

1991

Jeanine Richards v. Dennis Allen Leavitt, and Chemopharm Laboratories, Inc. v. City of Woodland Hills : Petition for Rehearing

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Craig M. Snyder; Howard, Lewis & Peterson; Attorneys for Respondent.

Dennis C. Ferguson; Snow, Christensen & Martineau; Attorneys for Appellant.

Recommended Citation

Petition for Rehearing, *Richards v. Leavitt*, No. 919714.00 (Utah Supreme Court, 1991).

https://digitalcommons.law.byu.edu/byu_sc1/3927

This Petition for Rehearing is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT

K F U

45.9

.S9

DOCKET NO.

919714

IN THE SUPREME COURT
OF THE STATE OF UTAH

JEANINE RICHARDS,

Plaintiff-Respondent,

vs.

DENNIS ALLEN LEAVITT,
CHEMOPHARM LABORATORIES,
INC., a Utah corporation,

Case No. 19714

Defendants,

CITY OF WOODLAND HILLS,

Defendant-Appellant.

PETITION FOR REHEARING

Dennis C. Ferguson
Snow, Christensen & Martineau
Attorneys for Defendant-
Appellant City of Woodland
Hills
10 Exchange Place, Eleventh Floor
Post Office Box 3000
Salt Lake City, Utah 84110
Telephone: 521-9000

Craig M. Snyder
Howard, Lewis & Peterson
Attorneys for Plaintiff-
Respondent
120 East 300 North Street
P.O. Box 778
Provo, Utah 84603
Telephone: 373-6345

FILED

SEP 23 1985

Clerk, Supreme Court, Utah

IN THE SUPREME COURT
OF THE STATE OF UTAH

JEANINE RICHARDS,

Plaintiff-Respondent,

vs.

DENNIS ALLEN LEAVITT,
CHEMOPHARM LABORATORIES,
INC., a Utah corporation,

Case No. 19714

Defendants,

CITY OF WOODLAND HILLS,

Defendant-Appellant.

PETITION FOR REHEARING

Dennis C. Ferguson
Snow, Christensen & Martineau
Attorneys for Defendant-
Appellant City of Woodland
Hills
10 Exchange Place, Eleventh Floor
Post Office Box 3000
Salt Lake City, Utah 84110
Telephone: 521-9000

Craig M. Snyder
Howard, Lewis & Peterson
Attorneys for Plaintiff-
Respondent
120 East 300 North Street
P.O. Box 778
Provo, Utah 84603
Telephone: 373-6345

TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT	1
STATEMENT OF FACTS.	2
ARGUMENT.	3
CONCLUSION.	4
EXHIBIT A - Order Granting Appeal of Interlocutory Order	

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Niblock v. Salt Lake City</u> , 100 Utah 573, 111 P.2d 800, 802 (Utah 1941)	4
<u>Sears v. Southworth</u> , 563 P.2d 192 (Utah 1977).	4
<u>Standiford v. Salt Lake City Corp.</u> , 605 P.2d 1230 (Utah 1980).	4

Statutes

Utah Rules of Civil Procedure, Rules 72(a) (b).	1,2,3,4
Utah Rules of Appellate Procedure, Rules 3,5	1,3

IN THE SUPREME COURT
OF THE STATE OF UTAH

JEANINE RICHARDS,

Plaintiff-Respondent,

vs.

DENNIS ALLEN LEAVITT,
CHEMOPHARM LABORATORIES,
INC., a Utah corporation,

Case No. 19714

Defendants.

CITY OF WOODLAND HILLS,

Defendant-Appellant.

PETITION FOR REHEARING

PRELIMINARY STATEMENT

Defendant-Appellant, City of Woodland Hills, hereby petitions the Court for rehearing of the per curiam dismissal of its appeal. The basis for this Petition is that the Court's decision of September 17, 1985 erroneously assumes that this was an appeal brought pursuant to Utah Rules of Civil Procedure 72(a) (now embodied in Utah Rules of Appellate Procedure 3(a)) and dismisses the case on the grounds that the trial court's denial of appellant's Motion to Dismiss is not a "final judgment".

In fact, the appeal of the trial court's denial of Woodland Hills' Motion to Dismiss was instituted pursuant to

Utah Rules of Civil Procedure 72(b) (now embodied in Rule 5, Utah Rules of Appellate Procedure) as an appeal from an interlocutory order.

STATEMENT OF FACTS

Following is a procedural history of this case:

1. Plaintiff allegedly received personal injuries in an automobile intersection accident on July 17, 1981.

2. On August 31, 1983, plaintiff made a claim against the City of Woodland Hills alleging that the City was negligent in maintaining the traffic control device (stop sign) at the intersection.

3. Defendant-appellant filed a Motion to Dismiss based upon plaintiff's failure to file a written notice of claim with the City within one year after the cause of action arose, as required by Utah Code Ann. §§63-30-11, 13.

4. By its Order dated December 28, 1983, the District Court denied defendant's Motion to Dismiss on the grounds that the maintenance of traffic control devices is not a "governmental function" and therefore plaintiff was not required to comply with the notice provisions of the Utah Governmental Immunity Act.

5. Defendant filed a timely Petition to Grant Interlocutory Appeal or to Issue an Extraordinary Writ, pursuant to Rule 72(b), Utah Rules of Civil Procedure.

6. In its Order of February 3, 1984, this Court granted appellant's Petition for an Interlocutory Appeal. A copy of this Order is attached hereto as Exhibit A.

7. The Record on Appeal was filed on February 22, 1984 and appellant was ordered to file its brief on or before March 23, 1984. Appellant's brief was filed with this Court on March 20, 1984. The brief of respondent was filed on or about April 25, 1984.

8. On September 17, 1985 the Court entered its current decision dismissing the appeal of the interlocutory order on the grounds that it is not a final judgment and not reviewable under Rule 72(a).

ARGUMENT

Appellant concedes that the District Court's denial of its Motion to Dismiss is not a final judgment within the meaning of Rule 72(a), Utah Rules of Civil Procedure or its successor, Rule 3, Utah Rules of Appellate Procedure.

This Court does, however, have and has taken discretionary jurisdiction of the appeal from the interlocutory order of the District Court denying defendant's Motion to Dismiss.

The criteria for the granting of petitioner's appeal from the Interlocutory Order are well served in this case. The issue involved is the strictly legal question of whether the maintenance of traffic control devices is a "governmental function", a question

which this Court has consistently answered in the affirmative in cases decided prior to Standiford v. Salt Lake City Corp., 605 P.2d 1230 (Utah 1980). Niblock v. Salt Lake City, 100 Utah 573, 111 P.2d 800, 802 (Utah 1940); Sears v. Southworth, 563 P.2d 192 (Utah 1977). By exercising its discretion to hear this appeal, the Court will advance the interests of both parties by the timely resolution of the issue of plaintiff's legal ability to pursue a claim against the City of Woodland Hills. Moreover, given the fact that the issue has now been fully briefed and is appropriately before this Court, the interests of justice would be disserved by the delay which would follow from dismissing the appeal at this time only to see the same issue again on appeal after trial.

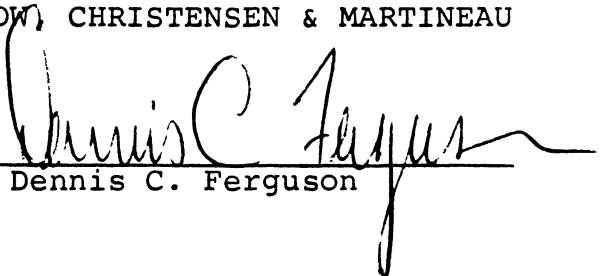
CONCLUSION

It is respectfully submitted that the per curiam decision of September 17, 1985 dismissing this appeal is based upon the erroneous assumption that appeal was taken pursuant to Rule 72(a) when in fact appeal has been taken pursuant to Rule 72(b). This Court does have jurisdiction to hear the appeal from the District Court's interlocutory order and should decide the appeal on its merits.

RESPECTFULLY SUBMITTED this 23rd day of September, 1985.

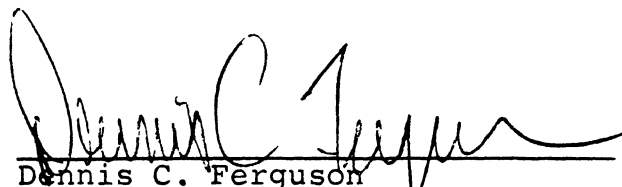
SNOW, CHRISTENSEN & MARTINEAU

By

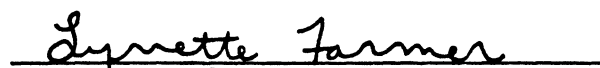

Dennis C. Ferguson

CERTIFICATION

Counsel for petitioner hereby certifies that the above
Petition for Rehearing is presented in good faith and not for
the purpose of delay.


Dennis C. Ferguson

SUBSCRIBED AND SWORN to before me this 23rd day of
September, 1985.


Lynette Farmer
Notary Public
Residing in the State of Utah

My Commission Expires:

5-14-86

**SUPREME COURT OF UTAH
STATE OF UTAH
SALT LAKE CITY, UTAH**

EXHIBIT A

February 3, 1984

OFFICE OF THE CLERK

┌
Dennis C. Ferguson, Esq.
10 Exchange Place, 11th Floor
P.O. Box 3000
Salt Lake City, Utah 84110
└

┌
Jeanine Richard,
Plaintiff and Respondent,
v.
Dennis Allen Leavitt, Chemopharm
Laboratories, Inc. a Utah corporation
and City of Woodland Hills, a Utah
municipal corporation,
Defendants and Appellants.
└

No.19714.....

This day~~petition for an interlocutory appeal granted.~~.....
.....

Geoffrey J. Butler, Clerk

IN THE SUPREME COURT OF THE STATE OF UTAH

-----ooOoo-----

Regular February Term, 1984

February 3, 1984

Jeanine Richard,

Plaintiff and Respondent,

v.

No. 19714

Dennis Allen Leavitt, Chemopharm
Laboratories, Inc. a Utah corporation
and City of Woodland Hills, a Utah
municipal corporation,

Defendants and Appellants.

Appellant's petition for an interlocutory appeal
having been considered, and the Court being sufficiently
advised in the premises, it is ordered that an
interlocutory appeal be, and the same is, granted as
prayed.

AFFIDAVIT OF SERVICE

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

Lynette Farmer, being duly sworn, deposes and states that she is an employee of Snow, Christensen & Martineau, attorneys for defendant-appellant herein; that she served the attached Petition for Rehearing upon the parties listed below by placing two true and correct copies thereof in an envelope addressed to:

Craig M. Snyder, Esq.
HOWARD, LEWIS & PETERSEN
120 East 300 North Street
P.O. Box 778
Provo, Utah 84601

Attorneys for Plaintiff

Ray Phillips Ivie, Esq.
48 North University Avenue
P.O. Box 672
Provo, Utah 84601

Attorneys for Defendants Leavitt and Chemopharm and causing the same to be mailed first class, postage prepaid, this 23 day of September, 1985.

Lynette Farmer

SUBSCRIBED AND SWORN to before me this 23 day of September, 1985.

Patricia B. Refsnes
Notary Public
Residing in the State of Utah

My Commission Expires:

2/6/89