

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Gordon Crofts,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20080512-CA
v.)	
)	
St. George City, a municipal)	F I L E D
city,)	(April 16, 2009)
)	
Defendant and Appellee.)	2009 UT App 100

Fifth District, St. George Department, 070501133
The Honorable James L. Shumate

Attorneys: Steven B. Wall, Salt Lake City, for Appellant
 Jesse C. Trentadue and Noah M. Hoagland, Salt Lake
 City, for Appellee

Before Judges Greenwood, Thorne, and McHugh.

McHUGH, Judge:

Gordon Crofts appeals the trial court's order granting St. George City's motion to dismiss for lack of subject matter jurisdiction after Crofts failed to comply with the notice requirement of the Utah Governmental Immunity Act (the Immunity Act), see Utah Code Ann. §§ 63G-7-401, -402 (2008).¹ Crofts argues that dismissal of his claim was improper because he substantially complied with the statutory notice requirement. We affirm.

The Immunity Act states that "[a] claim against a governmental entity . . . is barred unless notice of claim is filed . . . within one year after the claim arises." Id. § 63G-7-402. "Utah law requires strict compliance with the explicit instructions outlined in the Immunity Act. Failure to strictly

¹After this matter arose, the relevant sections of the Utah Code were renumbered; however, they remain substantively identical to the version in effect when Crofts filed the notice at issue. Therefore, for the convenience of the reader, we cite to the current version of the statute.

comply with these requirements deprives a court of subject matter jurisdiction and precludes a claimant from bringing suit against a governmental entity." Greene v. Utah Transit Auth., 2001 UT 109, ¶ 20, 37 P.3d 1156. "Accordingly, a district court's dismissal of a case based on governmental immunity is a determination of law that we afford no deference." Wheeler v. McPherson, 2002 UT 16, ¶ 9, 40 P.3d 632.

First, Crofts claims that, despite his due diligence, the actions of a third party caused the failure to file the notice of claim before the one-year time period had lapsed. Crofts argues that because he sought personal service of the notice of claim, provided the notice of claim to the constable several days prior to the one-year statutory deadline, and received assurances from the constable that the notice of claim would be timely served, his actions are equivalent to strict compliance with the notice requirement of the Immunity Act.² Crofts reasons that the inexplicable failure of the constable to serve the notice of claim on time, combined with his own efforts to ensure timely service, should lead us to apply a substantial compliance standard in these circumstances.³

The Utah Supreme Court has emphatically stated that the "notice of claim provision [of the Immunity Act] . . . neither contemplates nor allows for anything less [than strict compliance]." Id. ¶ 13. Here, Crofts does not dispute that his notice of claim was not timely filed; the constable did not serve the notice of claim until one year and two days after the date Crofts's claim arose. See generally Utah Code Ann. § 63G-7-402 (requiring the filing of a notice of claim within one year after

²The Immunity Act provides for more than one form of service. See Utah Code Ann. § 63G-7-401(3)(b)(ii) (2008) (allowing service by mail or by hand delivery). Therefore, even though Crofts believed personal service was his best option given the looming statutory deadline, it was not his only option to comply with the notice of claim requirement. See id.

³In support of his argument, Crofts contends that in Moreno v. Board of Education, 926 P.2d 886 (Utah 1996), the Utah Supreme Court permitted "something less than 'strict compliance' [with the provisions of the Immunity Act] in certain situations." Great W. Cas. Co. v. Utah Dep't of Transp., 2001 UT App 54, 21 P.3d 240 ¶¶ 10, 15 (referring to the Utah Supreme Court's holding in Moreno, which allowed a third party to "piggyback" on the claimants' timely filed notice of claim and intervene in their action). However, in Moreno the claimants had first filed a timely notice of claim thereby conferring jurisdiction on the trial court. See Moreno, 926 P.2d at 891-92.

claim arises). Therefore, Crofts did not strictly comply with the notice provisions of the Immunity Act. Moreover, because "the Immunity Act demands strict compliance with its requirements to allow suit against governmental entities," we "decline [the] invitation to adopt a 'substantial compliance' interpretation of the Act." Wheeler, 2002 UT 16, ¶ 13 (emphasis added).

Crofts further argues that St. George City would not be prejudiced by defending against his claim because the City received actual notice of the claim, albeit two days after the time period for filing the notice had lapsed. Again, Utah law does not support Crofts's contention. "In general, even in situations where a governmental agency may be given actual notice of a party's claim, the party must still file a notice of claim in full compliance with the [Immunity Act] in order to pursue its claim." Great W. Cas. Co. v. Utah Dep't of Transp., 2001 UT App 54, ¶ 9, 21 P.3d 240.

Affirmed.

Carolyn B. McHugh, Judge

WE CONCUR:

Pamela T. Greenwood,
Presiding Judge

William A. Thorne Jr.,
Associate Presiding Judge