

2006

Donna Jex, vs. JRA Inc. dba Hickory Kist Deli, James Fillmore and Angela Fillmore: Legal Brief

Utah Court of Appeals

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Robert Janicki; Attorney for Appellees.

unknown.

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JUN 18 2007

June 13, 2007

Clerk of Court
Utah Court of Appeals
450 South State Street, 5th Floor
P.O. Box 140230
Salt Lake City, Utah 84114-0230

Re: Donna Jex vs. JRA, Inc. dba Hickory Kist Deli, James Fillmore and Angela Fillmore
Case No. 20060571-CA

Dear Court Clerk:

Pursuant to Rule 24(a)(11)(C)(i), appellant sends this citation of supplemental authorities which are pertinent and significant and have come to the attention of appellant after the briefs were filed. Seven copies of this letter are enclosed.

The first case is Bluffdale v. Smith, 156 p. 3rd 175 (UT App. 2007) which holds that undisputed facts must be controverted to prevent summary judgment. The Bluffdale case is cited because appellant filed an affidavit with the trial court from a safety expert with approximately 40 years experience showing that appellees breached the standard of care and did not exercise ordinary care to keep the premises in a condition reasonably safe for business visitors and failed to have a proper method of operation. This affidavit was not opposed by argument or opposing affidavit or addressed by the District Court in its decision. This argument is addressed at page 30 of Appellant's Brief and in appellants Motion for Summary Judgment (R. at 299).

The second case is cited in Bluffdale. It is the case of Salt Lake County v. Metro West Ready Mix, 89 P. 3rd 496 (Utah 2004) which holds that undisputed facts not cited in the undisputed facts section of a motion for summary judgment but which are cited in the memo are in substantial compliance with Rule 7. Appellant did not cite the Affidavit of Expert Haines in its undisputed facts, but did file it with Appellants Motion for Summary Judgment and argue it in its Appeal Brief at page 30 and before the trial court in its Motion for Summary Judgment at page 12 (R. at 299).

Clerk of Court
Utah Court of Appeals
June 13, 2007
Page 2

The third case is Carlile v. Wal-Mart, 61 p. 3rd 287 (UT App. 2002), which holds that the question of constructive knowledge is a question of fact, the question of whether there was a foreseeable dangerous condition is normally a question of fact, and the question of whether there is an unsafe or defective condition is a question of fact. These arguments are treated in Appellant's Brief pages 10-22.

Truly,

A handwritten signature in black ink, appearing to read "DMH", is positioned below the word "Truly,".

Denton M. Hatch

DMH/bjw
cc: Robert Janicki attorney for Defendant/Appellees