

1992

# M. Dalton Cannon and Patricia Cannon v. The University of Utah : Unknown

Utah Court of Appeals

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UTAH COURT OF APPEALS

BRIEF

September 1, 1993

UTAH

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COURT OF APPEALS

Ms. Mary T. Noonan  
Clerk, Utah Court of Appeals  
230 South 500 East, #430  
Salt Lake City, Utah 84102

Re: M. Dalton Cannon & Patricia Cannon v. University  
of Utah, Appeal No. 92-0377

Dear Ms. Noonan:

Pursuant to Rule 24(j), U.R.A.P., appellants Dalton and Patricia Cannon wish to inform the Court of Appeals of significant recent authority supporting their position in this appeal. This authority pertains to the discussion set forth at pages 14-20 of the Cannons' principal brief in this matter. As more fully discussed in the Cannons' brief, the Cannons were injured when hit by a vehicle while using a pedestrian crosswalk on the University of Utah campus immediately prior to a men's basketball game. The Cannons contend that two University police officers who had been assigned to protect pedestrian safety at the crosswalk negligently failed to stop vehicular and/or pedestrian traffic at the crosswalk, resulting in the accident that caused their injuries.

The trial court's grant of summary judgment in this case was based upon its conclusion that the so-called "public duty" doctrine ruled out the existence of a duty of care by the officers towards the Cannons. In Higgins v. Salt Lake County, 855 P. 2d. 231 (Utah 1993), the Utah Supreme Court addressed the existence of a duty of care in light of the "public duty" doctrine. The Supreme Court in Higgins found that a county mental health facility owed a duty of care to a child who was stabbed by a released mental patient, even though the victim had not been individually threatened by the patient. The Court instead found a duty of care to exist where the defendants could have ascertained the likelihood of such danger. The Supreme Court held:

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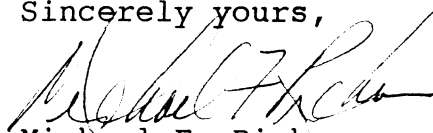
[W]e will find a special relationship and consequent duty when a defendant knew of the likely danger to an individual or distinct group of individuals or when a defendant should have known of such danger. 855 P. 2d. at 238 (emphasis added).

In the case now before the Court of Appeals, the University of Utah police officers admitted that they had been assigned to protect pedestrian safety at the crosswalk where the Cannons were hit, admitted that in order to do so they needed to be out of their car stopping traffic, and admitted that they were instead sitting in their car, out of the rain. R. 327, 329. At least one officer also expressly stated that he was aware that the crossing area where the accident occurred was highly dangerous, placing this case squarely within the Supreme Court's ruling in Higgins. Appellant's Reply Brief at 8.

The Higgins case provides a clear and recent expression of the Utah Supreme Court's determination that the public duty doctrine does not bar a plaintiff's claims where the defendant did or should have recognized danger to an identifiable group. Under the facts of this case, Higgins supports a finding that a special relationship and a duty of care are present, requiring reversal of the trial court's grant of summary judgment in favor of the University.

Please contact us if the Court has any questions about this matter.

Sincerely yours,



Michael F. Richman

MFR  
cc: Brent A. Burnett