

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 30, 2008

Elisabeth A. Shumaker
Clerk of Court

LEMANDA LILLIAN MECHAM,

Plaintiff-Appellee,

v.

SEAN D. FRAZIER; DAVID L.
JOHNSON,

Defendants-Appellants.

No. 04-4262
(D.C. No. 1:04-CV-33-BSJ)
(D. Utah)

ORDER AND JUDGMENT*

Before **TACHA**,** **BALDOCK**, and **TYMKOVICH**, Circuit Judges.

This matter is before the court following receipt of the Utah Supreme Court's answer to the questions we certified on September 11, 2007. *See Mecham v. Frazier*, ___P.3d___, 2008 UT 60, 2008 WL 3980872 (Utah Aug. 29, 2008). In that answer, the court ruled (1) the Utah Governmental Immunity Act does confer immunity from suit for state officers, and (2) that the Act does not require a

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

** Because of the passing of the Honorable Philip S. Figa on January 5, 2008, the Honorable Deanell R. Tacha has been substituted on this appeal.

notice of claim against state officials, in their individual capacities, to expressly aver “fraud” or “malice.” 2008 WL 3980872, ¶ 1. Rather, the UGIA “requires that a notice of claim contain only (1) a brief statement of the facts, (2) the nature of the claim asserted, and (3) the damages incurred by the claimant so far as they are known.” *Id.* ¶¶ 19, 21 (“UGIA requires only enough specificity in the notice to inform as to the nature of the claim so that the defendant can appraise its potential liability.” (internal quotation omitted)).

In light of the Utah Supreme Court’s decision, we vacate the district court’s order dated October 6, 2004, and remand this matter to the United States District Court for the District of Utah with instructions to conduct additional proceedings in accord with the state court’s decision. We note in this regard that no federal questions remain in this appeal in light of our decision in related appeal number 05-4297. *See Mecham v. Frazier*, 500 F.3d 1200 (10th Cir. 2007). As a result, this Order and Judgment disposes of all remaining issues.

Consequently, the abatement is lifted, the decision of the district court is VACATED, and this matter is REMANDED for further proceedings in accord with this Order and Judgment. The mandate shall issue forthwith.

ENTERED FOR THE COURT

Timothy M. Tymkovich
Circuit Judge