

1991

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

Utah Supreme Court

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UTAH SUPREME COURT
BRIEF

UTAH
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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.

ANSWER TO PETITION FOR REHEARING
OF PLAINTIFF-RESPONDENT

Appeal from Order of the Fourth Judicial District Court
Utah County, State of Utah
Honorable David Sam

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Defendant-Appellant.

ANSWER TO PETITION FOR REHEARING
OF PLAINTIFF-RESPONDENT

PRELIMINARY STATEMENT

Defendant-Appellant, City of Woodland Hills, hereby answers the Petition for Rehearing filed by respondent, who seeks rehearing of the Per Curiam Replacement Opinion, which reverses the trial court's denial of appellant's Motion for Summary Judgment and dismisses plaintiff's action against The City of Woodland Hills, with prejudice.

STATEMENT OF FACTS

Following is a factual synopsis and procedural history of this case on appeal:

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 it was negligent in maintaining the intersection and the traffic control device (stop sign), which had been knocked down at an undetermined time prior to the accident.

3. 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 that plaintiff was, therefore, not required to comply with the notice provisions of the Utah Governmental Immunity Act.

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

6. This Court granted appellant's Petition for Interlocutory Appeal by Order, dated February 3, 1984.

7. The Record on Appeal was filed on February 22, 1984 and briefs filed by appellant and respondent.

8. On September 17, 1985 the Court entered a decision dismissing the appeal of the Interlocutory Order on the grounds that it was not a final judgment and not reviewable under Rule 72(a).

9. On September 23, 1985 appellant petitioned the Court for rehearing.

10. On November 1, 1985 the Court issued a Replacement Opinion, which dealt with the merits of the appeal. The Court held that the maintenance of public highways, as prescribed and regulated by statute, was an activity of such a unique nature that it could only be performed by a governmental agency. The notice requirements of the Governmental Immunity Act, therefore, were applicable to the case and plaintiff's action was, therefore, barred.

11. The Replacement Opinion was entered without oral argument by the parties.

12. Respondent has now filed a Petition for Rehearing on the grounds that she was not afforded the opportunity to respond to the Petition for Rehearing and was not afforded the opportunity for oral argument.

ARGUMENT

I

THE COURT APPROPRIATELY EXERCISED ITS DISCRETION
NOT TO SOLICIT AN ANSWER TO APPELLANT'S
PETITION FOR REHEARING, SINCE IT WAS
BASED UPON AN OBVIOUS PROCEDURAL ERROR

Appellant's Petition for Rehearing was grounded upon the fact that the Court had granted Interlocutory Appeal pursuant to Rule 72(b), Utah Rules of Civil Procedure, but had misapprehended this fact in dismissing the appeal on the basis that it was not from a final order, thereby depriving the Court of jurisdiction. The dismissal of the appeal was an obvious procedural oversight. It is uncontroverted that the Court granted an Interlocutory Appeal pursuant to Rule 72(b) and has jurisdiction to decide the merits of the case.

Under these circumstances, an answer to the Petition for Rehearing would have served no purpose. Thus, the Court appropriately excepted to the provision of Rule 35, Utah Rules of Appellate Procedure, which provides, in part, that a petition for rehearing will not be granted in the absence of a request to answer the petition.

Rule 2, Utah Rules of Appellate Procedure, specifically provides that the Supreme Court may suspend the requirements

or provisions of any of the rules in the interest of expediting a decision. This, of course, can be done on the Court's own motion, as in this case. Plaintiff suffered no prejudice by not being allowed to file an answer to appellant's Petition for Rehearing.

II

THE COURT APPROPRIATELY EXERCISED ITS DISCRETION TO
DECIDE THE APPEAL WITHOUT ORAL ARGUMENT
UNDER RULE 29

Oral argument of an appeal is aimed at assisting the Court in deciding the issues presented on appeal. It is discretionary with the Court to request oral argument. If the dispositive issue has been recently authoritatively decided and/or the facts and legal arguments are adequately presented in the briefs to the Court's satisfaction, it is within the Court's prerogative to not request oral argument. Rule 29(a)(2), (3), Utah Rules of Appellate Procedure.

The Court's decision, dated November 1, 1985 makes it clear that the issue presented on appeal in this case had been recently authoritatively decided:

As interpreted by recent case law, section 63-30-8 is dispositive here. In Bowen v. Riverton City, Utah, 656 P.2d 434 (1982), this Court was faced with a similar fact situation as the one now before us. We there held in reversing a summary judgment that the city had "a nondelegable duty to exercise due care in maintaining streets

within its corporate boundaries in a reasonably safe condition for travel (citations omitted) and the city may be held liable for injuries proximately resulting from its failure to do so. Id. at 437.

Richards v. Leavitt, Replacement Opinion, No. 19714, filed November 1, 1985, p. 4.

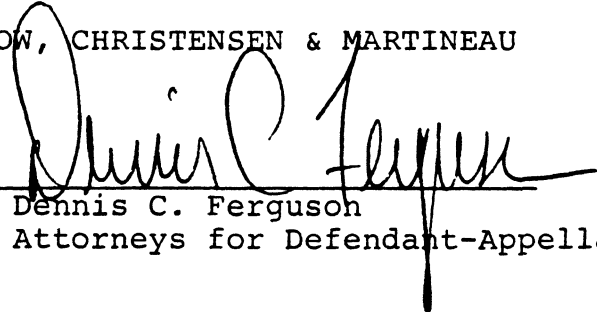
The issue presented by this appeal is clearly delineated and the briefs of the respective parties adequately presented the legal arguments and precedent relating to both sides of the issue.

CONCLUSION

The Court proceeded appropriately in deciding the merits of this appeal. Given the legal precedent which is dispositive of the issue presented on appeal, it would be meaningless to grant respondent's Petition for Rehearing and reopen the case for oral argument on an issue upon which the law is clear.

RESPECTFULLY SUBMITTED this 12 day of March, 1986.

SNOW, CHRISTENSEN & MARTINEAU

By 
Dennis C. Ferguson
Attorneys for Defendant-Appellant

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 the law firm of Snow, Christensen & Martineau, attorneys for defendant-appellant herein; that she served the attached Answer to Petition for Rehearing of Plaintiff-Respondent upon the parties listed below by placing four 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 13th day of March, 1986.

Lynette Farmer

SUBSCRIBED AND SWORN to before me this 13th day of
March, 1986.

Karen D. Harwood
Notary Public
Residing in the State of Utah

My Commission Expires:

6-1-86