

2003

MACHELLE CANFIELD, Plaintiff and Appellant,
vs. LAYTON CITY, a Utah Municipality,
Defendant and Appellee. : Brief of Appellant

Utah Court of Appeals

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Stanley J. Preston, Camille N. Johnson, Maralyn M. Reger; Snow, Christensen & Martineau; attorneys for appellee.

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BEFORE THE UTAH COURT OF APPEALS

MACHELLE CANFIELD,

Plaintiff/Appellant,

vs.

LAYTON CITY, a Utah Municipality,

Defendant/Appellee.

Court of Appeals Case
No. 20030212-CA

On Appeal from the Judgment and Order of the Honorable Michael G. Allphin,
Second District Court for Davis County, State of Utah

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FILED
Utah Court of Appeals

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Paulette Stagg
Clerk of the Court

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BEFORE THE UTAH COURT OF APPEALS	
MACHELLE CANFIELD, Plaintiff/Appellant, vs. LAYTON CITY, a Utah Municipality, Defendant/Appellee.	Court of Appeals Case No. 20030212-CA
Jurisdiction	

The Utah Court of Appeals has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2a-3(2)(j)(2003).

Issues and Standard of Review

Is an employment claim against a government entity, which sounds in contract, exempt from the notice requirements of the Utah Governmental Immunity Act under Utah Code Ann. § 63-30-5(1) (2003)? This issue was raised and preserved in briefing before the District Court. (R. at 28-36.)

This issue involves the interpretation of the Utah Governmental Immunity Act, Utah Code Ann. §§ 63-30-1, et seq. A matter of statutory construction is a

question of law, to be reviewed for correctness. See, Taghipour v. Jerez, 2002 UT 74, ¶8, 52 P.3d 1252.

Determinative Statutory Provisions

This case is determined by Utah Code Ann. § 63-30-5(1) (2003), which states:

Immunity from suit of all government entities is waived as to any contractual obligation. Actions arising out of contractual rights or obligations shall not be subject to the requirements of Sections 63-30-11, 63-30-12, 63-30-13, 63-30-14, 63-30-15, or 63-10-19.

Statement of the Case

This case comes to the Court of Appeals as a result of the district court's dismissal of Plaintiff's complaint under Utah R. Civ. P. 12(b)(6). The district court determined that Plaintiff had not provided notice under the Governmental Immunity Act and could not, therefore, proceed. This appeal follows.

Plaintiff was an employee of Defendant Layton City. Plaintiff, in her complaint, alleged that she was constructively terminated in violation of the Defendant's written policy manual and in violation of her contractual rights of

good faith and fair dealing. Because Plaintiff's complaint sounded exclusively in contract, compliance with the notice provisions of the Governmental Immunity Act has been waived by the plain terms of the Act itself. Utah Code Ann. § 63-30-5(1).

Statement of Facts

1. Plaintiff was constructively terminated from her employment at Layton City on 2 July 2001. She had been employed for fourteen years as a police dispatcher.
2. Plaintiff filed a Complaint on 14 March 2002 in the Second Judicial District Court for Davis County, Case No. 020800412.
3. Defendant removed the case to Federal Court asserting that Plaintiff was attempting to assert an equal protection claim under 42 U.S.C. §1983. No such cause of action pleaded or attempted. Ultimately, the United States District Court dismissed the removed case since there was no basis for federal jurisdiction.
4. After the case was dismissed, Plaintiff immediately refiled her complaint in Second District Court for Davis County, Case no. 020700620. Exhibit B.

5. After Plaintiff filed its new complaint, Defendant moved to dismiss the case under Utah R. Civ. P. 12(b)(6) for failure to comply with the notice requirements of the Utah Governmental Immunity Act. This was the first time Defendant had raised such an issue.
6. Plaintiff's complaint alleged that she was terminated in violation of an employment contract, as contained in Defendant's policy manual. Plaintiff also alleged that her constructive termination was in violation the covenant of good faith and fair dealing. Exhibit B, Complaint.
7. After briefing¹, the District Court, without issuing any memorandum decision, and without informing Plaintiff, ruled in favor of Defendant and granted the Motion to Dismiss. The court's decision was communicated solely to Defendant's counsel by the court clerk. The mechanism of communication is evidenced by the cover letter Defendant's counsel submitted to Plaintiff with the draft order. See Exhibit C.

¹Significantly, Defendant filed its motion to dismiss and memorandum citing to a number of Utah immunity cases, virtually all of which were tort cases. Defendant did not cite or analyze the contract provision of the Governmental Immunity Act. Plaintiff's memorandum in opposition, conversely, raised the contract provision and provided analysis. Defendant filed no reply memorandum to Plaintiff's briefing and thus, provided the trial court with no contrary analysis and did not preserve any counterarguments in the record.

8. No notice of the court's decision was ever provided by the Court to Plaintiff or Plaintiff's counsel.
9. The Court entered the Order prepared by Defendant on 19 February 2003, from which Plaintiff timely appeals. Exhibit A.

Summary of Argument

Plaintiff was constructively terminated from her employment with Defendant Layton City. Following her termination, Plaintiff sued the city for breach of its contractual obligations. Under the plain language of the Governmental Immunity Act, immunity was waived for Plaintiff's claim and compliance with the terms of the Act was also waived. The district court's determination –without analysis– that Plaintiff's claims were barred by the Governmental Immunity Act was incorrect as a matter of law. The statutory language is clear, as are the decisions of courts interpreting it. Plaintiff's claims should be allowed to proceed. The district court's decision should be reversed and this matter remanded for further proceedings.

Argument

I. Under the Plain Language of the Utah Government Immunity Act, Plaintiff Was Not Required to Comply with Statutory Notice Requirements.

Plaintiff's complaint sounds in contract. Her claims are for a constructive termination in violation of the Defendant's written policy manual and the covenant of good faith and fair dealing. A contract claim could not be more clearly stated. Claims against municipalities, including contract claims, are subject to the terms of the Utah Governmental Immunity Act, Utah Code Ann. §§63-30-1, et seq. (2003). Utah Code Ann. § 63-30-3(1) (2003) provides for a general claim of immunity, subject to the exceptions detailed in the Act: "Except as may be otherwise provided in this chapter, all governmental entities are immune from suit for any injury which results from the exercise of a governmental function..."

The Act contains numerous areas of the law for which sovereign immunity is waived. For example, the Act waives immunity for actions involving possession or title to real or personal property. Utah Code Ann. § 63-30-6 (2003). The Act waives immunity for certain cases of negligence. Utah Code Ann. §§ 63-30-7, 63-30-10 (2003). The Act also waives immunity from suit in actions involving injuries sustained from unsafe public roads and buildings. See, Utah Code Ann. §§ 63-30-8, 63-30-9 (2003). As to each of the foregoing sections, however,

persons desirous of pursuing a claim against a governmental entity must still comply with the notice requirements set forth in the Act.

Contract claims are different. The Act provides, “Immunity from suit of all governmental entities is waived as to any contractual obligations. Actions arising out of contractual rights or obligations shall not be subject to the requirements of Section 63-30-11, 63-30-12, 63-30-13, 63-30-14, 63-30-15, or 63-30-19.” Utah Code Ann. § 63-30-5(1) (2003).² Under this section, immunity from suit is waived as to any actions against governmental entities sounding in contract. Significantly, not only is sovereign immunity waived by §63-30-5(1), but compliance with all of the notice and claim provisions contained in the Act is also waived.

The Utah Supreme Court has held that the “Governmental Immunity Act must be strictly applied.” See, Hall v. Utah State Dep’t of Corrections, 2001 UT 34, ¶14, 24 P.3d 958. (Citations omitted.) Statutes should also be construed to “evinced the true intent and purpose of the Legislature [as expressed through] the plain language of the Act,” and courts should “avoid interpretations that will

²The only exception to the waiver of actions sounding in contract involves the Division of Water Resources under Utah Code Ann. § 63-30-5 (2) and is not applicable to the case at bar.

render portions of a statute superfluous or inoperative.” Id. at ¶15. (Citations omitted.) The District Court’s decision reads Utah Code Ann. § 63-30-5(1) out of the Act and is therefore improper.

Given the numerous diverse areas in which the Act waives immunity or compliance with the notice provisions of the Act, the proper analytical framework would include: (1) A consideration of the claim, as set forth in the Complaint, without reference to the Act or any governmental entity to determine the actual nature of the claim asserted, i.e., contract, negligence, property, etc.; (2) a categorization of the claim as actually asserted; (3) a review of the Act to see whether immunity has been waived and whether compliance with the Act has been waived; and (4) an application of the plain terms of the Act to the actual claim. It is essential to the proper application of the Act to engage in a clear, deliberative analysis to categorize, analyze, and determine governmental immunity claims. See, Camas Colorado, Inc. v. Board of County Commr’s, 36 P.2d 135, 138 (Colo. Ct. App. 2001)(holding that, under Colorado’s immunity act, courts should analyze the claim itself and determine, based upon a classification of the claim, whether governmental immunity applies). The record fails to reveal that the trial court engage in any such deliberation.

Other courts have demonstrated the proper analysis. For example, the North Carolina Court of Appeals analyzed a claim for unpaid wages, determined that such claim arose from a contractual right, and that therefore, sovereign immunity was waived under an immunity statute similar to Utah's. Paquette v. County of Durham, 573 S.E.2d 715, 718 (N.C. Ct. App. 2002). In another case, a court concluded that a claim for money had and received, based upon a faulty civil forfeiture, sounded in contract for immunity analysis purposes. Karpierz v. Easley, 31 S.W.2d 505, 511 (Mo. Ct. App. 2000).

In this matter, the district court engaged in no such analysis and made no findings, instead making the bald assertion, "The claims plaintiff has asserted in her Complaint dated November 25, 2002, are barred by the Governmental Immunity Act."³ (See, Exhibit A, ¶2.) This conclusion is unsupported by the evidence and is incorrect as a matter of law. Analysis of the claims presented in Plaintiff's Complaint dictates the opposite outcome on this question. The

³It is significant to note that Plaintiff/Appellant did not have the benefit of even knowing the district court had made a decision. In a strange procedure, the district court informed Defendant's counsel of its decision. The only notice Plaintiff had of the decision was the draft copy of the order sent out by Defendant's counsel. See Letter, Exhibit C. While there is was no actual impropriety here, it is difficult to explain to non-lawyers that such a procedure is fair and transparent. Such an approach is certainly ill-advised and fairly raises the appearance of impropriety to litigants and the public.

Complaint makes specific contractually based allegations regarding Plaintiff's use of sick leave, accounting for hours, and other contractual matters. (See, Exhibit B, ¶¶ 4-11.) The Complaint alleges that Defendant violated its own written personnel policies, which have contractual significance, in its treatment of Plaintiff. (See, Exhibit B, ¶¶12-13, 17.) The Complaint also alleges that given the policy, Plaintiff was treated unfairly, thus implicating the city's contractual obligation of good faith and fair dealing. (See, Exhibit B, ¶17.) Finally, Plaintiff's Complaint sought damages that were contractual in nature. Indeed, Plaintiff made no tort claims whatsoever against the Defendant. Its only claims were related to Plaintiff's contractual relationship with Layton City. (See, Exhibit B.)

Given the nature of Plaintiff's claims, there is only one possible conclusion under the plain language of the Government Immunity Act. Plaintiffs' cause of action sounds in contract. Therefore, Utah has waived immunity, as well as waived any need for Plaintiff to comply with the notice requirements demanded of other claimants under the Governmental Immunity Act. Any other interpretation would render the notice waiver contained in Utah Code Ann. § 63-30-5(1) superfluous and inoperative. The district court erred in so doing; its decision should be reversed and this matter remanded.

II. Court Interpretation of Governmental Immunity Supports Plaintiff's Interpretation of the Statute.

Utah's appellate courts have regularly faced issues related to the Governmental Immunity Act. In their decisions, these courts have recognized that Utah has waived immunity for contractual obligations, including the implied covenant of good faith and fair dealing. See, Brown v. Moore, 973 P.2d 950, 954 (Utah 1998); Brown v. Weis, 871 P.2d 552, 563-64 and n.18 (Utah Ct. App. 1994). Utah Appellate Courts have explicitly noted that suits arising against governmental entities, like Layton City, arising out of contract do not need to be preceded by the notice provisions otherwise applicable under the Governmental Immunity Act. See, Neilson v. Gurley, 888 P.2d 130, 135 (Utah Ct. App. 1995).

Recently, this Court concluded that a passenger injured while riding in a State-owned automobile was entitled to assert a claim without satisfying the notice and claim provisions of the Governmental Immunity Act. See, Neel v. State, 854 P.2d 581, 582-83 (Utah Ct. App. 1993). This Court concluded that the passenger/plaintiff was the third party beneficiary of the State's "contractual" obligation to provide PIP benefits as a self-insurer. Id. See, Stewart ex rel. Womack v. City of Jackson, 804 So.2d 1041, 1044 (Miss. 2002)(similar holding under arising from third party beneficiary analysis). In another matter, the Utah

Supreme Court concluded that §63-30-5 governed an unsigned contract for a right-of-way. See, Farmers New World Life Ins. Co. v. Bountiful City, 803 P.2d 1241, 1248 (Utah 1990). In that case, the court concluded that even though the city did not sign the contract, by accepting the grant and paying for an easement, the city entered into a contract. The Court concluded that the contract waiver provision of §63-30-5 applied even though the easement was for flood control purposes. Id. It is clear that cases brought before the courts sounding in contract have been consistently held to be governed by § 63-30-5.

Indeed, those cases where the courts have held notice requirements to be an issue are distinguishable from the case *sub judice*. For example, in Hall, a Utah Department of Corrections officer settled a claim relating to his treatment while employed, an allegedly unlawful demotion. He received a payment for this settlement. Hall, at ¶3. Subsequently, he resigned from the department and alleged that the department had made disparaging reports about him to prospective employers, which prevented him from obtaining employment. Id. at ¶5. The court concluded that these *tort* based claims were subject to the notice provisions of the Governmental Immunity Act. Id. at ¶¶21-26. This Court took a similar approach in Broadbent v. Board of Education of Cache County, 910 P.2d

1274, 1280 (Utah Ct. App. 1996), disposing of Plaintiff's *tort* claims because of the Governmental Immunity Act.

There is also support for Plaintiff's position in case law from other jurisdictions. Garcia v. Middle Rio Grande Conservancy District, 918 P.2d 7 (N.M. 1996), is one such example. New Mexico, like Utah, has a general statutory scheme creating governmental immunity. In addition, New Mexico has an exception to the rule established in N.M. Stat. Ann. § 37-1-23, through which the state has waived immunity from suit for actions based on written contracts. Garcia, like the instant matter, involved a dispute over violations of a government's entities written employment policies. See, Garcia, 918 P.2d at 9. The governmental entity challenged the suit arguing that it was immune because of sovereign immunity. However, the court held that the nature of the defendant's policies, created an implied employment contract, which fell squarely under the statutory exception. Id. at 11-13.

Harris v. State Personnel Bd., 216 Cal. Rptr. 274 (Ct. App. 1985), is another example. California's Tort Claims Act establishes immunity from suit, and contains notice requirements similar to those in Utah's code. Id. at 276. However, like Utah, contract actions are expressly exempted from California's immunity scheme by Cal. Gov't. Code §814. Id. In Harris, a state employee

brought a claim based on his termination and appeal rights. Id. at 275. The Harris court noted that the Tort Claims Act excluded actions arising on contract, and noted that the plaintiff's dispute, centered in his employment contract, did not sound in tort, and was therefore exempt from statutory notice requirements. Id. at 276.

A similar example is Tennyson v. School District of Menomonie Area, 606 N.W.2d 594 (Wis. Ct. App. 1999). In Tennyson, a governmental employee claimed she was constructively terminated. The governmental agency claimed that the constructive termination claim was a tort claim masquerading as a contract claim. The Wisconsin Court of Appeals rejected this argument out of hand, holding that a constructive termination sounded in contract and therefore governmental immunity was waived under Wisconsin's immunity statute. Id. at 602 n.9. Even when a claim would support both a contract and a tort claim, at least one court has held that only the tort claim is governed by a state immunity statute which waives immunity for contract but not tort claims. Koenig v. City of South Haven, 597 N.W.2d 99, 104 (Mich. 1999).

Like Garcia, Harris, and Tennyson, the instant matter is a cause of action centered on Plaintiff's rights under her employment contract as contained in Defendant's written policies. Like New Mexico, California and Wisconsin, Utah

expressly excludes contractual obligations from its governmental immunity scheme. Other states have reached the same conclusion. CSX Transp., Inc. v. City of Garden City, 325 F.3d 1236, 1242 n.6 (11th Cir. 2003)(holding Georgia had waived sovereign immunity for contract claims); J.P. Asset Co., Inc. v. City of Wichita, 70 P.3d 711, 715 (Kan. Ct. App. 2003)(holding that only a tort claimant, not a contract claimant, need comply with the notice requirements Kansas' immunity act). Causes of action against governmental entities based on employment contracts are excluded from the Governmental Immunity Act's scope, and any notice requirements are waived.

Since the Governmental Immunity Act squarely waives immunity for contract claims *and* squarely waives compliance with the notice and claim provisions of the Act, Plaintiff was not required to provide any notice or claim prior to filing her complaint. Defendant's invocation of the Act was baseless. The trial court's determination was erroneous. The trial court's dismissal of Plaintiff's complaint should therefore be reversed and this case remanded.

III. The Utah Governmental Immunity Act Should Be Liberally Construed in This Case

While Utah's appellate courts have routinely held that compliance with the Utah Governmental Immunity Act must be strict, the Act itself should be liberally construed to effectuate its purposes. The Act clearly expresses an intent to not require compliance with the notice requirements for "any contractual obligation." Utah Code Ann. § 63-30-5(1)(2003). This intent should be broadly and liberally construed to effectuate the Legislature's purpose in modifying the common law.

"It is generally true that the Utah Governmental Immunity Act expanded government liability." Condemarin v. University Hospital, 775 P.2d 348, 351 (Utah 1989). The Utah Governmental Immunity Act was therefore in derogation of the common law. By legislative action, Utah has rejected the canon of interpretation that provides that statutes in derogation of the common law are to be strictly construed; the statutes of the state of Utah are to be liberally construed with a view to accomplishment of the objects of the statutes and to promote justice. Utah Code Ann. § 68-3-2 (2003). This section was expressly intended to abrogate the common law rule of strict construction of statutes which are in derogation of the common law. See In Re Garr's Estate, 86 P. 757, 761 (Utah 1906).

Under this case, the contract provision of the immunity act, § 63-30-5(1), should be liberally construed. Camas Colorado, 36 P.3d at 138. In this case, the trial court applied the statute so narrowly as to ignore its express provisions relating to contracts. Assuming the trial court analyzed the nature of the Plaintiff's claims, as contained in the complaint, its analysis was so crabbed and unsparing that it violated the rule that statutes in derogation of the common law are to be liberally construed. The trial court's decision -there was no analysis- was erroneous. It should be reversed.

Conclusion

Under the plain language of the Utah Governmental Immunity Act, immunity is waived for claims arising out of the state's contractual obligations. Plaintiff filed claims against Layton City based on her employment contract with the city. These claims are wholly permissible under the Governmental Immunity Act, and because of their contractual nature, are exempt from the notice and claim requirements of the act. Moreover, the Act should, in this respect, be liberally construed to effectuate the Legislative purpose of allowing contract claims to proceed without compliance with the notice and claim provisions of the Act. Only this analysis is faithful to the terms of the Act. The decision of the

District Court should be reversed and this case remanded for further proceedings..

DATED this 11 day of July, 2003.

Stevenson & Smith , P.C.
Attorneys for Plaintiff/Appellant

By: 
Brad C. Smith

Certificate of Service

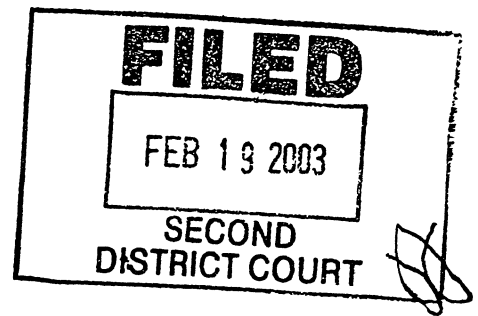
I HEREBY CERTIFY that on the 11 day of July, 2003, I mailed,
postage prepaid, two true and correct copies of the foregoing Brief of Appellant to
the following:

Camille Johnson
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Exhibit A

Findings and Order



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IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY

STATE OF UTAH

MACHELLE CANFIELD,

FINDINGS AND ORDER

Plaintiff,

Case No. 020700620

vs.

Judge Michael G. Allphin

LAYTON CITY, a Utah municipality,

Defendant.

The Court, having reviewed defendant Layton City's Motion to Dismiss and Memorandum in Support, together with plaintiff's Memorandum in Opposition to Motion to Dismiss, and being fully advised in the matter hereby finds:

1. Plaintiff did not file a Notice of Claim against Layton City pursuant to the Utah Governmental Immunity Act; and
2. The claims plaintiff has asserted in her Complaint dated November 25, 2002, are barred by the Governmental Immunity Act.

Ex A

Based upon the foregoing findings, this Court hereby orders plaintiff's Complaint dismissed with prejudice, each party to bear its own attorneys' fees and costs.

DATED this 12th day of Feb, 2003.

BY THE COURT:

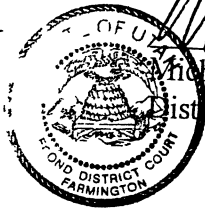
STATE OF UTAH }
COUNTY OF DAVIS } SS

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN

DATED THIS 24 Feb 03
ALYSON E. FARR
CLERK

BY Corie Clayman DEPUTY

PAGE 2 OF 3



Michael G. Allphin
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing proposed **FINDINGS AND ORDER** was served on the parties listed below by first class mail, postage prepaid, this 30th day of January, 2003.

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Exhibit B

Complaint

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Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT FOR DAVIS COUNTY
STATE OF UTAH

MACHELLE CANFIELD,	:	
Plaintiff,	:	COMPLAINT
vs.	:	Civil No. _____
	:	Judge: _____
LAYTON CITY, a Utah	:	
municipality,	:	
Defendant.	:	

Comes now Plaintiff, by and through counsel, and complains
and alleges of Defendant as follows:

PARTIES, JURISDICTION & VENUE

1. Machelles Canfield is a resident of Weber County, State of Utah.
2. Defendant Layton City, is a Utah municipality, located in Davis County, State of Utah.
3. Venue and jurisdiction are proper in the above-entitled court.

Ex B

FACTUAL ALLEGATIONS

4. Plaintiff was employed as a police department dispatcher for Defendant, Layton City. Prior to July 2001, Plaintiff had been employed by Defendant for in excess of thirteen (13) years. During that period of time she was a police dispatcher. Approximately six months prior to the termination of her employment, Plaintiff was placed under the charge of a new supervisor, Lisa Murdock.
5. Ms. Murdock unfairly and unjustly scrutinized the work performance of Plaintiff and created a hostile, tense and stressful environment, in an area that is already stress ridden.
6. On 12 June 2001, Plaintiff left work to take her daughter to the doctor's office. Plaintiff reported said hours on her time sheet.
7. Due to the stress situation, Plaintiff decided it was best not to go back to work until Lt. Moyes had returned and we could resolve the situation. Plaintiff spoke with Lt. Moyes on Monday morning, June 11th, and he had asked if Plaintiff should be alright until he got back. Plaintiff thought she would.
8. On Tuesday, the 12th, Plaintiff left 4.5 hours early, and that evening she called dispatch to have her shift filled for the next day.
9. Lisa called Plaintiff back and said that Plaintiff needed

be at work. Plaintiff went to work at 7:00 a.m. When Plaintiff came in to work later in the morning, Lisa asked if she needed to leave. Plaintiff said if she could skip lunch and go home early it would be better. Lisa said she would see what she could do since she is the lunch relief. Lisa came up several hours later and told Plaintiff to go to lunch. Plaintiff assumed that meant she was not going home early.

10. In the meantime Plaintiff's daughter called on her cell phone and said that her knee and ankle were hurting from the basketball camp that morning. (She has had other ankle injuries).
11. At 2:00 p.m. Lisa came back to dispatch and told Plaintiff she could leave. Plaintiff was surprised. Plaintiff was walking out the door and Lisa said she would need a doctor's excuse for the one hour she was leaving early.
12. Prior to these incidents, in December, 2000, after being Plaintiff's supervisor for only a few weeks, Lisa Murdock demanded that Plaintiff provide medical documentation of sick leave used at that time. Plaintiff did not provide said documentation, although she had it, because she felt that it was an improper deviation from existing City policy.
13. Plaintiff is informed and believes, and thereupon alleges, that numerous employees of City have used sick leave in the

same manner as Plaintiff but have not been subject to any disciplinary proceeding whatsoever. Accordingly, Plaintiff has been treated differently from and more severely than other employees of Defendant, all in contravention of Defendant's specific written policy.

14. Officers, employees, agents or servants of Defendant confronted Plaintiff with the allegation that Plaintiff had misused sick leave and gave her an ultimatum that she resign from the City or face termination. Because of her fear that a termination would preclude her from obtaining future gainful employment, Plaintiff and reluctantly and against her will accepted termination.
15. Plaintiff is informed and believes and thereupon alleges that other employees of City have been subject to allegations regarding misuse of sick leave and/or other instances in which they have been accused, rightly or wrongly, of stealing city property, misusing city time or similar allegations.
16. Plaintiff is informed and believes and there upon alleges that said individuals have not been punished as severely as she has, have not been terminated, or not given an ultimatum, but instead, were given employee warnings, probation, and other punishment.
17. Defendant's personnel policy specifically require that Plaintiff be treated fairly and that any punishments or

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discipline given to her be proportionate to the offense alleged. Defendant's punishment of Plaintiff, including its termination of her, was disproportionate to the acts alleged, even if the acts were taken as true.

WHEREFORE, Plaintiff prays judgment against Defendant as follows:

1. For damages in an amount to be proven at trial.
2. For reinstatement or other appropriate remedy.
3. For costs of court and attorney's fees as the same may be allowed by law.
4. For such other and further relief as the court deems just and proper.

DATED this 25 day of November, 2002.



Brad C. Smith
Attorney for Plaintiff

Plaintiff's Address:
3552 W. 5000 S.
Roy, Utah 84067

Exhibit C

Letter and Proposed Findings and Order

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January 30, 2003

VIA HAND-DELIVERY

Honorable Judge Michael G. Allphin
District Court Judge
Second District Court
P.O. Box 769
Farmington, UT 84025


Re: *Machelle Canfield v. Layton City*
Case No. Case No. 020700620

Dear Judge Allphin:

Pursuant to a request from Terry in your office, we submit the enclosed Findings and Order for your consideration.

Very truly yours,

SNOW, CHRISTENSEN & MARTINEAU


Camille N. Johnson

CNJ/cah
Enclosure
cc: Brad C. Smith
Gary Crane
James Fisher

N:\13607520\Corresp\Judge Allphin 1a.wpd

EXC

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IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY

STATE OF UTAH

MACHELLE CANFIELD,

Plaintiff,

vs.

LAYTON CITY, a Utah municipality,

Defendant.

FINDINGS AND ORDER

Case No. 020700620

Judge Michael G. Allphin

The Court, having reviewed defendant Layton City's Motion to Dismiss and Memorandum in Support, together with plaintiff's Memorandum in Opposition to Motion to Dismiss, and being fully advised in the matter hereby finds:

1. Plaintiff did not file a Notice of Claim against Layton City pursuant to the Utah Governmental Immunity Act; and
2. The claims plaintiff has asserted in her Complaint dated November 25, 2002, are barred by the Governmental Immunity Act.

Based upon the foregoing findings, this Court hereby orders plaintiff's Complaint dismissed with prejudice, each party to bear its own attorneys' fees and costs.

DATED this _____ day of _____, 2003.

BY THE COURT:

15/

Michael G. Allphin
District Court Judge

2-19-03 entered