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M. Dalton Cannon and Patricia Cannon v. The University of Utah : Unknown

Utah Court of Appeals

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Utah Attorney General; Paul A. Van Dam; Brent A. Burnett; Attorneys for Defendant/Appellant. Van Cott, Bagley, Cornwall & McCarthy; Michael F. Richman; John W. Andrews; Attorneys for Plaintiffs/Appellants.

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LAW OFFICES OF

VAN COTT, BAGLEY, CORNWALL & MCCARTHY

A PROFESSIONAL CORPORATION

SUITE 1600

50 SOUTH MAIN STREET

SALT LAKE CITY, UTAH 84144

TELEPHONE (801) 532-3333

FACSIMILE (801) 534-0058

TELEX 453149

ADDRESS ALL CORRESPONDENCE TO

POST OFFICE BOX 45340

84145-0450

WRITER'S DIRECT DIAL NUMBER

DAVID E. SALISBURY
M. SCOTT WOODLAND
NORMAN S. JOHNSON
STEPHEN D. SWINDLE
ROBERT D. MERRILL
WILLIAM G. FOWLER
GREGORY P. WILLIAMS
ALAN F. MCHAM
BRENT J. CHAUQUE
E. SCOTT SAVAGE
KENNETH W. YEATES
RAND L. COOK
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J. KEITH ADAMS
THOMAS T. BILLINGS
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MICHAEL F. RICHMAN
DANNY C. KELLY
STEVEN D. WOODLAND
RICHARD H. JOHNSON, II
H. MICHAEL KELLER
BRENT D. CHRISTENSEN
ELIZABETH A. WHITSETT
JEFFREY E. NELSON
PATRICIA M. LEITH
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ERIC C. OLSON
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S. ROBERT BRADLEY

JON C. CHRISTIANSEN
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CASEY K. MCGARVEY
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2404 WASHINGTON BOULEVARD
OGDEN, UTAH 84401
(801) 394-5783

314 MAIN STREET
PARK CITY, UTAH 84060
(801) 649-3889

3549 N. UNIVERSITY AVENUE
PROVO, UTAH 84604
(801) 375-5666

100 WEST LIBERTY
RENO, NEVADA 89501
(702) 333-6800

OF COUNSEL
LEONARD J. LEWIS
CLIFFORD L. ASHTON
DAVID L. GILLETTE
RICHARD K. SAGER
JAMES P. COWLEY
JOHN CRAWFORD, JR.
WILLIAM L. FILLMORE
MARLIN K. JENSEN
GEORGE M. McMILLAN

UTAH COURT OF APPEALS

BRIEF

September 1, 1993

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COURT OF APPEALS

Ms. Mary T. Noonan
Clerk, Utah Court of Appeals
230 South 500 East, #430
Salt Lake City, Utah 84102

Re: M. Dalton Cannon & Patricia Cannon v. University
of Utah, Appeal No. 92-0377

Dear Ms. Noonan:

Pursuant to Rule 24(j), U.R.A.P., appellants Dalton and Patricia Cannon wish to inform the Court of Appeals of significant recent authority supporting their position in this appeal. This authority pertains to the discussion set forth at pages 14-20 of the Cannons' principal brief in this matter. As more fully discussed in the Cannons' brief, the Cannons were injured when hit by a vehicle while using a pedestrian crosswalk on the University of Utah campus immediately prior to a men's basketball game. The Cannons contend that two University police officers who had been assigned to protect pedestrian safety at the crosswalk negligently failed to stop vehicular and/or pedestrian traffic at the crosswalk, resulting in the accident that caused their injuries.

The trial court's grant of summary judgment in this case was based upon its conclusion that the so-called "public duty" doctrine ruled out the existence of a duty of care by the officers towards the Cannons. In Higgins v. Salt Lake County, 855 P. 2d. 231 (Utah 1993), the Utah Supreme Court addressed the existence of a duty of care in light of the "public duty" doctrine. The Supreme Court in Higgins found that a county mental health facility owed a duty of care to a child who was stabbed by a released mental patient, even though the victim had not been individually threatened by the patient. The Court instead found a duty of care to exist where the defendants could have ascertained the likelihood of such danger. The Supreme Court held:

Ms. Mary T. Noonan
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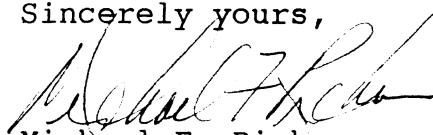
[W]e will find a special relationship and consequent duty when a defendant knew of the likely danger to an individual or distinct group of individuals or when a defendant should have known of such danger. 855 P. 2d. at 238 (emphasis added).

In the case now before the Court of Appeals, the University of Utah police officers admitted that they had been assigned to protect pedestrian safety at the crosswalk where the Cannons were hit, admitted that in order to do so they needed to be out of their car stopping traffic, and admitted that they were instead sitting in their car, out of the rain. R. 327, 329. At least one officer also expressly stated that he was aware that the crossing area where the accident occurred was highly dangerous, placing this case squarely within the Supreme Court's ruling in Higgins. Appellant's Reply Brief at 8.

The Higgins case provides a clear and recent expression of the Utah Supreme Court's determination that the public duty doctrine does not bar a plaintiff's claims where the defendant did or should have recognized danger to an identifiable group. Under the facts of this case, Higgins supports a finding that a special relationship and a duty of care are present, requiring reversal of the trial court's grant of summary judgment in favor of the University.

Please contact us if the Court has any questions about this matter.

Sincerely yours,



Michael F. Richman

MFR

cc: Brent A. Burnett