

2002

# John D. Hale v. Kurt Beckstead and John Does I through V : Reply Brief

Utah Court of Appeals

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## Recommended Citation

Reply Brief, *Hale v. Beckstead*, No. 20020196 (Utah Court of Appeals, 2002).  
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IN THE UTAH COURT OF APPEALS

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JOHN D. HALE

Plaintiff and Appellant,

vs.

KURT BECKSTEAD and JOHN  
DOES I through V,

Defendants and Appellees.

Case No. 0020196-CA

Priority [REDACTED]

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REPLY BRIEF OF APPELLANT

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IN THE UTAH COURT OF APPEALS

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JOHN D. HALE

Plaintiff and Appellant,

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**REPLY BRIEF OF APPELLANT**

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REPLY BRIEF

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ARGUMENT

APPELLEE’S BRIEF CONTINUES TO ADVANCE AN ERRONEOUS  
APPLICATION OF *THOMPSON V. JESS*.

Appellee contends that the facts of *Thompson v. Jess*, 1999 UT 22, 979 P.2d 322 (Utah 1999), “parallel” those of the instant case and that *Thompson* must therefore be applied in deciding this matter. *See* Appellee’s Brief at 9, 12. While the Appellee faithfully recites the relevant facts of that case (*see* Appellee’s Brief at 7-8), in advancing *Thompson*’s application, Appellee completely disregards the fact that the claim in *Thompson* was based upon the contention that the landowner was guilty of negligence in the control she exercised over the installation of a large sign post and in failing to take or require special precautions in its installation. *See Thompson*, 1999 UT 22 at ¶¶ 7-8. The claim in *Thompson* had nothing to do with any unsafe condition existing on the premises

in question. Beckstead argues:

Appellee does not dispute that there is some conflict between the cases relied upon by Hale and *Thompson* regarding the duty of care. This conflict is due in part to case law which stands for the proposition that a workman who comes onto land to make improvements, alterations, or repairs is owed a duty of care by the landowner which is equivalent to that owed to a regular invitee. [Citation omitted.]

The fact remains, however, that in *Thompson*, the most recent case addressing the duty of care owed in circumstances as are present in the instant case, the Utah Supreme Court applied section 409 of the Restatement and its exceptions as set forth above. It did not cite to or address sections 343 and 343A of the Restatement or Hale's [*sic*] possible status as an invitee. Therefore, because the facts in the instant case parallel those in *Thompson*, *Thompson* must be applied, and its application results in a finding that Beckstead owed Hale no duty of care.

Appellee's Brief at 12.

What the Appellee insists upon overlooking is the fact that *Thompson* did not involve the existence of a dangerous condition on the premises which was created or existed independent of the manner in which the contractor undertook his performance. The language of the *Thompson* opinion clearly demonstrates that the case was decided by application of the legal principles set out in Chapter 15, Topic 2 (HARM CAUSED BY NEGLIGENCE OF A CAREFULLY SELECTED INDEPENDENT CONTRACTOR) of the Restatement (Second) of Torts (1965). The instant case is governed by the application of the legal principles outlined in Chapter 13, Topic 1 (LIABILITY OF POSSESSORS OF LAND TO PERSONS ON THE LAND) of the Restatement. Under the undisputed facts of the instant case, the Defendant was clearly the "possessor" of the real property in question. *See, id.* § 328E defining "possessor." Moreover, it is apparent that Plaintiff was Beckstead's "invitee." *See English v. Kienke*, 848 P.2d 153, 156-57 (Utah 1993) (referring to the

Restatement rule as “the safe workplace doctrine”). The duty Beckstead, as a possessor of land, owed Hale, as his invitee, is set forth in sections 343 and 343A of the Restatement.

While Appellee seems to concede the possibility that sections 343 and 343A might have some application in deciding the instant case, he attempts to distinguish cases which have applied the premises liability principles outlined in Chapter 13, Topic 1, of the Restatement Second. In questioning the relevance of *Laws v. Blanding City*, 893 P.2d 1083 (Utah App.1995), Beckstead attempts to distinguish the case on the basis that Hale was an independent contractor while the plaintiff in *Laws* was not, at the same time apparently conceding that Hale enjoyed the status of a business invitee. See Appellee’s Brief at 11. Appellee then goes on to contend that “Beckstead is certainly not a governmental entity or public utility under which the duty of care, as implied by the court in *Laws*, is perhaps greater than that expected of a private property owner or general contractor.” See *id.* Appellee cites no authority indicating and conducts no legal analysis suggesting that the duty of care owed by a governmental entity or public utility is “perhaps” greater than that owed by a private property owner or general contractor.<sup>1</sup>

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<sup>1</sup>Although the district court recognized Hale’s status as a “business visitor or invitee” (R 102), it undertook no analysis of the legal consequences of that conclusion. Indeed, in a footnote on page 3 of its ruling the lower court noted:

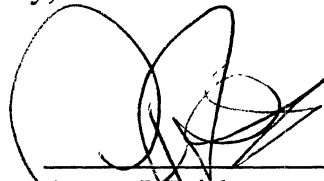
This court is fully aware of the now-frequent instruction of the appellate courts for the trial courts to make a more extensive analysis in rulings such as this. See, e.g., *Gabriel v. Salt Lake City Corp.*, 2001 UT App 277, 431 Utah Adv. Rep. 7. That instruction is not always realistic, however. First, the caseloads of the trial courts continue to increase while many courts’ time and resources remain stagnant; for example, the judicial resources in this district have remained the same for over 12 years in spite of the overwhelming growth in the population and case filings in the district.



## CONCLUSION

It is respectfully submitted that the Appellee and the district court have erroneously relied upon legal authority which has no application to the facts of this case and that the order granting Defendant summary judgment must be reversed and the case remanded for trial.

DATED this 17 day of January, 2003.

A handwritten signature in black ink, appearing to read 'Aaron J. Prisbrey', is written over a horizontal line.

Aaron J. Prisbrey  
Attorney for Plaintiff and Appellant

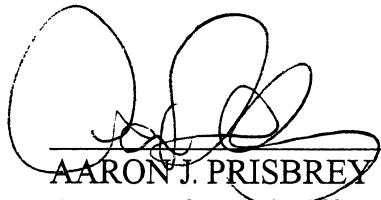
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Second, appellate reviews of summary judgment decisions of the Utah district courts resulted in a reversal rate well over 50% in reported cases decided in the Utah appellate courts in the year 2000. In light of the huge caseloads carried by the trial courts, the time required for the drafting of a detailed ruling, which is more likely to be reversed than to be affirmed, is often too great a luxury for a trial judge to afford.

CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of January, 2003, two (2) copies of the foregoing REPLY BRIEF were mailed, postage prepaid, as follows:

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