

2003

Mark Cook and Nanalee Cook v. City of Moroni : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MARK COOK and NANALEE COOK : Civil No. 20030383

Appellants, :

vs. :

CITY OF MORONI, :

Appellee. :

:

BRIEF OF APPELLEE

Appeal from a Judgment entered in the Sixth Judicial District Court Sanpete
County, State of Utah Honorable Judge K. L. McIff, Presiding

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UTAH APPELLATE COURTS
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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	2
STATUTES WHOSE INTERPRETATION ARE DETERMINATIVE OF THE APPEAL.....	3
STATEMENT OF THE CASE.....	4
SUMMARY OF ARGUMENT.....	5
ARGUMENT.....	6
CONCLUSION.....	11

TABLE OF AUTHORITIES

Cases

<u>Laney v. Fairview City</u> , 2002 UT 79	10, 11
<u>Ledfors v. Emery School District</u> , 849 P.2d 1162, 1164 (Utah 1993).....	8
<u>Prows v. State</u> , 822 P.2d 764 (Utah 1991).....	6
<u>Rocky Mountain Thrift v. Salt Lake City</u> , 784 P.2d 459 (Utah 1989).....	9,12,13
<u>Standiford v. Salt Lake City Corp.</u> , 605 P.2d 1230 (Utah 1980).....	12

Statutes

Utah Code Ann. § 63-30-2(4)(a)	8,11
Utah Code Ann. § 63-30-1	3,4,7
Utah Code Ann. §§ 63-30-3(1).....	3,8
Utah Code Ann. § 63-30-3(3).....	8
Utah Code Ann. § 63-30-3(4).....	3,4,7
Utah Code Ann. §§ 63-30-10(13) & (14)	3,4,9

STATUTES WHOSE INTERPRETATION
ARE DETERMINATIVE OF THE APPEAL

The following statutes are determinative of the appeal.

Utah Code Ann. § 63-30-3(1). “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, governmentally-owned hospital, nursing homes, or other governmental health care facility, and from an approved medical, nursing, or other professional health care clinical training program conducted in either public or private facilities.”

Utah Code Ann. § 63-30-3 (4). “The management of flood waters and other natural disasters and the construction, repair and operation of flood and storm systems by governmental entities are considered to be governmental functions, and governmental entities and their officers and employees are immune from suit for any injury or damage resulting from those activities.”

Utah Code Ann. § 63-30-10. “Immunity from the suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of employment except if the injury arises out of, in connection with, or results from: . . .

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

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

STATEMENT OF THE CASE

This is a negligence action against Moroni City a Utah municipal corporation. The complaint alleges that the Plaintiffs’ home was flooded and that the cause of the flood was the negligence of the City in designing and installing an undersized drainage system.

The District Court dismissed the complaint upon motion of the defendant made pursuant to Rule 12(b)(6) of the Utah Rules of Civil Procedure. The rationale for the dismissal was that, under the facts alleged in the complaint, the Defendant was immune from liability pursuant to the Utah Governmental Immunity Act, Utah Code Ann. §§ 63-3-1 et seq.

Since this matter was dismissed pursuant to a Rule 12(b)(6) the facts alleged in the complaint are presumed to be true for the purposes of the motion and this appeal. The facts relevant to the issues presented for review are as follows:

1. Plaintiffs are residents of the City of Moroni. (Complaint ¶1, Record on Appeal page 1).
2. Moroni City is a Utah municipal corporation. (Complaint paragraph 2, Record on Appeal page 1).

3. The Plaintiffs are owners of real property located at 12 East Main Street, Moroni, Utah. (Complaint paragraph 7, Record on Appeal page 2).
4. The Plaintiffs' property is located at the bottom of the slope of a street where water runs down. (Complaint paragraph 8, Record on Appeal page 2).
5. On or about the 4th day of August, 2001 a flood occurred at the property of the Plaintiffs. (Complaint paragraph 9, Record on Appeal page 2).
6. The cause of the flooding was that a 4 inch drainage line was undersized and could not handle the water flow. (Complaint paragraph 10, Record on Appeal page 2).
7. As a result of the undersized drainage line the Plaintiffs' property was flooded. (Complaint paragraph 11, Record on Appeal page 2).
8. The Defendant city was the entity which designed and installed the faulty 4 inch drainage system. (Complaint 12, Record on Appeal page 2).
9. The Plaintiffs' property sustained considerable damage as a result of the flooding from the undersized pipe. (Complaint paragraph 13, Record on Appeal page 3).

SUMMARY OF ARGUMENT

The Plaintiffs' claims arose from the Defendant's operation and design of a flood or storm drainage control system. The City is immune from liability for

claims arising from the construction, design, operation, repair or management of a flood or storm water system.

Immunity from liability for claims arising out of the design and operation of a flood or storm drainage system does not violate the open courts provisions of the Utah State Constitution.

ARGUMENT

POINT ONE

THIS CLAIM ARISES OUT OF MORONI CITY'S DESIGN AND OPERATION OF A STORM OR FLOOD CONTROL SYSTEM AND THE MANAGEMENT OF FLOOD WATERS

When reviewing an appeal taken from an dismissal pursuant to Rule 12(b)(6) of the Utah Rules of Civil Procedure the appellate court must accept the factual allegations in the complaint as true and consider all reasonable inferences to be drawn from those facts in a light most favorable to the plaintiff. See Prows v. State, 822 P.2d 764 (Utah 1991). However, this does not mean that the Plaintiffs may make new allegations of facts in their Brief that are not included in the complaint. Plaintiffs' Brief presents facts in the "Background" section that are not supported by a citation to the Record on Appeal and are not alleged in Plaintiffs' complaint. These facts should not be considered by this Court in this appeal.

The complaint alleges that the direct cause of Plaintiffs' damages is a flood and that the proximate cause of the damages was that "Moroni City was the entity which designed and installed the faulty four-inch drainage system." (Complaint paragraph 12, Record on Appeal page 2). The Plaintiffs are alleging that Moroni City damaged their property by its negligent management of flood waters. They have alleged that the "cause of the flooding was that the 4-inch drainage line was undersized and could not handle the water flow." (Complaint paragraph 10, Record on Appeal page 2).

Because Plaintiffs are alleging they were damaged by the negligent design of a flood control device or drainage system, the only question on appeal is whether the City is immune from such claims under the Utah Governmental Immunity Act, Utah Code Ann §§ 63-30-1 et seq..

POINT TWO

THE DEFENDANT IS IMMUNE FROM LIABILITY FOR CLAIMS ARISING FROM THE NEGLIGENT MANAGEMENT OF FLOOD AND STORM WATER SYSTEMS

The Utah Supreme Court has established a three-step analysis for determining whether a government entity is entitled to immunity under the Utah Governmental Immunity Act (hereinafter referred to as "Act"). To determine

whether immunity has been waived for a particular activity, three questions must be answered: (1) is the activity a governmental function for which blanket immunity has been granted in Utah Code Ann. § 63-30-3 of the Act; (2) if the activity is an immunized governmental function, is the blanket immunity waived in another section of the Act; and (3) if immunity has been waived, is there an exception to the waiver that would result in the retention of immunity despite the waiver. See Ledfors v. Emery School District, 849 P.2d 1162, 1164 (Utah 1993).

The first question, therefore, is whether flood and storm water control is a governmental function. This inquiry is mandated by Utah Code Ann. § 63-30-3(1), which establishes the general principle of governmental immunity subject to certain exceptions. "Except as may be otherwise provided in this chapter, all governmental entities are immune from any injury which results from the exercise of a governmental function." (Utah Code Ann. § 63-30-3(1)). The City qualifies for this blanket grant of immunity if the flooding of plaintiffs' property resulted from the exercise of a "governmental function". (See Utah Code Ann. § 63-30-2(4)(a)). The Act specifically provides that construction, repair, and operation of flood and storm systems are governmental functions. (See Utah Code Ann. § 63-30-3(3)). The Utah Supreme Court has determined that the operation of flood and

storm systems is a governmental function. See Rocky Mountain Thrift v. Salt Lake City, 784 P.2d 459 (Utah 1989).

The second issue is whether the Act provides an exception to that immunity. Utah Code Ann. § 63-30-10 provides a broad waiver of governmental immunity for negligent acts of an employee committed in the course and scope of employment. "Immunity from suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of employment" (Utah Code Ann. § 63-30-10).

The next question is whether the Act contains an exception to the waiver for negligence claims. Utah Code Ann. § 63-30-10 has several subsections that exclude certain activities from the waiver and thereby retain immunity. Subsections 13 and 14 are two exceptions that are applicable here. They state as follows:

Immunity from suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of employment except if the injury arises out of, in connection with, or results from: . . .

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

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

Utah Code Ann. §§ 63-30-10(13) & (14)

If the City or its employees were negligent as alleged in the complaint, they did so either in their “construction, repair, or operation of flood or storm system” or in the “management of flood waters.” Because Plaintiffs’ claims arise out of and resulted from either the management of flood waters or the repair or operation of flood or storm systems, the Defendant is immune from any liability on the claims.

POINT THREE

IMMUNITY FROM CLAIMS ARISING FROM THE OPERATION OF FLOOD AND STORM WATER SYSTEM DOES NOT VIOLATE THE UTAH STATE CONSTITUTION

The Plaintiffs have argued that this statutory grant of immunity should be ignored because of the open courts provisions of the Utah State Constitution, Article I, Section 11 of the Utah Constitution which reads as follows:

All courts shall be open, and every person, for an injury done to him in his person, property, or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this state, by himself or counsel any civil cause to which he is a party.

The Plaintiffs rely on the relatively recent case of Laney v. Fairview City, 2002 UT 79, for this argument. This reliance is misplaced and is based on an inaccurate reading of the Laney decision.

Laney stands only for the proposition that Utah Code Ann. § 63-30-2(4)(a) is unconstitutional as it affects municipal power systems. Laney at ¶71. Laney does not, as argued by Plaintiffs' brief, require this Court to let this matter proceed to trial to determine the standard of care for flood control systems. The Court, in Laney, found that the operation of a municipal power system was not a governmental function prior to the 1987 amendment to the Act and therefore the grant of immunity for claims arising out of the operation of a municipal power system was an unconstitutional violation of the open courts provisions of the State Constitution. The section of the State Code found unconstitutional by Laney (Utah Code Ann. § 63-30-2(4)(a)) is the section that generally defines governmental function for the purposes of the Governmental Immunity Act. This section was enacted in 1987 and broadly defines what a governmental function is for the purposes of granting immunity from suit for injury. If the same rationale used in Laney is applied in this case, Plaintiffs must prove that the Defendant's operation and maintenance of a flood and storm water system would not have been a governmental function prior to 1987 amendment to the Act.

Prior to the Legislature broadening the definition of governmental function in the 1987 amendment to the Act, the scope of immunity depended on whether the governmental activity complained of was found by the courts to be a governmental

function or a proprietary function. See Standiford v. Salt Lake City Corp., 605 P.2d 1230 (Utah 1980). Immunity only applied to injuries resulting from the exercise of a governmental function. The Immunity Act did not define what constituted a governmental function. Therefore the Utah Supreme court established a standard whereby a function could be considered a governmental function. The Standiford court found that the statute's language gave the Court the power to “understandably and logically” define the term governmental function. Standiford, *id.* at 1235. In Standiford, The Utah Supreme Court held that a governmental function must be "of such a unique nature that it can only be performed by a governmental agency or that it is essential to the core of governmental activity." Id. at 1236-37. This definition of the term governmental function was used to determine whether an activity was covered by the Act until the legislature redefined the term in the 1987 amendment.

The Utah Supreme Court has previously held that the operation of flood and storm drain systems is a governmental function and they did this without relying on the 1987 amendment to the Act. In Rocky Mountain Thrift Stores v. Salt Lake City, *supra*, the Utah Supreme Court held that flood control was a governmental function. The Court’s holding in Rocky Mountain Thrift Stores was based on the pre 1987 Standiford analysis of governmental function.

As the Utah Supreme Court in Rocky Mountain Thrift Stores stated:

First, operation of a flood control system... requires a breadth of coordination that cannot reasonably be obtained by private parties. Further, no private parties can deal with flood control, as they might sewage disposal, on an individual basis. Finally, the immediate threats posed to life and property by uncontrolled flooding makes its operations uniquely governmental, almost equivalent to police and fire protection.

* * *

We hold that the construction, operation, and maintenance of this system was and is a governmental function under the tests of Standiford and Johnson and that all of defendants' flood control activities in the instant case are covered by the Governmental Immunity Act. This is consistent with legislative intent subsequently revealed by the 1984 amendment to section 63-30-3. In addition, we note that the legislature in 1987 enacted its own definition of "governmental function," but we need not and do not rely on or consider that provision in this case. Rocky Mountain Thrift, supra at 462.

It is clear that the design and operation of flood and storm water facilities is a governmental function. Because the question of whether flood control and storm water control are governmental functions is an answered question by the Utah Supreme Court, the Laney decision is not relevant to this case and the District Court's granting of the Defendant's motion to dismiss should be upheld.

CONCLUSION

There are no facts alleged in the complaint that prevented the District Court from entering an order of dismissal. This is only a question of law. The complaint alleges damages from flood waters caused by an undersized city drainage system. Flood and storm water control is a governmental function. The Laney case does not apply. The Governmental Immunity Act still provides immunity to Moroni City for the claims made in the complaint. The District Court appropriately dismissed the case.

Dated this 19th day of April, 2004.

A handwritten signature in cursive script, reading "David L. Church", written over a horizontal line.

David L. Church
Attorney for Defendant/ Appellee

MAILING CERTIFICATE

The undersigned certifies that true and correct copies of the foregoing Brief were mailed, postage prepaid, this 19th day of April 2004 to the following:

SHAFFER LAW OFFICE
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A handwritten signature in cursive script, appearing to read "David Chaves", is written over a horizontal line.