

1995

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

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MOISES J. SANCHEZ, :
Plaintiff and Appellant, : Case No. 950273-CA
v. :
STATE OF UTAH, DEPARTMENT OF :
TRANSPORTATION, UTAH STATE HIGHWAY :
PATROL, and HAROLD C. CLEMENTS, : Priority No. 15
Defendants and Appellee. :

BRIEF OF APPELLEE UTAH STATE HIGHWAY PATROL

APPEAL FROM A FINAL ORDER OF THE
SECOND JUDICIAL DISTRICT COURT IN AND FOR
WEBER COUNTY, STATE OF UTAH,
THE HONORABLE W. BRENT WEST, PRESIDING

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ORAL ARGUMENT NOT DESIRED BY APPELLEE;
PUBLISHED OPINION REQUESTED.

FILED

AUG 29 1995

COURT OF APPEALS

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PRIOR AND RELATED APPEALS

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(voluntarily dismissed 2/28/95)

IN THE UTAH COURT OF APPEALS

MOISES J. SANCHEZ, :
Plaintiff and Appellant, : Case No. 950273-CA
v. :
STATE OF UTAH, DEPARTMENT OF :
TRANSPORTATION, UTAH STATE HIGHWAY :
PATROL, and HAROLD C. CLEMENTS, : Priority No. 15
Defendants and Appellee. :

BRIEF OF APPELLEE UTAH STATE HIGHWAY PATROL
- - - - -

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from a final order of the Second Judicial District Court dated November 17, 1994, granting summary judgment in favor of defendant-appellee Utah State Highway Patrol. Utah Code Ann. § 78-2a-3(2)(k) (Supp. 1994) grants this Court jurisdiction to hear the appeal as transferred from the Supreme Court of Utah.

ISSUE PRESENTED UPON APPEAL AND STANDARD OF APPELLATE REVIEW

The sole issue for review is whether the district court correctly held that defendant Utah State Highway Patrol had no special relationship with plaintiff giving rise to an actionable duty. On appeal from a summary judgment, the reviewing court, without deference to the trial court's rulings, determines "only whether the trial court erred in applying the governing law and whether the trial court correctly held that there were no

disputed issues of material fact.” Ferree v. State, 784 P.2d 149, 151 (Utah 1989). In a negligence action, “[t]he issue of whether a duty exists is entirely a question of law to be determined by the [reviewing] court.” Id.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

All relevant text of constitutional provisions, statutes, or rules pertinent to the resolution of the issue before the Court is contained in the body of this brief.

STATEMENT OF THE CASE

A. Nature of the Case and Course of Proceedings Below

Plaintiff, a bystander at the scene of a minor single-vehicle traffic accident on a snow-packed freeway off-ramp, brought suit in November of 1993 alleging, inter alia, that the injuries he received when he was struck by a sliding car resulted from the negligent failure of defendant Utah State Highway Patrol (“UHP”) to adequately control the scene (R. 1-7). On October 28, 1994, the district court rendered summary judgment in favor of UHP (R. 136-37). The court dismissed UHP from the case by order signed November 17 and entered November 25, 1994 (R. 145-47: Addendum A, attached). On December 6, 1994, plaintiff filed a premature notice of appeal (R. 150-51) from the November 17 order while action was still pending against the defendant driver of the sliding vehicle. This remaining claim was dismissed by stipulation of the relevant parties in an order dated January 26

and entered January 27, 1995 (R. 159).

The Supreme Court of Utah poured the premature appeal over to this Court by order of February 3, 1995 (R. 160). On February 15, 1995, the Court entered a sua sponte motion for summary disposition based on the ineffective notice of appeal (Addendum B, attached). On February 21, 1995, plaintiff filed a timely notice of appeal (R. 162-63), and one week later moved to voluntarily dismiss the earlier appeal (Addendum C, attached). The motion was granted the same day (R. 165).

On April 20, 1995, the supreme court poured over the second appeal to this Court (R. 170).

B. Statement of Relevant Facts

On December 30, 1992, plaintiff and his son stopped and exited their trucks on the snow-packed 24th Street off-ramp of northbound interstate highway I-15 in Ogden, Utah, to render assistance to another motorist whose van had slipped off the ramp into the snow (R. 1 at ¶ 2; 63-64 at ¶ 1; 94 at ¶ 4). UHP Trooper Richard Taylor, en route to another accident, saw the men on the ramp as he drove along the highway (R. 94 at ¶ 4). He stopped his patrol car on I-15 above the exit and called to them, telling them to leave the area due to the danger posed by the snow (*id.*). They initially resisted the trooper's request (*id.*). He then approached them on foot, advising them against attempting to pull the van from the snow due to their potential liability for any damage to it, and informing them that he would call a tow truck for the stranded motorist (*id.*). At that time, they picked

up their equipment and began walking toward their trucks (*id.*). Before they reached the trucks, another vehicle came down the off-ramp, lost control on the snow, and struck plaintiff (*id.* at ¶ 5).

SUMMARY OF ARGUMENT

Under the "public duty/special duty" doctrine, a government agency is not liable to a member of the public for injury caused by negligence absent a breach of duty owed to him as an individual. The essence of a relationship creating a special duty is dependence, as where one party assumes responsibility for another's safety or deprives him of his normal opportunities for self-protection. An obligation owed to the public at large is insufficient to create a special relationship giving rise to a duty.

The undisputed facts of this case show no special relationship between plaintiff and the highway patrol. Trooper Taylor, as a member of UHP, had a general duty to the public at large to enforce traffic laws and ensure pedestrian safety. In advising plaintiff to leave the snow-slicked off-ramp, Trooper Taylor acted within the scope of these general duties, neither inducing plaintiff's reliance on the trooper's protection nor depriving plaintiff of his normal opportunities to guard himself from danger. Because the facts do not support the existence of a special relationship, the district court correctly granted summary judgment in favor of UHP, and plaintiff has articulated

neither facts nor policy considerations which would justify a reversal.

ARGUMENT

POINT I

THE ACTIONS OF TROOPER TAYLOR DID NOT CREATE A SPECIAL RELATIONSHIP WITH PLAINTIFF GIVING RISE TO AN ACTIONABLE DUTY.

"To establish negligence or gross negligence, a plaintiff must first establish a duty of care owed by the defendant to the plaintiff." Ferree, 784 P.2d at 151; see also Beach v. University of Utah, 726 P.2d 413, 415 (Utah 1986); Owens v. Garfield, 784 P.2d 1187, 1189 (Utah 1989); Rollins v. Petersen, 813 P.2d 1156, 1159 (Utah 1991). As both this Court and the supreme court have held, "without a showing of duty, a plaintiff cannot recover." Lamarr v. Utah State Dep't of Transp., 828 P.2d 535, 537-38 (Utah App. 1992); accord, Rollins, 813 P.2d at 1159; Beach, 726 P.2d at 415.

With respect to a governmental entity, the duty cannot be simply a public duty, but must be a duty owed to a particular individual as the result of some special relationship:

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 governmental official.

Ferree, 784 P.2d at 151. Acknowledging the distinction, this Court has noted that "[u]nder the public duty doctrine, 'a duty

to all is a duty to none.'" Cannon v. University of Utah, 866 P.2d 586, 588 (Utah App. 1993), cert. denied, 879 P.2d 266 (Utah 1994) (citations omitted); see also Owens, 784 P.2d at 1189, n.2 ("Under the doctrine, the government is only liable if it owes a special duty to the individual plaintiff beyond the general duty owed to the public"); Obray v. Malmberg, 26 Utah 2d 17, 484 P.2d 160, 162 (Utah 1971) ("[F]ailure by a public sheriff to investigate a crime claimed by an individual to have been committed, ordinarily is a matter of judgment and discretion, not actionable or compensable, and not pursuable by an individual since the public official's duty is to the public . . .") (footnote omitted). Consequently, unless UHP owed some duty to plaintiff beyond its duty to the general public, plaintiff cannot recover.

It is clear that Utah subscribes to "the 'special relation' analysis described in sections 314 through 320 of the Restatement of Torts." Rollins, 813 P.2d at 1159. The Rollins court described the analysis as follows:

Section 315 sets out the general tort principle that one has no duty to control the conduct of third persons. - The Restatement then lists two exceptions to this general rule. First, if "a special relation exists between the actor and the third person," then the actor has a duty to "control the third person's conduct." Restatement (Second) of Torts § 315 (1965). Second, if "a special relation exists between the actor" and the plaintiff, the plaintiff has "a right to [the actor's] protection," presumably against harm from third persons. Id.

Rollins, 813 P.2d at 1159.

Under the first exception to the general rule of

nonliability, "[o]ne who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm." Restatement (Second) of Torts § 319 (1965). In the present case, plaintiff has not alleged that Trooper Taylor had taken charge of the injuring vehicle's driver prior to the accident, or knew or should have known that the driver would be likely to cause bodily harm to others if not controlled. This exception is inapplicable to plaintiff's circumstances.

Under the second exception, "[o]ne who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection is under a similar duty to the other [to protect against unreasonable risk of physical harm]." Restatement (Second) of Torts § 314A(4) (1965). Plaintiff has not alleged that he was in Trooper Taylor's custody at any time, nor do the facts suggest that the trooper deprived plaintiff of his normal opportunities for protection. As with the first exception, plaintiff has articulated no facts that meet this exception to the general nonliability rule.

In applying the special relationship analysis of Restatement sections 14 through 20, the supreme court has agreed that "[t]he law imposes upon one party an affirmative duty to act only when certain special relationships exist between the parties. These relationships generally arise when one assumes responsibility for

another's safety or deprives another of his or her normal opportunities for self-protection." Beach, 726 P.2d at 415. An examination of Utah precedent regarding special relationships in the context of the public duty/special duty doctrine demonstrates that under the undisputed facts of this case, Trooper Taylor's actions did not create a special relationship with plaintiff giving rise to an actionable duty.

Plaintiff makes much of the supreme court's finding of a duty in DCR Inc. v. Peak Alarm Co., 663 P.2d 433 (Utah 1983). DCR is inapposite to the facts here. An action between private parties, it involved no public entity and no question of public duty. Rather than relying on Restatement sections 14 through 20, which the supreme court has held generally applicable in the context of a public agency, it was analyzed under section 323, which applies to the negligent performance of one who undertakes to render services. The duty in DCR was predicated on the parties' underlying contract for services: "Similarly, contractual relationships for the performance of services impose on each of the contracting parties a general duty of due care toward the other, apart from the specific obligations of the contract itself." DCR, 663 P.2d at 435. Plaintiff has not suggested any contractual relationship giving rise to a duty in this case, nor has he addressed the effect of the public duty/special duty doctrine on section 323.

More helpful to the analysis of the facts in this case are precedents dealing with public entities and public safety. In

Cannon, the plaintiffs, on their way to a university basketball game, were injured when a car struck them as they crossed the road between the university parking lot and the building housing the event. Two police officers had been assigned by the university to provide traffic control at the marked crosswalk where the accident occurred, but at the time of the accident, the officers were sitting in their patrol car, and the flares they had placed at the crosswalk were burned out. Noting that "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" (Cannon, 866 P.2d at 589), the Court declined to find a special relationship between the university and the plaintiffs that would entitle them to relief.

Plaintiff attempts to distinguish Cannon on the basis that "[t]he officers in Cannon did not interact individually with the Cannons . . ." (Brief of Appellant at 11). However, he points to no authority for his implied proposition that interaction with an identifiable member of the public is, by itself, sufficient to convert a public duty to a special duty, and precedent belies this theory. In Christenson v. Hayward, 694 P.2d 612 (Utah 1984), sheriff's deputies were called to a disturbance at a billiard hall involving a drunken patron. Finding the drunken man in the parking lot, they requested that he walk his motorcycle from the location. He complied, but was killed within minutes while riding the vehicle and failing to negotiate a

curve. The personal representative of the estate sued, claiming that the death was due to the officers' negligent failure to arrest the decedent. The supreme court declined to find an actionable duty under these facts, favorably citing the analysis applied by a California court:

Stout v. City of Porterville, 148 Cal. App. 3d 937, 196 Cal. Rptr. 301 (5 Dist. 1983), is apropos to the question of whether the complaint states a cause of action. It states:

The only additional duty undertaken by accepting employment as a police officer is the duty owed to the public at large

... Appellants did not allege that [the officer] assured Michael Stout he would take care of him or by his words or conduct induced him to rely on the officer's protection. Appellants did not allege that the officer in any way induced him into a false sense of security. In sum, appellants failed to allege a common law legal duty owed to them by the City and/or [the officer].

(Citations omitted.)

Christenson, 694 P.2d at 613. Although the officers in Christenson dealt directly and personally with an individual whose abilities they believed to be compromised by alcohol, and who therefore might be seen as dependent on their protection, this fact was insufficient to demonstrate the plaintiff's reliance on the officers, to show an actionable undertaking of services to the plaintiff, or to create a special relationship giving rise to a duty.

Trooper Taylor's brief interaction with plaintiff, whose faculties were unimpaired, pales by comparison to the interaction in Christenson, affording no grounds for a special relationship. Asked in interrogatories to "state with particularity all that

the Trooper did and all that he said between the time you first saw him and the time of the collision with defendant Clements' car" (R. 101) (emphasis supplied), plaintiff responded:

When UHP Trooper Taylor was on his way to another accident and he saw us trying to help the lady get her van out, he yelled from Interstate 15 to my son and me that if we could get our vehicles out to go on home because it was dangerous with all the snow on the road. We yelled back and told him we were just trying to help. He did not hear us so he came down to where we were and told us not to pull the van out ourselves because if there was any damage done by us to the van, we would be liable for it. He said he would call a tow truck because they were insured. At that time, my son, Morris, and I picked up our chains and headed back to our trucks. From then on, I do not remember what else happened. I did not know I'd been hit by the defendant's car.

R. 101-02. Trooper Taylor's actions, as described by plaintiff, do not support plaintiff's contention that the trooper "took control of the scene" (Brief of Appellant at 11) in a way that induced plaintiff's reliance on the trooper's protection. At most, they show the trooper's performance of a general public duty to enforce traffic laws and assure pedestrian safety--the duty this Court explicitly found insufficient to support a special relationship in Cannon.

Plaintiff argues that

[h]ad 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 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.

Brief of Appellant at 7-8. This contention ignores the fact that had he not resisted Trooper Taylor's initial request to leave the

scene, he would have been out of harm's way long before the arrival of the vehicle that injured him. More importantly, while plaintiff claims to have "relied upon the trooper's assumption of control" (Brief of Appellant at 11), he does not claim to have been in the trooper's custody. He points to no assurances by Trooper Taylor that the trooper would take care of him and no words or conduct that induced him to rely on the trooper's protection or gave him a false sense of security. To the contrary, as plaintiff admits, the trooper specifically apprised him of the danger to which the snowy conditions exposed him (R. 101), an action which should have alerted plaintiff to the need for caution and attentiveness to his own safety. He does not show that Trooper Taylor assumed responsibility for his safety or deprived him of his normal opportunities to protect himself. He does not assert that Trooper Taylor's actions interfered with his ability to observe traffic and respond appropriately. In short, he provides no basis for differentiating himself from the general public to which Trooper Taylor owed a public duty. The actions taken by Trooper Taylor to fulfill that duty do not, under the precedents of Utah's appellate courts, demonstrate a special relationship with plaintiff supporting liability in this case.

POINT II

PUBLIC POLICY WOULD NOT BE SERVED BY FINDING A SPECIAL RELATIONSHIP BETWEEN THE PARTIES.

Whether a special relationship exists is an "essentially pragmatic" analysis (Rollins, 813 P.2d at 1160). In Beach, the

supreme court stated:

Determining whether one party has an affirmative duty to protect another from the other's own acts or those of a third party requires a careful consideration of the consequences for the parties and society at large. If the duty is realistically incapable of performance, or if it is fundamentally at odds with the nature of the parties' relationship, we should be loath to term the relationship "special" and to impose a resulting "duty," for it is meaningless to speak of "special relationships" and "duties" in the abstract.

Beach, 726 P.2d at 418. This Court has addressed the policy considerations underlying the special relationship analysis specifically as applied to government officials:

[W]hen 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.

Cannon, 866 P.2d at 589 (citation omitted).

Plaintiff contends that public policy supports recognition of his special relationship with UHP under the facts of this case. He suggests that holding police officers to a duty of reasonable care in using their authority is not an unreasonable burden. In support of his argument, plaintiff relies on DCR and Howe v. Jackson, 18 Utah 2d 269, 421 P.2d 159 (Utah 1966). His reliance on these cases is misplaced.

In Howe, the supreme court faced the question whether an ambulance driver should be held negligent as a matter of law in a collision with Howe's vehicle. The court did not address the issue of whether a duty was, in fact, owed to the plaintiff;

assuming the duty, the court simply held that the trial court had adequately protected the plaintiff's interests by instructing the jury of the ambulance driver's obligation to use reasonable care under the circumstances. See 421 P.2d at 161. The opinion did not mention or discuss the special relationship doctrine.

DCR, as previously discussed (see Point I, supra), involved a duty predicated on an underlying contractual relationship and is therefore distinguishable from the present case. Moreover, DCR did not involve government entities and the concomitant public service concerns apparent in the line of cases represented by Cannon, and therefore did not address the public duty/special duty doctrine. Its factual inconsistency with plaintiff's circumstances vitiates its precedential value here.

As plaintiff acknowledges (see Brief of Appellant at 12-13), the supreme court held in Ferree that "[t]he 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," 784 P.2d at 151, even though the failure of those programs can lead to tragic results--in Ferree, the bludgeoning and death of an innocent victim. Although plaintiff argues that the policy concerns attending Ferree do not apply to his circumstances, he has failed to recognize that other public interests may weigh as heavily in a pragmatic analysis.

Analyzing the pragmatic concerns in Cannon, this Court concluded that

to adopt the Cannons' theory that they were part of a

distinct group of pedestrians on their way to a basketball game would impose too broad a duty on the University and its police officers. It would expose the University to liability to every person injured in any accident that occurs while on the way to any University event. In the face of such exposure, the likely result would be for the University to stop providing any sort of traffic enforcement. Thus, the public interest would not be served by imposing liability on the University and its police officers in this case.

Cannon, 866 P.2d at 590, n.3. The pragmatic concerns in the present case are analogous. To adopt plaintiff's theory, that his transient interaction with a police officer created a special relationship, would impose too broad a duty on the state. It would expose the state to liability every time a person was injured in an accident after contact with police, regardless of the nature of that contact. The likely outcome would be for police to stop intervening where the actions of motorists and pedestrians, however well-intended, may pose a potential danger. This result would be detrimental to the public interest in traffic safety and accident prevention. Contrary to plaintiff's conclusion, the duty plaintiff seeks to impose--a duty explicitly rejected by this Court in Cannon--is not "already well-entrenched in Utah law" (Brief of Appellant at 13), regardless of how much he may wish it to be.

Plaintiff's public policy argument fails to fairly weigh the competing policy considerations relevant to the special relationship analysis or to take cognizance of controlling precedent in a factually analogous case. He has neither acknowledged the Court's prior balancing of policy interests in

Cannon nor offered a justification for ignoring it. His desire to escape the result of this precedent simply does not warrant the outcome he seeks.

CONCLUSION

Plaintiff's argument for recognition of a special relationship with UHP giving rise to an actionable duty under the circumstances of this case is unsupported in policy and contradicted by precedent. By engaging in performance of his public duty of traffic enforcement, Trooper Taylor did nothing to induce plaintiff's reliance on his protection or to disable plaintiff from protecting himself. Plaintiff has articulated no facts which set him apart from the public at large or provide grounds for reversal of the district court's grant of summary judgment in favor of the highway patrol.

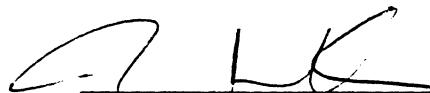
For these reasons, defendant Utah State Highway Patrol respectfully requests this Court to affirm the district court's decision.

REQUEST RE ORAL ARGUMENT AND/OR PUBLISHED OPINION

Defendant does not believe oral argument is necessary to the disposition of this case, but desires to participate if oral argument is ordered by the Court. However, defendant believes that the facts of this case provide helpful guidance in clarifying Cannon and properly applying the public duty/special duty analysis to traffic enforcement activities. Defendant

therefore respectfully requests publication of the Court's opinion.

Dated this 29th day of August, 1995.

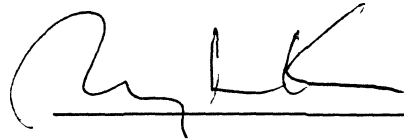
A handwritten signature in dark ink, appearing to be 'N. L. Kemp', written over a horizontal line.

Nancy L. Kemp
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that on this 29th day of August, 1995,
I caused to be mailed, postage prepaid, a true and accurate copy
of the foregoing BRIEF OF APPELLEE to the following:

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ADDENDUM A

NOV 25 PM 3 23

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IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

NOV 25 1994

MOISES J. SANCHEZ,	:	
	:	ORDER OF DISMISSAL
Plaintiff,	:	
	:	
vs.	:	
	:	
STATE OF UTAH DEPARTMENT	:	
OF TRANSPORTATION, UTAH	:	
STATE HIGHWAY PATROL and	:	Civil No. 930900509
HAROLD C. CLEMENTS,	:	
	:	Judge W. Brent West
Defendants.	:	
	:	

This matter came before the Court on defendant Utah State Highway Patrol's Motion for Summary Judgment.

The Court, having reviewed the memoranda submitted on behalf of plaintiff and defendant and having heard oral argument, now rules as follows:

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.


For the reasons stated above, the Court enters the following
Order:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

Defendant Utah State Highway Patrol's Motion for Summary
Judgment is granted and Plaintiff's Complaint is hereby dismissed
with prejudice.

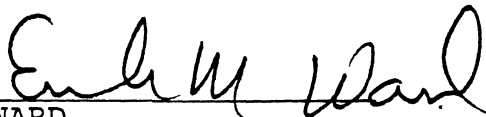

DATED this 17th day of November, 1994.

BY THE COURT:



W. BRENT WEST
District Court Judge

Approved as to form:

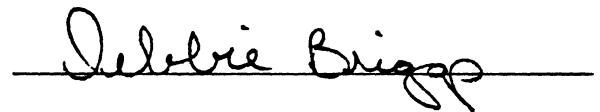

ERIK WARD
Attorney for Plaintiff
ROBERT H. HENDERSON
Attorney for Defendant Clements

CERTIFICATE OF MAILING

This is to certify that I mailed a true and correct copy of the foregoing **ORDER OF DISMISSAL**, postage prepaid, this 8th day of November, 1994, to the following:

Erik Ward
Attorney for Plaintiff
635 25th Street
Ogden, Utah 84401

Robert H. Henderson
Attorney for Defendant Clements
10 Exchange Place, Suite 1100
Salt Lake City, Utah 84111

A handwritten signature in cursive script, reading "Julie Briggs", is written over a horizontal line.

ADDENDUM B

COURT OF APPEALS

-----00000-----

Moises J. Sanchez,

Plaintiff and Appellant,

v.

State of Utah, Department of
Transportation; Utah State
Highway Patrol; and Harold C.
Clements,

Defendants and Appellees.

**SUA SPONTE MOTION FOR
SUMMARY DISPOSITION**

Case No. 950090-CA

TO THE ABOVE PARTIES AND THEIR ATTORNEYS:

A docketing statement has been filed with the Court of Appeals in the above-captioned case. This case is being considered for summary dismissal, pursuant to Utah Rules of Appellate Procedure 10(e), on the grounds that the notice of appeal was filed from a non-final order since it preceded entry of an order dismissing plaintiff's claims against defendant Clements. In lieu of a brief, each party shall file a memorandum, not to exceed ten pages, explaining why summary disposition should, or should not, be granted by the court. Failure to respond may result in the granting of this motion.

An original and four copies of the memorandum should be filed with the clerk of the Utah Court of Appeals on or before February 28, 1995.

DATED this 15th day of February, 1995.

Russell W. Bench
Russell W. Bench, Judge

CERTIFICATE OF MAILING

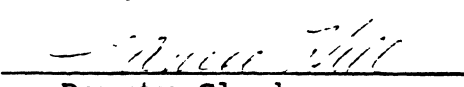
I hereby certify that on the 15th day of February, 1995, a true and correct copy of the foregoing ORDER was deposited in the United States mail to the parties listed below:

Erik M. Ward
Gridley, Ward, Havas, Hamilton & Shaw
Attorneys at Law for Appellant
635 - 25th Street
Ogden, UT 84401

Barbara E. Ochoa
Assistant Attorney General
Jan Graham
State Attorney General
330 South 300 East, 2nd Floor
Salt Lake City, UT 84111

Dated this 15th day of February, 1995.

By


Deputy Clerk

ADDENDUM C

ERIK M. WARD (3380)
GRIDLEY, WARD, HAVAS, HAMILTON & SHAW
Attorneys for Plaintiff/Appellant
635 - 25th Street
Ogden, Utah 84401
Telephone: 801-621-3317

RECEIVED
MAR 06 1995
OFFICE OF ATTORNEY GENERAL
LITIGATION DIV.

IN THE SUPREME COURT OF UTAH

MOISES J. SANCHEZ,	:	MOTION TO DISMISS
	:	APPEAL and MEMORANDUM
Plaintiff/Appellant,	:	IN SUPPORT OF MOTION
	:	
vs.	:	Appellate Court No. 9405079
	:	
STATE OF UTAH DEPARTMENT OF	:	
TRANSPORTATION, UTAH STATE	:	
HIGHWAY PATROL and HAROLD	:	
C. CLEMENTS,	:	
	:	
Defendants/Appellees.	:	

Plaintiff/Appellant in the above-entitled action respectfully moves the court to dismiss this appeal on grounds that Notice of Appeal filed December 6, 1994 was untimely. An order dismissing defendant Harold C. Clements was entered by the trial court on January 26, 1995, and a timely Notice of Appeal has subsequently been filed with the court.

DATED this 28th day of February, 1995.


Erik M. Ward
Attorney for Plaintiff/Appellant

CERTIFICATE OF DELIVERY/MAILING

I HEREBY CERTIFY that on this 28th day of February, 1995, I mailed, postage prepaid and first class mail, a true and correct copy of the foregoing MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT OF MOTION to:

Barbara Ochoa
Assistant Attorney General
330 South 300 East
Salt Lake City, Utah 84111

A handwritten signature in cursive script, appearing to read "Barbara Ochoa", is written over a horizontal line.