

IN THE UTAH COURT OF APPEALS

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Larry Ward,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20060268-CA
v.)	
)	
Washington County and)	F I L E D
Kenny Canfield,)	(September 21, 2006)
)	
Defendants and Appellees.)	2006 UT App 383

Fifth District, St. George Department, 060500119
The Honorable G. Rand Beacham

Attorneys: Larry Ward, New Harmony, Appellant Pro Se
Kathleen M. Liuzzi and Susan Black Dunn, Salt Lake
City, for Appellees

Before Judges Bench, McHugh, and Thorne.

PER CURIAM:

Larry Ward appeals from the trial court's order dismissing his claims against Washington County and Kenny Canfield (collectively, the County) for lack of subject matter jurisdiction. We affirm.

When reviewing a grant of summary judgment,¹ "this [c]ourt will view the facts in a light most favorable to the party opposing the motion and will allow the summary judgment to stand only if the movant is entitled to summary judgment as a matter of law on the undisputed facts." Nunez v. Albo, 2002 UT App 247, ¶8, 53 P.3d 2 (quotations and citation omitted). Furthermore, interpretation of a statute "is a question of law which we review for correctness, granting no deference to the trial court's determinations." Bellonio v. Salt Lake City Corp., 911 P.2d 1294, 1296 (Utah Ct. App. 1996) (citation omitted).

1. Because matters outside the pleadings were considered by the trial court, the trial court's order was technically an order granting summary judgment. See Utah R. Civ. P. 12(b); see also Greene v. Utah Transit Auth., 2001 UT 109, ¶2, 37 P.3d 1156.

The County argued below that Ward did not comply with the notice requirements of the Utah Governmental Immunity Act (the Act), see Utah Code Ann. § 63-30d-401 (Supp. 2006), because he failed to direct a notice of claim to the Washington County Clerk. Ward does not address this issue on appeal.

It is well settled that "suit may not be brought against the state or its subdivisions unless the requirements of [the Act] are strictly followed." Wheeler v. McPherson, 2002 UT 16, ¶11, 40 P.3d 632 (quotations and citation omitted). Applying this rule of strict compliance, the Utah Supreme Court has "repeatedly denied recourse to parties that have even slightly diverged from the exactness required by [the Act]." Id. at ¶12; see also Gurule v. Salt Lake County, 2003 UT 25, ¶6, 69 P.3d 1287 (holding that plaintiff who sought to sue Salt Lake County "did not strictly comply with the Act by delivering his notice of claim to a county commissioner").

In this case, Ward initiated a claim against the County for damages. The Act requires that a "person having a claim against a governmental entity . . . shall file a written notice of claim with the entity before maintaining an action." Utah Code Ann. § 63-30d-401(2). The Act further requires that when a claim is against a county, "the notice of claim shall be . . . directed and delivered . . . to the county clerk." Id. § 63-30d-401(3)(b)(ii)(B). Therefore, in order to strictly comply with the Act, Ward was required to direct his notice of claim to the Washington County Clerk.

It is undisputed that Ward's notice of claim was not addressed to the Washington County Clerk. Thus, Ward failed to strictly comply with the Act. See id. Accordingly, we affirm the dismissal of the complaint based upon lack of subject matter jurisdiction.²

Russell W. Bench,
Presiding Judge

Carolyn B. McHugh, Judge

William A. Thorne Jr., Judge

2. Ward argues that he was denied his constitutional right to a jury trial. However, this argument is unpersuasive in light of the trial court's lack of subject matter jurisdiction.