

2002

Melody Little v. Davis County : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MELODY LITTLE,	:	
Plaintiff/Appellant,	:	Docket No. 20021039-CA
vs.	:	
DAVIS COUNTY,	:	
Defendant/Appellee.	:	

BRIEF OF APPELLEE

Appeal from the Second District Court, Farmington Department
THE HONORABLE MICHAEL C. ALLPHIN
Second District Court Judge, Presiding
Case No. 010700399

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Appeals

ORAL ARGUMENT REQUESTED

*te Stagg

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ORAL ARGUMENT REQUESTED

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JURISDICTION

Jurisdiction is proper pursuant to Utah Code Ann. § 78-2a-3(2)(j) (as amended 2001).

STATEMENT OF THE ISSUES

The proper issue before this Court is broader than that stated by Appellant:

Whether the District Court properly granted summary judgment based upon its finding that Plaintiff's claims are barred for failure to comply with the notice requirements of the Utah Governmental Immunity Act, Utah Code Ann. §§ 63-30-11. Whether Compliance with the Immunity Act is a prerequisite to vesting a district court with subject matter jurisdiction over claims against governmental entities. *Wheeler v. McPherson*, 40 P.3d 632, 635 (Utah 2002) (citations omitted). Accordingly, a district court's dismissal of a case based on governmental immunity is a determination of law that we afford no deference. *Id.* We review such conclusions for correctness. *Id.*

RELEVANT STATUTORY PROVISIONS

Utah Code Ann. §§ 63-30-11 (as amended 2000)

STATEMENT OF THE CASE

A. Nature of the Case and Course of Proceedings Below.

Melody Little, Plaintiff and Appellant herein (hereinafter referred to as "Plaintiff"), filed a Complaint on or about August 14, 2001 for personal injury, alleging that she sustained injury to her left arm and teeth when she tripped on a raised edge of concrete and fell while walking on the sidewalk of the "old Davis County Courthouse." Plaintiff seeks financial compensation for injuries she sustained as a result of the Defendant's failure to "grind down the raised lip of concrete which was defective." R. 1-2; Complaint 1-2. The

case was brought in the Second District Court, Davis County, Farmington Department the Honorable Michael Allphin presiding.

On April 4, 2002, Defendant/Appellee (hereinafter referred to as “Defendant”) filed its Motion to Dismiss and/or for Summary Judgment on April 4, 2002 alleging Plaintiff’s claims are barred for failure to comply with the notice requirements of the Utah Governmental Immunity Act, Utah Code Ann. § 63-30-11, 13 and Plaintiff’s claims should be dismissed as there was no defective or condition on the sidewalk for which defendant may be found liable. R. 28-71; Memorandum in Support of Motion to Dismiss and/or for Summary Judgment. Plaintiff filed her Responsive memorandum on June 11, 2002 (R. 92-134) and Defendant’s Reply was filed on June 25, 2002 (R.290-289). Neither party submitted a request for oral argument with the initial pleadings. R. 25, 92.

On November 15, 2002 the Second District Court issued a Ruling granting Defendant’s Motion to Dismiss and/or for Summary Judgment. R. 306-310. The Court found the Notice of Claim was deficient as follows:

The Notice of Claim was addressed to Davis County, the Davis County Attorney, the State of Utah and the Utah Attorney General, but not specifically directed to the Davis County Clerk. At this point, Plaintiff has failed to meet the statutory requirements for the Notice of Claim, by not directing the Notice of Claim to the county clerk. There is a factual question regarding the actual delivery of the Notice of Claim, but regardless, the Notice of Claim was facially deficient.

. . . .

The Notice of Claim was also deficient when it did not clearly set forth the damages incurred by the claimant so far as they are known.

R. 306-310; Ruling on Defendant’s Motion to Dismiss and/or for Summary Judgment

(“Ruling”), attached hereto as Addendum “A.”

The Court held:

Having found that Plaintiff’s claims are barred for failure to comply with the notice requirements of the Utah Governmental Immunity Act, Utah Code Ann. §§ 63-30-11, the Court finds no reason to proceed in its analysis of the remaining issue in relation to the Motion to Dismiss and/or for Summary Judgment before the Court. For the foregoing reasons, the Court grants Defendant’s Motion to Dismiss and/or for Summary Judgment.

R. 310; Ruling at p. 310, Addendum “A.”

B. Statement of Facts

1. On August 14, 2000, Plaintiff went to the Davis County Memorial Courthouse in Farmington to renew her food handler’s permit. R. 92, Applt. Docket, Memorandum in Support of Appellee’s Motion for Summary Affirmance, at pg. 1. Ms. Little alleges she was injured when she fell on the sidewalk along the east side of the Courthouse. R.306.

2. On or about August 15, 2001, Plaintiff filed a Complaint alleging injury as a result of her fall. R. 1, 306. Plaintiff’s Complaint does not allege compliance with the Governmental Immunity Act (“Act”), Utah Code Ann. § 63-30-1 *et seq.* R.1–2; Complaint attached hereto as Addendum “B.”

3. Plaintiff argues that she complied with the Act by presenting to the District Court a document entitled “Notice of Claim.” R. 44, 92, 232; Notice of Claim attached hereto as Addendum “C.” This document is dated October 17, 2000 and is directed to “Davis County,” “Davis County Attorney,” “State of Utah,” and “Utah Attorney General.” *Id.* It states that plaintiff fell on a “raised edge of concrete” sustaining injury to her arm and teeth, “damage in amounts to be proved at trial.” *Id.*

4. On April 8, 2002, Defendant filed its Motion to Dismiss and/or for Summary Judgment with Supporting Memorandum arguing Plaintiff's claims were barred for failure to comply with the notice requirements of the Act, Utah Code Ann. § 63-30-11, and no defect or condition existed on the sidewalk for which Defendant may be found liable to Plaintiff. R.153. In support of Defendant's Motion the Affidavit of Steve S. Rawlings, Davis County Clerk/Auditor was filed. R.234; Affidavit of Steve S. Rawlings attached hereto as Addendum "D." Mr. Rawlings averred that the document entitled "notice of Claim" was "neither directed nor delivered to me as Davis County Clerk." *Id.*

5. There is no record evidence to support Plaintiff's Statement of Fact regarding receipt and/or processing of the notice of claim as set forth in Appellant's Brief at p. 3, however, the document bears a stamp indicating it was received by "McLarens" on Oct 27 2000." R.44; Addendum "C." Mr. Rawlings states:

[A]t some point I became aware of the document but cannot confirm the date or even whether it was before or after the Notice of Claim was provided to the Davis County insurer. It is my understanding the Notice was simply left at the front desk of the Davis County Memorial Courthouse.

R.44, Addendum "C." The record is devoid of any reference to how or by whom the document was delivered to "McLarens."

SUMMARY OF THE ARGUMENT

The Utah Governmental Immunity Act requires strict compliance with the provisions of Utah Code Ann. § 63-30-11. *Nunez v. Albo, M.D.*, 53 P.3d 2, 9 (Utah Ct. App. 2002); *Brown v. UTA*, 40 P.3d 638 (Utah 2002); *Greene v. UTA*, 37 P.3d 1156, 1159 (Utah 2001); *Hall v. Utah State Dept. of Corrections*, 24 P.3d 958, 965 (Utah 2001); *Great West Casualty*

Co. v. Utah Dept. of Transportation, 21 P.3d 240 244 (Utah Ct. App. 2001); *Wheeler v. McPherson*, 40 P.3d 632 (Utah 2002). The district court reviewed the record evidence and found there was a factual dispute as to whether or not the notice of claim was actually delivered to the person or entity identified in Utah Code Ann. § 63-30-11. The Governmental Immunity Act provides in part:

- (3)(a) The notice of claim shall set forth:
 - (i) a brief statement of the facts;
 - (ii) the nature of the claim asserted; and
 - (iii) the damages incurred by the claimant so far as they are known.
- (b) The notice of claim shall be:
 - (i) signed by the person making the claim or that person's agent, attorney, parent or legal guardian; and
 - (ii) directed and delivered to:
 - ...(B) the county clerk, when the claim is against a county.

Utah Code Ann. § 63-30-11, attached has Addendum "E."

The Court notes in its Ruling, that the Affidavit of Ken Thomson submitted by Plaintiff in support of her contention the notice of claim was filed with the Davis County Clerk, "indicates delivery was made to Pat Beckstead, although the signed Affidavit of Service by Ken Thomson dated September 14, 2001 lists personal delivery to Steve Rawlins, the Davis County Clerk, and does not check the "Leaving Said Copy With" box on the Affidavit and does not list the name of Pat Beckstead as receiving delivery for Steve Rawlins." However, construing the pleadings "in a light most favorable to the non-moving party," the Court found a "factual dispute" existed. However, it noted facially, the notice of claim was deficient because it was not "directed to the Davis County Clerk," and it failed to set forth "the damages incurred by the claimant so far as they are known." R. 308, Ruling, Addendum "A."

The district court found the evidence supported a finding that Plaintiff had not complied with the notice of claim requirement in the Utah Governmental Immunity Act and granted Defendant's motion for summary judgment. R. 306. The district court's findings and Ruling is clearly supported by the facts and firmly established legal principals.

ARGUMENT

I. PLAINTIFF'S NOTICE OF CLAIM DOES NOT MEET THE STRICT COMPLIANCE STANDARDS OF THE GOVERNMENTAL IMMUNITY ACT.

A. The Governmental Immunity Act Requires The Notice of Claim Be "Directed and Delivered" to the Davis County Clerk.

The Utah Governmental Immunity Act (hereinafter "the Act") establishes specific parameters under which parties may bring suit against governmental entities for injuries. Utah Code Ann. §§ 63-30-1 *et seq.* (2001), *see also Greene v. UTA*, 37 P.3d 1156 (Utah 2001), *Wheeler v. McPherson*, 40 P.3d 632 (Utah 2002), *Brown v. UTA*, 40 P.3d 638 (Utah 2002). In order to sue a governmental entity under these parameters, potential plaintiffs must first provide, as a prerequisite to filing suit, formal "notice of claim" to the appropriate governmental official. *Id.* at §§ 63-30-11, 13, *Greene* at ¶ 13, *Wheeler* at ¶ 10, *Brown* at ¶

4. The Act provides:

A claim against a political subdivision, or against its employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment or under color of authority is barred unless notice of claim is filed with the governing body of the political subdivision *according to the requirements of Section 63-30-11* within one year after the claim arises ...

Wheeler at ¶ 10, Utah Code Ann. § 63-30-13 (emphasis added).

In cases where the potential plaintiff intends to sue a county, § 63-30-11 provides that the “notice of claim *shall* be . . . directed and delivered to . . . the county clerk.” The legislature’s 1998 amendment of the notice of claim provision, clarified exactly to whom such notices must be delivered. “With the 1998 amendment, the legislature has left little open to interpretation and has resolved any potential ambiguities as to whom the Notice must be delivered and reinforces the rule of strict compliance with the statute.” *Greene* at ¶ 12, *Wheeler* at ¶ 14. “Where the government grants statutory rights of action against itself, any conditions placed on those rights must be followed precisely.” *Wheeler* at ¶ 11 (citations omitted), *Hall v. Utah State Dept. of Corrections*, 24 P.3d 958 (Utah 2001).¹ Consequently, the Immunity Act requires that parties “shall” file a notice of claim prior to suit, it “shall” be directed and delivered to the county clerk, and failure to strictly comply with the notice requirements “shall” deprive the court of subject matter jurisdiction and bar the plaintiff’s claim. *Wheeler* at ¶ 9 (“compliance with the Immunity Act is a prerequisite to vesting a district court with subject matter jurisdiction”), *Great West Casualty Co. v. Utah Dept. of Transportation*, 21 P.3d 240 (Utah Ct. App. 2001), *Rushton v. Salt Lake County*, 977 P.2d 1201 (Utah 1999) (“Failure to file such notice [of claim] deprives the court of subject matter jurisdiction.”).

Plaintiff argues her Notice of Claim satisfies the requirements of the act because the

¹ In *Thomas E. Jeremy Estate v. Salt Lake City*, 49 P.2d 405, 407 (Utah 1935), the Supreme Court of Utah held “a cause of action against the government is barred where a notice of claim is not filed with the appropriate official prior to filing suit. See *Hall* at ¶ 24, *Wheeler* at ¶ 12.

Affidavit of her process server indicates it was directed and delivered to Steve Rawlins, Davis County Clerk. *See* Appellants Brief at 4-8. The Plaintiff relies, however, on facts that are clearly in dispute. R.308. Mr. Thomson's Affidavit states that he "attempted to serve the Davis County Clerk." R.126. He does not state that he was "directed" to "deliver" the notice of claim to the Davis County Clerk. Indeed, the notice of claim clearly indicates to whom it is "directed." R.44; Addendum "C." It is directed to "Davis County ... Davis County Attorney ... State of Utah ... Utah Attorney General." R.44. Mr. Thomson's attachment identified as "Affidavit of Service," and dated October 26, 2000, indicates he was directed to serve "Davis County." R.128; Affidavit of Service of Ken Thomson, attached as Addendum "F." Mr. Thomson avers he received the notice of claim on October 20, 2000, he indicates that he personally served "Davis County Clerk Pat Beckstead" on October 25, 2000 and then signed the Affidavit a day later on October 26, 2000. *Id.* Thomson does not indicate on the Affidavit of Service that he inquired and left the notice of claim with a person "authorized to receive service" on behalf of the Davis County Clerk. *Id.* The Affidavit of Service specifically provides for such a contingency. *Id.* Notably, there is no indication as to who represented Pat Beckstead as authorized, there is no notation on the form by Beckstead or any indication on the notice of claim that it was received by an alternative person as is customary. *Id.*

The Davis County Clerk avers in his Affidavit that a notice of claim was "neither directed nor delivered to me as Davis County Clerk." R.235. He further states, "[i]t is my understanding the Notice was simply left at the front desk of the Davis County Memorial Courthouse without an envelope or other direction or instruction as to whom or where it

should be delivered.” *Id.*

In viewing the evidence presented in a “light most favorable to the party opposing summary judgment,” the district court held “[t]here is a factual question regarding the actual delivery of the Notice of Claim.” R.309 (emphasis added). The facts presented in the Affidavit of Service and the Affidavit of Ken Thomson are not consistent, do not provide evidence that the Plaintiff complied with the Governmental Immunity Act notice requirements, and do not establish that the notice of claim was “directed and delivered to ... the county clerk.” *Id.* Plaintiff’s continued reliance on the Affidavit of Ken Thomson as “proof” the Plaintiff “directed and delivered” the notice of claim to the Davis County Clerk is unsupported by the evidence in this case.

Moreover, Plaintiff’s argument that the notice “found its way to McLarens” is of no moment. First, the law is absolutely clear, “compliance with the statute is the determining issue, not actual notice.” *Hall*, 24 P.3d at 965, *Rushton v. Salt Lake County*, 977 P.2d 1201 (Utah 1999), *Sears v. Southworth*, 563 P.2d 192, 194 (Utah; 1977); *Scarborough v. Granite School District*, 531 P.2d 480, 482 (Utah 1975); *Greene*, 37 P.3d at 1159, *Wheeler*, 40 P.3d at 637. Further, there is no indication as to whom forwarded the document. As indicated by Steve Rawlins, the document “was simply left at the front desk” ... of the Courthouse “without direction or instruction as to whom or where it was to be delivered.” R.42; Affidavit of Steve Rawlins, Addendum “D.” The notice of claim itself indicates on its face that it was intended for delivery to “Davis County” and the “Davis County Attorney.” *Id.* Any person employed in any department of Davis County and/or the Office of the Davis

County Attorney may have forwarded this document to “McLarens,”² There is absolutely nothing to support the Plaintiff’s argument that a “reasonable inference” is the Davis County Clerk forwarded the documents. *See* Appellant’s Brief at 5.

The district court found in its Ruling:

Utah courts have been strict in applying the requirements for a Notice of Claim, “applying this rule of strict compliance we have repeatedly denied recourse to parties that have even slightly diverged from the exactness required by the Immunity Act.” *Wheeler v. McPherson*, 40 P.3d 632, 625 (Utah 2002). The Notice of Claim may or may not have been delivered to Steve Rawlins, but it was not directed to the Davis County Clerk, Steve Rawlins.

R. 309; Ruling Addendum “A.”

B. The Governmental Immunity Act Requires The Notice of Claim Set Forth “the damages incurred by the claimant so far as they are known.”

The district court noted the Notice of Claim was also deficient for failing to set forth “the damages incurred by the claimant so far as they are know.” R.309; Utah Code Ann. § 63-30-11(3)(a). Failure to note the amount of damages incurred or provide any other information about their extent or nature is insufficient for even a sympathetic tribunal to find even substantial compliance under the Act. *Johnson v. City of Bountiful*, 996 F.Supp. 1100, 1103 (D.Utah 1998). This is not a situation where Plaintiff had insufficient time to determine the extent or amount of her damages. *See Spencer v. Salt Lake City*, 412 P.2d 449 (1966) (excusing failure to state amount of damages under prior statute that required claim be filed within 30 days on grounds that damages could not be known by then), *Yearsley v.*

² McLarens Toplis of North America, Inc. was the insurance adjuster for the Utah Association of Counties Insurance Mutual at the time this claim arose.

Jensen, 798 P.2d 1127 (Utah 1990) (holding notice of claim for “physical and emotional distress” resulting from alleged assault by police officer was insufficient description of damages incurred by claimant). Indeed, Plaintiff testified she had completed treatment on her teeth and arm in September 2000, but continued with physical therapy until February 2001. R.188, Deposition of Melody Little 44:8-18; R.187, 40:1-17; R.188, 45:1-8, R.186, 28:22-23.

“Applying this rule of strict compliance, we have repeatedly denied recourse to parties that have even slightly diverged from the exactness required by the Immunity Act.”

Wheeler v. McPherson, 40 P.3d 632, 635 (Utah 2002).

With the 1998 amendment, the legislature has left little open to interpretation and has resolved any potential ambiguities as to whom the Notice must be delivered. This move to clarify the delivery requirements of the Immunity Act reinforces the rule of strict compliance with the statute.

Wheeler, 40 P.3d at 636 (citations omitted). “Where, as here, the statute is clear, readily available, and easily accessible by counsel, there is no reason to require anything less than strict compliance.” *Id.* at n. 3. Plaintiff’s failure to comply with the strict statutory requirements deprives the Court of subject matter jurisdiction in this matter.

II. STRICT COMPLIANCE WITH THE GOVERNMENTAL IMMUNITY ACT IS NECESSARY TO CONFER SUBJECT MATTER JURISDICTION TO THE TRIAL COURT.

Plaintiff argues the County “waived” its right to allege improper notice of claim because “Davis County failed to raise the argument that damages need to be ‘definitively’ set forth in its initial Memorandum in Support of Summary Judgment. Appellant’s Brief at pp. 8-9. This argument fails for two reasons. First, the entire basis of Davis County’s

Motion for Summary Judgment was the Plaintiff's failure to comply with the Governmental Immunity Act's notice of claim requirement. R.28-71. Second, strict compliance with the Governmental Immunity Act is necessary to confer subject matter jurisdiction upon a trial court. *Greene*, 37 P.3d at 1159. Jurisdictional issues are threshold questions and must be addressed before a trial court can even consider other arguments. *Id.* Thus, failure to comply with the Immunity Act requires a trial court to dismiss a complaint. *Id.* It is well established in Utah law that challenges to subject matter jurisdiction may be raised at any time and cannot be waived by the parties. *Barnard v. Wassermann*, 855 P.2d 243 (Utah 1993).³ "When a matter is outside the court's jurisdiction, it retains only the authority to dismiss the action." *VarianEimac v. Lamoreaux*, 767 P.2d 569, 570 (Utah Ct.App.1989).

The District Court found:

Plaintiff made no definite statement as to damages other than to state "amounts to be proved at trial." Plaintiff had two months to discover the damage amounts for immediate injuries, but failed to set forth "the damages incurred by the claimant so far as they are known."

R.308. The District court's determination that the "Notice of Claim is deficient for purposes of the Utah Governmental Immunity Act and interpretive case law" was correct. Plaintiff's

² *Thomas v. Lewis*, 26 P.3d 217 (Utah 2001) ("the notice of claim provisions of the Governmental Immunity Act are jurisdictional and although not raised in the court below, this issue determines our authority to address the merits of the case and may therefore be raised at any time."); *Lamarr v. Utah State Dep't of Transp.*, 828 P.2d 535, 540 (Utah Ct.App.1992) ("because improper notice divests the court of subject matter jurisdiction, failure to provide proper notice of claim is a non-waivable defense that any party, or the court, can raise at any time."); *State v. Tunzi*, 31 P.3d 588 (Utah Ct. App. 2001) ("Subject matter jurisdiction is the authority and competency of the court to decide the case.... consequently, any jurisdictional defect arising from misapplication of the statute cannot be waived"); *James v. Galetka*, 965 P.2d 567, 570 (Utah Ct.App.1998) (subject matter jurisdiction "can neither be waived nor conferred by consent"); *In re E.G.T.*, 808 P.2d 138, 139 (Utah Ct.App.1991) ("a [subject matter] jurisdictional defect cannot be waived"); *Petersen v. Utah Bd. of Pardons*, 907 P.2d 1148, 1151 (Utah 1995) ("[s]ubject matter jurisdiction is an issue that can and should be addressed sua sponte when jurisdiction is questionable.").

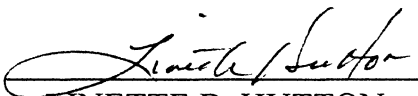
failure to comply deprived the trial court of jurisdiction and dismissal was the court's only recourse.

CONCLUSION

Based on the foregoing, Defendants respectfully request that this Court affirm the district court's Ruling Granting Defendant's Motion for Summary Judgment.

DATED this 7th day of June 2003.

WINDER & HASLAM, P.C.


By: 
LINETTE B. HUTTON
Attorney for Defendants/Appellees

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4 day of June, 2003, I caused to be served a true and correct copy of the foregoing APPELLEE BRIEF to the following, by the method indicated below:

James R. Hasenyager, Esq.
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ADDENDUM

Ruling on Defendant's Motion to Dismiss and/or for Summary Judgment	A
Complaint	B
Notice of Claim	C
Affidavit of Steve S. Rawlings in Support of Defendant Motion to Dismiss or for Summary Judgment	D
Utah Governmental Immunity Act, Utah Code Ann. § 63-30-11	E
Affidavit of Ken Thomson and attached Affidavit of Service	F

Tab A

FILED

NOV 15 2002

IN THE SECOND DISTRICT COURT OF DAVIS COUNTY
STATE OF UTAH

SECOND
DISTRICT COURT

MELODY LITTLE,

Plaintiff,

v.

DAVIS COUNTY,

Defendants,

**RULING ON DEFENDANT'S
MOTION TO DISMISS AND/OR
FOR SUMMARY JUDGMENT**

Case No. 010700399 TO

Judge Michael G. Allphin

The above-entitled matter having come before the Court on Defendants' Motion to Dismiss and/or for Summary Judgment; and the Court having reviewed the Motion; and being fully advised in the premises, makes the following ruling.

BACKGROUND

The matter before the Court concerns an injury which occurred on the sidewalk along the side of the old Davis County Courthouse building on August 14, 2000. Plaintiff filed a Complaint against the Defendant on August 15, 2001, claiming that Defendant and its agents and employees were negligent in failing to grind down a raised lip of concrete and were liable for damages. On April 8, 2002, Defendant filed a Motion to Dismiss and/or for Summary Judgment with Supporting Memorandum. Therein, Defendant argues; 1) As a matter of law, Plaintiff's claims are barred for failure to comply with the notice requirements of the Utah Governmental Immunity Act, Utah Code Ann. §§ 63-30-11, and 2) That Plaintiff's claims should also be dismissed as there was no defect or condition on the sidewalk for which Defendant may be found liable to Plaintiff. Plaintiff filed its Memorandum in Opposition to Davis County's Motion for

Summary Judgment on June 12, 2002. Defendant filed its Reply Memorandum in Support of Defendant's Motion to Dismiss and/or for Summary Judgment on June 24, 2002. On September 16, 2002, Defendant filed a Notice to Submit for Decision.

ANALYSIS

A motion to dismiss, pursuant to Rule 12(b)(6) of the Utah Rules of Civil Procedure, is a question of law for the Court, wherein the Court is required to determine if the Complaint is sufficient on its face. In making that determination, the Court must assume that the factual allegations in the Complaint are true and must draw all reasonable inferences in the light most favorable to the Plaintiff. Munteer v. Utah Power & Light Co., 823 P.2d 1055 (Utah 1991).

The purpose of summary judgment is to avoid unnecessary trial by allowing the parties to submit the matter on the pleadings where there is no genuine issue to present to the fact finder. In accordance with this purpose, specific facts are required to show whether there is a genuine issue for trial. Reagan Outdoor Adv., Inc. v. Lundgren, 692 P.2d 776 (Utah 1984). In considering a motion for summary judgment, the Court must examine the evidence in "a light most favorable to the party opposing summary judgment." Hunt v. Hunt, 785 P.2d 414, 415 (Utah 1990).

Having reviewed the parties' filings, the Court addresses the following issues; 1) Whether Plaintiff complied with the notice requirements of the Utah Governmental Immunity Act, Utah Code Ann. §§ 63-30-11, and 2) Whether there was a defect or condition on the sidewalk for which Defendant may be found liable to Plaintiff.

The Court first examines whether Plaintiff complied with the notice requirements of the Utah Governmental Immunity Act, Utah Code Ann. §§ 63-30-11. The Utah Governmental Immunity Act reads in part:

- (3) (a) The notice of claim shall set forth:
 - (i) a brief statement of the facts;
 - (ii) the nature of the claim asserted; and
 - (iii) the damages incurred by the claimant so far as they are known.
- (b) The notice of claim shall be:
 - (i) signed by the person making the claim or that person's agent, attorney, parent, or legal guardian; and
 - (ii) directed and delivered to:
 - ...(B) the county clerk, when the claim is against a county;....

On October 25, 2000, a process server named Ken Thomson delivered a document entitled "Notice of Claim" to the Davis County Memorial Courthouse. There is a factual dispute as to whether the Notice of Claim was left at the front desk or was delivered to Pat Beckstead, a Davis County employee, with the understanding that Pat Beckstead would receive service on behalf of Steve Rawlins, the Davis County Clerk. The Affidavit of Ken Thomson dated April 18, 2002 indicates that delivery was made to Pat Beckstead, although the signed Affidavit of Service by Ken Thomson dated September 14, 2001 lists personal delivery to Steve Rawlins, the Davis County Clerk, and does not check the "LEAVING SAID COPY WITH" box on the Affidavit and does not list the name of Pat Beckstead as receiving delivery for Steve Rawlins. Defendant's Affidavits would dispute this delivery, but as stated above, in considering a motion for summary judgment, the Court must examine the evidence in "a light most favorable to the party opposing summary judgment." Hunt v. Hunt, 785 P.2d 414, 415 (Utah 1990). The Notice of Claim was addressed to Davis County, the Davis County Attorney, the State of Utah, and the Utah Attorney General, but not specifically directed to the Davis County Clerk. At this point, Plaintiff has

failed to meet the statutory requirements for the Notice of Claim, by not directing the Notice of Claim to the county clerk. There is a factual question regarding the actual delivery of the Notice of Claim, but regardless, the Notice of Claim was facially deficient. Utah courts have been strict in applying the requirements for a Notice of Claim, "[a]pplying this rule of strict compliance, we have repeatedly denied recourse to parties that have even slightly diverged from the exactness required by the Immunity Act." Wheeler v. McPherson, 40 P.3d 632, 635 (Utah 2002). The Notice of Claim may or may not have been delivered to Steve Rawlins office, but it was not directed to the Davis County Clerk, Steve Rawlins.

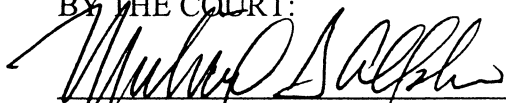
The Notice of Claim was also deficient when it did not clearly set forth "the damages incurred by the claimant so far as they are known." Utah Code Ann. § 63-30-11 (3)(a)(iii). The Notice of Claim listed the physical damage to Plaintiff and stated that "Plaintiff has also sustained pain and suffering, medical expenses, and physical therapy expenses to her damage in amounts to be proved at trial." The Notice of Claim was dated October 17, 2000, two months and three days after the August 14th fall, however Plaintiff made no definite statement as to damages, other than to state "amounts to be proved at trial." Plaintiff had two months to discover the damage amounts for immediate injuries, but failed to set forth "the damages incurred by the claimant so far as they are known." The Notice of Claim is deficient for purposes of the Utah Governmental Immunity Act and interpretive case law. "[N]or does the letter state the amount of damages incurred or provide any other information about their extent or nature. There is simply nothing upon which even a sympathetic tribunal, as this Court is given the facts of this case, could base a finding of substantial compliance." Johnson v. City of Bountiful, 996 F.Supp. 1100, 1103 (D. Utah 1998).

Having found that Plaintiff's claims are barred for failure to comply with the notice requirements of the Utah Governmental Immunity Act, Utah Code Ann. §§ 63-30-11, the Court finds no reason to proceed in its analysis of the remaining issue in relation to the Motion to Dismiss and/or for Summary Judgment before the Court.

For the foregoing reasons, the Court grants Defendant's Motion to Dismiss and/or for Summary Judgment.

Dated November 14th, 2002.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Michael G. Allphin", written over a horizontal line.

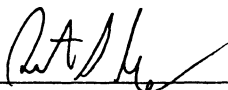
MICHAEL G. ALLPHIN
DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the foregoing Ruling on November
15, 2002, postage prepaid, to the following:

James R. Hasenyager
Peter W. Summerill
HASENYAGER & SUMMERILL
1004 Twenty-Fourth Street
Ogden, UT 84401

Linette B. Hutton
WINDER & HASLAM, P.C.
175 West 200 South, Suite 4000
PO Box 2668
Salt Lake City, UT 84110-2668



Robert S. Payne
Law Clerk to the Honorable Michael G. Allphin

Tab B

JAMES R. HASENYAGER (Bar No. 1404)
PETER W. SUMMERILL (Bar No. 8282)
Attorneys for Plaintiff
1004 -24th Street
Ogden, Utah 84401
Telephone: (801) 621-3662
Facsimile: (801) 392-2543

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY
FARMINGTON DEPARTMENT, STATE OF UTAH

MELODY LITTLE, : COMPLAINT

Plaintiff, :

vs. :

Civil No: 010700399

DAVIS COUNTY, :

Defendant. :

Judge: Michael Allphin


Plaintiff alleges as follows:

1. Plaintiff's claim arose in Davis County, Utah.
2. On August 14, 2000, plaintiff went to the old Davis County Courthouse building in Farmington to conduct some business.
3. As she was walking along the east sidewalk of the building, a raised edge of concrete caught plaintiff's shoe, causing her to fall.
4. As a result of her fall, plaintiff broke her left arm and sustained damage to her teeth, which caused physical pain and disability; past, present and future medical expense; and wage loss to her damage in amounts to be proved at trial.

5. Defendant, its agents and employees negligently and carelessly failed to grind down the raised lip of concrete, which was defective pursuant to Section 63-30-8, Utah Code Annotated.

WHEREFORE, plaintiff requests a jury trial; for an award of damages as are proved at trial; for interest pursuant to Section 78-27-44, Utah Code Annotated; and for such other and further relief as is just and proper.

Dated this 14 day of August, 2001.


JAMES R. HASENYAGER
Attorney for Plaintiff

OLD REPUBLIC SURETY COMPANY

**IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY FARMINGTON
DEPARTMENT, STATE OF UTAH**

BOND NO. 1154707

Melody Little

(Plaintiffs)

vs.

Davis County

(Defendants)

UNDERTAKING FOR COST

Civil No.

WHEREAS, the above-named plaintiff desires to give an undertaking for COST as provided by Section 63-30-19 of the Utah Code Annotated.

NOW, THEREFORE, Old Republic Surety Company, a corporation duly licensed to do business in the State of Utah, as Surety, does hereby obligate itself, its successors and assigns to the above named defendants under said statutory obligations in the sum of THREE HUNDRED DOLLARS and NO/100 (\$300.00)**

DATED at Salt Lake City, Utah the 14th day of August, 2001.

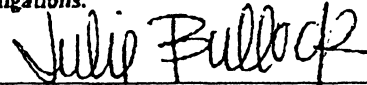
OLD REPUBLIC SURETY COMPANY

BY:

Its: Julie Bullock, Attorney-in-Fact

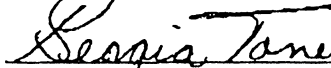
AFFIDAVIT OF QUALIFICATION**STATE OF UTAH****County of Salt Lake**

Julie Bullock appeared personally before me and declared that she is the Attorney-in-Fact of the Old Republic Surety Company, and that she is duly authorized to execute and deliver the foregoing obligation; that said Company is authorized to execute the same and has complied in all respects with that laws of Utah, in reference to becoming sole surety upon bonds, undertakings and obligations.



Julie Bullock, Attorney-in-Fact

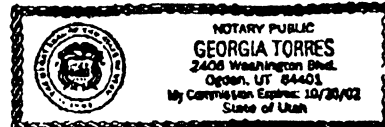
Subscribed and Sworn to before me this 14th Day of August, 2001.



Notary Public
Ogden, Utah

My commission expires

10/20/02



OLD REPUBLIC

Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that OLD REPUBLIC INSURANCE COMPANY, a Pennsylvania stock insurance corporation, does make, constitute and appoint:

C. ERIC M. LITSON, J. TARK, GAYBOURNE, MICHELLE S. HOLT, RAYNE C. HARRIS, JAMES W. BROWN, JULIE TULLOCK, MICHAEL H. GALE, GEORGIA TERRES, OF HODEN, UT

True and lawful Attorney(s) in fact with full power and authority for and on behalf of the company as surety to execute and deliver and affix the seal of the company hereto (if a seal is required) bonds, undertakings, recognizances or other written obligations in the nature of (other than self-insurance workers compensation bonds) guaranteeing payment of benefits, asbestos abatement contract bonds, waste management bonds, hazardous waste remediation bonds or black lung bonds, as follows:

ALL WRITTEN INSTRUMENTS IN AN AMOUNT NOT TO EXCEED AN AGGREGATE OF SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) FOR ANY SINGLE LITIGATION, REGARDLESS OF THE NUMBER OF INSTRUMENTS ISSUED FOR THE LITIGATION, to bind OLD REPUBLIC INSURANCE COMPANY hereby, and all of the acts of said Attorneys in fact pursuant to these presents, are filed and confirmed. This document is not valid unless printed on colored background and is multi-colored. This appointment is made by and by authority of the board of directors at a special meeting held on May 29, 1986. This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of the OLD REPUBLIC INSURANCE COMPANY on May 29, 1986:

RESOLVED FURTHER, that the chairman, president or any vice president of the Company's surety division, in conjunction with the secretary or any assistant secretary of the Company, be and hereby are authorized and directed to execute and deliver to such persons as such officers of the Company may deem appropriate Powers of Attorney in the form presented to and attached to the minutes of this meeting, authorizing such persons to execute and deliver and affix the seal of the Company to bonds, undertakings, recognizances and suretyship obligations of all kinds, other than bail bonds, bank depository bonds, mortgage deficiency bonds, mortgage guaranty bonds, guarantees of installment paper and note guaranty bonds. The said officers may revoke any Power of Attorney previously granted to any such person. The authority of any Power of Attorney granted by any such officer of the Company as aforesaid shall not exceed five million dollars (\$5,000,000.00); except (a) bonds required to be filed as open penalty bonds, and (b) bonds filed with any court or governmental authority requiring an unlimited penalty in bonds filed in that court.

RESOLVED FURTHER, that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company (i) when signed by the chairman, president or any vice president of the Company's surety division and attested and sealed (if a seal be required) by any Secretary or assistant secretary, or (ii) when signed by a duly authorized attorney in fact and sealed with the seal of the Company (if a seal be required).

RESOLVED FURTHER, that the signature of any officer designated above and the seal of the Company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, OLD REPUBLIC INSURANCE COMPANY has caused these presents to be signed by its proper officer, and its corporate seal to be affixed this 15th day of JUNE 1987.

OLD REPUBLIC INSURANCE COMPANY

Geraldine J. Stelter
Assistant Secretary



James F. Lee
Vice President

STATE OF WISCONSIN, COUNTY OF WAUKESHA--SS

On this 15th day of JUNE 1987, personally came before me JAMES F. LEE, GERALDINE J. STELTER to me known to be the individuals and officers of the OLD REPUBLIC INSURANCE COMPANY who executed above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally depose and say they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said organization.



Sharon M. Cugno
Notary Public

My commission expires 02/19/2001

CERTIFICATE
I, the undersigned, assistant secretary of the OLD REPUBLIC INSURANCE COMPANY, a Pennsylvania corporation, CERTIFY that the foregoing and attached power of attorney remains in full force and has not been revoked; and furthermore, that the Resolutions of the board of directors set forth in the Power of Attorney are now in force.

4-11-

Signed and sealed at the City of Brookfield this 14th day of August 2001



James F. Lee
Assistant Secretary

Tab C

NOTICE OF CLAIM

TO: Davis County
28 East State Street
Farmington, Utah 84025

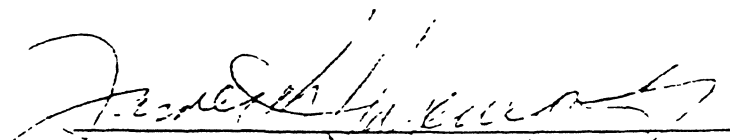
Davis County Attorney
800 West State Street
Farmington, Utah 84025

State of Utah
236 State Capitol
Salt Lake City, Utah 84114

Utah Attorney General
236 State Capitol
Salt Lake City, Utah 84114

Pursuant to law, Melodie Little hereby gives notice of her intent to file a lawsuit against you for injuries she sustained in a fall at the old Davis County Courthouse on August 14, 2000. On that date, on the east sidewalk of the building, a raised edge of concrete caught plaintiff's shoe, causing her to fall. Defendants had negligently and carelessly failed to grind down the concrete lip, and as a result, plaintiff fell breaking her left arm and sustaining damage to her teeth. Plaintiff has also sustained pain and suffering, medical expenses, and physical therapy expenses, to her damage in amounts to be proved at trial. The sidewalk in question was owned or maintained by Davis County and/or the State of Utah and was defective under Section 63-30-8, Utah Code Annotated.

Dated this 17 day of April, 2000.


JAMES R. HASENYAGER.
Attorney for Plaintiff

RECEIVED

007 37 2000

Tab D

LINETTE B. HUTTON (Bar No. 6408)
WINDER & HASLAM, P.C.
 175 West 200 South, Suite 4000
 P. O. Box 2668
 Salt Lake City, UT 84110-2668
 Telephone: (801) 322-2222

Attorney for Davis County

IN THE SECOND JUDICIAL DISTRICT COURT

STATE OF UTAH, DAVIS COUNTY, FARMINGTON DEPARTMENT

MELODY LITTLE,	:	AFFIDAVIT OF STEVE S.
	:	RAWLINGS IN SUPPORT OF
Plaintiff,	:	DEFENDANT'S MOTION FOR
	:	SUMMARY JUDGMENT
vs.	:	
	:	Case No. 010700399
DAVIS COUNTY,	:	
	:	Judge Michael G. Allphin
Defendant.	:	

STATE OF UTAH)
 :ss.
 COUNTY OF DAVIS)

I, Steve S. Rawlings, being first duly sworn, depose and aver as follows:

1. I am the Davis County Clerk/Auditor and have been serving in that office since January 1999.

2. I have had an opportunity to review a document entitled "Notice of Claim" which purports to provide notice that Ms. Little tripped and fell on the sidewalk along the east side of the

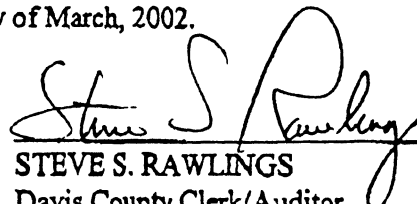
Davis County Memorial Courthouse. I am attaching hereto a copy of the document as Exhibit "A."

3. This document was neither directed nor delivered to me as Davis County Clerk.

4. To my knowledge, no member of my staff signed for or accepted delivery of this or any other notice of claim relative to the incident alleged by Ms. Little.

5. I do recall at some point I became aware of the document but cannot confirm the date or even whether it was before or after the Notice of Claim was provided to the Davis County insurer. It is my understanding the Notice was simply left at the front desk of the Davis County Memorial Courthouse, without an envelope or other direction or instruction as to whom or where it should be delivered.

DATED this 26th day of March, 2002.


STEVE S. RAWLINGS
Davis County Clerk/Auditor

Subscribed and sworn to before me this 26th day of March, 2002.


NOTARY PUBLIC

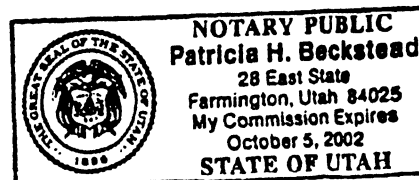


EXHIBIT “A”

NOTICE OF CLAIM

TO: Davis County
28 East State Street
Farmington, Utah 84025

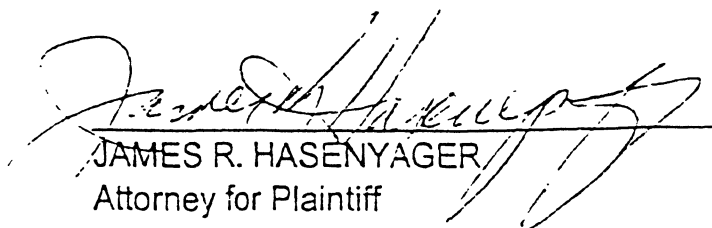
Davis County Attorney
800 West State Street
Farmington, Utah 84025

State of Utah
236 State Capitol
Salt Lake City, Utah 84114

Utah Attorney General
236 State Capitol
Salt Lake City, Utah 84114

Pursuant to law, Melodie Little hereby gives notice of her intent to file a lawsuit against you for injuries she sustained in a fall at the old Davis County Courthouse on August 14, 2000. On that date, on the east sidewalk of the building, a raised edge of concrete caught plaintiff's shoe, causing her to fall. Defendants had negligently and carelessly failed to grind down the concrete lip, and as a result, plaintiff fell breaking her left arm and sustaining damage to her teeth. Plaintiff has also sustained pain and suffering, medical expenses, and physical therapy expenses, to her damage in amounts to be proved at trial. The sidewalk in question was owned or maintained by Davis County and/or the State of Utah and was defective under Section 63-30-8, Utah Code Annotated.

Dated this 17 day of October, 2000.


JAMES R. HASENYAGER
Attorney for Plaintiff

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OCT 27 2000

Tab E

(2) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or violation of civil rights;

(3) the issuance, denial, suspension, or revocation of or by the failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization;

(4) a failure to make an inspection or by making an inadequate or negligent inspection;

(5) the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;

(6) a misrepresentation by an employee whether or not it is negligent or intentional;

(7) riots, unlawful assemblies, public demonstrations, mob violence, and civil disturbances;

(8) the collection of and assessment of taxes;

(9) the activities of the Utah National Guard;

(10) the incarceration of any person in any state prison, county or city jail, or other place of legal confinement;

(11) any natural condition on publicly owned or controlled lands, any condition existing in connection with an abandoned mine or mining operation, or any activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire and State Lands;

(12) research or implementation of cloud management or seeding for the clearing of fog;

(13) the management of flood waters, earthquakes, or natural disasters;

(14) the construction, repair, or operation of flood or storm systems;

(15) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6-14;

(16) a latent dangerous or latent defective condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them;

(17) a latent dangerous or latent defective condition of any public building, structure, dam, reservoir, or other public improvement;

(18) the activities of:

(a) providing emergency medical assistance;

(b) fighting fire;

(c) regulating, mitigating, or handling hazardous materials or hazardous wastes;

(d) emergency evacuations;

(e) transporting or removing injured persons to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service; or

(f) intervening during dam emergencies; or

(19) the exercise or performance or the failure to exercise or perform any function pursuant to Title 73, Chapter 5a, Dam Safety, or Title 73, Chapter 10, Board of Water Resources — Division of Water Resources, which immunity is in addition to all other immunities granted by law.

2001

63-30-10.5. Waiver of immunity for taking private property without compensation.

(1) As provided by Article I, Section 22 of the Utah Constitution, immunity from suit of all governmental entities is waived for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation.

(2) Compensation and damages shall be assessed according to the requirements of Title 78, Chapter 34, Eminent Domain.

1991

63-30-10.6. Attorneys' fees for records requests.

(1) Immunity from suit of all governmental entities is waived for recovery of attorneys' fees under Sections 63-2-405 and 63-2-802.

Notwithstanding Section 63-30-11:

(a) a notice of claim for attorneys' fees under Subsection (1) may be filed contemporaneously with a petition for review under Section 63-2-404; and

(b) Sections 63-30-14 and 63-30-19 shall not apply.

(2) Any other claim under this chapter that is related to a claim for attorneys' fees under Subsection (1) may be brought contemporaneously with the claim for attorneys' fees or in a subsequent action.

1992

63-30-11. Claim for injury — Notice — Contents — Service — Legal disability — Appointment of guardian ad litem.

(1) A claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.

(2) Any person having a claim for injury against a governmental entity, or against its employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless of whether or not the function giving rise to the claim is characterized as governmental.

(3) (a) The notice of claim shall set forth:

(i) a brief statement of the facts;

(ii) the nature of the claim asserted; and

(iii) the damages incurred by the claimant so far as they are known.

(b) The notice of claim shall be:

(i) signed by the person making the claim or that person's agent, attorney, parent, or legal guardian; and

(ii) directed and delivered to:

(A) the city or town recorder, when the claim is against an incorporated city or town;

(B) the county clerk, when the claim is against a county;

(C) the superintendent or business administrator of the board, when the claim is against a school district or board of education;

(D) the president or secretary of the board, when the claim is against a special district;

(E) the attorney general, when the claim is against the State of Utah; or

(F) a member of the governing board, the executive director, or executive secretary, when the claim is against any other public board, commission, or body.

(4) (a) If the claimant is under the age of majority, or mentally incompetent and without a legal guardian at the time the claim arises, the claimant may apply to the court to extend the time for service of notice of claim.

(b) (i) After hearing and notice to the governmental entity, the court may extend the time for service of notice of claim.

(ii) The court may not grant an extension that exceeds the applicable statute of limitations.

(c) In determining whether or not to grant an extension, the court shall consider whether the delay in serving the notice of claim will substantially prejudice the governmental entity in maintaining its defense on the merits.

(d) (i) If an injury that may reasonably be expected to result in a claim against a governmental entity is sustained by a potential claimant described in Subsection (4)(a), that government entity may file a request with the court for the appointment of a guardian ad litem for the potential claimant.

(ii) If a guardian ad litem is appointed under this Subsection (4)(d), the time for filing a claim under Sections 63-30-12 and 63-30-13 begins when the order appointing the guardian is issued. 2000

63-30-12. Claim against state or its employee — Time for filing notice.

A claim against the state, or against its employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the attorney general within one year after the claim arises, or before the expiration of any extension of time granted under Section 63-30-11, regardless of whether or not the function giving rise to the claim is characterized as governmental.

1998

63-30-13. Claim against political subdivision or its employee — Time for filing notice.

A claim against a political subdivision, or against its employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the governing body of the political subdivision according to the requirements of Section 63-30-11 within one year after the claim arises, or before the expiration of any extension of time granted under Section 63-30-11, regardless of whether or not the function giving rise to the claim is characterized as governmental.

1998

63-30-14. Claim for injury — Approval or denial by governmental entity or insurance carrier within ninety days.

Within ninety days of the filing of a claim the governmental entity or its insurance carrier shall act thereon and notify the claimant in writing of its approval or denial. A claim shall be deemed to have been denied if at the end of the ninety-day period the governmental entity or its insurance carrier has failed to approve or deny the claim.

1965

63-30-15. Denial of claim for injury — Authority and time for filing action against governmental entity.

(1) If the claim is denied, a claimant may institute an action in the district court against the governmental entity or an employee of the entity.

(2) The claimant shall begin the action within one year after denial of the claim or within one year after the denial period specified in this chapter has expired, regardless of whether or not the function giving rise to the claim is characterized as governmental.

1987

63-30-16. Jurisdiction of district courts over actions — Application of Rules of Civil Procedure.

(1) The district courts shall have exclusive original jurisdiction over any action brought under this chapter.

(2) An action brought under this chapter may not be tried as a small claims action and shall be governed by the Utah Rules of Civil Procedure to the extent they are consistent with this chapter.

1999

63-30-17. Venue of actions.

Actions against the state may be brought in the county in which the claim arose or in Salt Lake County. Actions against a county may be brought in the county in which the claim

arose, or in the defendant county, or, upon leave granted by a district court judge of the defendant county, in any county contiguous to the defendant county. Leave may be granted ex parte. Actions against all other political subdivisions including cities and towns, shall be brought in the county in which the political subdivision is located or in the county in which the claim arose.

1983

63-30-18. Compromise and settlement of actions.

(1) A political subdivision, after conferring with its legal officer or other legal counsel if it does not have a legal officer, may compromise and settle any action as to the damages or other relief sought.

(2) The risk manager in the Department of Administrative Services may:

(a) compromise and settle any claim of \$25,000 or less in damages filed against the state for which the Risk Management Fund may be liable;

(b) with the concurrence of the attorney general or his representative and the executive director of the Department of Administrative Services, compromise and settle any claim of \$25,000 to \$100,000 in damages for which the Risk Management Fund may be liable; and

(3) The risk manager shall comply with procedures and requirements of Title 63, Chapter 38b, in compromising and settling any claim of \$100,000 or more.

1995

63-30-19. Undertaking required of plaintiff in action.

At the time of filing the action the plaintiff shall file an undertaking in a sum fixed by the court, but in no case less than the sum of \$300, conditioned upon payment by the plaintiff of taxable costs incurred by the governmental entity in the action if the plaintiff fails to prosecute the action or fails to recover judgment.

1965

63-30-20. Judgment against governmental entity bars action against employee.

Judgment against a governmental entity in an action brought under this act shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee whose act or omission gave rise to the claim.

1965

63-30-21. Repealed.

1978

63-30-22. Exemplary or punitive damages prohibited — Governmental entity exempt from execution, attachment, or garnishment.

(1) (a) No judgment may be rendered against the governmental entity for exemplary or punitive damages.

(b) The state shall pay any judgment or portion of any judgment entered against a state employee in the employee's personal capacity even if the judgment is for or includes exemplary or punitive damages if the state would be required to pay the judgment under Section 63-30-36 or 63-30-37.

(2) Execution, attachment, or garnishment may not issue against a governmental entity.

1991

63-30-23. Payment of claim or judgment against state — Presentment for payment.

Any claim approved by the state as defined by Subsection 63-30-2(1) or any final judgment obtained against the state shall be presented to the state risk manager, or to the office, agency, institution or other instrumentality involved for payment, if payment by said instrumentality is otherwise permitted by law. If such payment is not authorized by law then said judgment or claim shall be presented to the board of examiners and the board shall proceed as provided in Section 63-6-10.

1987

Tab F

James R. Hasenyager (Bar No. 1404)
Peter W. Summerill (Bar No. 8282)
HASENYAGER & SUMMERILL
Attorneys for Plaintiff
1004 24th Street
Ogden, Utah 84401
(801) 621-3662

In the Second Judicial District, Farmington Department,
State of Utah

MELODY LITTLE,	:	AFFIDAVIT KEN THOMSON
Plaintiff,	:	
vs.	:	Civil No: 010700399
DAVIS COUNTY,	:	
Defendant.	:	Judge Michael G. Allphin


STATE OF UTAH)
	:ss
WEBER COUNTY)

I, Ken Thomson, being first duly sworn, state:

1. That on October 25, 2000 at 12:10 p.m. I attempted to serve upon the Davis County Clerk the Notice of Claim.
2. The clerk was unavailable and, as is my usual practice, I asked if anyone was authorized to receive service on behalf of the Davis County Clerk.
3. Pat Beckstead was represented as authorized to receive service on behalf of the Davis County Clerk.

4. I then served and delivered a copy of the Notice of Claim, attached hereto as Exhibit "A" on Pat Beckstead.


DATED this 18 day of April, 2002

Affiant: 
Process Server, Ken Thomson

SUBSCRIBED AND SWORN TO before me this 18th day of April 2002



NOTARY PUBLIC
LORI VIGIL
1064 - 24th Street
Ogden, UT 84401
My Commission Expires
October 12, 2002
STATE OF UTAH


Notary Public
Residing at:
My Commission Expires:

10.26.00

CASE NAME: Melodie Little v. Davis County
(Plaintiff) (Defendant)

SERVE: Davis County
28 E. State St.
Farmington, Utah

AFFIDAVIT OF SERVICE

STATE OF UTAH)
: ss
COUNTY OF WEBER)

I, Ken Thomson, being first duly sworn, state:

That on the 20 day of Oct., 2000, I received the annexed
Notice Of Claim, and being a person over the age of 18, a resident
of this State and not party to the action, I served Davis County Clerk Pat Beckstead
copy thereof on Oct. 25, 2000 at 12:10 hours by:

☒ x

DELIVERING SAID COPY TO SAID INDIVIDUAL PERSONALLY AT:

28 E. State St. Farmington, Utah

☐

LEAVING SAID COPY WITH _____,
A PERSON OF SUITABLE AGE AND DISCRETION AT THE USUAL PLACE OF ABODE OF THE
INDIVIDUAL BEING SERVED, THEREIN RESIDING.

☐

Upon serving the same, I endorsed the date and place of service and my name of the copy served and showed the
original to the person served.

DATED this 26 day of Oct., 2000.

AFFIANT:

Ken Thomson
Process Server

SUBSCRIBED AND SWORN TO before me this 26th day of Oct., 2000.

SERVICE FEE: \$ 28.00

FILEAGE FEE: _____

@ _____ \$ _____

ADDITIONAL ATTEMPTS \$ _____

TOTAL \$ 28.00

Notary Public
Residing at:
My Commission Expires _____

