

1990

# June Trapp v. Salt Lake City : Brief of Appellant

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

900485

IN THE SUPREME COURT OF THE STATE OF UTAH

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JUNE TRAPP,  
Plaintiff/Appellant : C  
v. : Priority No. 14(b)  
SALT LAKE CITY CORPORATION,  
Defendant/Appellee :

---00000000---

BRIEF OF APPELLANT

THIRD JUDGE  
THE

Salt Lake City, Utah  
(801) 521-  
for  
/Appellant

R. Hawkins  
State #510  
Salt Lake City, Utah 84111  
Defendant/Appellee

IN THE SUPREME COURT OF THE STATE OF UTAH

---ooo0ooo---

JUNE TRAPP,	:	Case No. 900485
Plaintiff/Appellant	:	
	:	Priority No. 14(b)
v.	:	
	:	
SALT LAKE CITY CORPORATION,	:	
Defendant/Appellee	:	

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BRIEF OF APPELLANT

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AN APPEAL FROM THE  
THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
THE HONORABLE RICHARD H. MOFFAT PRESIDING

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IN THE SUPREME COURT OF THE STATE OF UTAH

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JUNE TRAPP,	:	Case No. 900485
Plaintiff/Appellant,	:	
v.	:	Priority No. 14(b)
SALT LAKE CITY CORPORATION,	:	
Defendant/Appellee.	:	

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STATEMENT OF JURISDICTION AND NATURE OF PROCEEDINGS BELOW

Jurisdiction to hear this appeal is conferred on the Court by Utah Code Anno. §78-2-2(3)(j) (1989).

The pertinent proceedings below include only Salt Lake City Corporation's ("Salt Lake City") Motion for Summary Judgment, argued before the Honorable Richard H. Moffat on August 31, 1990. On September 25, 1990, Judge Moffat entered his Findings of Fact, Conclusions of Law and Order, as well as his Order of Dismissal With Prejudice granting Salt Lake City's Motion for Summary Judgment.<sup>1</sup>

ISSUE ON APPEAL AND STANDARD OF REVIEW

The sole issue presented for review is whether the trial court erred in holding that Salt Lake City did not owe June Trapp

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<sup>1</sup>Order of Dismissal with Prejudice dated September 25, 1990 (R. 72-73).

("Mrs. Trapp") a duty to maintain the sidewalk in question in a reasonably safe condition.

Inasmuch as this challenge to a summary judgment presents for review conclusions of law only, the Court reviews those conclusions for correctness, according no deference to the trial court's legal conclusions.<sup>2</sup>

#### STATEMENT OF THE CASE

This is a personal injury action filed by Mrs. Trapp for injuries sustained by her on May 11, 1988 when she fell over a defective portion of a Salt Lake City sidewalk. Mrs. Trapp's Complaint alleged that Salt Lake City was negligent in failing to maintain the sidewalk and in failing to warn pedestrians of the defective section of the sidewalk.

Salt Lake City filed its Motion for Summary Judgment on June 19, 1990. In its Memorandum in Support of Motion for Summary Judgment, Salt Lake City relied upon *Ferree v. State of Utah*, 784 P.2d 149 (Utah 1989), for the proposition that it owed no duty to Mrs. Trapp to maintain the sidewalk because Mrs. Trapp could show no special relationship between the parties.

Salt Lake City's Motion contained other arguments, but the trial court granted Salt Lake City's Motion solely on the basis of

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<sup>2</sup>*Daniels v. Deseret Fed. Sav. & Loan Ass'n.*, 771 P.2d 1100 (Utah App. 1989).

its public duty doctrine argument. The trial court entered its Findings of Fact and Conclusions of Law and Order, and its Order of Dismissal with Prejudice on September 25, 1990.

Mrs. Trapp filed her Notice of Appeal on October 5, 1990. On November 5, 1990, Mrs. Trapp filed her Motion for Summary Disposition seeking summary reversal of the trial court's Order on the basis of manifest error.

On November 16, 1990, Salt Lake City filed its Cross Motion for Summary Disposition seeking summary affirmance of the trial court's decision.

On or about December 21, 1990, this Court issued a written decision granting Mrs. Trapp's Motion for Summary Reversal and denying Salt Lake City's Motion for Summary Affirmance. The Court's decision instructed the trial court to vacate the judgment of dismissal and reinstate the case for trial on the merits.

On or about December 31, 1990, Salt Lake City filed its Petition for Reconsideration of Summary Disposition. After receiving memoranda from both parties, this Court granted Salt Lake City's Petition for Reconsideration on or about February 6, 1991. The written decision vacated the summary reversal order and reinstated the appeal for plenary disposition.



### **STATEMENT OF FACTS**

On May 11, 1988, Mrs. Trapp was walking eastward on the north side of 300 South Street, between State and Main Streets in Salt Lake City, Utah. Mrs. Trapp stepped into a hole in the sidewalk left by broken and missing decorative bricks. As she fell forward, she tried to break her fall but was unable to prevent striking her face on the sidewalk. The fall resulted in several broken teeth, facial lacerations, and an injury to Mrs. Trapp's right hand.

Because of the limited legal basis for the trial court's decision, no other facts are relevant to the issues presented for review.

### **SUMMARY OF ARGUMENT**

The trial court erred when it held that Salt Lake City owed Mrs. Trapp no duty to maintain its sidewalks. Salt Lake City's duty to maintain its sidewalks in a reasonably safe condition was established as a matter of law as early as 1926.

Salt Lake City's duty to Mrs. Trapp was not extinguished by the holding in *Ferree v. State of Utah*, 784 P.2d 149 (Utah 1989). The so-called "public duty doctrine" as expressed in *Ferree* has been recognized in Utah for at least twenty years. The sidewalk maintenance cases upon which Mrs. Trapp relies have coexisted with the precedent supporting *Ferree* since at least 1971. Thus, the

trial court's reliance on *Ferree* to conclude that Salt Lake City owed no duty absent a special relationship was error.

#### **ARGUMENT**

**POINT I: THE TRIAL COURT'S HOLDING THAT THERE IS NO DUTY TO MAINTAIN SIDEWALKS ABSENT A SPECIAL RELATIONSHIP IS ERROR.**

Salt Lake City's Motion for Summary Judgment, as granted by the trial court, focused on only one element of Mrs. Trapp's negligence claim: duty. Salt Lake City argued that because Mrs. Trapp could not establish a special duty owed to her by Salt Lake City, as distinguished from a duty owed to the general public, her negligence claim must fail under the public duty doctrine as expressed in *Ferree v. State of Utah*, 784 P.2d 149 (Utah 1989).

In response, Mrs. Trapp acknowledged that she had no special relationship with Salt Lake City that might create a duty distinct from that owed to other members of the public. Instead, Mrs. Trapp relied on a long line of cases in support of her argument that Salt Lake City's duty to maintain its sidewalks is established as a matter of law. The "sidewalk maintenance" cases establish Salt Lake City's duty to each individual member of the public.

In *Rollow v. Ogden City*, 66 Utah 475, 243 P. 791 (1926), this Court held that a municipality is charged with a nondelegable duty to exercise due care in maintaining sidewalks within its corporate limits in a reasonably safe condition:

"It is...well settled that in maintaining the public streets and highways within the limits of such cities and towns a positive legal duty is imposed to maintain them in a reasonably safe condition for travel. In other words, cities and towns are required to exercise reasonable care and diligence in maintaining the public streets and highways within their corporate limits in a reasonably safe condition for travel, and that in case any injury and damage results to anyone lawfully using such streets or highways for travel, which injury and damage arise by reason of the negligence of such city or town in not maintaining such streets or highways in a reasonably safe condition for travel, such city or town is liable to the injured person for the damages sustained by reason of the negligence aforesaid...." (emphasis added).

*Rollow*, 243 P. at 794-5.

The only aspect of *Rollow* that distinguishes it from the present matter, that it involved travel over a street rather than a sidewalk, is meaningless. There is nothing unique about the nature of a street that gives rise to a duty to maintain it as opposed to a sidewalk. Rather, the duty arises in both cases from the city's ownership of the structures and the fact that it has assumed responsibility for maintaining the structures.<sup>3</sup>

Citing *Rollow* and *Nyman v. Cedar City*, 361 P.2d 1114 (Utah 1961), this Court again held that a city is charged with the

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<sup>3</sup>This Court recognized the lack of any meaningful difference between a street and sidewalk in this context in *Murray v. Ogden City*, 548 P.2d 896, 897 (Utah 1976), when it noted that Ogden City's sidewalks are considered a part of its public streets. In discussing the duty issue, this Court combined streets and sidewalks in one category: "a city is charged with the nondelegable duty to exercise due care in maintaining streets and sidewalks within their corporate limits in a reasonably safe condition for travel." 548 P.2d at 897.

nondelegable duty to exercise due care in maintaining streets and sidewalks in *Murray v. Ogden City*, 548 P.2d 896, 897 (Utah 1976). *Murray* involved a situation essentially identical to the present matter. Mr. Murray fell into a small hole in a sidewalk in Ogden and suffered injuries. It is impossible to determine based on the opinion whether the city's duty to Mr. Murray was an issue in the case. Without analysis, this Court simply recited the now familiar language that a city is charged with the nondelegable duty to exercise due care in maintaining its sidewalks.

Similarly, in *Bowen v. Riverton City*, 656 P.2d 434 (Utah 1982), this Court concluded that Riverton City had a nondelegable duty to exercise due care in maintaining streets within its corporate boundaries. The Court made no analysis of the nature of the relationship between Riverton City and Bowen. Rather, it simply concluded that the duty exists as a matter of law.

The most recent sidewalk maintenance case out of this Court, *Ingram v. Salt Lake City*, 733 P.2d 126 (Utah 1987), involved facts similar to the present matter. Ingram was injured when he stepped on a manhole cover located on a "parking strip" between the sidewalk and the curb in the Sugar House area of Salt Lake City. The only issue presented in *Ingram* was whether Salt Lake City was immune from suit under the Utah Governmental Immunity Act. In the process of deciding that no such immunity existed, the Court made the following general statement of law:

The city has a nondelegable duty to exercise due care in maintaining streets and sidewalks within its corporate boundaries in a reasonably safe condition for travel and may be held liable for injuries proximately resulting from its failure to do so. (Citations omitted)

733 P.2d at 127.

Implicit in the holding of *Ingram v. Salt Lake City* and the other sidewalk maintenance precedents is recognition of the fact that the duty to maintain a public sidewalk, by its very nature, is a duty owed to everyone who uses the sidewalk. By definition it is a public duty.<sup>4</sup> *Ingram* and its predecessors establish the duty as a matter of law because if Plaintiffs are required to show a special relationship to prove a duty in sidewalk maintenance cases, a municipality can never be held negligent for failure to maintain a sidewalk. There is simply no conceivable set of circumstances under which a member of the general public, such as Mrs. Trapp, can show the requisite special relationship. Thus, the trial court erred in holding that Mrs. Trapp's negligence claim must fail absent a special relationship.

**POINT II: THE DUTY TO MAINTAIN SIDEWALKS IS AN EXCEPTION TO THE PUBLIC DUTY DOCTRINE.**

Contrary to Salt Lake City's arguments, *Ferree v. State of Utah* did not announce a new rule of law impliedly overruling the

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<sup>4</sup>"Streets from side to side, including the sidewalks and all area between, are primarily for the public use. The public use is paramount." *Ingram v. Salt Lake City*, 733 P.2d 126, 127 (Utah 1987).

sidewalk maintenance cases. The so-called "public duty doctrine" as expressed in *Ferree* has been recognized in Utah for at least twenty years. *Ferree* cites as supporting authority the cases of *Obray v. Malmberg*, 484 P.2d 160 (Utah 1971), *Kristenson v. Hayward*, 694 P.2d 612 (Utah 1984) and *Beach v. University of Utah*, 726 P.2d 413 (Utah 1986), among others. Thus, although the cited sidewalk maintenance cases predate *Ferree*, they do not predate all public duty doctrine precedent in Utah.

*Beach v. University of Utah* illustrates the coexistence of sidewalk maintenance and public duty doctrine cases. In *Beach* this Court held under the public duty doctrine that the University had no general duty to supervise and protect students against voluntary intoxication. *Beach* was decided on September 26, 1986. Four months later, on January 29, 1987, this Court decided *Ingram v. Salt Lake City* without reference to the public duty doctrine. Without any analysis concerning the nature of the relationship between the parties, the Court summarily concluded that the city has a nondelegable duty to exercise due care in maintaining its streets and sidewalks.<sup>5</sup>

In short, sidewalk maintenance cases represent an exception to the general rule that a special relationship must be shown before a governmental entity will be found to owe a duty to one of its

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<sup>5</sup>*Ingram v. Salt Lake City*, 733 P.2d 126, 127 (Utah 1987).


citizens. The Trial Court erred in failing to recognize the exception.

#### CONCLUSION

Although it is true as a general matter that municipalities owe no duty of care to their citizens absent a special relationship, the duty to maintain sidewalks is an exception. Utah courts have long recognized a nondelegable duty on the part of municipalities to maintain their sidewalks in a reasonably safe condition. The trial court's conclusion that Mrs. Trapp's claim fails absent a showing of a special relationship was, therefore, error.

This Court should reverse the trial court's order of dismissal with prejudice and reinstate the matter for trial on the merits.

DATED: April 8, 1991.

A handwritten signature in black ink, appearing to be "Craig G. Adamson" and "Eric P. Lee" joined together.

Craig G. Adamson  
Eric P. Lee  
Attorneys for  
Plaintiff/Appellant

MAILING CERTIFICATE

I hereby certify that on the 8 day of April, 1991, I caused four (4) true and correct copies of the foregoing to be mailed, postage prepaid, to Greg R. Hawkins, 324 South State #510, Salt Lake City, Utah 84111.

