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Graham S. Campbell v. Elmo Pack, William H. Page, Board of Education of Granite School District : Brief of Respondent

Utah Supreme Court

McKay and Burton; Attorneys for Respondent;
Hansen & Sumsion; Attorneys for Appellants;

IN THE SUPREME COURT OF THE STATE OF UTAH

DOUGLAS CAMPBELL, a minor, by GRAHAM S. CAMPBELL, his guardian ad litem,

GRAHAM S. CAMPBELL,
Plaintiffs and Appellants,

— vs. —

ELMO PACK, WILLIAM H. PAGE, BOARD OF EDUCATION OF GRANITE SCHOOL DISTRICT,
Defendants and Respondents.

Case No. 9951

Brief Of Respondent Board Of Education Of Granite School District

Appeal From an Order of Dismissal of the Third District Court in and for Salt Lake County
HONORABLE STEWART M. HANSON, *Judge*

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For convenience, the plaintiffs and appellants will be referred to as "Campbell" and the Board of Education of Granite School District as "the School District."

STATEMENT OF KIND OF CASE

This is an action brought by Campbell against the School District and others seeking to recover damages for injuries allegedly sustained while attending a metal

shop class at Olympus Junior High School, resulting from the alleged negligence of the School District and others.

DISPOSITION IN LOWER COURT

Pursuant to the motion of the School District, an order was entered by the District Court dismissing the complaint as to the School District.

RELIEF SOUGHT ON APPEAL

Campbell is seeking in this appeal to reverse the order of the District Court. The School District contends that the order of the District Court dismissing the action as to it should be affirmed.

STATEMENT OF FACTS

Campbell alleges essentially the facts as set forth in the appellants' brief. The motion of the School District to dismiss the complaint as to it was granted on the ground that the School District is immune from tort liability. It is from that order of dismissal that Campbell has appealed. It is the contention of the School District that the order should be affirmed.

ARGUMENT

POINT NO. I

THE SCHOOL DISTRICT IS IMMUNE FROM LIABILITY FOR NEGLIGENCE.

Counsel for the plaintiffs is doing nothing more than seeking judicial legislation. He admits that the law, as established in this jurisdiction, gives to the School District an immunity against his clients' claim. Nevertheless he is seeking in this appeal to have this Court do away with the doctrine of governmental immunity as it has been applied in this state for more than 43 years.

Over thirteen years ago, this Court considered precisely the same problem in the case of *Bingham* v. *Board of Education of Ogden City,* 118 Utah 582, 223 P. 2d. 432 (1950). That case involved an action brought by one Jack T. Bingham, individually and as a guardian ad litem of his minor, Marilyn Bingham, against the Board of Education of Ogden City, to recover damages owing from an accident which injured Marilyn Bingham while she was playing on the grounds of a junior high school in Ogden, Utah. In deciding the case, the Court reviewed the basis for the governmental immunity enjoyed by the school district, referred to the earlier decision of *Woodcock* v. *Board of Education of Salt Lake City,* 55 Utah 458, 187 P. 181, considered the differing views of writers, editors and judges with respect to the doctrine of governmental immunity and then held:

> "... the weight of precedent of decided cases supports the general rule and we prefer not to disregard a principle so well established without statutory authority. We, therefore, adopt the rule of the majority and hold that school boards cannot be held liable for ordinary negligent acts."

As noted in the Bingham case, this Court, in deciding *Woodcock* v. *Board of Education of Salt Lake City,* 55

Utah 458, 187 P. 181 (1920), more than forty-three years ago recognized the doctrine:

> "The general law of this jurisdiction, as in most other jurisdictions, does not authorize actions for damages for personal injuries against school districts. School districts are corporations with limited powers, and act merely on behalf of the state in discharging the duty of educating the children of school age in the public schools created by general laws."

In 1953, in the case of *Davis* v. *Provo City Corp.*, 1 Utah 2d. 244, 265 P. 2d. 415, this Court again considered the doctrine of governmental immunity, this time as applied to a municipal corporation. Said the Court:

> "A more difficult question is presented in relation to Provo City. The doctrine of governmental immunity has been accepted by the majority of states as covering the actions of a municipality when the city acts as an agent of the state. According to this general rule of immunity, if the function is a public or governmental one, the municipality is not responsible for the negligence of its officers or employees in respect thereof, and the rule of respondeat superior has no application. 38 Am. Jur., Municipal Corporations, p. 261, § 572. This rule has been accepted in this jurisdiction, despite many considerations of the injustices which may be wrought in a particular case by exempting the municipality from liability.
>
> "The question of whether or not the doctrine of immunity from suit when the city is acting in its governmental capacity should be discarded entirely has been considered by this court several times with the majority concluding that the matter was properly within the province of the legislature.

> There are valid reasons for protecting the municipality from vexatious and groundless suits; the doctrine of immunity in absence of statute is ancient and well-established in our law; and limits of liability can be imposed by the legislature where we are powerless to do so. For these reasons we believe that the doctrine must be enforced until the time when the legislature takes action providing for the bringing of suits not encompassed in U.C.A. 1953, 10-7-77."

In 1955, in the case of *Ramirez* v. *Ogden City,* 3 Utah 2d. 102, 279 P. 2d. 463, this court again recognized the doctrine of governmental immunity as being applicable to municipal corporations. That case involved an action for personal injuries sustained when the plaintiff's dress came in contact with an unprotected gas heater and caught fire in the ladies' powder room of the city's Community Center. Again noting the history of the doctrine and judicial expressions questioning its soundness, the Court, entirely consistent with its prior decisions, held:

> "It has long been recognized in this jurisdiction that a municipal corporation may act both in a public and a private capacity and that when performing in a public or governmental function it is not subject to tort liability. From time to time certain judicial expressions have been uttered questioning the soundness of that rule as a matter of policy. Whatever its desirability or undesirability may be, it has long been firmly established in our law by rulings of the majority of this court. In deference to the principle of stare decisis, we do not now feel at liberty to consider its merits or demerits. Any change would be properly within the province of the Legislature."

Not quite two years ago, this Court in *Cobia* v. *Roy City,* 12 Utah 2d. 375, 366 P. 2d. 986, noted the doctrine and its well-established history in this state. In this decision the Court noted, as it had in other decisions, the constitution and subsequent legislation that gave "new breadth and immunity to state agencies, except where specifically waived." In a footnote to the decision, this court stated:

> "The intent of the legislature to immunize state agencies against tort liability generally is reflected in certain legislation permitting suits against specific agencies under certain circumstances: See Title 10-7, U.C.A. 1953, allowing suits against cities where injury may have been suffered because of disrepair of streets and sidewalks; Title 32-1-28, providing for suits against the liquor commission, with the governor's consent; Title 78-11-9, allowing suits against the state itself in cases involving real estate, etc."

In view of the status of the law as it has long been established in this state, there is little to be gained by reviewing the origin and philosophical basis for the doctrine and its continued application. Neither is it thought to be helpful to the Court to review the many decided cases in other jurisdictions dealing with the question nor is it thought helpful to consider specifically the decisions cited by counsel for Campbell. Such decisions are only some among the many which are collected and available for this Court's review and consideration in 160 A. L. R. 7 and 86 A. L. R. 2d. 489.

Counsel's plea that this Court should assume a legislative function and should abolish the doctrine of gov-

ernmental immunity has already been answered in the decisions noted above and particularly by this Court in *Ramirez* v. *Ogden City*, supra.:

> "Whatever its desirability or undesirability may be, it has long been firmly established in our law by rulings of the majority of this court. In deference to the principle of stare decisis we do not now feel at liberty to consider its merits or demerits. Any change would be properly within the province of the Legislature."

In this connection, it is of interest to note that in the last legislative session (No. 35) House Bill No. 16 was introduced, which bill proposed doing away with sovereign immunity and permitting suits to be brought against the state and local governments for damage caused to person and property.

The bill was rejected. The Sifting Committee recommended that it be stricken and upon such recommendation the House voted that the enacting clause be stricken after the second reading.

In addition, it should be pointed out that to suddenly judicially change the law of this state after the same has become so well established would be unjust and disastrous to say the least. The School District and other similar entities have had a right to rely on the present status of the law and in so relying have made no attempt to carry insurance to protect themselves against such claims as asserted by Campbell. To now suddenly change the law and strip the District of its governmental immunity, ex-

poses the District to an unjust liability and loss against which it has had no opportunity whatsoever to protect itself ~~against~~ through the medium of insurance otherwise.

Respectfully submitted,

McKAY AND BURTON

By .....

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