

2005

Daniel Carter v. University of Utah Medical Center : Reply Brief

Utah Court of Appeals

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James R. Hasenyager; Peter W. Summerill; Hasenyager & Summerill; Attorneys for Plaintiff/
Appellee.

David G. Williams; Rodney R. Parker; Terence L. Rooney; Snow, Christensen, & Martineau;
Attorneys for Defendants/Appellant.

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IN THE UTAH SUPREME COURT

DANIEL CARTER, INDIVIDUALLY AND ON)	CASE No. 2005-1087-SC
BEHALF OF THE HEIRS OF MARJORIE)	
CARTER AND ON BEHALF OF THE ESTATE OF)	DISTRICT Ct. No. 050901842
MARJORIE CARTER,)	
PLAINTIFF/APPELLEE,)	
v.)	
UNIVERSITY OF UTAH MEDICAL CEN-)	
TER,)	
DEFENDANT/APPELLANT,)	
AND)	
CRESTWOOD CARE CENTER,)	
DEFENDANT.)	

REPLY BRIEF OF APPELLANT

APPEAL FROM A DECISION OF THE SECOND JUDICIAL DISTRICT COURT
HONORABLE ROGER S. DUTSON

JAMES R. HASENYAGER
PETER W. SUMMERILL
HASENYAGER & SUMMERILL
1004 24TH STREET
OGDEN, UTAH 84401
TELEPHONE: (801) 621-3662

Attorneys for Plaintiff/Appellee

DAVID G. WILLIAMS
RODNEY R. PARKER
TERENCE L. ROONEY
SNOW, CHRISTENSEN & MARTINEAU
10 EXCHANGE PLACE, ELEVENTH FLOOR
POST OFFICE BOX 45000
SALT LAKE CITY, UTAH 84145-5000
TELEPHONE: (801) 521-9000

Attorneys for Defendant/Appellant

UTAH APPELLATE COURT
MAY 31 2006

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1004 24TH STREET
OGDEN, UTAH 84401
TELEPHONE: (801) 621-3662

Attorneys for Plaintiff/Appellee

DAVID G. WILLIAMS
RODNEY R. PARKER
TERENCE L. ROONEY
SNOW, CHRISTENSEN & MARTINEAU
10 EXCHANGE PLACE, ELEVENTH FLOOR
POST OFFICE BOX 45000
SALT LAKE CITY, UTAH 84145-5000
TELEPHONE: (801) 521-9000

Attorneys for Defendant/Appellant

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ARGUMENT

I. PLAINTIFF'S ARGUMENTS REGARDING LEGISLATIVE INTENT ARE NOT PERSUASIVE.

Plaintiff begins by arguing that there is nothing in the legislative history of UTAH CODE ANN. § 63-30d-502¹ to affirmatively suggest that the Legislature intended to supplant § 78-13-7 in multi-defendant cases. In fact, however, the legislative history is silent on this point. It equally supports the conclusion that the Legislature intended the opposite result, and it is more logical to conclude that the Legislature, in adopting a comprehensive statutory scheme dealing with claims against the government, intended the Act to operate as a unified whole.

Accordingly, the University's argument focuses, within that context, on rules of statutory construction. Such rules are useful to tease out legislative intent when there are no direct statements of intent. Here, the venue provision under the Governmental Immunity Act is more specific in application than the general venue statute, and the construction urged on the Court by the plaintiff renders the provision of § 63-30d-502 allowing venue "in the county in which the claim arose" redundant of § 78-13-7, and thus superfluous. Plaintiff's arguments violate longstanding rules of statutory construction.

¹ Plaintiff argues that the predecessor to § 63-30d-502 is applicable to this case because the decedent died prior to enactment of § 63-30d-502. Section 63-30d-502 became effective July 1, 2004. 2004 Utah Laws ch. 267 §§ 19, 49. Because the statute governs the process for bringing a claim, rather than the substance of the claim itself, it applies to cases filed after the effective date. *Carlucci v. Utah State Industrial Com'n*, 725 P.2d 1335, 1336-37 (Utah 1986). In this case, the filing date of the complaint, not the decedent's date of death, controls, and § 63-30d-502 is the applicable statute.

In support of his argument, plaintiff cites *Hoffman v. Bos*, 56 Mich. App. 448, 224 N.W.2d 107 (1974). That case was a suit against joint tortfeasors, one of which was a political subdivision. The subdivision asserted that venue was proper only in the county where it was established. The case did not turn on an effort to ascertain and implement legislative intent. Rather, it turned on a conflict between a statute and a court rule. The court held that the rule prevailed over the statute, because the rule was procedural in nature and thus within the Supreme Court's exclusive constitutional jurisdiction:

The above background of the code and analysis thereof suggests that the issue posed in the instant case is not a conflict between two statutory provisions but rather is a conflict between the court rule and the statute. This being so, the court rule should prevail. It is well established that Const. 1963, art. 6, § 5 vests exclusive jurisdiction in the Supreme Court over matters of practice and procedure. Where a rule conflicts with a statute on such matters the rule prevails.

224 N.W.2d at 453 (citations omitted).

The case at bar differs from the *Hoffman* case. In the case at bar, the Court is faced with the task of harmonizing two statutory provisions. It cannot, as the *Hoffman* court was able to do, resort to the primacy of one type of authority over another. It is well-settled in Utah that the Court's "fundamental duty" is to ferret out the meanings of the two statutory enactments and to give meaning to both to the extent possible. *State v. Morrison*, 2001 UT 73 ¶ 11, 31 P.3d 547. In this case, the University offers a clear reconciliation of the two statutes that gives meaning to both without rendering any provisions superfluous, and that is consistent with the apparent legislative intent of the Governmental Immunity Act.

Plaintiff next cites *Lawless v. Village of Park Forest South*, 108 Ill. App. 3d 191, 438 N.E.2d 1299 (1982). In that case, the court essentially disregarded the statutory language in favor of a public policy resolution of the issue presented. While the court had its reasons for doing so, its ruling cannot be reconciled with the obligation recognized by Utah courts to defer to legislative enactments and to give them meaning wherever possible. In this sense, the *Lawless* case is appropriately named.

The Florida case cited by plaintiff, *Board of County Commissioners of Madison County v. Grice*, 438 So.2d 392 (Fl. 1983), involved the unusual situation where “two governmental entities residing in different counties [were] sued as joint tortfeasors and the actions [were] unseverable.” 438 So.2d at 393. That is not the case here.

Finally, plaintiff cites *Peaceman v. Cades*, 272 Pa. Super. 568, 416 A.2d 1042 (1979). That case attempts to ascertain the meaning of the applicable rule of civil procedure without doing violence to the requirement that all parts of the rule be given effect. The Pennsylvania rule, however, differed from the Utah statute in that it specifically addressed cases against the Commonwealth within the same statute that dealt with joint tortfeasors:

“An action to enforce a joint or joint and several liability against two or more defendants, except actions in which the Commonwealth is a party defendant, may be brought against all defendants in any county in which the venue may be laid against any one of the defendants”

416 A.2d at 1044 (quoting Pa.R.C.P. 1006(c)). Elsewhere in the rules, the term “Commonwealth” was used distinctly from the term “political subdivision.” The court found this significant, and held that the term “Commonwealth” as used in Rule 1006(c) did not

include political subdivisions. *Id.* This result is consistent with the Utah approach and with the approach the University advocates in this case.

In this case, subsections (1) and (2) of § 63-30d-502 address special situations with the word “may.” Subsection (3) is the broader provision and uses the word “shall.” The proper interpretation of these sections is that any case not fitting within (1) or (2) must be brought pursuant to (3). In other words, (1) and (2) are permissive exceptions to the mandatory requirement of (3). They are not stand-alone venue provisions. This is the only interpretation consistent with the purpose of the Governmental Immunity Act, and which does not render a portion of § 78-13-7 superfluous.

II. PLAINTIFF’S ARGUMENTS AGAINST THE PUBLIC POLICY CONSIDERATIONS INHERENT IN THE STATUTE ARE UN-PERSUASIVE.

Plaintiff disagrees with the University’s explanation of the public policy objectives which § 63-30d-502 seeks to support. In doing so, however, plaintiff does not dispute that the statute is intended to limit longer absences of public officers from their official place of business or duty and minimizing the hampering of that duty which traveling to distant counties in defense of lawsuits necessitates. Indeed, the objectives are beyond dispute. Instead, plaintiff asserts that the objectives are not legitimate or important.

There is a legitimate disagreement over this issue in the case law. It is not, however, the place of the courts to disregard valid enactments of the Legislature on the basis that the courts may disagree with the importance of the objective the Legislature seeks to achieve. In this case, the venue provision is one of the conditions of the waiver of immunity enacted by the Legislature, and it is entitled to deference.

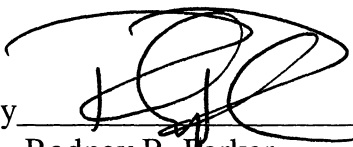
Moreover, the issue in this case is not whether or not the Legislature's objectives are legitimate. Rather, the issue is how to reconcile the two venue statutes at issue. In that context, the Legislature's objective is important as evidence of that body's intention in enacting § 63-30d-502, which in turn serves to help the Court ascertain the proper meaning to be given the statute. Apart from that narrow usage, the validity of the Legislature's objectives is beyond the scope of the issues raised in this case.

CONCLUSION

For the foregoing reasons, the University requests that this Court reverse the decision of the district court and remand the case with instructions to dismiss the case or transfer it to Salt Lake County.

DATED this 31 day of May, 2006.

SNOW, CHRISTENSEN & MARTINEAU

By  _____
Rodney R. Harker
Terence L. Rooney
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing REPLY BRIEF
OF APPELLANT were served by U.S. Mail on May 31, 2006 as follows:

JAMES R HASENYAGER
PETER W SUMMERILL
HASENYAGER & SUMMERILL
1004 24TH ST
OGDEN UT 84401-2702

MICHAEL P ZACCHEO
RICHARD BRANDT MILLER & NELSON
PO BOX 2465
SALT LAKE CITY UT 84111-2465



RODNEY R. PARKER