the statute, all public entities may no longer be able to allow the public access to recreational areas over low-maintenance roads--something the legislature was trying to avoid when it enacted the statute.

Respondent asks this court to affirm the lower court's grant of summary judgment.

DATED this 5th day of April, 1990.

DAVID E. YOCOM
Salt Lake County Attorney




JAY STONE
Deputy County Attorney
Attorney for Respondent

AFFIDAVIT OF SERVICE

STATE OF UTAH)
 : ss.
County of Salt Lake)

JAY STONE, being duly sworn, states that he is the attorney for respondent and that he served four copies of the brief of respondent upon Matt Biljanic, attorney for appellant, 7355 South 900 East, Midvale, Utah 84047, by mailing true copies thereof, postage prepaid, on the 5th day of April, 1990.



JAY STONE
Deputy Salt Lake County Attorney
Attorney for Respondent

SUBSCRIBED AND SWORN to before me this 5th day of April, 1990.



NOTARY PUBLIC
Residing in Salt Lake County, Utah

My Commission Expires:

11-33-90