

2004

# Gregory K. Chase v. Midvale City, Tim Start, and Tony Mason : Brief of Appellee

Utah Court of Appeals

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20041127-CA

IN THE UTAH COURT OF APPEALS

GREGORY K. CHASE, : Civil No. 20041127-CA

Plaintiff / Appellant, :

vs. :

MIDVALE CITY, TIM START, :  
AND TONY MASON, :

Defendants / Appellees. :

BRIEF OF APPELLEES

Appeal from a Summary Judgment entered in the Third Judicial District  
Court, Salt Lake County, State of Utah, Salt Lake Division, Honorable  
Timothy R. Hanson, Presiding

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**STATUTES AND RULES OF CENTRAL IMPORTANCE**  
**TO THE APPEAL**

42 U.S.C. § 1983.

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United State or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for any act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Utah Rules of Civil Procedure, Rule 56(e).

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

## **STATEMENT OF THE CASE**

**NATURE OF THE CASE.** This is a claim against Midvale City, and two of its employees, for the failure to hire the Plaintiff as a police officer. The Plaintiff applied for a job with Midvale City. He was interviewed by a panel which included the Defendants Tim Start and Tony Mason. Tim Start told Tony Mason and the other interview panel members that he believed that the Plaintiff had been forced to leave his previous employment. Tim Start and Tony Mason gave the Plaintiff low marks on his interview response to the question about why he had left his previous employment because the Plaintiff answered that he had voluntarily resigned that employment.

After the City chose not to hire the Plaintiff he sued the City, Tim Start and Tony Mason alleging several state tort claims and a claim under 42 U.S.C. § 1983.

**COURSE OF PROCEEDINGS.** The Defendants filed a motion for summary judgment on June 11<sup>th</sup> 2004. (Record pgs.67-68). On July 2, 2004 the Plaintiff's attorney requested an extension of time to respond to the motion for one week, which was granted by the Defendants' counsel. (Record pg. 221). When the extension expired without the Plaintiff having

filed any memorandum in opposition to the Motion for Summary Judgment, *the Defendants requested, on July 21, 2004, that the District Court rule on* the Motion. (Record pgs. 133-134). The Court ruled on the motion on August 10, 2004. (Record pgs 189-191, District Court's Minute entry, Appellees' Addendum). The Plaintiff had filed a responsive memorandum on August 5, 2004 which was not considered by the Court when it rendered its decision on the Motion for Summary Judgment, because it was untimely. The District Court judge dismissed all claims on the Defendants' Motion for Summary Judgment. The Plaintiff filed a motion to amend the judgment and alleged newly discovered evidence. The District Court denied that motion.

The Plaintiff appealed the decisions of the District Court but has only briefed the issues regarding the dismissal of the claims for deprivation of his federal constitutional rights made under 42 U.S.C. § 1983. The Plaintiff apparently has accepted the District Court's ruling on the state tort claims.

### **STATEMENT OF FACTS**

The following facts are the only material facts that should be considered in this Appeal because they were established by the Defendants' motion for summary judgment, and were not properly placed in dispute by the Plaintiff:

1. Midvale City is a political subdivision of the State of Utah. (Record pg. 70).
2. The Defendant Tim Start was an employee of Midvale City. (Record pg. 70).
3. Tony Mason was an employee with Midvale City. (Record pg.70)
4. Plaintiff applied for position with Midvale City as a police officer. (Record pg.70).
5. Prior to applying for work with Midvale City, the Plaintiff had been employed with the Jordan School District as a police officer. (Record pg, 70).
6. As part of the application process with Midvale City, the Plaintiff was scheduled for oral interview with a board of four members. (Record pg.70).
7. Two of the four members of the interview board were the Defendants Tim Start and Tony Mason. (Record pg.70).
8. Prior to the interview Tim Start was told by his Assistant Police Chief that the Chief of the Jordan School District Police force had said that the happiest day of his life was when the chief was able to take the Plaintiff, Greg Chase, home. (Record pg. 70).



9. Tim Start interpreted this statement to mean that the Plaintiff's employment with Jordan School District had been involuntarily terminated. (Record pg. 71).
10. Tim Start told Tony Mason that the Plaintiff's employment with Jordan School District had been involuntarily terminated. (Record pg.71).
11. The only evidence that Plaintiff had, that either Tim Start or Tony Mason knew, or should have known, that it was false that Plaintiff's employment with Jordan School District had been involuntarily terminated, was the Plaintiff's application for employment with Midvale City and the Plaintiff's answers to the interview questions. (Record pg.71).
12. During the interview process the Plaintiff was asked a question concerning why he had left his previous job and he answered that he had voluntarily resigned. (Record pg.71).
13. The Plaintiff was not hired by Midvale City and was ranked somewhere between 12 and 14 on the potential candidate list. (Record pg. 71).
14. The Plaintiff does not know of anybody, other than Tony Mason and the members of the interview panel, who was told by either Tim Start

or Tony Mason told that Plaintiff's employment with Jordan School District had been involuntarily terminated. (Record pg. 71).

15. Both Tim Start and Tony Mason gave Plaintiff zero points for his answer in the interview about why he had left his previous jobs. (Record pg.71).

16. The Plaintiff had applied for unemployment benefits with the State of Utah and in his application for unemployment benefits had indicated that he had been forced to resign his previous job with the Jordan School District. (Record pg. 71.)

17. The Plaintiff does not know of any potential employers who have been told by the Defendants that the Plaintiff lied about why he left his employment with the Jordan School District. (Record pg.72).

### **SUMMARY OF ARGUMENT**

There were no material facts in dispute that prevented the District Court from granting the Defendant's motion for summary judgment because the Plaintiff failed to timely respond to the Defendants' motion and when he finally did respond he did not controvert the Statement of Facts in the Defendants' memorandum in support of summary judgment.

Based upon the undisputed facts before the District Court the Plaintiff's claims under 42 U.S.C. § 1983 fail as a matter of law. The claim

of deprivation of liberty without due process of law fails because there is no factual allegation that the Plaintiff's reputation was damaged, by these Defendants, in conjunction with the termination of his employment and there is no evidence that the Defendants harmed the Plaintiff's reputation in such a manner as to foreclose other employment opportunities for the Plaintiff.

The Plaintiff's equal protection claim fails because he failed to identify any particular class or group that he belongs to that was subjected to disparate treatment by the Defendants, or to present to the District Court, any evidence of disparate treatment based on personal animus toward him by the Defendants.

## **ARGUMENT**

### **POINT ONE**

#### **THERE WERE NO FACTS IN DISPUTE WHICH PREVENTED THE DISTRICT COURT FROM DECIDING THIS MATTER ON A MOTION FOR SUMMARY JUDGMENT**

The Utah Rules of Civil Procedure, Rule 56 (e), provided that “[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for

trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.”

The Utah Supreme Court stated in Anderson Development Co. v. Tobias, 2005 Ut 36, \_\_\_ P.3d \_\_\_ (2005):

To successfully defend against a motion for summary judgment, the nonmoving party must set forth facts “sufficient to establish the existence of an element essential to that party’s case.” Burns v. Cannondale Bicycle Co., 876 P.2d 415, 419 (Utah Ct. App. 1994) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). Failure to do so with regard to any of the essential elements of that party’s claim will result in a conclusion that the moving party “is entitled to a judgment as a matter of law.” Id. at 420; see also Celotex, 477 U.S. at 322-23 (“In such a situation, there can be ‘no genuine issue as to any material fact,’ since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” (quoting Fed. R. Civ. P.56 (c))). Anderson Development Co. v. Tobias, at ¶ 23.

Because the Plaintiff failed to properly and timely respond to the motion for summary judgment the facts set forth in this Brief are the relevant facts of this case. Based upon these facts the Defendants were entitled to summary judgment on all claims in the complaint. No other facts should be considered in this Appeal and the Plaintiff should not now be allowed to submit additional facts to attempt to create issues of fact.

## **POINT TWO**

### **THE DISTRICT COURT'S DENIAL OF PLAINTIFF'S RULE 59 MOTION TO AMEND THE JUDGMENT PURSUANT WAS PROPER**

The Utah Supreme Court has held that a district court's order granting or denying Rule 59 motion for a new trial or to amend a judgment should not be reversed unless there has been a manifest abuse of discretion. Doty v. Town of Cedar Hills, 656 P. 2d 993 (1982). The Plaintiff's Brief in this case has not presented any facts or argument that the District Court abused its discretion in denying the motion to amend the judgment. That order of the District Court should not be reversed.

## **POINT THREE**

### **THE PLAINTIFF'S COMPLAINT FAILS TO STATE A CLAIM UNDER 42 U.S.C. § 1983 UNDER THE FACTS OF THIS CASE**

Section 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights conferred by federal statute or the Constitution. Albright v. Oliver, 510 U.S. 266, 271 (1994). "The first inquiry in any 1983 suit . . . is whether the Plaintiff has been deprived of a right 'secured by the Constitution and laws' [;] . . . it is necessary to isolate the precise constitutional violation with which he is charged." Baker v.

McCollan, 443 U.S. 137, 140 (1979). Unless Plaintiff has clearly pled and can prove a violation of federal constitutional rights there can be no section 1983 claim.

The Plaintiff identified in his complaint three distinct federal Constitutional provisions for his section 1983 claim. (See Complaint attached in Appellee's Addendum). He alleged a deprivation of property without due process of law (Record pg.13), a deprivation of liberty without due process of law (Record pg. 12) and a denial of equal protection of the law. (Record pg. 13-14). Since he did not brief the deprivation of property claim he apparently is only appealing the District Court Judge's decision regarding the liberty interest and equal protection and conceding on the claim regarding the deprivation of a property interest.

For Midvale City to be liable to the Plaintiff under 42 U.S.C. §1983 there must be a local government official policy or custom, which is a cause in fact of the Plaintiff's constitutional deprivation. Monell v. Department of Social Services, 436 U.S. 658 (1978). Municipal liability cannot be based on the doctrine of respondeat superior. Midvale City can only be held liable for its own actions and not for the actions of its officers and employees.

The Plaintiff's Complaint does not identify any policy, practice, custom or procedures of Midvale City that he believes deprived him of his

constitutional rights, nor does the Plaintiff's Brief on Appeal. This alone was sufficient to allow the District Court Judge to dismiss the claims against Midvale City.

The section 1983 claims against the individually named defendants also fail as a matter of law and summary judgment was appropriate. While the Plaintiff may have pled a state tort claim of defamation against the individual defendants, all state law tort claims were dismissed by the District Court based on the Utah Governmental Immunity Act (record pgs.189, 198) and that dismissal has not been appealed by the Plaintiff.

There is no federal constitutional claim for defamation. However, in Paul v. Davis, 424 U.S. 693, 708-10 (1976) the United States Supreme Court held that a state may abridge a person's liberty interest by creating a stigma or other disability that foreclosed an employee's freedom to take advantage of other employment opportunities. The Supreme Court stated that defamation, standing alone, is not sufficient to establish a claim for deprivation of a liberty interest. "[T]he defamation had to occur in the course of the termination of employment." Id. at 710.

The United States Supreme Court has further stated that no constitutional claim can be stated even where a Defendant acts with malice in defaming another and that a government employee could not have a

liberty interest claim if the alleged defamation did not occur in connection with the termination of his government employment. Siegert v. Gilley, 500 U. S. 226, 234 (1991).

In the case of Stidham v. Peace Officer Standards and Training, 265 F.3d 1144, (10<sup>th</sup> Cir. 2001) the Tenth Circuit Court of Appeals held, in reliance on Siegert, that a claimant who had resigned employment and could not obtain employment elsewhere, allegedly due to defamatory statements, did not have a liberty interest claim.

This is similar to the case before this court. There are no allegations in the complaint, or facts in the record, that indicate that the actions of any of the Defendants foreclosed any employment opportunities with anyone other than Midvale City.

To prove his liberty interest claim the Plaintiff must be able to show that the Defendants defamed him, and that this defamation was in conjunction with the termination of his government employment.

The undisputed facts in this case do not show either of these elements. The facts are that the Defendant Tim Start believed that the Plaintiff had been forced to resign for the Jordan School District. (Record pgs.70, 71); that he communicated that belief to the members of the interview panel, (Record pgs. 70, 71); that the Plaintiff when asked about why he had left his



employment with Jordan School District replied that he had voluntarily resigned (Record pg. 71); the Defendants Tim Start and Tony Mason gave him low marks on his interview because of this answer (Record pg. 71); because of these low marks he ranked between 12<sup>th</sup> and 14<sup>th</sup> on the Midvale City hiring list (Record pg. 71); that the Defendants did not tell anyone else including other potential employers of the Plaintiff that the Plaintiff had been forced to resign his employment with the Jordan School District. (Record pgs.71, 72).

There are no facts in the record that establish that the Defendants harmed the Plaintiff's reputation in any way. There is also no allegation that the Defendants participated in anyway in the termination of Plaintiff's employment with the Jordan School District.

The Plaintiff has argued that he has a liberty interest claim because the defendants Tim Start and Tony Mason wrongfully kept him from being employed by Midvale City. The Plaintiff has not cited any law or authority for this proposition.

The section 1983 claim based on an alleged denial of equal protection of the law also fails as a matter of law. The Plaintiff has not alleged membership in any particular group. He has alleged that was singled out for

disparate treatment by the Defendants denying him an equal opportunity to “compete for the position of police officer.” (Record pg. 14).

Federal constitutional law does recognize the possibility of equal protection claims based on a class of one. See Village of Willowbrook v. Olech, 528 U.S. 562 (2000). This appears to be what the Plaintiff is alleging. However, to succeed with an Olech claim, the Utah Supreme Court has held that a Plaintiff must present evidence that the Defendant deliberately sought to deprive the Plaintiff of the equal protection of the laws for reasons of a personal nature unrelated to the duties of the Defendant’s position. It requires a showing of animus toward Plaintiffs by the Defendants. Patterson v. American Fork, 2003 UT 7, 67 P3d 466. at ¶33.

The Complaint does not contain any allegations of personal animus by the Defendants toward the Plaintiff nor does it have any allegation that any individual acted against the Plaintiff outside of that individual Defendant’s duties. The Plaintiff’s equal protection claim must fail as a matter of law even if all of the factual allegations of the Complaint were considered to be true.

The Plaintiff’s Brief on Appeal attempts to argue a claim under the Utah Constitution for violation of his rights under the uniform operation of laws provisions of the Utah Constitution. However, the Complaint filed in

this matter does not contain a claim under the Utah uniform operation of laws provisions of the Utah Constitution but only an equal protection claim under the United States Constitution. This claim should therefore not be considered.

In addition a claim under 42 U.S.C. § 1983 cannot be based on a violation of a state constitutional right. It is a remedy for violations of federal rights only. However, even if a section 1983 claim could be based on the Utah Constitution, and the Plaintiff had pled such a claim in his complaint, this claim would fail under the facts in this case.

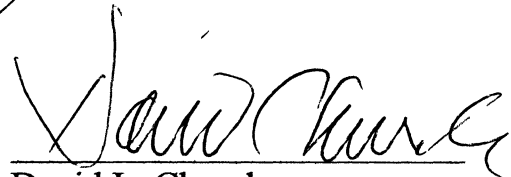
In evaluating a uniform operation of laws claim this Court must first determine what classifications if any are created by a Midvale City policy or ordinance. Second, this Court must determine whether different classes or subclasses are treated disparately. Finally, if any disparate treatment exists the court must determine whether the City had any reasonable objective that justified the disparity. See State v. Mohi, 901 P.2d 991 at 997 (Utah 1995).

The Plaintiff has not identified any particular Midvale City policy or ordinance that creates classes or subclasses to which he belongs. He is only arguing that he was treated differently than other applicants for employment. This is not sufficient for a claim under the uniform operation of laws provision of the Utah Constitution.

## CONCLUSION

The District Court was correct in granting summary judgment on all of Plaintiff's claims. The Plaintiff did not respond timely to the motion for summary judgment and therefore the facts in the motion by the Defendants were undisputed. Based upon these undisputed facts the Plaintiff's section 1983 claims failed as a matter of law. The District Court did not err in denying the Plaintiff motion to amend the judgment and allow additional discovery.

Dated this 17<sup>th</sup> day of June, 2005.



David L. Church

Attorney for Defendants/ Appellees

## **MAILING CERTIFICATE**

The undersigned certifies that true and correct copies of the foregoing Brief were mailed, postage prepaid, this 17<sup>th</sup> day of June 2005 to the following:

D. Bruce Oliver #5120  
D. BRUCE OLIVER, L.L.C.  
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Salt Lake City, Utah 84101-1490  
Attorney for Gregory K. Chase



## **ADDENDUM**

## COMPLAINT



1. Plaintiff, Gregory K. Chase, is a male person, a citizen of the United States and at all times relevant hereto was a resident of the State of Utah and City of Midvale, who lives at 8344 S. Monroe Street, Midvale, UT 84047.

2. Midvale City is a political subdivision of the State of Utah.

3. Midvale City Police Department is a Department of Midvale City government.

4. Tim Start is an individual who is employed with Midvale City and the Midvale City Police Department.

5. Tony Mason is an individual who is employed with Midvale City and the Midvale City Police Department.

#### **COMPLIANCE WITH THE UTAH GOVERNMENTAL IMMUNITY ACT**

6. On October 31, 2002, pursuant to Utah Code § 63-30-11, Mr. Chase served a Notice of Claim on the City Recorder of Midvale City. Such Notice of Claim complied with § 63-30-11. Such Notice of Claim was timely filed under § 63-30-13.

7. Midvale City did not respond to such Notice of Claim within the time specified in § 63-30-14. Accordingly, such claim is deemed denied.

8. This Court has jurisdiction of this case under § 63-30-16.

#### **BACKGROUND FACTS**



9. In approximately April 2002, Mr. Chase voluntarily resigned from his employment with Jordan School District.

10. In June 2002, Mr. Chase applied for a position with Midvale City and the Midvale City Police Department as a police officer. He passed the "B-Pad" written examination, and shortly thereafter, he was scheduled for an oral interview with a Board of four members.

11. Mr. Chase went in for his oral interview with the Board feeling optimistic about his chances for hire, as he has been in law enforcement for nineteen (19) years and he knew most of the officers in the Midvale City Police Department. He has also lived in Midvale City for almost the same amount of years.

12. When Mr. Chase went into the room for the oral interview, he felt comfortable and confident, as he knew all four (4) of the individuals on the Board. As each member asked Mr. Chase questions, he answered each question openly and honestly. As he left, he felt as though he had done a really good interview.

13. After having not heard anything back from Midvale City in the following almost three (3) weeks, Mr. Chase contacted one of the individuals on the Oral Board, Brian Todd. This individual advised Mr. Chase that Mr. Chase had ended up being ranked somewhere around 12<sup>th</sup> to 14<sup>th</sup> on the hire list. At first, Mr. Chase thought Mr. Todd was just joking with him. Then, after a few minutes, Mr. Chase

realized that Mr. Todd was serious. Mr. Chase asked, "how could this be?" Mr. Todd explained that one of the individuals on the Oral Board, Tim Start, had told the others on the Oral Board before Mr. Chase even walked into the interview room that: (1) Mr. Chase was lying about why he had left his previous employer, that Mr. Start told the others in the room that he had it on good source—that someone from Mr. Chase's previous employer had told him that Mr. Chase had been fired—that Mr. Chase had not quit; and (2) Mr. Start also stated that someone from Mr. Chase's previous employer had told him that Mr. Chase had been called in by his Chief one day, told to turn in all his equipment and gear, and driven home by the Chief. Tim Start stated that because of such things, Mr. Chase must be lying about his previous employment history and, therefore, he was going to fail Mr. Chase on the oral interview. Tim Start, along with another individual on the Board, Tony Mason, both failed Mr. Chase on question # 4). Tell us about your employment history for the past 5 years, and question # 4a. Why did you leave those jobs? Both of those individuals gave Mr. Chase zero (0) points for his answer (which, by the way, Mr. Chase answered honestly and correctly).

14. Mr. Todd, the officer who advised Mr. Chase of what had happened before the Oral Board interview, also told Mr. Chase that he should contact the Midvale City Chief of Police and let him know of what happened. That same exact day Mr. Chase did try to contact the Chief to lodge a protest, but only got his answering

machine. The next day, one of the individuals on the Oral Board, and one who had failed Mr. Chase based on Mr. Start's false information, Tony Mason, contacted Mr. Chase. This individual (Tony Mason) advised Mr. Chase that the Chief would not entertain any meeting or conversation in regards to this incident. Mr. Chase brought up what he knew about what had happened before the Oral Board convened with him, and Mr. Mason told Mr. Chase that he didn't have a clue about what Mr. Chase was talking about.

15. Thereafter, Mr. Chase re-contacted Brian Todd, the officer who had advised Mr. Chase of what had occurred, and Mr. Todd once again told Mr. Chase how Mr. Start had stated that he was told from Mr. Chase's previous employer that Mr. Chase had been fired and that Mr. Chase was lying to them about his quitting his previous employer. Mr. Chase told Mr. Todd again that he had not been fired, that he had resigned. Mr. Chase even stated that he would show the Board a copy of his letter of resignation, and the letter from his former Chief, Clyde Shaw, who stated Mr. Chase left in good standing. Mr. Chase even offered to show them the decision from an unemployment judge. (At the time, Mr. Chase was attempting to get unemployment insurance benefits, and Judge Patterson had denied his eligibility because Mr. Chase had quit.)

16. Mr. Todd told Mr. Chase he had confronted Tim Start and Tony Mason about their comments before Mr. Chase's interview with the Board; telling them that he personally had spoken to Mr. Chase, and that Mr. Chase had told him about Mr. Chase's quitting his last job. He also told Mr. Start and Mr. Mason that he would personally like the opportunity to verify everything Mr. Chase had been telling him through performing a background check on Mr. Chase. Mr. Start and Mr. Mason told Mr. Todd that that would not be necessary, that they were sure Mr. Chase had been fired, and that Mr. Chase had lied to the Board.

17. Mr. Chase couldn't understand how someone who had as much experience as he had, who had done so much for the State of Utah, could be blacklisted based on false information. Mr. Chase had been involved in many important events/cases in the State's history over the last almost 20 years. He had worked on the Unsolved Homicide Task Force, the Original Gang (Operation Red Flag) Task Force, The Mark Hoffmann (Mormon Murder Investigation), The Ervil Lebaron Task Force; he was an original member of the FBI's Fugitive/Violent Crimes Task Force. Mr. Chase could not believe how someone with this much background was now not even able to get an fair interview.

18. Mr. Chase then contacted Attorney Shawn Robinson, and explained what was going on. Mr. Chase told Mr. Robinson that within days of being

told he could not talk to the Midvale City Chief of Police, he received a letter from Tony Mason , one of the individuals who had failed him, stating that all information in regard to Mr. Chase's testing and oral interview was going to be destroyed within a few days. Attorney Robinson subpoenaed the information on the testing results, which showed exactly what Mr. Chase had already been told, that he had been failed on that particular question by Tim Start and Tony Mason. (#4, 4a).

19. During the next week or so, Mr. Chsae contacted City Councilman Wayne Sharp, and told him about what had happened, and about how Mr.Chase knew the Board had not handled this situation properly. Mr. Sharp advised Mr. Chase that he would look into the matter. Within a week, Mr. Chase received a phone call from Mr. Mason, indicating that he wanted Mr. Chase to come in for a talk. Mr. Chase figured that maybe at this point he would get what he had been asking for: an apology, and the name of the person from my previous employer who had published false information. Instead, all Mr. Mason wanted to talk about was the other person on the Oral Board (Brian Todd) who had told Mr. Chase about what had happened. Mr. Mason wanted a statement from Mr. Chase about what Mr. Todd had told Mr. Chase. Mr. Chase refused to give this information to him. Mr. Chase asked Mr. Mason directly for the name of the person from his previous employer who had said these things about him. Mr. Mason would not respond. Mr. Mason asked if Mr. Chase would sign a waiver

allowing the Board to get Mr. Chase's personnel records from his previous employer to see under what circumstances Mr. Chase did leave. Mr. Chase agreed and signed the waiver. As Mr. Chase was leaving, Mr. Mason stated, "If it's like your saying, maybe you can test again and, then, next time you'll get a fair interview!" Mr. Chase left even more frustrated.

20. Next, Mr. Chase had a meeting with the Midvale City Administrator, Lee King. Mr. Chase told Mr. King that he was aware of the problems Brian Todd was now experiencing because he had spoken to Mr. Chase regarding what had happened during the Oral Board. Mr. Todd had been told he was going to be written up, not allowed to be on the Oral Board anymore and that he could even possibly be terminated. Mr. Chase told Mr. King they were harassing the wrong person, that they should be looking into the actions of Tim Start and Tony Mason, who had slandered him, who actually violated City Policies and Procedures, and taken away Mr. Chase's right to work within his career. Instead, they were going after the honest and ethical person. Mr. King told Mr. Chase that he had spoken to Tony Mason and Mr. Mason stated, "that what was said before Mr. Chase's interview, didn't really have any effect on how they scored him." (An admission that it had actually occurred.) Mr. Chase asked Mr. King how Mr. Start and Mr. Mason knew it had no effect? Mr. King had no answer. Mr. Chase told Mr. King that all Mr. Chase wanted at the time was the

name of the person from his previous employer who distributed the false information to Mr. Start and Mr. Mason.

21. Subsequently, Mr. Chase learned that Brian Todd had several meetings with regard to this situation. Mr. Todd had one meeting with Tony Mason, the superior officer who failed Mr. Chase on the oral interviews and one with the Lee King, the City Administrator. Mr. Chase is aware of what came out of those meetings, and aware of the evidence that proves that what Mr. Todd told Mr. Chase did occur did in fact occur, and the actions of those covering this up.

22. After speaking to Lee King, Mr. Chase left several messages for the Mayor of Midvale City, JoAnn Seghrist, to contact Mr. Chase but has received no reply.

### **DEFAMATION**

23. The actions set forth above in ¶¶ 9 through 22 constitute the tort of defamation in that (1) one of the members of the panel of the Oral Board published to other members of the Oral Board; (2) statements which were false, which the publisher either knew to be false or knew that he didn't know whether it was true or false (recklessly)—namely, that Mr. Chase had been fired from his previous employment with Jordan School District and, therefore, that he was lying on his application and efforts to obtain employment with Midvale City. .

24. Such statements were defamatory, defamatory per se and have caused Mr. Chase to suffer injury and loss in that he was not able to advance beyond the interview stage in his effort to be selected for one of the vacancies at issue.

#### **INTERFERENCE WITH PROSPECTIVE ECONOMIC INTERESTS**

25. The actions set forth above in ¶¶ 9 through 24 constitute the wrongful and tortuous conduct of “interference with prospective economic interest” in that (1) members of the Oral Board knew of the presence of an expectancy on the part of Mr. Chase of entering into a contractual relationship for employment with Midvale City; (2) such individuals published said information to the other members of the Oral Board and acted on the basis of such information in their ranking of Mr. Chase with the intent and for the purpose of interfering in Mr. Chase’s pending and prospective economic relations with Midvale City and with the intent and for the purpose of preventing Mr. Chase from securing employment opportunities and employment with Midvale City without justification; (3) published or caused to be published information about Mr. Chase which was false; (4) which persuaded the Board to not allow Mr. Chase to proceed beyond the interview stage, to Mr. Chase’s detriment and damage; and (5) such action was undertaken to pursue personal goals or to intentionally harm Mr. Chase and in detriment to Midvale City’s best interests.



26. The person(s) who passed false information on about Mr. Chase interfered with Mr. Chase's ability to compete fairly and obtain employment with Midvale City.

27. Such actions, as set forth above, constitute interference with an improper purpose and by an improper means as prohibited by various public policies of the State of Utah, such as the Utah Constitution, Article XVI, the Utah Criminal Code 76-9-501 to 509, Utah Code 34-24-1, et. seq. and not diminished by the Utah Employer Reference Immunity Act, Utah Code 34-42-1.

28. Such actions have caused Mr. Chase to suffer injury and loss in that he was not able to advance beyond the interview state in his efforts to be selected for one of the vacancies at issue.

#### **VIOLATION OF CITY AND DEPARTMENTAL POLICIES**

29. Mr. Chase alleges the actions set forth in ¶¶ 1 through 28 above violated various City and Departmental policies that the City agreed to comply with when he submitted an application for employment.

30. Mr. Chase has earned and deserves the right to be allowed to apply for and compete for employment with Midvale City without having member(s) of the interview panel publish information about him which was false to other members of the panel before the interview.

31. Mr. Chase believes the City policy on filling vacancies mandates that any background check is performed only after the interview stage of the process, not before.

32. As set forth above, Mr. Start and Mr. Mason received false information about Mr. Chase and published the same to other members of the Oral Board before the oral interviews and acted on the basis of such false information.

33. Such actions have caused Mr. Chase to suffer injury and loss in that he was not able to advance beyond the interview state in his efforts to be selected for one of the vacancies at issue.

#### **DEPRIVATION OF A LIBERTY INTEREST**

34. Mr. Chase has a liberty interest in the ability to compete equally and fairly for vacancies within Midvale City and to pursue his career in law enforcement.

35. The sources of such liberty interest are found in Midvale City Departmental Personnel Policies and Procedures and policies and procedures that relate to selection of candidates for hire.

36. The actions set forth above in ¶¶ 9 through 33<sup>above</sup> constitute the wrongful deprivation of such a liberty interest without due process of law in violation of 42 U.S.C. § 1983.

37. Such actions have caused Mr. Chase to suffer injury and loss in that he was not able to advance beyond the interview state in his efforts to be selected for one of the vacancies at issue.

### **DEPRIVATION OF A PROPERTY INTEREST**

38. Mr. Chase has a property interest in the ability to compete equally and fairly for vacancies within Midvale City and to receive an honest and fair evaluation for employment and to not have slander destroy his chance to interview for and obtain a job and provide for himself and his family.

39. The sources of such property right are found in Midvale City and Departmental Personnel Policies and Procedures and policies and procedures that relate to selection of candidates for hire.

40. The actions set forth above in ¶¶ 9 through 33<sup>above</sup> constitute the wrongful deprivation of such a property interest without due process of law in violation of 42 U.S.C. § 1983.

41. Such actions have caused Mr. Chase to suffer injury and loss in that he was not able to advance beyond the interview state in his efforts to be selected for one of the vacancies at issue.

### **DENIAL OF EQUAL PROTECTION**

42. The 14<sup>th</sup> Amendment guarantees to citizens the equal protection of the law.

43. Mr. Chase believes and contends that Mr. Tim Start and Mr. Tony Mason communicated information regarding Mr. Chase's work history, character and reputation, which was false to other Midvale City employees prior to the oral interview and otherwise interfered and deprived Mr. Chase an equal opportunity to compete for the position of police officer.

44. Mr. Chase contends the reasons provided for the rejection of his application are false, are a pretext to mask denial of equal opportunities and cannot be substantiated by the Defendants.

45. Mr. Chase contends the actions set forth above in ¶¶ 7 through 33<sup>above</sup> deprived him of an equal opportunity to compete for job openings announced and recruited for by Midvale City in violation of 42 U.S.C. § 1983.

46. Such actions have caused Mr. Chase to suffer injury and loss in that he was not able to advance beyond the interview state in his efforts to be selected for one of the vacancies at issue.

### **DAMAGES**

47. Defendants' wrongful actions as set forth above have caused Mr. Chase to experience and suffer the loss of the opportunity to compete, to be selected

and hired, to earn wages and benefits and have caused him embarrassment, humiliation, emotional pain and distress for which he makes a claim to compensation.

48. If Mr. Chase had been given a fair interview, he would have been hired on or about July 1, 2002. If he had been hired by the Midvale City Police Department, Mr. Chase figures he would have been hired at, or close to, what he was already making when he quit his former employer of \$19.92 per/hour. Mr. Chase is aware that Midvale has hired many other officers with years of experience from other agencies, and is crediting them on a year-for-year experience basis and paying them accordingly. In addition, Mr. Chase contends that if he had been hired, he would have been entitled to participate in and receive all the other benefits that Midvale City provides its police officers.


49. Since the events set forth above have occurred, Mr. Chase has had to change his entire way of life. He doesn't sleep through the nights, he feels an enormous amount of stress, pressure, and the constant worry for his family. He wonders if he'll ever be allowed to finish up his last year or two of law enforcement so as to be able to receive a public safety retirement. The effect of these circumstances on Mr. Chase has caused a tremendous strain on him and his family.

50. As a result of the actions, events and decision set forth above, Mr. Chase also had to hire legal counsel and incur fees and costs. Mr. Chase makes a claim for such additional fees and costs.

WHEREFORE, Mr. Chase prays for judgment against Defendants as follows for sums and other relief as may reasonably compensate him for the torts and wrongful actions described above, to wit:

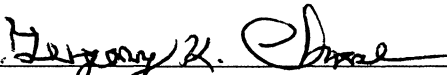
1. Compensatory damages in an amount to be proven at trial;
2. For costs of this action;
3. For reasonable attorney's fees;
4. For such other relief as the Court deems suitable and proper.

DATED THIS 14<sup>th</sup> day of March, 2003.

  
\_\_\_\_\_  
David J. Holdsworth  
Attorney for Plaintiff

VERIFICATION

Gregory K. Chase, being first duly sworn, upon his oath, deposes and says that he is the Plaintiff in the above-entitled action, that he has read the foregoing COMPLAINT and understands the contents thereof, and the allegations made therein are true of his own knowledge, except as to those matters alleged on information and belief which he believes to be true.

  
\_\_\_\_\_  
Gregory K. Chase

SUBSCRIBED AND SWORN to before me, a Notary Public, this \_\_\_\_\_  
day of March, 2003.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

RESIDING AT: \_\_\_\_\_  
\_\_\_\_\_

**DISTRICT COURT'S SUMMARY JUDGMENT MINUTE ENTRY**



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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GREGORY K. CHASE,	:	MINUTE ENTRY
Plaintiff,	:	CASE NO. 030905866
vs.	:	
MIDVALE CITY, a political	:	
subdivision of the State of	:	
Utah, MIDVALE CITY POLICE	:	
DEPARTMENT, A DEPARTMENT OF	:	
MIDVALE CITY, and TIM START,	:	
and TONY MASON, individuals,	:	
Defendants.	:	

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**FILED DISTRICT COURT**  
Third Judicial District

AUG 10 2004

By 151 SALT LAKE COUNTY

Deputy Clerk

The Court has before it a request for decision filed by the defendants seeking a ruling on their Motion for Summary Judgment. The Court notes that the plaintiff has not responded to the Motion and the time for doing so has now expired. Therefore, having reviewed the Motion and no opposition having been filed, the Court determines that the Motion is well-taken and therefore granted. Specifically, it appears that the majority of the plaintiff's claims fall under the Utah Governmental Immunity Act, thereby shielding the defendants from liability. Further, as a result of the plaintiff's failure to respond, it is uncontroverted that the plaintiff's federal constitutional claims have no legal substance and fail as a matter of law. Accordingly, the Court grants the

defendants' Motion for the reasons advanced in the defendants' moving papers.

Counsel for the defendants is to prepare an Order consistent with this Minute Entry decision. The trial date of August 31, 2004, is stricken.

Dated this 10 day of August, 2004.

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TIMOTHY R. HANSON  
DISTRICT COURT JUDGE

As a postscript to this Minute Entry decision, the Court notes since dictating this decision that the plaintiff's attorney, Mr. Oliver, has filed a Memorandum in Opposition to the defendant's Summary Judgment Motion. The opposition was filed August 5, 2004, it was postdated and mailed to defendant's counsel August 2, 2004. The Memorandum is substantially out of time under Rule 7, Utah Rules of Civil Procedure. There is nothing in the file requesting an extension of time to file an opposition Memorandum or anything else suggesting a late filing should be allowed or considered. The Request for Decision was filed July 21, 2004, and the Court reviewed the matter for decision before August 2, 2004. There being no basis to consider Mr. Oliver's out of time Memorandum, the Court declines to do so.

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MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, to the following, this\_\_\_\_\_ day of August, 2004:

D. Bruce Oliver  
Attorney for Plaintiff  
180 South 300 West, Suite 210  
Salt Lake City, Utah 84101

David L. Church  
Attorney for Defendants  
5995 S. Redwood Road  
Salt Lake City, Utah 84123

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