

1995

# Moises J. Sanchez v. State of Utah Department of Transportation, Utah State Highway Patrol and Harold C. Clements : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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MOISES J. SANCHEZ,  
Plaintiff/Appellant,

vs.

STATE OF UTAH DEPARTMENT  
OF TRANSPORTATION, UTAH STATE  
HIGHWAY PATROL and HAROLD C.  
CLEMENTS,

Defendant/Appellee.

Appellate Court No. 9405079

950273-CA

Priority No: 15

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BRIEF OF APPELLANT

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An Appeal From the Order Granting Utah State  
Highway Patrol's Motion for Summary Judgment  
from The Second District Court for Weber County  
The Honorable W. Brent West Presiding

---

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FILED

JUL 17 1995

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## **JURISDICTION**

This Court has jurisdiction over cases transferred from the Utah Supreme Court pursuant to Utah Code Ann. § 78-2a-3(2)(k) (1994).

## **ISSUE PRESENTED FOR REVIEW**

### **AND STANDARD OF REVIEW**

Whether the trial court erred in granting summary judgment based upon its finding that the facts failed to establish a sufficient relationship between the Plaintiff/Appellant ("Sanchez") and Defendant/Appellee ("UHP") such that UHP owed Sanchez no duty of care?<sup>1</sup> In deciding whether the trial court properly granted judgment as a matter of law, the trial court's legal conclusions are accorded no deference but are reviewed for correctness.<sup>2</sup> On review of a grant of summary judgment, the appellate court views "the facts, and all reasonable inferences drawn therefrom in the light most favorable to the non-moving party."<sup>3</sup>

## **DETERMINATIVE STATUTES**

There are no constitutional provisions, statutes, ordinances, rule, or regulations whose interpretation is determinative of this appeal.

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<sup>1</sup> *R. at 136.*

<sup>2</sup> *Higgins v. Salt Lake County*, 855 P.2d 231, 213 (Utah 1993).

<sup>3</sup> *Id.*

## STATEMENT OF THE CASE

### Nature of the Case

This is an action to recover damages for personal injuries sustained by Sanchez when he was struck by a car in Weber County, Utah. Sanchez brought an action against the driver of the vehicle for negligent operation of his vehicle, the State of Utah Department of Transportation ("UDOT") for negligent maintenance of a public roadway and failure to warn the public of a dangerous condition, and the Utah State Highway Patrol ("UHP") for failure to safeguard a known dangerous condition.<sup>4</sup>

On April 6, 1994, UDOT moved for judgment as a matter of law.<sup>5</sup> The trial court granted UDOT's motion on October 31, 1994.<sup>6</sup> No appeal is taken from that order. On June 6, 1994, UHP moved for summary judgment.<sup>7</sup> Sanchez opposed UHP's motion on grounds that UHP Trooper Taylor stopped to offer assistance to Sanchez at the accident scene and in so doing, the trooper assumed a particular duty to Sanchez to exercise reasonable care towards Sanchez, and that he failed to do so in that the trooper failed to slow or warn oncoming traffic of the accident scene, despite his knowledge of the dangerous conditions.<sup>8</sup> UHP's motion was granted by the trial court on October 28, 1994.<sup>9</sup> Sanchez settled with the driver of the vehicle and upon entry of the court's final

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<sup>4</sup> R. at 1-4.

<sup>5</sup> Motion for Summary Judgment, R. at 044.

<sup>6</sup> Decision, R. at 138; Order of Dismissal, R. at 142.

<sup>7</sup> R. at 091.

<sup>8</sup> R. at 107.

<sup>9</sup> Decision, R. at 136; Order of Dismissal dated November 17, 1994, R. at 145.

orders, Sanchez filed notice to appeal the order granting UHP's motion for judgment as a matter of law.<sup>10</sup>

#### Statement of the Facts

On December 30, 1992, Sanchez exited his vehicle to assist one of many motorists who had slid off the side of the road as they exited the off-ramp at Interstate 15 and 24th Street in Ogden, Utah.<sup>11</sup> The off-ramp, distinct from the freeway, was snow-packed and cars were sliding off the road as they exited.<sup>12</sup>

The trooper was in his patrol vehicle on the freeway above the off-ramp. He stopped, exited his vehicle and walked down the off ramp, assumed control of the area and ordered Sanchez and his son to leave.<sup>13</sup> He ordered Sanchez out of the area because the snow packed roadway created a dangerous condition.<sup>14</sup> The trooper took no steps to warn motorists approaching the off-ramp to slow or detour.

After a conversation with the trooper, Sanchez and his son complied with the trooper's order and were returning to their vehicle when Sanchez was struck by another car coming down the off-ramp.<sup>15</sup> The area where Sanchez had been assisting the stranded motorist was not impacted by the defendant driver.

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<sup>10</sup> Stipulation and Motion for Order of Dismissal, R. at 158; Order of Dismissal entered January 27, 1995, R. at 159.

<sup>11</sup> Memorandum Supporting Defendant UHP's Motion for Summary Judgment, Statement of Undisputed Material Facts, R. at 093-4.

<sup>12</sup> Id.

<sup>13</sup> Id. at 094.

<sup>14</sup> Id., R. at 094.

<sup>15</sup> Id.



## SUMMARY OF THE ARGUMENT

An essential element of a negligence action is a duty of reasonable care owed to the plaintiff by defendant.<sup>16</sup> Absent a showing of a duty, Sanchez may not recover for his injuries which were caused by UHP's negligent conduct.<sup>17</sup> UHP contends they owed no duty to Sanchez under the "public duty doctrine".

A duty of care arises when "the defendant is under any obligation for the benefit of a particular plaintiff."<sup>18</sup> Thus, to establish a negligence claim against the UHP, Sanchez must show that the UHP breached a duty owed to him individually, rather than a duty owed to the public at large, or that a "special relationship" existed between him and the UHP. Utah recognizes a duty to exercise reasonable care on the part of one who undertakes to render service if a failure to exercise such care increases the risk of harm, or harm is suffered because of the other's reliance upon the undertaking.<sup>19</sup> The UHP trooper undertook a service to Sanchez when he ordered Sanchez to engage in a particular behavior. The trooper's actions establish a special relationship apart from his duty to the general public; therefore, Sanchez has a legitimate claim.<sup>20</sup>

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<sup>16</sup> *Beach v. University of Utah*, 726 P.2d 413 (Utah 1986) (citations omitted).

<sup>17</sup> *Id.*

<sup>18</sup> *Cannon v. University of Utah*, 866 P.2d 586 (Utah App. 1993) (citations omitted).

<sup>19</sup> *DCR, Inc. v. Peak Alarm Co.*, 663 P.2d 433 (Utah 1983), citing Prosser, Handbook on the Law of Torts, § 104, and Restatement (Second) of Torts § 323 (1965).

<sup>20</sup> *Id.*

Sanchez claims that the trial court improperly applied the factual issues related to the existence of the trooper's duty to Sanchez, and contends the trooper's intervention and assumption of control over the area gave rise to a special relationship between the parties and an affirmative duty on the trooper's part to exercise reasonable care in rendering service to Sanchez.

## **ARGUMENT**

### **I. The trooper assumed a duty to Sanchez to exercise reasonable care.**

Utah recognizes a duty to exercise reasonable care on the part of one who undertakes to render services if: (a) failure to exercise such care increases the risk of harm, or (b) harm is suffered because of the other's reliance upon the undertaking.<sup>21</sup> Liability for negligence arises out of the failure to exercise reasonable care.<sup>22</sup>

In DCR, Inc. v. Peak Alarm Co., the alarm company installed a burglar alarm system in plaintiff's clothing store and undertook the responsibility to maintain the system.<sup>23</sup> A burglary subsequently occurred at plaintiff's store, resulting in a substantial inventory loss. Plaintiff's alarm system failed to detect the burglary. Plaintiff discovered that the alarm system had been rendered inoperative prior to the burglary through the use of a simple deactivating technique well-known to criminals. Plaintiff also learned that

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<sup>21</sup> *DCR, Inc. v. Peak Alarm Co.*, 663 P.2d 433 (Utah 1983) (citations omitted).

<sup>22</sup> *Id.*

<sup>23</sup> 663 P.2d 433 (Utah 1983).

defendant had been aware of the common use of this technique by criminals and that defendant knew of an easy, inexpensive way to protect its alarm systems against the risk of deactivation.

Plaintiff sued defendant for negligence in failing to use ordinary care in maintaining its alarm system and in failing to warn plaintiff of the inadequacy of the system. Plaintiff's first cause of action alleged breach by defendant of a duty "to warn of known hazards and defect attendant with the use of this particular system." Such a duty to warn was not expressed in the parties' contract; rather, this duty, if shown to exist, would derive from defendant's general duty of due care toward plaintiff as defined by tort law. The court found the defendant owed plaintiff a duty of care separate from the duty derived the party's contract.<sup>24</sup>

In cases where the alleged negligence consists of a failure to act, the person injured by another's inaction must demonstrate the existence of some special relationship between the parties creating a duty on the part of the latter to exercise such due care in behalf of the former.<sup>25</sup> Utah recognizes a duty to exercise reasonable care on the part of one who undertakes to render services.<sup>26</sup> The court in DCR recognized the principle as articulated at 9 Restatement (Second) of Torts:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his

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<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id.

undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm is suffered because of, the other's reliance upon the undertaking.

According to Prosser, "it is no longer in dispute that one who renders services to another is under a duty to exercise reasonable care in doing so, and that he is liable for any negligence to anyone who may foreseeably be expected to be injured as a result."<sup>27</sup> "When a defendant has undertaken to give professional services gratuitously, liability may be imposed for injuries resulting from substandard conduct...."<sup>28</sup>

The trooper assumed a duty to exercise reasonable care when he exerted his authority as a highway patrol officer and ordered Sanchez to leave a dangerous area. The patrolman is a professional law enforcement officer, trained to appreciate dangerous situations, and to take measures to reduce the risk of harm to those he undertakes to render service to. In the instant case, he failed to apply his training and experience to the dangerous conditions in that he did nothing to slow traffic using the slippery off-ramp.

The trooper's failure to apply his training and experience actually increased the risk of harm to Sanchez, who was complying with the officer's order to leave the area. Sanchez relied upon his position as a trained UHP officer to take reasonable measures to secure the area. Had Sanchez refused to comply with the trooper's order, or had the trooper simply continued past the scene, Sanchez would have been near the van he was assisting when

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<sup>27</sup> Id.

<sup>28</sup> *DCR, Inc. v. Peak Alarm Co.*, 663 P.2d at 437, quoting Carl S. Hawkins, Vol. 1981, Number 1, B.Y.U. L. Rev. 33, 36.

the other vehicle came off the ramp and slid off the road, instead of walking away from oncoming traffic, unable to see and appreciate the danger. Because the officer failed to take reasonable care to secure the area, another driver exited the off-ramp unaware of the dangerous conditions and collided with Sanchez. Viewed in a light most favorable to Sanchez, these facts are sufficient to show that the trooper assumed a duty to exercise reasonable care as one who undertakes to render services; that his failure to exercise such care increased the risk of harm to Sanchez; and that Sanchez suffered harm because of his reliance upon the officer's undertaking. UHP's liability arises out of the trooper's failure to exercise reasonable care.

**II. The trooper undertook to render service to Sanchez and created a special relationship sufficient to give rise to an obligation to exercise reasonable care.**

The "public duty doctrine" provides:

For a governmental agency and its agents to be liable for negligently caused injury suffered by a member of the public, the plaintiff must show a breach of a duty owed him as an individual, not merely the breach of an obligation owed to the general public at large by the government official... In other words, when the government deals generally with the welfare of all, it does so without a duty to anyone, unless there is a "special relationship" between the government and the individual... Absent such a doctrine, the government would be discouraged from adequately providing any general protections or services for the public.<sup>29</sup>

The doctrine limits the duty to control the conduct of a third person or to protect another from the conduct of a third person to instances where there is a "special relationship" between the plaintiff and the defendant.<sup>30</sup>

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<sup>29</sup> *Cannon v. Univ. of Utah*, 866 P.2D 586 (Ut.App. 1993).

<sup>30</sup> *Owens v. Garfield*, 784 P.2d 1187, 1189 (Utah 1989) (citations omitted).

In Cannon v. University of Utah, the Cannons were struck by a car while walking in a crosswalk across South Campus Drive on their way to a basketball game in the Huntsman Center.<sup>31</sup> The Cannons had parked in a University parking lot on the south side of South Campus Drive and were proceeding north across South Campus Drive when the accident occurred. The parking lot to the south of South Campus Drive and the Huntsman Center to the north are University property, and the University had assigned two police officers to the crosswalk to assist in controlling traffic. It had been raining and snowing intermittently, and the officers had marked the crosswalk with flares. When the Cannons approached the crosswalk on foot, they did not observe the police officers who were sitting in their patrol car, and the flares had burned out. The Cannons proceeded across South Campus Drive and were struck by a westbound vehicle.

The Cannons sued the driver of the car and the University, claiming that their injuries resulted from the negligent conduct of both the driver and the two University police officers who were assigned to assist in controlling traffic at the crosswalk. Specifically, the Cannons claimed that the officers were negligent in the manner in which they assisted or failed to assist pedestrians using the crosswalk in question. The University moved for summary judgment, arguing, *inter alia*, that it owed no duty of care to the Cannons. The Cannons argued that the public duty doctrine was not a bar to their cause of action, claiming that the University owed them a special duty of care because (1) they were business invitees of the University, or alternatively, (2) the risk of harm from the police

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<sup>31</sup> 866 P.2D 586 (Ut.App. 1993).

officers' conduct was to a clearly identifiable group to which the Cannons belonged, pedestrians en route to a University-sponsored basketball game. The trial court entered summary judgment in favor of the University on the ground that under the public duty doctrine, the officers owed the Cannons no duty of care.<sup>32</sup>

The court determined the police officers' duty, to enforce the traffic laws and ensure the safety of pedestrian travel, was a general duty owed to the public at large, not to any distinct group.<sup>33</sup> Neither the Cannons nor the University did anything to set apart the Cannons, or others going to the basketball game, from the general public. The service provided by the officers was the same for all pedestrians using the crosswalk, whether they were traveling north or south. Further, the officers did not distinguish between those pedestrians on their way to attend the basketball game and any other pedestrians. The court took special notice of the fact that the Cannons did not rely on the aid of the officers when they attempted to cross the street. Based upon these considerations, the court held the officers did not owe any specific duty to the Cannons which they did not already owe to the general public. Insofar as there was no special relationship between the Cannons and the University, under the public duty doctrine, the University could not be held liable for the Cannons' injuries.<sup>34</sup>

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<sup>32</sup> Id.

<sup>33</sup> Id.; See also, *Owens v. Garfield*, 784 P.2d 1187 (Utah 1989) (licensing agency not shown to have sufficiently close relationship in a legal sense to give rise to a duty to control her activities); *Christensen v. Hayward*, 694 P.2d 612 (Utah 1984) (no statutory duty to arrest); *Obray v. Malmberg*, 484 P.2d 160 (Utah 1970) (no statutory duty to investigate burglary).

<sup>34</sup> Id.

The facts in Cannon are similar to those in the instant case only to the extent the trooper's duties to enforce the traffic laws and ensure the public's is a general duty owed to the public at large, not to any distinct group. From there, however, the facts in the two cases diverge: In Cannon, the officers did nothing to set apart the Cannons from the other pedestrians in the area. In Sanchez' case, the trooper was on his way to another accident when he stopped near the off-ramp where Sanchez was assisting a stranded motorist.<sup>35</sup> The officers in Cannon merely sat in their patrol car while pedestrians traveled through the cross walk: the patrolman left his patrol car and took control of the scene.<sup>36</sup> The officers in Cannon did not interact individually with the Cannons: the trooper ordered Sanchez to leave the area due to the dangerous conditions.<sup>37</sup> He also advised Sanchez that he might be liable for damage to the van if they continued to try to pull it from the snow themselves.<sup>38</sup> The Cannons did not rely upon the aid of the officers when they attempted to cross the street. Sanchez was injured as he relied upon the trooper's assumption of control. In addition, it is not inconceivable that Sanchez could face criminal penalties had he failed to comply with the trooper's orders.<sup>39</sup>

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<sup>35</sup> Memorandum Supporting Defendant UHP's Motion for Summary Judgment, Statement of Undisputed Facts, R. at 093-4.

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> Utah Code Ann. § 76-9-102 provides that a person is guilty of disorderly conduct if:

(a) He refuses to comply with the lawful order of the police to move from a public place. . .

(2) "Public place," for the purpose of this section, means any place to which the public or a substantial group of the public has access and includes but is not limited to streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.



Based upon these considerations, the trooper did owe a specific duty to Sanchez which he did not already owe to the general public. The existence of a special relationship between Sanchez and the UHP constitutes an exception to the public duty doctrine, and UHP is liable for Sanchez' injuries. The trooper's intervention and assumption of control over the area gave rise to a special relationship between the parties and an affirmative duty on the officer's part to exercise reasonable care in rendering service to Sanchez.

**III. Public policy concerns support a finding  
that the trooper had a duty to Sanchez to  
exercise reasonable care.**

The Utah Supreme Court has articulated some of the public policy reasons underlying a decision to find that no "special relationship" exists. In Ferree v. States, plaintiff brought a wrongful death action following the death of plaintiff's spouse who was killed by an inmate on weekend release from the Bonneville Community Corrections Center ("Center") in Salt Lake City, Utah.<sup>40</sup> Plaintiffs alleged that the State, through its corrections officers, was reckless, negligent, or grossly negligent in the supervision and release of the inmate, and that Ferree's death at the hands of the inmate was a direct and proximate result of the defendants' conduct. The trial court entered summary judgment against the plaintiffs on the ground that the defendants owed no duty of care to the deceased and that the action was barred by sovereign immunity.

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a person to desist. Otherwise it is an infraction.

(Emphasis added).

<sup>40</sup> 784 P.2d 140 (Utah 1989).

On appeal, the court determined that plaintiffs' theory imposed too broad a duty of care on the part of corrections officers toward individual members of the public.<sup>41</sup> The state could face potential exposure for liability arising out of the misconduct of persons remanded to rehabilitation programs and on parole.<sup>42</sup> According to the court, the effect could well be to burden corrections officials and chill legitimate rehabilitative programs.<sup>43</sup> The public interest would not be served by imposing liability on corrections officials and the state for the uncertain success that attends parole and probation programs.<sup>44</sup>

The concerns raised by the court in Ferree do not extend to the instance case with the finding of a special relationship between Sanchez and the UHP. First, no new duty of care is established by finding Taylor had a duty to exercise reasonable care once he undertook to render service to Sanchez. That duty is already well-entrenched in Utah law.<sup>45</sup> Expecting law enforcement officers to take reasonable care once they exert their authority does not place an unreasonable burden on the police; rather, citizens must be able to expect that trained officers who are endowed with the police power of the State will act reasonably and in accordance with their training and experience. The effect is to solidify rather than chill the authority of law enforcement officers.

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<sup>41</sup> Id.

<sup>42</sup> Id.

<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> See, e.g., *DCR, Inc. v. Peak Alarm Co.*, 663 P.2d 433 (Utah 1983) (duty to exercise reasonable care on part of one who undertakes to render service); See also, *Howe v. Jackson*, 421 P.2d 159 (Utah 1966) (ambulance driver must use reasonable care).

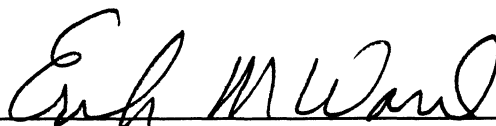
### CONCLUSION

Based upon the foregoing, Sanchez respectfully requests this Court reverse the trial court's grant of UHP's motion for summary judgment.

### ADDENDUM

- i. Decision of the trial court dated October 28, 1994.

DATED this 12<sup>th</sup> day of July, 1995.

  
\_\_\_\_\_  
ERIK M. WARD  
Attorney for Moises Sanchez

**PROOF OF SERVICE/MAILING**

I hereby certify that on this 17 day of July, 1995, the foregoing BRIEF OF APPELLANT was served/mailed in the manner indicated below upon the following:

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Erin M. Ward

# **ADDENDUM**

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IN THE SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WEBER, STATE OF UTAH

---

MOISES J. SANCHEZ,	§	
Plaintiff,	§	
vs.	§	<b>DECISION</b>
STATE OF UTAH DEPARTMENT	§	
OF TRANSPORTATION, UTAH		
STATE HIGHWAY PATROL and	§	Civil No. 930900509
HAROLD C. CLEMENTS,		
	§	
Defendant.	§	

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The defendant Utah State Highway Patrol's Motion for Summary Judgment is granted.

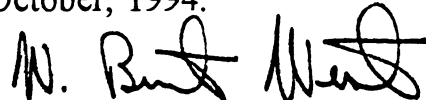
There is no disputed issue of material fact. The only dispute is over the legal significance of the facts.

Based on the facts of this case, there is no special relationship established between the Plaintiff and Trooper Taylor. As such, Trooper Taylor owed no duty of care towards the Plaintiff.

Page Two  
Decision  
Civil No. 930900509

Defense counsel will please prepare Findings of Fact, Conclusions of Law, and an order consistent with this ruling.

DATED this 28<sup>th</sup> day of October, 1994.



W. Brent West  
District Court Judge

#### CERTIFICATE OF MAILING

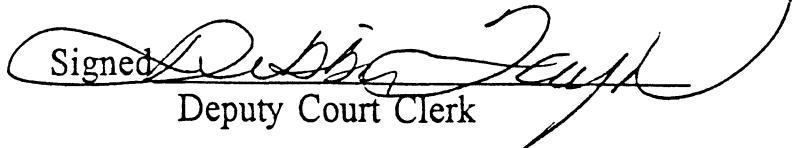
I hereby certify that I mailed a true and correct copy of the foregoing Decision to:

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Salt Lake City, Utah 84111

postage prepaid, dated this 28<sup>th</sup> day of October, 1994.

Signed 

Deputy Court Clerk