

The Order of the Court is stated below:

Dated: December 12, 2024
09:51:20 AM

/s/ DON M. TORGERSON
District Court Judge



Mitchell A. Stephens (11775)
Justin L. James (15167)
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Attorneys for Moab City Police Department

**IN THE SEVENTH JUDICIAL DISTRICT COURT
GRAND COUNTY, STATE OF UTAH**

JOSEPH PETITO and NICHOLE SCHMIDT,
individually and for and on behalf of
GABRIELLE PETITO,
Plaintiffs,

v.

MOAB CITY POLICE DEPARTMENT
Defendant.

**ORDER GRANTING MOTION TO
DISMISS**

Case No. 220700046

Judge Don M. Torgerson

On April 26, 2024, Defendant Moab City Police Department (“Moab”) filed a Motion to Dismiss (the “Motion”). [See Dkt. 78]. On July 9, 2024, Plaintiffs Joseph Petito and Nichole Schmidt, individually and for and on behalf of Gabrielle Petito (collectively “Plaintiffs”) filed a memorandum in opposition to the Motion. [See Dkt. 81]. On September 20, 2024, Moab filed a reply memorandum in support of the Motion. [See Dkt. 94].

On November 20, 2024, the Court heard oral argument on the Motion. At the conclusion of the argument, the Court issued an oral ruling granting the Motion to the extent it sought the dismissal of this case with prejudice. This written ruling follows.

The Court, having considered the briefing and argument of the parties, GRANTS the Motion to the extent it seeks dismissal of the case with prejudice. The Court incorporates its oral ruling and finds and orders as follows:

Plaintiffs' claims are barred by the Governmental Immunity Act of Utah ("GIAU"). See Utah Code § 63G-7-101, *et seq.* Plaintiffs do not dispute that the plain language of the GIAU bars their claims. Instead, they argue that the GIAU violates Article XVI, section 5 of the Utah Constitution. The Court, however, is bound by what it views as approximately 125 years of contrary precedent from the Utah Supreme Court. See, *e.g.*, *Tindley v. Salt Lake City Sch. Dist.*, 2005 UT 30, 116 P.3d 295; *Parks v. Utah Transit Authority*, 2005 UT 55, 53 P.3d 473; *Tiede v. State*, 915 P.2d 500 (Utah 1996); *Ramirez v. Ogden City*, 3 Utah 2d 102, 279 P.2d 463 (1955); *Niblock v. Salt Lake City*, 100 Utah 573, 111 P.2d 800 (1941); *Rollow v. Ogden City*, 66 Utah 475, 243 P. 791 (1926); *Sehy v. Salt Lake City*, 41 Utah 535, 126 P. 691 (1912); *Royce v. Salt Lake City*, 15 Utah 401, 49 P. 290 (1897). Accordingly, the Court concludes that the GIAU applies and requires the dismissal of this case.

The Court denies Moab's alternative argument that the case should be dismissed for lack of proximate cause. [See Motion at 7-11]. Because the Court is deciding a motion to dismiss, it must "accept the factual allegations" from Plaintiffs' Second Amended Complaint "as true and draw all reasonable inferences from those facts in a light most favorable to the [P]laintiff[s]." *State v. Apotex Corp.*, 2012 UT 36, ¶ 3, 282 P.3d 66. Given the early stage of this case, the Court concludes it would be premature to rule that, as a matter of law, Plaintiffs cannot establish proximate cause.

As a result of this Ruling, all of Plaintiffs' claims are dismissed with prejudice. Pursuant to Utah Rule of Civil Procedure 54, the Court will enter a separate and final judgment of dismissal.

----- END OF ORDER -----

The Court's electronic signature appears at the top of the first page.

Approved as to form:

/s/ Mitchell A. Stephens
Mitchell A. Stephens

Attorney for Moab City Police Department

/s/ Judson D. Burton*
Judson D. Burton

*Attorney for Plaintiffs Joseph Petito and Nichole Schmidt,
individually and for and on behalf of Gabrielle Petito*

*Signature affixed with permission received via email on 12/11/2024.

Certificate of Service

I hereby certify that, on this 11th day of December, 2024, I caused a true and correct copy of the foregoing to be served upon all counsel of record via the Court's electronic filing system.

/s/ Mitchell A. Stephens
Mitchell A. Stephens