

SUPREME COURT OF UTAH

Salo v. Tyler

2018 UT 7 (2018) · No. 20150520 · Decided February 22, 2018

SUMMARY

The Utah Supreme Court affirmed summary judgment for University of Utah Hospital pharmacy administrators sued for defamation and interference with economic relations after communications concerning alleged off-label promotion of a drug contributed to the plaintiff’s termination by Amgen. The court clarified that Utah’s summary-judgment standard follows Celotex and held that the defendants’ conduct occurred within the scope of their employment under the Utah Governmental Immunity Act. The court also upheld denial of a motion to strike an affidavit because the plaintiff was not prejudiced by the witness-disclosure issue.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Associate Chief Justice Lee; Chief Justice Durrant; Justice Himonas; District Court Judge Jennifer A. Brown; District Court Judge Noel S. Hyde
JURISDICTION	Utah
DECIDED	February 22, 2018
DOCKET	20150520
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from the Third District Court's entry of summary judgment for the defendants and denial of Salo's motion to strike an affidavit.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Denial of a motion to strike is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	binding
PARTIES	David Salo v. Linda Tyler, Kavish Choudhary, John Vu

TOPICS

- summary judgment
- civil procedure
- defamation
- torts

PRACTICE AREAS

civil procedure

torts

governmental immunity

QUESTIONS PRESENTED

1. What summary judgment standard applies under Utah Rule of Civil Procedure 56 when the nonmoving party bears the burden of proof at trial?
2. Whether the defendants' conduct occurred within the scope of their employment under the Utah Governmental Immunity Act.
3. Whether Salo produced evidence creating a genuine issue of material fact as to willful misconduct under the Utah Governmental Immunity Act.
4. Whether the district court abused its discretion by considering Linda Tyler's affidavit despite her omission from the defendants' final Rule 26(a) witness disclosure.

HOLDINGS

1. Utah's summary judgment standard is consistent with the federal standard in *Celotex Corp. v. Catrett*. The moving party always bears the burden of showing the absence of a genuine dispute of material fact and entitlement to judgment as a matter of law, but when the nonmoving party bears the burden of proof at trial, the movant may satisfy its burden of persuasion by showing that the nonmoving party lacks evidence supporting an essential element, without producing affirmative evidence of its own.
2. The defendants acted within the scope of their employment because investigating alleged off-label promotion was of the general kind of work they were employed to perform, was directed toward protecting the hospital's interests, and was not a personal endeavor.
3. Salo failed to create a genuine issue of material fact concerning willful misconduct because he presented no evidence that the defendants intentionally committed a wrongful act while knowing that their statements were false. Evidence that the defendants knew their statements might harm Salo or held ill will toward him was insufficient.
4. The district court acted within its discretion in denying Salo's motion to strike Tyler's affidavit because Tyler had appeared on earlier witness lists, discovery had been completed, Salo had deposed her, and the omission from the final disclosure caused no prejudice.

KEY QUOTATIONS

"We hold that our Utah summary judgment standard is in line with the federal standard set forth in Celotex." (¶ 28)

"And we now embrace it without reservation as completely consistent with our Utah Rules of Civil Procedure." (¶ 32)

"A defamatory statement is wrongful only if it is false. And defamation is intentional (and thus willful) only if the defendant had knowledge of its falsity." (¶ 44)

FACTUAL BACKGROUND

David Salo, a pharmaceutical representative, provided University of Utah Hospital personnel information concerning off-label use of Amgen's denosumab and Amgen patient-assistance programs. Hospital administrators investigated and communicated allegations of improper off-label promotion to Amgen and university administrators. Amgen terminated Salo, after which Salo sued the administrators for defamation and interference with economic relations. The defendants submitted evidence that their actions were part of a hospital investigation conducted within the scope of their employment, while Salo produced no evidence that they knowingly disseminated false information.

PROCEDURAL HISTORY

Salo sued University of Utah Hospital administrators for defamation and interference with economic relations after Amgen terminated his employment. The district court granted the defendants summary judgment under the Utah Governmental Immunity Act and denied Salo's motion to strike Linda Tyler's affidavit. The Utah Supreme Court affirmed both rulings.

DISPOSITION

affirmed

CASES CITED

- Orvis v. Johnson, 2008 UT 2, 177 P.3d 600
- Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
- Jones v. Trevor Mktg., Inc. v. Lowry, 2012 UT 39, 284 P.3d 630
- Bahr v. Imus, 2011 UT 19, 250 P.3d 56
- Murdock v. Springville Mun. Corp., 1999 UT 39, 982 P.2d 65
- Newman v. White Water Whirlpool, 2008 UT 79, 197 P.3d 654
- Birkner v. Salt Lake County, 771 P.2d 1053 (Utah 1989)
- M.J. v. Wisan, 2016 UT 13, 371 P.3d 21
- Scott v. Universal Sales, Inc., 2015 UT 64, 356 P.3d 1172
- Ferguson v. Williams & Hunt, Inc., 2009 UT 49, 221 P.3d 205
- Maxfield v. Herbert, 2012 UT 44, 284 P.3d 647
- Nuñez v. Albo, 2002 UT App 247, 53 P.3d 2
- Eldridge v. Johndrow, 2015 UT 21, 345 P.3d 553

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