

COURT OF APPEALS OF UTAH

Rosser v. Elite Craft Homes, LLC

Rosser, 2026 UT App 66 (Utah Ct. App. 2026) · No. 20231023-CA · Decided April 23, 2026

SUMMARY

The Utah Court of Appeals held that landowners owe adjoining landowners and inhabitants a duty to exercise reasonable care when conducting construction activities. It reversed summary judgment on negligence, negligent infliction of emotional distress, and nuisance claims, while affirming summary judgment on the trespass claim because Utah does not recognize negligent trespass. The court remanded the negligent infliction of emotional distress claim for further consideration of disputed factual issues.

CASE DETAILS

COURT	Court of Appeals of Utah
WRITING FOR THE COURT	Amy J. Oliver; Michele M. Christiansen Forster; Ryan M. Harris
JURISDICTION	Utah Court of Appeals
DECIDED	April 23, 2026
DOCKET	20231023-CA
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the district court's grant of summary judgment dismissing claims for negligence, negligent infliction of emotional distress, trespass, and nuisance.
STANDARD OF REVIEW	Summary judgment and the existence of a legal duty are reviewed for correctness. Summary judgment is proper only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published and precedential Utah Court of Appeals opinion
PARTIES	Jeremy Rosser, Brandon Kilburn v. Elite Craft Homes, LLC, JPC Contracting, Inc.

TOPICS

- construction law
- duty of care
- negligence
- negligent infliction of emotional distress
- appellate procedure

PRACTICE AREAS

Torts

Construction law

Real estate

Appellate procedure

QUESTIONS PRESENTED

1. Whether a landowner engaged in construction owes adjoining landowners and inhabitants a duty to exercise reasonable care.
2. Whether summary judgment was proper on the Residents' negligent infliction of emotional distress claim where the duty issue was resolved incorrectly and factual disputes remained concerning the zone of danger and emotional distress.
3. Whether Utah recognizes a cause of action for negligent trespass.
4. Whether the nuisance claim should remain dismissed after the court reversed summary judgment on several other claims.

HOLDINGS

1. Utah landowners owe adjoining landowners and inhabitants a duty to exercise reasonable care when engaging in construction activities on their property.
2. Summary judgment on the negligent infliction of emotional distress claim was improper because Elite owed a duty and the record contained disputed facts concerning whether the Residents were within the zone of danger and suffered the required emotional distress.
3. Utah does not recognize a separate cause of action for negligent trespass; negligent invasions of another's property are covered by general negligence principles.
4. The dismissal of the nuisance claim was reversed because the parties' stipulation made dismissal contingent on the absence of another valid cause of action, and the court reversed summary judgment on several other claims.

KEY QUOTATIONS

“landowners owe a duty to adjoining landowners and inhabitants to exercise reasonable care when they engage in construction activities on their property.” (§ 30)

“But plaintiffs are not left without recourse for negligent trespass. Such conduct is covered by a general negligence claim because a negligent trespass claim, like negligence, requires proof of duty, breach, causation, and damages.” (§ 40)

FACTUAL BACKGROUND

Elite Craft Homes constructed a four-story, largely wood-framed apartment building on property adjacent to the home of Jeremy Rosser and Brandon Kilburn. The construction site remained accessible to pedestrians after hours, and Elite knew that unauthorized people had entered the site and that makeshift shelters had been established there. In June 2021, a fire began at the construction site, spread to the Residents' home, destroyed the home, killed their pets, and forced the Residents to flee; the precise origin and cause of the fire could not be determined.

PROCEDURAL HISTORY

Jeremy Rosser and Brandon Kilburn sued the construction-site owner and contractor after a fire spread from the adjacent construction site to their home. The district court granted summary judgment to Elite on all claims, concluding that Elite owed no duty to the Residents and that the trespass claim lacked the required intent. The Utah Court of Appeals affirmed as to intentional trespass, reversed as to negligence, negligent infliction of emotional distress, and nuisance, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings on the negligence, negligent infliction of emotional distress, and nuisance claims. On the negligent-infliction-of-emotional-distress claim, the district court must address Elite's alternative arguments concerning the zone of danger and the required emotional distress. The intentional trespass judgment remains affirmed.

CASES CITED

- Utah Golf Ass'n v. City of N. Salt Lake, 2003 UT 38, ¶ 10, 79 P.3d 919
- Liley v. Cedar Springs Ranch Inc., 2017 UT App 166, ¶ 11, 405 P.3d 817
- D.W. v. FPA Sandy Mall Assocs., 2024 UT 32, ¶ 16 n.2, 554 P.3d 1052
- B.R. ex rel. Jeffs v. West, 2012 UT 11, ¶ 5, 275 P.3d 228
- Estate of Schofield v. Starbucks Corp., 2025 UT App 29, ¶¶ 15-16, 32, 566 P.3d 777
- Herland v. Izatt, 2015 UT 30, ¶¶ 13, 39, 345 P.3d 661
- Kirk v. Anderson, 2021 UT 41, ¶¶ 17-20, 496 P.3d 66
- Boynton v. Kennecott Utah Copper, LLC, 2021 UT 67, ¶¶ 39, 44, 500 P.3d 847
- Mower v. Baird, 2018 UT 29, ¶¶ 30, 52-53, 422 P.3d 837
- Scott v. Universal Sales, Inc., 2015 UT 64, ¶ 29, 356 P.3d 1172
- Kessler v. Mortenson, 2000 UT 95, ¶¶ 3-4, 7, 9, 16 P.3d 1225
- Hill v. Superior Prop. Mgmt. Servs., Inc., 2013 UT 60, ¶¶ 43-46, 321 P.3d 1054
- R.O.A. Gen. Inc. v. Salt Lake City Corp., 2022 UT App 141, ¶ 39, 525 P.3d 100
- Carter v. Done, 2012 UT App 72, ¶ 17, 276 P.3d 1127
- Gallegos v. Lloyd, 2008 UT App 40, ¶ 11, 178 P.3d 922
- Brigham Young Univ. v. Paulsen Constr. Co., 744 P.2d 1370, 1372 n.2 (Utah 1987)
- Pruitt v. Douglas County, 66 P.3d 1111, 1115 (Wash. Ct. App. 2003)
- Hansen v. Sea Ray Boats, Inc., 830 P.2d 236, 239 (Utah 1992)
- AMS Salt Industries, Inc. v. Magnesium Corp. of America, 942 P.2d 315, 322-23 (Utah 1997)
- Smith v. Bank of Utah, Inc., 2007 UT App 89, ¶ 8 n.2, 157 P.3d 817

- *Steamfitters Local Union No. 602 v. Erie Insurance Exchange*, 233 A.3d 59, 64, 73-75 (Md. 2020)

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