

2017

Hammons v Weber County Defendant/Appellee

Utah Court of Appeals

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FILED
UTAH APPELLATE COURTS

MAR 30 2017

Heidi G. Goebel
Mark L. Anderson
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30 March 2017

Hand Delivered
Utah Supreme Court
Matheson Courthouse
450 South State Street, Fifth Floor
PO Box 140210
Salt Lake City, Utah 84114-0210

Re: **County's Rule 24(j) Supplemental Letter**
Hammons et al. v. Weber County et al., case no. 20151074-SC

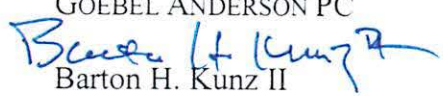
To the Utah Supreme Court:

The defendants/appellees ("County") file this letter under Utah Rule of Appellate Procedure 24(j). The County neglected to include in its briefing on its first issue and part I of its argument (Aplees.' Replacement Br. at 9 & 20-30) that the district court addressed Utah Code § 59-2-1321's application to the plaintiffs/appellants' ("Hammons") first three claims and their timeliness in its order on a motion to dismiss the County filed early in the case. (R.0166-68.)

Addressing the County's motion to dismiss the claims on the ground that the Hammons had not identified a private right of action, the district court held that the claims were brought under section 59-2-1321. Although the issue was not briefed by the parties but rather raised by the County during oral argument as the basis for a potential future motion, the district court also held that the claims were timely under section 59-2-1321 by applying the equitable discovery rule. (R.0166-68; R.0463/41:25-47:6, 49:19-51:25.)

The district court ultimately, however, held when it decided the County's motion for judgment on the pleadings that the claims should have been brought under section 59-2-1004 and were untimely. (R.0429-34.) The Hammons appeal from that subsequent ruling. (Aplees.' Br. at 6-7, 15-16, A15.) The County raises its section 59-2-1321 timeliness argument under *State v. South*, which holds that an appellee may raise an argument rejected by the trial court as an alternative ground for affirmance. *State v. South*, 924 P.2d 354, 356-57 (Utah 1996).

Respectfully,

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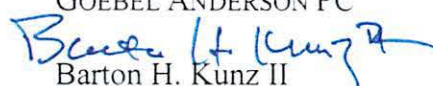
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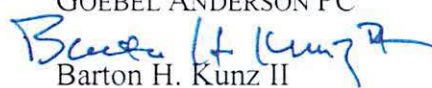
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