2012

Peak Alarm Company v. Salt Lake City Corp : Reply Brief

Utah Court of Appeals

IN THE SUPREME COURT OF UTAH

PEAK ALARM COMPANY, INC., a Utah corporation, JERRY D. HOWE, an individual, and MICHAEL JEFFREY HOWE, an individual Plaintiffs and Appellees, v. SALT LAKE CITY CORP., a Utah municipal corporation; SHANNA WERNER, an individual; CHARLES F. "RICK" DINSE, an individual; SCOTT ATKINSON, an individual; and JAMES BRYANT, an individual, Defendants and Appellants.	**REPLY BRIEF OF APPELLANTS** Case No. 20120050

On Appeal From the Third Judicial District Court,
In and For Salt Lake County, State of Utah, Case No. 050906433

HONORABLE L. A. DEVER

Stephen C. Clark, #4551 Kathleen E. McDonald, #10187 JONES, WALDO, HOLBROOK & McDONOUGH PC 170 South Main Street, Suite 1500 Salt Lake City, Utah 84101 Attorneys for Plaintiffs/Appellees	J. Wesley Robinson, #6321 Senior City Attorney 451 South State, Suite 505 P.O. Box 145478 Salt Lake City, UT 84114-5478 Telephone: (801) 535-7788 Attorney for Defendants/ Appellants

IN THE SUPREME COURT OF UTAH

PEAK ALARM COMPANY, INC., a Utah corporation, JERRY D. HOWE, an individual, and MICHAEL JEFFREY HOWE, an individual Plaintiffs and Appellees, v. SALT LAKE CITY CORP., a Utah municipal corporation; SHANNA WERNER, an individual; CHARLES F. "RICK" DINSE, an individual; SCOTT ATKINSON, an individual; and JAMES BRYANT, an individual, Defendants and Appellants.	**REPLY BRIEF OF APPELLANTS** Case No. 20120050

On Appeal From the Third Judicial District Court,
In and For Salt Lake County, State of Utah, Case No. 050906433

HONORABLE L. A. DEVER

Stephen C. Clark, #4551 Kathleen E. McDonald, #10187 JONES, WALDO, HOLBROOK & McDONOUGH PC 170 South Main Street, Suite 1500 Salt Lake City, Utah 84101 Attorneys for Plaintiffs/Appellees	J. Wesley Robinson, #6321 Senior City Attorney 451 South State, Suite 505 P.O. Box 145478 Salt Lake City, UT 84114-5478 Telephone: (801) 535-7788 Attorney for Defendants/ Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

REPLY TO PLAINTIFFS' STATEMENT OF FACTS

With the exception of plaintiffs' factual statements numbered 7 and 8, the remaining statements of fact are irrelevant to the issues presented in this appeal. Defendants further reply to plaintiff's factual statements as follows:

Plaintiffs' Fact No. 3: Plaintiffs' statement that Jeff Howe was "apprehended" is argument masquerading as fact.

Plaintiffs' Fact No. 4: Plaintiffs' statement regarding an alleged "sustained campaign by Ms. Werner, abetted by Sgt. Bryant" is also argument masquerading as fact.

Plaintiffs' Fact No. 4b: This statement of "fact" is incorrect. Ms. Werner's letter to the Utah Attorney General did not even mention Peak Alarm, Jerry Howe or Jeff Howe. *R. 2465-66.*

Plaintiffs' Fact No. 4c: This statement of "fact" is, in reality, simply an inadmissible allegation made by Ron Walters, a member of the alarm industry with an obvious axe to grind with Ms. Werner.

Plaintiffs' Fact No. 4e: While the content of the email quoted by plaintiffs is accurate, their characterization of Ms. Werner's deposition testimony is not. Plaintiffs' allegation that Ms. Werner "admitted in her deposition that this statement was false" is nothing more than argument masquerading as fact. The transcript of Ms. Werner's deposition speaks for itself. *R. 2391.*

Plaintiffs' Fact No. 5: Again, this statement of "fact" is nothing more than argument masquerading as fact.

2. Jeff Howe admits that Sgt. Bryant gave him the option of being arrested or signing the citation, and that he opted to sign the citation in lieu of arrest. *R. 1770.*

3. Jeff Howe admits he was not handcuffed at any time, he was not physically restrained by Sgt. Bryant, nor did Sgt. Bryant lay hands on him in any way. *R. 1771, 1826.*

4. The officers then left the building, and Howe was subjected to no further restrictions on his liberty other than to appear in court at some time in the future. *R. 1820-22.*

5. Jeff Howe was tried in Justice Court on April 12, 2004, and won a directed verdict in his favor. *R. 1838-43.*

6. On June 25, 2004, Plaintiffs filed a Notice of Claim with the City Recorder's Office, alleging unlawful conduct by the City and one or more of its employees. *R. 1845-52.*

7. On April 7, 2005, plaintiffs filed their Complaint against the City and the individual defendants in their individual and official capacities. *R. 1-21.*

8. Plaintiffs alleged that Ms. Werner made broad and damaging statements regarding the alarm industry that were published as late as April 30, 2003. *R. 112-15.*

9. Plaintiffs alleged that Ms. Werner also targeted Peak Alarm specifically in a letter to a Peak Alarm customer dated March 21, 2002 wherein she encouraged the customer to "consider selecting another company who will do a better job for you." *R. 115.*

10. Plaintiffs allege that these statements unfairly maligned Peak Alarm, Jerry and Jeff Howe, threatened existing and future business prospects of Peak Alarm, and sent a "chill over the expression of legitimate viewpoints." *R. 115.*

11. Jeff Howe concedes that he knew about all of these allegedly defamatory statements in 2003. *R. 1775-1817, 1802, 1805, 1812-13, 1818-19.*

12. Both parties to this action moved for summary judgment. On August 5, 2008, the trial court heard oral arguments on the parties' summary judgment motions, and took the matter under advisement. *R. 2661.*

13. On October 6, 2008, the trial court issued a Ruling granting summary judgment in favor of the defendants, and denying Plaintiffs' motion for partial summary judgment. *R. 2661-96.*

14. Plaintiffs appealed the Ruling to this Court, which affirmed in part, and reversed in part. The Court remanded seven Utah law claims and one federal law claim back to the trial court. *R. 2753-88.*

15. Defendants again moved for summary judgment on February 4, 2011. *R. 2877-79, 2882-2928, 2953-96.*

16. The trial court ultimately denied summary judgment as to the state law false arrest/seizure and defamation claims on December 7, 2011. *R. 3235-47.*

ARGUMENT

I.

THE UTAH LEGISLATURE CLEARLY INTENDED THE ONE-YEAR LIMITATION PERIOD TO APPLY TO GOVERNMENTAL ENTITIES AND EMPLOYEES

Plaintiffs argue that when it comes to suing a governmental entity or employee, the only filing deadline that applies is provided for in the Immunity Act, *Utah Code Ann. § 63-30-15* (one year after notice of claim is denied). All other filing requirements or limitation periods are superseded by the Immunity Act. This argument, however, overlooks some basic facts. Utah's one-year statute of limitations (*Utah Code Ann. § 78-12-29*), by its own language, very clearly applies to governmental entities and employees. For example, subsection 2 requires that an action be brought within one year "upon a statute for a penalty or forfeiture where the action is given to . . . an individual and the state;" subsection 3: "upon a statute, or upon an undertaking in a criminal action, for a forfeiture or penalty to the state;" subsection 5: "against a sheriff or other officer for the escape of a prisoner;" subsection 6: "against a municipal corporation for damages or injuries to property caused by a mob or riot;" and subsection 8: "against a county legislative body or a county executive to challenge a decision of the county legislative body or county executive." *Utah Code Ann. § 78-12-29(2), (3), (5), (6) and (8).*

Similarly, Utah's two-year statute of limitation also applies to marshals, sheriffs, constables and other officers, as well as the state and its political subdivisions for injury to the personal rights of another. *Utah Code Ann. § 78-12-28.* If the Legislature had intended that the Immunity Act provide the only "limitation" period applicable to claims

against a governmental entity or employee, it would not have made 78-12-28 and -29 applicable to the state, counties, county executives, sheriffs, other officers or municipal corporations.

The Immunity Act's language further supports the Legislature's intent to apply Utah's statutes of limitations to governmental entities and employees. The Immunity Act specifically provides that where the government's immunity is waived, "liability of the entity shall be determined as if the entity were a private person." *Utah Code Ann. § 63-30-4(1)(b)*. There can be no dispute that private persons are subject to the one-year statute of limitation for libel, slander and false arrest. The Immunity Act also provides that "[n]othing in this chapter may be construed as adversely affecting any immunity from suit that a governmental entity or employee may otherwise assert under state or federal law." *Utah Code Ann. § 63-30-4(2)*.

Thus, the Utah Legislature made clear its intention that other state law immunities (such as statutes of limitation) be specifically retained by governmental entities and employees, separate and apart from the provisions of the Immunity Act, which was limited to providing for the conditions under which governmental entities retain, or waive, sovereign immunity, and the procedural requirements necessary to confer jurisdiction on Utah courts that must be met when immunity from suit is waived.

Here, plaintiffs were able, and indeed were required, to comply with both the procedural requirements for suing the City and its employees under the Immunity Act, AND comply with the one-year statute of limitations for defamation and false arrest.

II.

THE IMMUNITY ACT'S NOTICE OF CLAIM AND COMMENCEMENT OF SUIT REQUIREMENT IS NOT A STATUTE OF LIMITATION

This Court has explained the procedural requirements of Utah's Immunity Act, allowing suits against governmental entities and their employees to proceed forward, as "a statutorily created exception to the Doctrine of Sovereign Immunity. Inasmuch as the maintenance of such a cause of action derives from such statutory authority, a prerequisite thereto is meeting the conditions prescribed in the statute." *Gallegos v. Midvale City*, 27 Utah 2d, 492 P.2d 1335, 1336-37 (1972). "The statutory right to sue a governmental entity 'may be circumscribed by any conditions that the Legislature may see fit to impose,' and compliance with those conditions is an 'indispensable prerequisite' in suits against governmental entities." *Davis v. Central Utah Counseling Center*, 2006 UT 52, ¶ 42, 147 P.3d 390 (citing *Artukovich v. Astendorf*, 21 Cal.2d 329, 131 P.2d 831, 833 (1942)).

Utah courts "have consistently and uniformly held that suit may not be brought against the state or its subdivisions unless the requirements of the Governmental Immunity Act are strictly followed." *Hall v. Utah Dept. of Corr.*, 2001 UT 34, ¶ 23, 24 P.3d 958. The strict compliance standard is drawn from the basic principles of sovereign immunity and from the provisions of the Immunity Act itself. As this Court stated in *Hall*, "[W]here the government grants statutory rights of action against itself, any conditions placed on those rights must be followed precisely." *Hall*, 2001 UT 34 at ¶ 23. "The requirement of strict compliance, therefore, is a recognition of the government's

sovereign immunity and its right to dictate the terms and conditions of its waiver of that immunity." *Davis*, 2006 UT 52 at ¶ 42.

Therefore, the conditions placed on a person's right to sue the government are not, in and of themselves, a statute of limitation simply because one aspect of those conditions involves time constraints. Rather, they are jurisdictional prerequisites to maintaining a suit against the government. *Wheeler v. McPherson*, 2002 UT 16, ¶¶ 9-10, 40 P.3d 632. As this Court explained in *Davis*, "[j]urisdiction, however, does not hinge on the difficulty of that task or the earnestness of plaintiffs' efforts. Jurisdiction instead springs when a claimant has effected full compliance with the Immunity Act." *Davis*, 2006 UT 52 at ¶ 46.

Plaintiffs' brief at page 14 correctly points out that defendants did not cite or analyze *Utah Code Ann. § 78-12-1* or *§ 78-12-30*. That is because they do not apply here. The Immunity Act's jurisdictional prerequisites are not a "different limitation . . . prescribed by statute," as provided for in § 78-12-1, and plaintiffs' claims against the City were never even considered, much less rejected, by "the county executive, city commissioners, city council, or board of trustees," as provided for in § 78-12-30.

Plaintiffs are incorrect, however, when they claim (also at page 14) that this Court has already concluded that the Immunity Act contains its own "one-year statute of limitations," which is "the only relevant statute for purposes of analyzing the timeliness of a lawsuit . . . against the government." While the Court did characterize the one-year commencement of suit requirement in *Utah Code Ann. § 63-30-15(2)* as a "one-year statute of limitations," *Peak Alarm v. Salt Lake City*, 2010 UT 22 at ¶ 34, it would be

more accurate to state that it operates like a statute of limitations (as did the Court in *Warren v. Provo City Corp.*, 838 P.2d 1125, 1128 (Utah 1992)). Nevertheless, the Court absolutely did not state that it is the only relevant limitation period applicable to suits against the government.

Ultimately, the labels used are unimportant. What is important is recognizing the difference between statutes of limitation and jurisdictional prerequisites to suit. This distinction is absolutely critical to all governmental entities and their employees. Here, the only limitation period applicable to this case is the one-year statute of limitation specific to claims of defamation and false arrest contained in *Utah Code Ann. § 78-12-29(4)*.

III.

UTAH CASE LAW SUPPORTS DEFENDANTS' POSITION

Plaintiffs' reliance on *Rushton* and *Patterson* is unavailing, particularly in light of the Utah Court of Appeal's decisions in *Cline* and *Carter*. Furthermore, the *Hardinge* case has no application to the facts of this case, it has never been applied by any Utah court in a reported case, and it's claimed "general rule" would have collateral consequences that plaintiffs understandably decline to address.

The *Rushton* decision clearly does not help plaintiffs. There, the issue on appeal was "whether the district court erred in granting the County's motion to dismiss on the ground that Rushton failed to comply with the notice provisions of the Immunity Act." *Rushton v. Salt Lake County*, 1999 UT 36, ¶ 16, 977 P.2d 1201. While plaintiffs correctly point out that defendant Salt Lake County claimed that Rushton's action was

barred by the statute of limitations as well as by the Immunity Act's notice provisions, the trial court dismissed Rushton's case only based on his failure to properly file a notice of claim. *Id.* at ¶ 14. Thus, the statute of limitation issue was not before the Court on appeal, and it was therefore not addressed in its opinion. Plaintiffs read too much into the *Rushton* Court's failure to address the County's statute of limitation defense.

Similarly, American Fork City, the defendant in *Patterson*, never even raised a statute of limitations defense, and just as in *Rushton*, the issue on appeal was whether the trial court correctly dismissed the Pattersons' non-equitable state-law claims for failure to comply with the Immunity Act's notice of claim requirements. Plaintiffs' reliance on this case is most curious, as it had nothing to do any statute of limitation whatsoever.

In contrast to plaintiffs' complete lack of case law in support of their position, defendants' position is at least adequately supported. Plaintiffs correctly point out that there is very little case law on point, and the case law that does exist inadequately analyzes the issue presented here. That is precisely why this issue is before this Court. The holdings in those prior decisions, however, clearly support defendants' position.

In *Cline*, it is true that the Court of Appeals spent no time analyzing how the one-year statute of limitations for libel and slander (the exact same statute at issue here) interfaced with the Immunity Act. However, it did analyze the Immunity Act's effect on several of Cline's claims, his compliance with the notice requirements, and in the final section of the opinion very clearly held that the one-year statute of limitations operated to bar Cline's libel and slander claims, in spite of the fact that he otherwise complied with the notice of claim requirements, just as plaintiffs did here. Notwithstanding the Court's

lack of analysis on the present issue, this decision is the clearest indication in Utah case law that plaintiffs' defamation and false arrest claims are similarly time-barred.

While *Carter* is, as plaintiffs point out, a medical malpractice case, its application to the issue here is nevertheless valid. Plaintiffs incorrectly argue that *Carter* "stands for the proposition that where the Legislature has specified a limitations period for a statutory cause of action, that specific limitations period applies." *Plaintiffs' Brief at 18.* To the contrary, the Court plainly stated that "[w]hen filing a claim against a political subdivision, separate procedural requirements must also be met" under the Immunity Act. *Carter v. Milford Valley Memorial Hospital*, 2000 UT App 21, 996 P.2d 1076 (emphasis added). "Carter complied with the unique procedural requirements of the Governmental Immunity Act, but not the requirements of the Malpractice Act. We note that in cases where both the Governmental Immunity Act and the Malpractice Act apply, compliance with the procedural requirements of both is required." *Id.* at ¶ 15 (emphasis added). "Thus, Carter's compliance with the procedural requirements of the Governmental Immunity Act is no excuse for his noncompliance with the Malpractice Act if it otherwise applies," which the Court determined that it did. *Id.* at ¶¶ 16, 22 and 23. That is exactly the situation presented in this appeal. Curiously, plaintiffs argue that *Carter* does not control in this case because "no competing limitations period for a specific statutory cause of action exists here." *Plaintiffs' Brief at 18.* Clearly, the one-year limitation period for defamation and false arrest qualifies as a "competing limitations period" as defined by plaintiffs.

Thorpe is similarly instructive. There, the Court stated: "[t]he issue squarely presented in this appeal is the apparent inconsistency between the WBA [Whistle Blower Act] and the GIA [Immunity Act]. Did Thorpe have a full year after his claim was denied to file his civil action, as provided in the GIA, or only 180 days, as provided in the WBA?" *Thorpe v. Washington City*, 2010 UT App 297, ¶ 13, 243 P.3d 500. In analyzing the interplay between the GIA and the WBA, the Court stated that "[w]hile we agree that plaintiffs must comply with the GIA's notice of claim requirements, we find nothing in the GIA to prevent such requirements from being effectively modified when read in conjunction with another applicable statute." *Id.* at ¶ 18. Reading the two statutes together in order to give effect to both statutes, the Court held that "Thorpe was required, pursuant to the provisions of the GIA and the WBA when construed together, to file a notice of claim *and* a 'civil action'-i.e., a district court complaint-within 180 days of the Board's denial of his appeal." *Id.* at 20 (emphasis in original).

Anticipating an argument similar to that made by plaintiffs on page 19 of their brief, the *Thorpe* Court noted that this holding would not lead to a "nonsensical result." *Id.* Instead, a WBA claimant must file a notice of claim early enough in the 180-day period to allow the governmental entity 60 days to accept or deny the claim so that, at the end of the 60-day period the claimant would still have enough time to file a complaint in district court within 180 days. *Id.* "Indeed, to read these statutes in any other manner would render superfluous" the WBA's requirement that an employee bring a WBA action within 180 days of the underlying violation. *Id.* The same is true here. Application of the one-year limitation for defamation and false arrest claims would not render the

Immunity Act's requirements "meaningless," as alleged by plaintiffs. *Plaintiffs' Brief at 19*. Rather, it requires plaintiffs to file a notice of claim and subsequent action in district court sooner than the time frames contemplated in the Immunity Act. *See Thorpe* at ¶ 21.

Finally, plaintiffs claim that "this Court has long held that, where there is 'substantial doubt' about what limitations period governs, that doubt should be resolved in favor of applying the longer limitations period." *Plaintiffs' Brief at 18*. There are several problems with this assertion. First, the *Hardinge* case cited by plaintiffs did not apply this "general rule," nor has any other Utah court in any reported case. That Court merely noted the statement of a "general rule" in 34 Am. Jur., Limitation of Actions, § 50, but decided the case on completely different grounds, holding that the six-year statute of limitation applied in that case based on the facts of the case, not on the "general rule." *Hardinge v. Eimco Corp.*, 266 P.2d 494, 496 (Utah 1954). Second, in the present case there are not three competing limitations periods from which the Court can only pick one, as was the case in *Hardinge*. There, the Court had to decide whether the four-year limitation period for "relief not otherwise provided for by law," the three-year limitation for relief on the ground of fraud or mistake, or the six-year limitation for actions based on a written contract applied. *Id.* at 494. Here, there is no "substantial doubt." The Court need not choose at all, since plaintiffs must comply with both the one-year statute of limitation for defamation and false arrest, and the jurisdictional prerequisites of the Immunity Act.

Third, application of this supposed "general rule" would have collateral consequences which plaintiffs, for good reason, decline to address. In any case brought

against a governmental entity, where a specific statute of limitation applies to the claim[s] asserted, plaintiffs advocate for a general rule that would apply the longest period in which the action can be brought. For instance, in personal injury actions (easily the most frequently-asserted claim against the City, and probably all governmental entities), the statute of limitations is four years. *Utah Code Ann. § 78-12-25(3)*. If this Court were to adopt plaintiffs' position, governmental entities' legitimate right to place conditions on the waiver of sovereign immunity, and the jurisdictional prerequisites of the Immunity Act, both well-established in Utah jurisprudence, would be completely abrogated. This issue is of utmost importance to all governmental entities in Utah.

As amply demonstrated in Utah case law, plaintiffs here were required to comply with both statutes. They failed to do so, and therefore their defamation and false arrest claims should have been dismissed by the trial court as untimely under Utah Code Ann. § 78-12-29(4).

IV.

PLAINTIFFS' "LAW OF THE CASE" ARGUMENT IS NOT PROPERLY BEFORE THIS COURT ON APPEAL

In Part C of their brief, plaintiffs argue that the law of the case doctrine should preclude defendants from arguing that the statute of limitations barred their defamation and false arrest claims. However, plaintiffs unsuccessfully made this very same argument in opposition to defendants' summary judgment motion. *R. 3009-16*. The trial court rejected this argument (*R. 3151-59, 3235-47*), and plaintiffs did not appeal those

Rulings. Therefore, it is not an issue that has been properly presented to this Court, and the Court should decline to consider it.

However, in the event the Court does consider this argument, it should again be rejected. This Court's opinion in *Jensen v. Cunningham, et al.*, 2011 UT 17, clearly demonstrates that the "law of the case" doctrine is inapplicable to the issues presented to the trial court on summary judgment. In *Jensen*, a federal district court granted summary judgment in favor of the State defendants on the plaintiffs' federal claims based on absolute and qualified immunity. *Id.* at ¶ 33. Declining to exercise supplemental jurisdiction over the state claims, the federal district court remanded those claims to state court. *Id.* The dismissal of the federal claims was affirmed by the Tenth Circuit. *Id.*

On remand to the Utah district court, the defendants moved for summary judgment, arguing that the federal court's ruling on the federal claims required dismissal of the Jensens' state law claims. *Id.* at ¶ 34. The district court granted the motion, holding that issue preclusion barred the Jensens from arguing that their state constitutional rights were violated because the federal and state constitutions provided substantially similar protection. *Id.* This Court reversed. "The district court erred in applying collateral estoppel in this case because the legal standards for state and federal constitutional violations are different." *Id.* at ¶ 39. Because the federal district court applied federal constitutional law and federal immunity standards to dismiss the Jensens' § 1983 claims on summary judgment, the Court held that the standards applied to federal claims are different than the standards applied to state law claims. *Id.* at ¶ 44.

"While some of the language of our state and federal constitutions is 'substantially the same,' similarity of language 'does not indicate that this court moves in 'lockstep' with the United States Supreme Court's [constitutional] analysis or foreclose our ability to decide in the future that our state constitutional provisions afford more rights than the federal Constitution.'" *Id.* at ¶ 46, quoting *Bailey v. Bayles*, 2002 UT 58, ¶ 11 n. 2, 52 P.3d 1158. In addition, the framework for making out a claim for damages is different. *Id.* at ¶ 47.

Most significantly, the Court noted that for the same reasons, the law of the case doctrine is inapplicable. "The law of the case doctrine applies to preclude relitigation of an issue when the identical issue was litigated earlier in the same case. Because the issues are different under the state and federal constitutions, the law of the case doctrine is inapplicable here." *Id.* at ¶ 49, n. 5.

That precedent applies in this case. Contrary to plaintiffs' assertions, this Court did not consider or render any opinion on plaintiffs' state law false arrest or malicious prosecution claims in the first appeal. Instead, the Court analyzed plaintiffs' allegations under the framework of a federal § 1983 Fourth Amendment cause of action, in the specific context of whether the individual defendants were entitled to qualified immunity. *Peak Alarm*, 2010 UT 22 at ¶¶ 43-56. Just as in the *Jensen* case, the issues, standards, and analytical framework applied by this Court in this case were different than the issues, standards and analytical framework that are to be applied to the state law claims here on remand. Therefore, the "law of the case" doctrine does not apply.

Similarly, defendants are not precluded from raising statute of limitations or governmental immunity issues in support of summary judgment on remand or appeal that were not addressed by this Court's opinion in the first appeal. The trial court's first grant of summary judgment on the state law defamation and false arrest claims was based solely on the Immunity Act's notice of claim requirements. The trial court reached no decision at all on defendants' statute of limitations defense.[1] The trial court's decision was reversed by this Court only on the grounds that plaintiffs' notice of claim adequately alleged fraud or malice against Werner and Bryant, and was timely filed. *Id.* at ¶¶ 29-35. Contrary to plaintiffs' assertion on page 22 of their brief, this Court did not hold that their state law claims were timely filed in district court. Rather, the Court held that plaintiffs' notice of claim was timely filed pursuant to the Immunity Act's requirements. *Id.* at ¶¶33-35. While defendants did indeed attempt to persuade the Court that it could rule in their favor on other alternative grounds not at issue on appeal (such as the one-year statute of limitations), the Court declined to do so. The Court's opinion said absolutely nothing about the one-year statute of limitations. Plaintiffs are incorrect in arguing that this Court implicitly rejected those alternative grounds by simply refusing to consider them, just as the trial court had done. The only issue decided and remanded by the Court

---

[1] Plaintiffs speculate on page 22 of their brief that the trial court did not rule on defendants' statute of limitations defense in the first summary judgment motion, "suggesting that it viewed the UGIA's own one-year statute of limitations as the only relevant period." An alternative, and more likely, explanation is that the trial court believed that plaintiffs' failure to comply with the notice of claim requirements was fully dispositive of the state law claims, and the trial court thus did not need to rule on the limitation issue.

pertained to the notice of claim content and timely filing requirements of the Immunity Act. The Court's opinion reached no further.

Finally, plaintiffs' argument for application of the "law of the case" doctrine in this matter is not based on any Utah law or court opinion. It is based solely on federal decisions from various federal courts. Indeed, it is not even possible given the limited facts available from these decisions to determine whether we are comparing apples with apples. Even if their argument were persuasive (which it is not), there is no precedent based on Utah law that would justify this Court to so hold, or which would put defendants on notice that such a doctrine could be applied against them in this case. Plaintiffs' "law of the case" argument should again be rejected.

Plaintiffs' name-calling aside, it is clear that defendants have the right to ensure that the law is properly applied and interpreted in all stages of this case, and all of their defenses are adequately considered and ruled upon, to the same extent as the plaintiffs had the right to appeal an unfavorable ruling and press inexorably toward trial. While plaintiffs are free to repeatedly chant their mantra that defendants fear defending their actions before a jury, it is equally clear that plaintiffs fear the proper interpretation and application of state law to their fatally flawed accusations of defamation and false arrest.

CONCLUSION

Defendants/Appellants respectfully request that this Court REVERSE the trial court's Ruling denying summary judgment as to Plaintiffs' state law defamation and false arrest claims, and hold that those claims are time-barred pursuant to Utah Code Ann. § 78-12-29(4).

Dated this 7th day of September, 2012.

J. WESLEY ROBINSON
Senior Salt Lake City Attorney
Attorney for Defendants/Appellants

CERTIFICATE OF COMPLIANCE

This brief, submitted under Utah Rule of Appellate Procedure 24(f)(1), complies with the type-volume limitation. The word processing system used to prepare this brief states that it contains 4,827 words and 449 lines in Times New Roman type, which is a proportionally spaced font.

CERTIFICATE OF DELIVERY

I hereby certify that on the 7th day of September, 2012, I caused to be hand-delivered two true and correct copies of the foregoing REPLY BRIEF OF APPELLANTS to:

Stephen C. Clark
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101