

1984

Metropolitan Finance Co. v. The State of Utah, The State Tax Commission of Utah, And John Does 1 Through 25 : Brief of Appellant

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IN THE SUPREME COURT
OF THE STATE OF UTAH

METROPOLITAN FINANCE CO.,	:	
	:	
Plaintiff/Appellant,	:	
	:	
vs.	:	
	:	
THE STATE OF UTAH, THE STATE	:	Case No. 19291
TAX COMMISSION OF UTAH, and	:	
JOHN DOES 1 Through 25,	:	
	:	
Defendant/Respondant.	:	

BRIEF OF APPELLANT

Appeal from the Judgment of the Third District Court, Salt
Lake County, the Honorable Timothy R. Hanson, Judge.

BOYD M. FULLMER
Attorney for Plaintiffs/
Appellants
240 South 2nd East
Salt Lake City, UT 84111
801-355-7475

Utah State Attorney General
David L. Wilkinson, Frank
V. Nelson, Assistant to the
Attorney General, Attorneys
for Utah State Tax Commission
124 State Capitol
Salt Lake City, UT 84114
801-533-5304

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MAY 22 1984

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OF THE STATE OF UTAH

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vs.

THE STATE OF UTAH, THE STATE
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IN THE SUPREME COURT
OF THE STATE OF UTAH

UTAH MUTUAL FINANCE CO.,
Plaintiff/Appellant
vs.
THE STATE OF UTAH, THE STATE
TAX COMMISSION OF UTAH, and
JOHN DOES 1 Through 25,
Defendant/Respondant.

Case No. 19291

BRIEF OF APPELLANT

NATURE OF THE CASE

This is an action in which the Plaintiff seeks indemnification from the Utah State Tax Commission based on the fact that the Tax Commission issued a Certificate of Title to the Plaintiff/Appellant when in fact there had been a duplicate Certificate of Title issued to a different party some years before.

DISPOSITION IN THE LOWER COURT

This case was argued on mutual Summary Judgment Motions by both Plaintiff and Defendant before the Honorable Timothy P. Hanson on April 22, 1983. Judge Hanson ruled that Plaintiff's claims would be barred by the Governmental Immunity Act and there would be Questions of Fact which would prevent the grant of Plaintiff's Motion for Summary Judgment. Judge Hanson

...that immunity from Suit is not waived for the issuance of Motor Vehicles Certificates of Title under Section 4-10(3) (G), and in effect the Court dismissed the Plaintiff's claims against the Tax Commission.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks a reversal of the Judgment of the Lower Court and entry of Judgment in favor of the Plaintiff or a return of the case to the Lower Court for trial.

STATEMENT OF FACTS

On November 18, 1974, the Tax Commission issued Utah Title Certificate 691368 to Kenneth Melley for a 1974 Silver Shadow Rolls Royce automobile. In June, 1978, Stephen J. Gibbs brought that Title Certificate properly signed-off, and the automobile to the Plaintiff's place of business to secure a \$15,000.00 loan. Plaintiff called the Tax Commission to ascertain that the vehicle was still free and clear of encumbrances, and was advised by telephone that it was, and Plaintiff sent Stephen Gibbs to the Tax Commission with the appropriated documents to get a new Title Certificate showing Plaintiff as a lien holder on the car, and that new Title Certificate was issued June 15, 1978, after Plaintiff's officer had personally looked at the vehicle and its serial number and compared them favorably with the serial number on the Title Certificate.

Payments were made for a period of time and they ceased and Plaintiff brought Action in Case C80-5773 in the District

plaintiff of Salt Lake County against Defendant Stephen J. Gibbs and secured a Judgment of Foreclosure and Order of Sale in the amount of \$14,829.46 principal, \$1,000.00 attorney's fee, and \$1,000.00 of \$29.25, plus interest at 18% per annum.

The vehicle could not be located and Mr. Gibbs denied knowing where the vehicle was.

Later, searches were made and it was ultimately determined that the vehicle was Titled in the State of New Mexico, and that prior to that, it had been Titled in the State of Utah, and that prior to that it had been Titled in the State of Idaho, and prior to that it had been Titled in the state of Utah on a duplicate Title Certificate of the Utah State Tax Commission #8798 issued May 8, 1975, which showed that the vehicle had been taken to Idaho and Titled there. After plaintiff secured all of those documents, the Tax Commission then was able to locate its record and in fact the duplicate Title had been issued and that they had made a mistake and should not have issued the Title to Mr. Gibbs based on the original Title in the name of Mr. Melley. Plaintiff thereafter immediately, in writing, made written claim against the State Tax Commission for the damages and thereafter brought suit in the District Court of Salt Lake County Case No. 82-10866 in which Judge Timothy Hanson ruled against the Plaintiff Appellant and upon which this Appeal is based.

ARGUMENT

POINT I

THE UTAH STATE TAX COMMISSION IS NOT IMMUNE FROM SUIT FOR THE IMPROPER ISSUANCE OF A MOTOR VEHICLE TITLE CERTIFICATE.

The Utah Code Ann., § 63-30-3 (1953), a section of the Utah Governmental, Immunity Act provides that governmental entities are immune from suits which result from the exercise of a "Governmental Function", except as may be otherwise provided in the act. Two essential questions must be addressed in determining whether the government has waived immunity in the present case. First, did the injury result from an exercise of a "Government Function" and Second, is immunity provided in the act?

- A. Under Utah Case Law the Harm Which Occurred Did Not Arise From Exercising a "Government Function".

The meaning of the phrase "Governmental Function" is settled in the case of Standiford v. Salt Lake City Corp., 605 P.2d 1230 (1980). The suit involved a patron who successfully sued a municipality for injuries sustained on a public golf course. The Utah Supreme court, in a landmark decision, discarded the traditional governmental proprietary analysis and introduced a new two part test for determination of governmental immunity: "We therefore hold that the test for determining governmental immunity is whether the activity under consideration is 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," Standiford, 665 P.2d at 1237.

A more recent interpretation of this test is provided in Thomas v. Clearfield City, 642 P.2d 737, 738 (1982) where the court stated that the words "can only be performed by a governmental agency" refer not to "what a government may do, but to what government alone must do."

In the case at bar the Plaintiff was injured by Defendants inability to discover that a duplicate title had previously been issued by the defendant for the same automobile. Utah Code Ann. 41-1-84 (1953), a section of the Motor Vehicle Act, specifically provides that "The Department shall maintain an appropriate index of all lien, encumbrances, or title retention instruments filed as herein provided." As a result of Defendants inadequate or negligent failure to comply with this statute Plaintiff was improperly issued a title certificate with a recorded lien in his favor.

The proper filing and maintenance of a duplicate title is statutorily mandated. Violation of this responsibility is not immune to suit under the Standiford rule. The Thomas case, though not precisely on point is closely analogous to the case at bar. The Plaintiff, a homeowner, sued the city of Clearfield to recover damages sustained when water backed up into her premises.

was allegedly occurred because the city had negligently maintained the sewer system. The court, finding in favor of the Plaintiff, properly held that even though the legislature had given municipalities the power and duty to provide sanitary sewer systems and mandatory hookups, those functions did not automatically qualify for governmental immunity as "essential to the core of governmental activity" under the Standiford test.

Thomas, 642 P.2d at 738. In addition the court stated; "The whole history of the governmental immunity controversy is replete with circumstances where government has the authority to operate but where the operators do not enjoy governmental immunity." Thomas, 642 P.2d at 739.

The decision in Thomas is dispositive of the case at bar. Title 41, chapter 1 Utah Code Ann. (1953) of the Utah Motor Vehicles Act. vests authority in the State Tax Commission to supervise and control the issuance of titles for motor vehicles. However, as stated in Thomas, such a vestiture of authority by the legislature for such functions "does not automatically qualify for immunity as essential to the core of government activity." Thomas, 642 P.2d at P 739. In fact, the inadequate filing, cross referencing, and record keeping functions which occurred in this case may be performed very efficiently by private enterprise without adversely affecting legislative intent. In an analogous language the Thomas court stated: "Even assuming that the collection and disposal of sewage is most effectively,

cheaply and inexpensively performed by a governmental entity, we do not agree that these functions are uniquely governmental or essential to the core of its activity." Id., 642 P.2d at 739. Such is true of the faulty or negligent record keeping that caused the improper issuance of a motor vehicle certificate. We are reminded in Standiford, that the real focus of concern in governmental immunity cases is "whether a governmental entity, like individuals and private entities should be liable for an injury inflicted by it." Standiford, 605 at 1234. Following the Standiford test and the above concern governmental immunity does not exist in this case.

B. The Statutory Provisions of the Governmental Immunity Act Do Not Provide an Exception to Waiver of Immunity for Improper Issuance of a Motor Vehicles Title Certificate.

The Utah Code Ann. 63-30-10 specifically waives governmental immunity for injuries caused by the negligent acts or omissions of governmental employees. The Defendant contends that the code preserves immunity where the alleged injury " (3) arises out of 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," Utah Code Ann. 63-30-10 (3).

Both Utah and California case laws adequately show that type of acts meant to be protected by these exceptions do not include improper or negligent filing of a duplicate title certificate resulting in an improper

insurance of title. The Defendant cites California statutes and case law regarding waiver of immunity as being similar to Utah law. The case of Hirsch v. People, Department of Motor Vehicles, 42 Cal. App. 3d 252, 115 Cal. Rptr. 452 (1972) which is cited as being a case almost exactly on point provides an excellent interpretation of a California statute similar to the Utah statute noted above. Cal (Government) code §818.4 (Deering 1982) states:

A public entity is not liable for an injury caused by 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, similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

The Hirsch case involved an action taken by an innocent purchaser of a stolen automobile against the California Department of Motor Vehicles (CDMV). The Plaintiff alleged that the Department negligently and carelessly failed to require the thief to file an undertaking or bond pursuant to the Cal. Vehicle Code. In ruling for the Defendant the court, in a narrow holding, found that the CDMV was immune from suit only where title was negligently issued by the Department to a thief because the Department employee made a discretionary decision not to require the filing of an undertaking or bond. The concern was the preservation of immunity for discretionary acts on the part of the employee. Hirsch 115

Utah App. at 452. The Hirsch court confirmed that the "discretionary" acts meant to be protected by "exception to waiver of immunity" statutes are only those resulting from discretionary acts of employees in the course of employment. The present case is distinguished from Hirsch by the fact that the Plaintiff was not injured from a poor discretionary decision on the part of a government employee. Plaintiff was injured as a result of negligent and inadequate access to records which were required, by statute, to be filed and maintained adequately. Utah Code Ann. §41-1-84 (1953) An informed decision employee, regarding issuance or denial of certificate of title could not possibly be made based on inadequate information.

The exceptions under the Utah Code Ann. 63-30-10 (3) (1953) cannot be read as granting governmental immunity to injury that resulted from a violation of a statute requiring the proper record keeping. Case law affirms the intent of the court to extend immunity only for those acts where employee discretion is involved under 63-30-10 (3). In Madsen v. Borthick, 658 P.2d 627 (1983) depositors in a finance company which became insolvent brought action against the commissioner of the Department of Financial Institutions and the State seeking reimbursements of lost deposits as a result of failure of Government employees to discharge their statutory duties. Although the court ruled for the

the defendant on another basis it makes reference to Section 63-30-10 as "The Discretionary function exception to Governmental Tort Liability." Madsen, 628 at 632. Section 63-30-10 exceptions to waiver of liability are meant to protect a government entity from harmful consequences of discretionary acts committed by its employees in the scope of employment. Harm resulting from an inadequate filing and cross reference system is not an act covered by this statute.

POINT II

THE GOVERNMENT IS IN THE BEST POSITION
TO PROTECT AGAINST INJURIES RESULTING
FROM IMPROPER ISSUANCE OF TITLE.

V. Government Can Protect Itself From the Harmful Results of Inadequate Filing and Referencing of Important Documents Through Liability Insurance.

Utah Code Ann. 63-30-28 (1953) Provides that "Any Governmental entity within the state may purchase commercial insurance or self-insurance against any risk created by this act..."

The Utah Supreme Court cites the availability of liability insurance as a major reason for introduction of the new standard of broadened liability in Standiford: "Because the Utah Government Immunity Act authorizes the procurement of governmental insurance protection, the governmental entities may sensibly budget to include insurance premiums for tort claims..." Standiford, 605 at 1237

5. After a Party Does all That is Required by Law to do in Obtaining a Title, Government is in the Best Position to Prevent the Harm.

The Utah Code Ann. §41-1-80 (1953) requires that a lien or encumbrance against an automobile in the state of Utah be filed according to statute in order to be valid.

No conditional sale contract, conditional lease, chattel mortgage, or other lien or encumbrance or title retention instrument upon a registered vehicle, other than a lien dependent upon possession, is valid as against the creditors of an owner acquiring a lien by levy or attachment or subsequent purchasers or encumbrancers without notice until the requirements of sections 41-1-81 to 41-1-87 have been complied with.

60 C.J.S. Motor Vehicles §42 (5)a. In this case the requirements of §41-1-80, were met by the Plaintiff, as required by law. As a result the title with a properly recorded lien was issued. There is nothing further the Plaintiff could have done to assure that the title was valid. In fact the Plaintiffs receipt of a valid title by compliance with statutory requirements renders the underlying purpose of those statutes meaningless if he, after all he could do, is required to warrant the validity of title himself. There are no Utah cases demonstrating legislative intent to impose such a burden.

POINT III

AS A MATTER OF PUBLIC POLICY THE DEFENDANT SHOULD NOT BE PERMITTED TO CLAIM GOVERNMENTAL IMMUNITY WHERE.

A. Plaintiff Should not be Permitted to Suffer Injury as a Result of Compliance with the Very Statutes Meant to Protect Him.

"Statutes relating to certificates of title to motor vehicles are generally enacted, among other things, for the protection of the owner of motor vehicles, of those holding liens thereon, of innocent purchasers for value, and of the public." 60 C.J.S. Motor Vehicle §42 (1)a. (1949) In the auto industry receipt of a valid title with a properly recorded lien upon it has, by practice, become a method of financing widely used and accepted. The title certificate becomes substantial legal claim to the lenders security interest in the vehicle. As a matter of public policy, the Defendant government should not be immune from suit for harm which results in its failure to use a system set up by the Legislature to protect its citizens.

B. The Ruling of the Lower Court Tends to Create Chaos in an Otherwise Settled System of Reliance on Certificate of Title Issued by the State.

The statutes make motor vehicles a matter of public record, similar to the recording of real estate deeds, and certificates of title issued in accordance with statutory provisions are sufficient notice to creditors and purchasers..." 60 C.J.S. §42 (2)

Like the sale of land, the sale of motor vehicles constitutes a substantial portion of the economy of the United States. Both industries rely on a statutory system for ascertaining title by recording title documents in a place certain, so that title condition is revealed to the true owner of land or motor vehicles

as well as the disclosure of all interests and liens thereon.

However, unlike title to land, the title to an automobile cannot be personally searched or insured by the public. Although the Motor Vehicle Act, provides that all records of the department, other than those declared by law to be confidential for the use of the department, shall be open to the public inspection during office hours," Utah Code Ann. §41-1-9 (1953) the public has no ability to search for errors in the title as they may in a land transaction. In practice a person must have a title number or a name which he presents to an official who does the search. In the present case, such a search failed to turn up an existing duplicate title that had been subsequently issued. The lower courts decision that such error is immune from suit throws a once settled system of reliance on titles into a state of uncertainty and chaos.

CONCLUSION

The Utah Supreme Court has explicitly manifested its intent to broaden governmental liability. This is in accordance with the reality of todays government operation and planning. Justice Stewart, in his touchstone opinion in Standiford stated,

Finally, and not the least of our concerns, the standard we adopt today to narrow governmental immunity should allow more innocent victims injured by tortious conduct on the part of public entities access to the courts for redress. Fewer such people will be mercilessly and senselessly barred from

recovery for their injuries sustained at the hands of the entities designed to serve them. Standiford, 650 at 1237.

In accordance with this position Plaintiff respectfully requests that the decision of the lower court be reversed and damage be granted or in the alternative, that the action be returned to the lower court for a finding of damages.

DATED this 22nd day of May 1984.


BOYD M. FULLMER
Attorney at Law

CERTIFICATE OF MAILING

I hereby certify that I delivered two true and correct copies of the foregoing Brief of Appellant to the
office of Utah Attorney General

_____, postage prepaid.

DATED this 22nd day of May, 1984.

