

2008

Gina M. Arnold and Charlie S. Arnold v. Gary B. White, M.D., Uintah Basin Medical Center and David Grigsby, M.D. : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Arnold v. White*, No. 20080255.00 (Utah Supreme Court, 2008).
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IN THE SUPREME COURT OF THE STATE OF UTAH

GINA M. ARNOLD and CHARLIE S.
ARNOLD,

Plaintiffs and Appellees,

vs.

GARY B. WHITE, M.D., UINTAH
BASIN MEDICAL CENTER and DAVID
GRIGSBY, M.D.,

Defendants and Appellants.

**SUPPLEMENTAL BRIEF OF
APPELLANTS**

Case No. 20080255-SC

APPEAL FROM A JUDGMENT OF THE COURT OF APPEALS OF UTAH

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MAR 31 2009

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I.

STATEMENT OF SUPPLEMENTAL QUESTION

The original issue presented on appeal was whether Utah Code Ann. § 78-14-4 (recently recodified as 78B-3-404) is subject to tolling under Utah Code Ann. § 78-12-35 (recently recodified as 78B-2-104).¹ In this Court's February 2, 2009, Order, the Court requested that the parties submit supplemental briefs on the following question:

In what way, if any, does the language of 78-12-35 limit its application to the provisions of 78-14-4?

Therefore, Defendant Dr. Grigsby provides the following supplemental brief to assist this Court in evaluating the proper interpretation and application of Utah Code Ann. § 78-12-35.

II.

ARGUMENT

Utah Code Ann. § 78-12-35, which codifies the tolling effect of a defendant's absence from the state on an applicable statute of limitation, was amended in 1987. The Utah Legislature substituted more specific language, highlighted below, to indicate that the tolling effect of an absence from the state is limited to statutory terms of limitation contained within Chapter 12 of Title 78:

¹Appellant notes that the Legislature has recodified Title 78, a change that went into effect on February 7, 2008. Because the renumbering does not change the analysis below, and because any substantive changes do not apply to this analysis, Appellant will cite to the version of Title 78 that was cited by the parties in their briefs and in this Court's February 2, 2009, Order. *See Medel v. State*, 2008 UT 32, n. 2.

Where a cause of action accrues against a person when he is out of the state, the action may be commenced within the term **as limited by this chapter** after his return to the state. If after a cause of action accrues he departs from the state, the time of his absence is not part of the time limited for the commencement of the action.

Utah Code Ann. § 78-12-35. The plain language of Utah Code Ann. § 78-12-35 clearly limits the tolling effect of an absence from the state to statutory terms of limitation contained within Chapter 12 of Title 78. The two-year statute of limitations for medical malpractice actions, which is codified in Utah Code Ann. § 78-14-4, is not a statute of limitations contained within “this chapter,” Chapter 12 of Title 78. Therefore, pursuant to the plain language of Utah Code Ann. § 78-12-35, an action against a health care provider is **not** tolled during the care provider’s absence from the state of Utah.

Based on the applicable legal standard as applied to undisputed facts, the district court did not err when it determined as a matter of law that the “Plaintiffs’ claim against Dr. Grigsby is time-barred on its face.” R. 859. “[W]e may affirm a grant of summary judgment on any ground available to the trial court, even if it is one not relied on below.” *Higgins v. Salt Lake County*, 855 P.2d 231 (Utah 1993) (citing *Hill v. Seattle First Nat’l Bank*, 827 P.2d 241, 246 (Utah 1992)).

A.

The Plain Language of Section 78-12-35 Restricts the Tolling Effect of an Absence From the State to Statutory Terms of Limitation Contained Within Chapter 12 of Title 78.

The Utah Supreme Court has pointed out that “Utah has developed an extensive

statutory scheme addressing the limitations of actions See Utah Code Ann. §§ 78-12-1 to 78-12-48 (2002).” *Beaver County v. Property Tax Div. of the Utah State Tax Comm’n*, 2006 UT 6, ¶ 37, 128 P.3d 1187. In other words, these statutes, Utah Code Ann. §§ 78-2-1 to 78-12-48, constitute “an extensive statutory scheme addressing the limitations of actions.” However, the extensive statutory scheme addressing the limitations of actions found in chapter 12 of Title 78 is not exhaustive. The Legislature has also established statute of limitations for certain specific civil actions, including the two-year statute of limitations for medical malpractice causes of action found in Utah Code Ann. § 78-14-4. As this Court recently indicated:

It is the Legislature’s prerogative to set statutes of limitation.
It is also the Legislature’s prerogative to set the terms by
which a statute will be tolled.

Olseth v. Larson, 2007 UT 29, ¶ 21, 158 P.3d 532. Within the “extensive statutory scheme addressing the limitations of actions” of Chapter 12 of Title 78, the Utah Legislature has included several statutory methods for tolling statutes of limitation. See Utah Code Ann. §§ 78-12-35 to 78-12-41. In particular, Utah Code Ann. § 78-12-35 provides for the tolling effect of a person’s absence from the state:

Where a cause of action accrues against a person when he is out of the state, the action may be commenced within the term **as limited by this chapter** after his return to the state. If after a cause of action accrues he departs from the state, the time of his absence is not part of the time limited for the commencement of the action.

(Emphasis added.) The plain language of Section 78-12-35 confines the tolling effect of

an absence from the state to statutory terms “as limited by this chapter.” In other words, the tolling of a statute of limitations as a result of a defendant’s absence from the state is “limited” to the statutory scheme addressing the limitations of actions found in chapter 12 of Title 78, i.e., Utah Code Ann. §§ 78-12-1 to 78-12-48.

The Utah Supreme Court has pointed out that the “first step in any statutory interpretation is to examine the plain meaning of the statute.” *Peck v. State*, 2008 UT 39, ¶ 10, 191 P.3d 4. To ascertain the plain meaning of a statute, the court interprets each term according to its ordinary and accepted meaning:

When faced with a question of statutory construction, we look first to the plain language of the statute. In so doing, [w]e presume that the legislature used each word advisedly and **give effect to each term according to its ordinary and accepted meaning.**

Arredondo v. Avis Rent A Car System, Inc., 2001 UT 29, ¶ 12, 24 P.3d 928 (quotation marks and citations omitted, alterations in original) (emphasis added).

Ballentine’s Law Dictionary (1969) defines the term “limited” as follows: “Narrow, restricted, circumscribed, inclosed within a certain limit; hemmed in; confined; bounded.” The court in *Cheyney v. Smith*, 3 Ariz. 143, 155 (Ariz. 1890), defined the term “limited” similarly:

The word ‘limited’ means narrow, restricted. It is synonymous with the word ‘circumscribe’; and that word means to inclose within a certain limit; to hem in; to confine; to bound; to limit; to restrict, etc.

According to the plain meaning of “limited,” Utah Code Ann. § 78-12-35 provides that

the tolling effect of a defendant's absence from the state is confined or restricted to the statutory terms or statute of limitations contained within "this chapter," chapter 12 of Title 78: "Where a cause of action accrues against a person when he is out of the state, **the action may be commenced within the term as limited by this chapter** after his return to the state." (Emphasis added.)

Although the second sentence in Utah Code Ann. § 78-12-35 does not contain the same express limitation, it is clearly implied that the tolling effect of a defendant's absence from the state is confined or restricted to statutory terms or statute of limitations contained within "this chapter," chapter 12, regardless of whether the person was out of the state when the cause of action accrued or the person was out of the state after the cause of action accrued. As the Utah Supreme Court pointed out:

It is to be observed, moreover, that statutory enactments are to be so construed as to render all parts thereof relevant and meaningful, and that interpretations are to be avoided which render some part of a provision nonsensical or absurd.

Millett v. Clark Clinic Corp., 609 P.2d 934, 936 (Utah 1980). It would be nonsensical and illogical to interpret Utah Code Ann. § 78-12-35 to limit the tolling effect of a defendant who is absent from the state if the defendant happens to be outside of the state when the cause of action accrues, but if the defendant leaves the state the day after the cause of action accrues, the same limitation would not apply.

Plaintiffs may argue that if the tolling effect of absence from the state pursuant to Utah Code Ann. § 78-12-35 is restricted to Chapter 12 of Title 78, then Utah Code Ann.

§ 78-12-1 expands the scope of Chapter 12 to include “specific cases where a different limitation is prescribed by statute,” such as Utah Code Ann. § 78-14-4. However, such an expansion would be contrary to the general rules of statutory construction. The Utah Supreme Court has pointed out:

When we are faced with two statutes that purport to cover the same subject, we seek to determine the legislature’s intent as to which applies. In doing this, we follow the general rules of statutory construction, which provide both that ‘the best evidence of legislative intent is the plain language of the statute,’ and that ‘a more specific statute governs instead of a more general statute.’

Jensen v. IHC Hosps., 944 P.2d 327, 331 (Utah 1997) (citations omitted). The plain language of Utah Code Ann. § 78-12-35 clearly indicates that “the action may be commenced within the term as limited by this chapter.” In other words, the tolling effect of absence from the state is restricted to statutory terms of limitation contained within “this chapter,” Chapter 12 of Title 78. Similarly, the more specific statute dealing with restrictions on the tolling effect of absence from the state, Utah Code Ann. § 78-12-35, governs instead of the more general statute, Utah Code Ann. § 78-12-1, that does not specifically address the tolling effect of absence from the state. In addition, these two statutes, 78-12-35 and 78-12-1, can be read to be consistent with one another regarding the fact that 78-12-35 is to be limited to application to only statutes of limitation in Chapter 12 of Title 78. During oral argument before this Court on February 2, 2009, Justice Michael J. Wilkins indicated that Utah Code Ann. § 78-12-35 “would appear by its own language to be limited to application to only statutes of limitation in Chapter 12,”

while pointing out that the medical malpractice statute of limitations is not in Chapter 12 of Title 78, concluding:

Because if you look earlier in Chapter 12, time for commencement of actions generally, in what's now 78B-2-102 [formerly 78-12-1], it says, 'Civil actions may be commenced only within the periods prescribed in this chapter, after the cause of action has accrued, except in specific cases where a different limitation is prescribed by statute.' Now one could read with consistency the proposition that the . . . what used to be Chapter 12 applies to Chapter 12 and that would lend some credence to the proposition that the medical malpractice limitation was intended to be a creature of an entirely different nature.

(Utah Supreme Court On-Demand Oral Arguments,

<http://www.utcourts.gov/courts/sup/streams/index.cgi?mon=20092>, February 2, 2009 --

Arnold v. Grigsby 20080255, Justice Michael J. Wilkins speaking). The plain language of Section 78-12-35 indicates that the tolling effect of absence from the state is limited in application to only statutes of limitation in Chapter 12 of Title 78, and the "medical malpractice limitations was intended to be a creature of an entirely different nature."

B.

The Legislative History of Section 78-12-35 Indicates that the Utah Legislature Added More Specific Language to Clarify that the Tolling Effect of an Absence From the State Would Be Limited to Statutory Terms of Limitation Contained Within Chapter 12 of Title 78.

The Utah Supreme Court has indicated, "The evolution of a statute through amendment by the Legislature may also shed light on a statute's intended meaning."

Olseth, 2007 UT 29 at ¶ 23. The Court went on to point out that the Utah Legislature has

not significantly amended Utah Code Ann. § 78-12-35 since it was originally enacted:

“Utah Code section 78-12-35 does not differ materially from its original version enacted in 1872.” *Id.* at ¶ 16. However, in 1987, the Utah Legislature made a significant change to the statute. The previous version of section 78-12-35 did not expressly restrict the tolling effect of absence from the state to statutory terms of limitation contained within Chapter 12 of Title 78:

If when a cause of action accrues against a person when he is out of the state, the action may be commenced within the term **herein limited** after his return to the state; and if after a cause of action accrues he departs from the state, the time of his absence is not part of the time limited for the commencement of the action.

Utah Code Ann. § 78-12-35 (1953) (emphasis added). In 1987, the Utah Legislature substituted “**as limited by this chapter**” for the phrase “**herein limited**” in Utah Code Ann. § 78-12-35. Therefore, the Utah Legislature added more specific language to section 78-12-35 to clearly indicate that the tolling effect of an absence from the state would be limited to statutory terms of limitation contained within Chapter 12 of Title 78.

A review of the Utah Code indicates that such a restriction would have impacted ten (10) statutes of limitation that were contained outside of Chapter 12 of Title 78 prior to 1987.² The defendants in these non-Chapter 12 statutes of limitations included bars

²Utah Code Ann. §§ 26-19-8 (enacted in 1981); 32A-14a-102 (enacted in 1985); 63G-3-603 (enacted in 1985); 63G-3-817 (enacted in 1980); 70A-2-725 (enacted in 1965); 70C-7-205 (enacted in 1985); 75-3-108 (enacted in 1975); 75-3-802 (enacted in 1975); 76-10-925 (enacted in 1979); and 78B-3-404 (enacted in 1976).

and stores that sold alcohol (32A-14a-102), state agencies (63G-3-603 and 63G-3-817), retailers (70A-2-725), credit card companies (70C-7-205), an estate (75-3-802), and metal dealers (76-10-925). None of these statutes of limitations would seem to have been directly impacted by limiting the tolling effect of absence from the state as defendants that are not natural persons are generally static. Utah Code Ann. § 75-3-108 deals with statute of limitations on a decedent's cause(s) of actions, but Utah Code Ann. § 78B-2-105 already tolls the statute of limitations in the case of death.

Arguably, the only individual defendants directly impacted by limiting the tolling effects of absence from the state to Chapter 12 of Title 78 would have been health care provider defendants under Utah Code Ann. §§ 26-19-8 and 78-14-4 (the statute at issue in this appeal). However, the Utah Supreme Court pointed out that the Utah Legislature purposefully chose to treat health care providers differently than other defendants: "The avowed legislative purpose for treating the class of health providers differently from other defendants is stated in the Act itself." *Allen v. Intermountain Health Care*, 635 P.2d 30, 31-32 (Utah 1981). The Utah Supreme Court has also indicated that "we ha[ve] no need to speculate as to what purposes the Malpractice Act was intended to serve because the purposes were set forth in § 78-14-2." *Lee v. Gaufin*, 867 P.2d 572, 580 (Utah 1993).

The Utah Supreme Court has noted:

According to its own provisions, the purpose of the UHCMA is to 'provide a reasonable time in which actions may be commenced against health care providers while limiting that time to a specific period for which professional liability

insurance premiums can be reasonably and accurately calculated.’ *Id.* § 78-14-2 .

Smith v. Four Corners Mental Health Ctr., Inc., 2003 UT 23, ¶ 30, 70 P.3d 904 (emphasis added). Similarly, in *Dowling v. Bullen*, the Utah Supreme Court pointed out that the purpose of the Utah Health Care Malpractice Act is to ease health care costs by establishing a specific window of time to bring malpractice actions:

However, the stated purpose of the UHCMA is to alleviate health care costs via the establishment of a fixed window of time “in which actions may be commenced against health care providers[,] while limiting that time to a specific period for which professional liability insurance premiums can be reasonably and accurately calculated.”

Dowling v. Bullen, 2004 UT 50, ¶ 11, 94 P.3d 915. Utah Code Ann. § 78-14-2,

“Legislative findings and declarations - Purpose of act,” provides:

The legislature finds and declares that the number of suits and claims for damages and the amount of judgments and settlements arising from health care has increased greatly in recent years. Because of these increases the insurance industry has substantially increased the cost of medical malpractice insurance. The effect of increased insurance premiums and increased claims is increased health care cost, both through the health care providers passing the cost of premiums to the patient and through the provider’s practicing defensive medicine because he views a patient as a potential adversary in a lawsuit. Further, certain health care providers are discouraged from continuing to provide services because of the high cost and possible unavailability of malpractice insurance.

In view of these recent trends and with the intention of alleviating the adverse effects which these trends are producing in the public’s health care system, it is necessary to protect the public interest by enacting measures designed to encourage private insurance companies to continue to provide health-related malpractice insurance while at the same time establishing a mechanism to ensure the availability of insurance in the event that it becomes unavailable

from private companies.

In enacting this act, it is the purpose of the legislature to provide a reasonable time in which actions may be commenced against health care providers while limiting that time to a specific period for which professional liability insurance premiums can be reasonably and accurately calculated; and to provide other procedural changes to expedite early evaluation and settlement of claims.

Utah Code Ann. § 78-14-2 (emphasis added). The clear intent of the Utah Health Care Malpractice Act was to treat health care provider defendants differently than other defendants.

Therefore, the Utah Legislature's decision to exclude health care provider defendants from the tolling effect of an absence from the state by limiting the application of Utah Code Ann. § 78-12-35 to statutes of limitations contained within Chapter 12 of Title 78 is clearly in keeping with the Utah Legislature's expressed intent in enacting the Utah Health Care Malpractice Act to limit the statutory term for bringing a malpractice action to a specific period of time. The tolling effect of a health care defendant's absence from the state would create a potentially limitless time for bringing a medical malpractice action and thwart the expressly stated purpose and intent of the Legislature in enacting a statute of limitations specifically for health care providers.

It is also important to remember that any health care provider defendant who leaves the state is still subject to the personal jurisdiction of the court pursuant to Utah's long arm statute, Utah Code Ann. § 78-27-24:

Utah's long-arm statute was enacted in 1969. It allows Utah's

courts to exert personal jurisdiction over any person, whether or not a resident of Utah, if that person committed any of the acts enumerated in the statute. The long-arm provisions apply ‘so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the *Due Process Clause of the Fourteenth Amendment to the United States Constitution*.’ The provisions allow service of process pursuant to *rule 4 of the Utah Rules of Civil Procedure* on any party outside the state.

Olseth, 2007 UT 29 at ¶ 19. Consequently, this Court has pointed out that Utah Code Ann. § 78-12-35 is of limited utility:

Basically, the tolling statute was designed to address a problem that no longer exists and the statute is, in that sense, an anachronism. Despite the fact that the tolling statute is anachronistic, however, it is clear, and it provides that a statute is tolled during that period where a defendant is absent from the state.

Id. at ¶ 13. The “anachronistic” nature of Utah Code Ann. § 78-12-35 further argues for reasonably interpreting the plain language of this statute to limit its scope to exclude health care provider defendants whose statutory term of limitation is not contained within Chapter 12 of Title 78.

It is also important to note that the other tolling statutes contained in Chapter 12 of Title 78 do not contain any express or implied limitation to statutory terms of limitation contained within the chapter. These tolling statutes include the effect of death, war, and disability—minority or legal incompetence—on statutory terms of limitation. In fact, Utah Code Ann. § 78-12-36 was amended in the same senate bill that amended Utah Code Ann. § 78-12-35 in 1987. Although the Legislature included the new language, “as

limited by this chapter,” in the amendments to Utah Code Ann. § 78-12-35, no such limitation was included in the amendments to Utah Code Ann. § 78-12-36, which provides:

A person may not bring an action while under the age of majority or mentally incompetent without a legal guardian. During the time the person is underage or incompetent, the statute of limitations for a cause of action other than for the recovery of real property may not run.

In other words, the exclusion of this phrase from other tolling statutes reinforces the interpretation that the Utah Legislature pointedly determined to restrict the tolling effects of absence from the state to statutory terms of limitation “limited by this chapter,” Chapter 12 of Title 78.

C.

Since Section 78-12-35 Was Amended in 1987, Utah Courts Have Only Applied the Tolling Effect of Absence from the State to Statutory Terms of Limitation Contained Within Chapter 12 of Title 78.

The case law dealing directly with the applicability of Utah Code Ann. § 78-12-35 since the statute was amended in 1987 is in harmony with an interpretation that restricts the tolling effects of absence from the state to statutory terms of limitation contained within Chapter 12 of Title 78. There have been four cases that have directly addressed Utah Code Ann. § 78-12-35 since the statute was amended in 1987. In *Olseth v. Larson*, the plaintiff filed a claim for a 42 U.S.C. § 1983 civil rights violation. *Olseth*, 2007 UT 29 at ¶ 6. The Reconstruction Civil Rights Act did not contain a statute of limitations for a section 1983 action. As a result, the U.S. Supreme Court determined that “section 1983

claims were best characterized as tort actions for the recovery of damages for personal injuries and federal courts must borrow the statute of limitations governing personal injury actions in the state in which the section 1983 action was brought.” *Banks v. City of Whitehall*, 344 F.3d 550, 553 (6th Cir. 2003) (citing *Wilson v. Garcia*, 471 U.S. 261, 275-76 (1985)). In Utah, the “statute of limitations for filing a personal injury action is four years. See Utah Code Ann. § 78-12-25.” *Jenkins v. Percival*, 962 P.2d 796, 805 (Utah 1998). Therefore, the applicable statute of limitations in *Olseth* was Utah Code Ann. § 78-12-25, which is clearly a statute of limitations within “this chapter,” Chapter 12 of Title 78. The Utah Supreme Court concluded: “We hold that section 78-12-35 *does toll* the applicable statute of limitations when a person against whom a claim has accrued has left the state of Utah.” *Id.* at ¶ 40 (emphasis in original).

In *Lund v. Hall*, 938 P.2d 285 (Utah 1997), the plaintiff claimed physical injuries as a result of an automobile collision:

On January 12, 1989, plaintiff Rallet C. Lund and defendant Eldon W. Hall were allegedly involved in an automobile collision, whereby Hall hit a vehicle from behind, which in turn hit Lund’s vehicle from behind causing her physical injuries.

Id. at 285. The same statute of limitations provision applied where the court said that the “statute of limitations for filing a personal injury action is four years. See Utah Code Ann. § 78-12-25.” *Jenkins v. Percival*, 962 P.2d 796, 805 (Utah 1998). Utah Code Ann. § 78-12-25 is clearly a statute of limitations within Chapter 12 of Title 78. In *Lund*, the Utah Supreme Court concluded: “Even if Hall had departed from the state, he was still

subject to service of process pursuant to the nonresident motor vehicle act. Thus, under our decision in *Snyder*, section 78-12-35 would not operate to toll the statute of limitations on this action.” *Id.* at 290.

In *York v. Gardiner*, 2006 UT App 471, the Utah Court of Appeals indicated that the “district court held that York’s claims were barred by Utah Code section 78-12-25(3), the applicable statute of limitations.” *Id.* at ¶ 1. As noted above, Utah Code Ann. § 78-12-25 is a statute of limitations within Chapter 12 of Title 78. The Utah Court of Appeals concluded: “The district court did not abuse its discretion when it found that section 78-12-35 did not apply because Gardiner was at all times amenable to service of process pursuant to Utah’s long-arm statute.” *Id.* at ¶ 5.

Finally, in *Van Tassell v. Shaffer*, 742 P.2d 111 (Utah Ct. App. 1987), the Utah Court of Appeals pointed out that “Defendant filed a motion for summary judgment claiming that the suit was barred by the eight year’s statute of limitations set forth in Utah Code Ann. § 78-12-22 (1984).” *Id.* at 112. The issue was whether “the statute of limitations was tolled when defendant was out of the state for both personal and business reasons even though he was amenable to service of process under Utah R. Civ. P. 4.” *Id.* The Utah Court of Appeals held that the statute of limitations was tolled pursuant to Utah Code Ann. § 78-12-35. *Id.* at 113. Utah Code Ann. § 78-12-22 is similarly a statute of limitations within “this chapter,” Chapter 12 of Title 78.

Each of the cases that have dealt directly with the applicability of Utah Code Ann. § 78-12-35 since the statute was amended in 1987 is in harmony with a statutory

interpretation that restricts the tolling effects of absence from the state to statutes of limitation contained within Chapter 12 of Title 78.

D.

Limiting the Application of the Tolling Effect for Absence From the State in Section 78-12-35 to Statutes of Limitation Contained Within Chapter 12 of Title 78 Minimizes the Potential Constitutional Conflict with the Commerce Clause.


Although the issue of whether the tolling statute, Section 78-12-35, unconstitutionally violates the Commerce Clause of the United States Constitution is not directly before this Court, the United States Supreme Court's holding in *Bendix Autolite Corp. v. Midwesco Enterprises, Inc.*, 486 U.S. 888 (1988), and its progeny, underscore the potential constitutional infirmities of the issue of whether the language of Section 78-12-35 limits its application to the provisions of Section 78-14-4. The Utah Supreme Court has stated, "we have 'a duty to construe a statute whenever possible so as to effectuate legislative intent and avoid and/or save it from constitutional conflicts or infirmities.'" *State v. Bell*, 785 P.2d 390, 397 (Utah 1989). This Court should construe the statutory phrase, "the action may be commenced within the term as limited by this chapter," to exclude statutory terms outside of Chapter 12 of Title 78 generally, and the statutory term of limitations contained within Utah Code Ann. § 78-14-4 specifically, so as to avoid a conflict with the Commerce Clause in matters involving the Utah Health Care Malpractice Act and limit potential conflicts with the Commerce Clause generally.

CONCLUSION

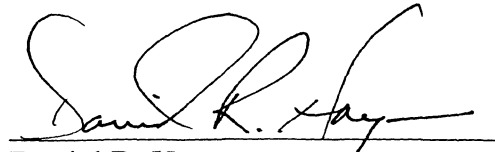
For the reasons set forth above, as well as the reasons set forth in the Appellant's other briefs, the Defendant/Appellant Dr. Grigsby respectfully requests that the Utah Supreme Court reverse the judgment of the Utah Court of Appeals and determine that Utah Code Ann. § 78-14-4 is not subject to tolling under Utah Code Ann. § 78-12-35 and uphold the summary judgment of the trial court.

RESPECTFULLY SUBMITTED this 31st day of March, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of March, 2009, I caused to be served by the method indicated below two true and correct copies of the attached and foregoing **SUPPLEMENTAL BRIEF OF APPELLANTS** to the following:

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