

1990

Kathy Lynn Higgins, individually and as guardian
ad litem for Shaundra Higgins, her daughter, v.
SALT LAKE COUNTY, by and through SALT
LAKE COUNTY MENTAL HEALTH, DR.
WILLIAM KUENTZEL, SHERYL STEADMAN,
THE UNIVERSITY OF UTAH and THE
UNIVERSITY OF UTAH MEDICAL CENTER
: Legal Brief

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Utah Supreme Court
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Recommended Citation

Legal Brief, *Higgins v. Salt Lake County*, No. 90255.00 (Utah Supreme Court, 1990).
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July 23, 1991

Justices of the Utah Supreme Court

Re: Kathy Lynn Higgins et al. v. Salt Lake County
et al., Case No. 90255

Dear Honorable Justices:

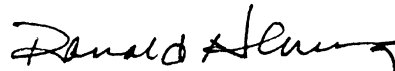
I am submitting this letter to the Court on behalf of amicus curiae Valley Mental Health pursuant to Rule 24(j) of the Utah Rules of Appellate Procedure to advise the Court of recent pertinent and significant authority relating to the issues in the above-referenced case.

In Rollins v. Petersen, 169 Utah Adv. Rep. 10, filed June 5, 1991, this Court held that the Utah State Hospital did not owe an unidentified plaintiff a duty to protect him from the acts of a hospital patient. In Rollins, this Court articulated a modification to § 319 of the Restatement (Second) of Torts, limiting the scope of duty imposed to protect others from bodily harm caused by persons under control of the state to those who are "reasonably identifiable by the custodian either individually or as members of a distinct group."

Valley Mental Health submits that the law announced in Rollins is controlling precedent in Higgins, buttressing the defendants' contention that they owed no duty to the plaintiff.

Sincerely,

PRINCE, YEATES & GELDZAHLER



Ronald E. Nehring

FILED

REN:jb

cc: Patricia J. Marlowe, Esq.
Stephen J. Hill, Esq.
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IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

---oOo---

KASCO SERVICES CORPORATION,)	
)	CIVIL NO. 89-0901724
Plaintiff,)	
)	
vs)	
)	
LARRY D. BENSON and CONNIE A. BENSON,)	DEPOSITION OF:
DBA TRI-B-SUPPLY,)	
)	<u>RANDALL HEATH</u>
Defendants.)	
)	

---oOo---

Be it remembered that on the 30th day of June 1989 the deposition of Randall Mitchell Heath, produced as a witness herein at the instance of the plaintiff, in the above-entitled action now pending, was taken before Sharon A. Merritt, a Certified Shorthand Reporter and Notary Public, in and for the State of Utah, at the offices of VanCott, Bagley, Cornwall & McCarthy, 2404 Washington Boulevard, Suite 900, Ogden, Utah.

That said deposition was taken pursuant to notice.



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1 chance of running out of products. And I looked at the prices,
2 and I had -- I went and got a copy of my last Kasco invoice, I
3 believe, (indicating) and I looked at them, and I knew their's
4 was on a four-month. On a three-month their prices looked a
5 lot cheaper on paper. But in reality they aren't that much
6 cheaper when you consider you're going to be serviced four
7 times a year instead of three times a year. So pricewise they
8 were about the same, a little bit cheaper, but -- but,
9 basically, we just talked about that. You know, we just --
10 just decided to give them a try.

11 Q. And you made that decision yourself?

12 A. Yes.

13 Q. Did you consult with anyone else?

14 A. No. I did tell my boss, Rich Christensen,
15 afterwards that I'd made the decision.

16 Q. What did he say?

17 A. He asked me why.

18 Q. What did you say to him?

19 A. I told him that, you know, I've known Larry for a
20 long time, even though it wasn't his company, it was his
21 family's company. And that, basically, they were a small
22 company starting out and just a -- that the service was the
23 same. I'd rather go with a small local company than a major
24 company.

25 Q. And you expected the service to be the same?

1 know, the Kasco thing, if you didn't call Larry Benson's house,
2 you had to call a toll free number, and I -- seemed like it was
3 in St. Louis or Kansas City. I can't remember where their main
4 offices are at. I don't know if it says on here.

5 MRS. BENSON: (indicating)

6 THE WITNESS: St. Louis. Okay. Something like that.

7 And, you know, they're just local and --

8 MR. MCGARVEY: Q. And Tri-B-Supply prices were
9 also a little bit lower, is that right?

10 A. They were just a little bit cheaper. But price
11 wasn't the -- wasn't why I went.

12 Q. Did it influence you at all, the fact that the
13 prices were a little bit low?

14 A. Well, if they'd come in higher or very much
15 higher, no, it wouldn't have. I mean we wouldn't have gone
16 with them. But as soon as they were competitive, you know,
17 we're only talking, you know, might be a total of -- it seemed
18 like when I figured it out with their knives and blades and
19 Kasco's price, it seemed like we were, you know, within like
20 ten bucks. You know, that's not much.

21 Q. Also, was your decision influenced partly because
22 you knew Larry Benson over so many years?

23 A. Yes. Yeah.

24 Q. So you knew or at least thought you could
25 anticipate a certain level of service?