1995

Ron Bellonio v. Salt Lake City Corporation : Reply Brief of Appellant Salt Lake City Corporation

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

RON BELLONIO	)	
	)	
Plaintiff/Appellee,	)	Case No. 950260-CA
	)	
vs.	)	(940903841PI)
	)	
SALT LAKE CITY CORPORATION	)	Priority No. 10
	)	
Defendant/Appellant.	)	

REPLY BRIEF OF APPELLANT SALT LAKE CITY CORPORATION

APPEAL OF INTERLOCUTORY ORDER DENYING DISMISSAL
ENTERED IN THE THIRD JUDICIAL DISTRICT COURT,
SALT LAKE COUNTY, STATE OF UTAH,
HONORABLE HOMER F. WILKINSON, PRESIDING

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ARGUMENT

POINT I. BELLONIO FAILED TO COMPLY WITH THE NOTICE OF CLAIM PROVISIONS OF THE UTAH GOVERNMENTAL IMMUNITY ACT.

The Governmental Immunity Act required that Bellonio file notice of claim with the "governing body" of Salt Lake City Corporation, § 63-30-13. The Utah Municipal Code, § 10-1-104, defines "governing body" as the legislative body and the executive. In the case of Salt Lake City, this means the Mayor and City Council. See § 10-2-107. Bellonio failed to do this. He seeks to excuse his non-compliance by arguing that the term "governing body" in the Governmental Immunity Act should not have the same meaning as the definition in the Utah Municipal Code. He argues that "governing body" should mean the same as "the agency concerned" as that term is used in the separate requirements of § 63-30-12 governing actions against the ***State***. Therefore, Bellonio argues that it was adequate to file notice with the City Attorney or the Airport Director. To make this argument, Bellonio states: "Utah Code Ann. § 10-1-104, however, makes it clear that the definition of 'governing body' is limited to 'as used in this act'." (Brief of Appellee Ron Bellonio at 8). This assertion is incorrect and misleading. § 10-1-104 defines "governing body and "other terms" [a]s used in this act." However, there is no indication that the definition is ***limited*** to use in the act, which is Utah Municipal Code, § 10-1-101 et. seq. The language obviously means that the definitions are mandatory with respect to the Utah Municipal Code, nothing more and

nothing less. A person seeking the statutory definition of "governing body" would reasonably and logically look to the Municipal Code, under Title 10, "Cities and Towns," for guidance. Anyone doing so would readily determine that "governing body" means "collectively the legislative body and the executive of any municipality." § 10-1-104(2). Under this standard, Bellonio did not file his notice of claim with the governing body as required.

Bellonio asserts that his cause is assisted by the provision of § 68-3-2 that statutes are to be liberally construed with a view to effect the objects of the statutes and to promote justice. However, the objects of the notice of claim provisions of the Utah Governmental Immunity Act are scarcely promoted by departure from the strict and complete compliance standard articulated by the Utah courts. Strict compliance is the best assurance for uniformity and predictability in the notice of claim procedure.

The same chapter on statutory construction is authority that the statutory definition of "governing body" should be used to give meaning to that term in the instant case: § 68-3-11 provides that words and phrases defined by statute are to be construed according to such definition.

In applying statutes, the court's principal duty is to determine legislative intent, and the best evidence of legislative intent is the plain language of the statute. Sullivan v. Scoular Grain Co. of Utah, 853 P.2d 877, 879 (Utah 1993); Jensen v. Intermountain Health Care, Inc., 679 P.2d 903, 906 (Utah 1984). Unambiguous

language in the statute may not be interpreted to contradict its plain meaning. Bonham v. Morgan, 788 P.2d 497, 500 (Utah 1989). "Governing body" has plain meaning. It means the people who govern Salt Lake City Corporation – the Mayor and the City Council. It does not mean attorneys or administrative personnel at the Airport.[1]

It is a basic rule of statutory construction that all words in a statute were placed there purposefully and should be given effect. Metropolitan Water Dist. of Salt Lake City v. Salt Lake City, 380 P.2d 721 (Utah 1963). Where the statute requires filing with the governing body, the court should enforce the provision as written.

Bellonio's brief argues that the standard of strict compliance established in a consistent line of prior Utah Supreme Court decisions should be relaxed because the written communications from Bellonio and his attorneys advised of the facts and the nature of the claim, and were directed to various City officials. The standard of strict compliance is well established. Brittain v. State, 882 P.2d 666, 669 (Utah App. 1994); Scarborough v. Granite School Dist., 531 P.2d 480, 482 (Utah 1975). Bellonio argues that he was excused from filing his notice of claim with the governing body of Salt Lake City Corporation as required by Utah Code Ann. § 63-30-13 and that any defects were

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[1] The Salt Lake City Airport is a department of Salt Lake City Corporation, with no independent legal existence. The Salt Lake City Airport Authority was not created as an independent entity under the Utah Public Airport Authority Act, Utah Code Ann. § 17A-2-1501, but existed long before that legislation was enacted, and presently is governed by Chapter 2.14, Salt Lake City Ordinances. (See R.19 et. seq., Memorandum in Support of Motion To Dismiss and Exhibit "B" thereto). For this reason, the trial court dismissed Salt Lake City Airport Authority as a separate party defendant, and Bellonio did not oppose the dismissal or appeal from it.

waived because the attorney representing Salt Lake City Corporation, R. M. Kern of Los Angeles, asked Bellonio's attorney to correspond with him (Letter of July 22, 1992, Exhibit C to Brief of Appellant Salt Lake City Corporation). This argument ignores the practical consideration that parties should be at liberty to communicate in the interest of possible settlement, without having their communications held against them as possible waiver of statutory notice of claim requirements. Scarborough v. Granite School Dist. at 531 P.2d 482. This is particularly true where Bellonio was corresponding through counsel. Cornwall v. Larsen, 571 P.2d. 925, 927 (Utah 1977). Both the Scarborough case and the Cornwall case expressly held that there was no estoppel based on communications and requests for information.

> The actions of the adjuster . . . were not such as would warrant a conclusion that the clear mandate of the statute [requiring notice of claim] need not be followed.

Cornwall v. Larsen at 571 P.2d 927.

POINT II. IF THE CORRESPONDENCE CONSTITUTES NOTICE OF CLAIM, CLAIM WAS MADE AND DENIED MORE THAN ONE YEAR BEFORE SUIT WAS FILED.

Bellonio argues that notice of claim is sufficient if the necessary information is conveyed to the proper parties, and standards should not be "hypertechnical" (Brief of Appellee Ron Bellonio at 13-14). On that ground, Bellonio asserts that the only possible notices of claim at issue in this case are the March 24, 1993, letter and the June 11,

1993, notice of claim. This is not true, and Bellonio should not be allowed to pick and choose among the correspondence to select only the facts which support his position.

If this Court is going to save Bellonio from statutory and judicial requirements of complete compliance with the notice of claim procedure by taking into account the correspondence between the parties, then notice of claim was accomplished by the letters of July 9, 1992, and December 7, 1992, from Bellonio's attorneys (Exhibits "B" and "D" to Brief of Appellant Salt Lake City Corporation). Those letters notify that Bellonio was injured on June 14, 1992, at the parking structure at Terminal One at the Airport, and his attorneys representing his interests make a "claim for injury". Subsequently, attorney R. M. Kern notified Bellonio's attorney in writing by letter of December 22, 1992, that liability was denied: "This does not appear to be a case wherein there is legal liability imposed upon our client." (Exhibit "F" to Brief of Appellant Salt Lake City Corporation). This denial triggered the one-year period within which to institute an action in the district court under § 63-30-15. The action was required to have been filed by December 22, 1993. The complaint filed June 14, 1994, was beyond the one-year time requirement and should be dismissed.

CONCLUSION

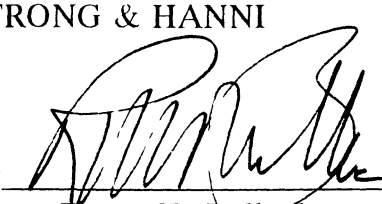
The notice of claim of June 11, 1993, did not comply with statutory requirements because it failed to state damages so far as they were known, and the notice was not filed with the proper authority.

Alternatively, applying Bellonio's own standard, the previous letters amounted to notice of claim and denial. The complaint was filed beyond the one-year time requirement.

Either the notice of claim provisions should be applied strictly as provided in the words of the statute, or the notice of claim provisions should be subject to the correspondence between the parties. In either event, plaintiffs' complaint was barred by the notice of claim requirements of the Utah Governmental Immunity Act.

DATED this 27 day of October, 1995.

STRONG & HANNI

By 

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27 day of October, 1995, two true and correct copies of REPLY BRIEF OF APPELLANT SALT LAKE CITY CORPORATION were mailed, postage prepaid, addressed to the following:

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