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SEVENTH JUDICIAL DISTRICT - MOAB DISTRICT COURT

GRAND COUNTY, STATE OF UTAH

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| _____ |) | |
| JOSEPH PETITO et al., |) | Case No. 220700046 |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | TRANSCRIPT OF: |
| |) | ORAL ARGUMENT - |
| MOAB CITY POLICE DEPARTMENT |) | MOTION TO DISMISS |
| et al., |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

BEFORE THE HONORABLE DON M. TORGERSON

MOAB DISTRICT COURT
125 EAST CENTER STREET
COURTROOM #1
MOAB, UTAH 84532

NOVEMBER 20, 2024

A P P E A R A N C E S

For the Plaintiffs:

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-ooOoo-

1 November 20, 2024

2 P R O C E E D I N G S

3
4 THE COURT: This is Case 220700046, Joseph Petito,
5 et al., versus Moab City Police Department, et al.

6 Mr. Stephens is present representing the defense.
7 Mr. Burton is present representing plaintiffs.

8 Counsel, anyone else from the attendee list that
9 should be part of the meeting?

10 MR. STEPHENS: Not on our side, Your Honor.

11 THE COURT: All right.

12 Mr. Burton, anybody that you need to have in here?

13 MR. BURTON: No, Your Honor.

14 THE COURT: All right. Very good.

15 I've reviewed all the cases. I've reviewed all the
16 briefing.

17 It's your motion, Mr. Stephens, so if you want to
18 get started, we'll go from there.

19 MR. STEPHENS: Thank you, Your Honor. Appreciate
20 that, and appreciate your preparation.

21 As plaintiffs' complaint acknowledges, Gabby Petito
22 was murdered by her abusive fiancé and travel companion, Brian
23 Laundrie. Plaintiffs' opposition confirms that a murder
24 occurred more than a month after the couple left Moab.

25 Gabby's interaction with the Moab Police Department

1 occurred August 12th, and she was killed 38 days later on
2 September 19th. That crime occurred more than 400 miles away
3 from Moab, in Wyoming.

4 The facts of the case are undoubtedly tragic, but
5 not every tragedy supports a lawsuit. For purposes of today's
6 hearing, I intend to focus on two of the reasons why this case
7 should be dismissed. First, because it's barred by the
8 Governmental Immunity Act. And second, for lack of legal
9 causation.

10 Starting with that first issue, there's really no
11 dispute that the four corners of the GIAU require dismissal.
12 In fact, until now, plaintiffs openly admitted to the Court
13 that it's required to dismiss their claims under the current
14 state of the law. They remember that from the last time we
15 were before you talking about a bond. And plaintiffs were
16 correct.

17 The Court is required to dismiss their claims.
18 That's the current state of the law. As we cited in our
19 motion, when addressing the GIAU, the Supreme Court has
20 instructed that the Court begins by asking whether the case
21 involves a governmental function, and then ask whether immunity
22 is waived.

23 That outcome is not disputed. Instead, plaintiffs
24 have really responded by providing a preview of their appellate
25 arguments. What they can't identify, and haven't identified, a

1 single case from the State of Utah, or even the territory of
2 Utah, that allowed a plaintiff to assert claims against a
3 municipality based on an allegedly improper police
4 investigation absent statutory approval. They want this Court
5 to be the first to allow that claim.

6 And they invite the Court down that road by arguing
7 about the scope of the Supreme Court's opinion in Teed versus
8 State. Notably, as Footnote 1 to Teed confirms, the State of
9 Utah was not the only defendant in that case. Regardless, the
10 focus on Teed ignores other binding opinions this Court must
11 follow.

12 For example, Tindley versus Salt Lake City School
13 District involved a car crash that killed two students when
14 they were returning home from a debate tournament in
15 California. Like this case, the State of Utah was not a
16 defendant. Like this case, the plaintiff argued the
17 Governmental Immunity Act was unconstitutional. Like this
18 case, those arguments were rejected.

19 Instead, the Utah Supreme Court ruled that even,
20 quote, "Before the enactment of the GIAU, 1965, governmental
21 entities" -- and I emphasize that. Not the State of Utah or
22 just the State of Utah. "Governmental entities were afforded
23 immunity to the extent that their activities qualified as
24 governmental functions." And accordingly, the Court upheld the
25 application of the Immunity Act to the Salt Lake City School

1 District. No dispute that Moab is a governmental entity and
2 police work is the definition of a governmental function.

3 Likewise, in Parks versus UTA, the Utah Supreme
4 Court expressly extended its ruling in Teed to, quote, "Other
5 political subdivisions, and not just the State of Utah." As a
6 matter of law, Moab City is a political subdivision. That's
7 Utah Code 10-1-201. "Municipalities shall be political
8 subdivisions of the State of Utah." Just like the Utah Transit
9 Authority.

10 In those cases, Parks and Tindley, are consistent
11 with more than 100 years of authority that came before Teed.
12 We saw that on pages 6 through 7 of our reply. And specific
13 cases dealing with police conduct, and you can see that on
14 pages 10 to 13 of our reply.

15 Even if plaintiffs can distinguish one case, Teed
16 versus State, the outcome remains. And it's the same outcome
17 the plaintiffs recognized in every filing up to this motion.
18 Under the existing state of the law, the case must be
19 dismissed.

20 Turning to the second reason why the case should be
21 dismissed. The plaintiffs also cannot establish legal
22 causation, also know as proximate cause. As the Court of
23 Appeals said, quote, "Where proximate cause is left to
24 conjecture, the plaintiff must fail as a matter of law." The
25 facts of this case are tragic, but for purposes of this motion,

1 they also are undisputed.

2 Moab Police separated Gabby and Brian. She had the
3 keys in her van. She didn't drive off without Brian. Instead,
4 they left Moab together, traveled for more than a month,
5 ultimately making it to Wyoming.

6 And then we have the causation theory that the
7 plaintiffs have alleged and argued in their opposition. In
8 their opposition, plaintiffs argue that Moab's, quote,
9 "Involvement caused Gabby's parents, who spoke with Gabby at
10 the scene and demanded she fly home to get away from Brian, to
11 stand down on the belief that Moab and its officers would
12 protect their daughter."

13 That's a speculative theory that cannot support
14 legal cause under the facts of this case. Moab's officers had
15 no way of predicting that anyone was relying on Moab to protect
16 Gabby more than a month after she left Moab, and while she was
17 in a different state. And only speculation can answer what
18 Gabby, an independent adult, on the other side of the country,
19 would have done if a family member demanded that she leave her
20 fiancé.

21 Moreover, we can compare the facts of this case to
22 other cases from the United States. Alexander versus Town of
23 Vernon, a case we cited. In that case, the victim called the
24 police, reported domestic violence, sought protection,
25 specifically saying that she had been hit and threatened with a

1 knife. Police responded but did not arrest the husband. Three
2 days later, he broke into the house and murdered the victim.

3 The Court recognized, as Officer Pratt did, that
4 generally speaking, domestic violence is a "potentially a
5 precursor to murder." That's a quote. But that generalized
6 concern was not enough for case-by-case causation. Indeed, the
7 Court also recognized that the victim knew the husband better
8 than the police, but like here, the couple both declared that
9 they did not want either to be arrested. And the Court ruled
10 that failing to arrest on Saturday afternoon was not the
11 proximate cause of a Monday morning murder. Quote, "There were
12 too many variables involved to support causation."

13 Same thing in Nichols versus Nichols. After a
14 court proceeding, the wife told the husband that she would
15 shoot him if he returned home. Husband went to the chief of
16 police, requested an escort to go home. The Chief said, "Don't
17 worry." Husband goes home, sees the wife's car, goes to the
18 door, and was shot. Court refused to find that the police
19 caused that crime.

20 Rodriguez versus Garcia, the Court entered a
21 mandatory detention order, non-discretionary, required the
22 officers to detain. And it did so because the subject of the
23 order, quote, "Had threatened to kill with a sharp object," and
24 the Court found that threat had been credible. Police find the
25 individual, but they fail to detain him.

1 Two weeks later, the individual then stabs his
2 brother in the chest, and does so at the exact address
3 identified in the original petition seeking the
4 non-discretionary detention order.

5 The Court dismisses the civil case for lack of
6 causation finding, quote, "The remoteness and time of the harm
7 precludes a finding of proximate causation."

8 As those cases confirm, Moab is not liable.
9 Criminal conduct that occurred a month later in a different
10 state. Brian Laundrie is the cause of Gabby Petito's death.
11 For those reasons, as more fully set forth in the briefing,
12 Moab requests that the Court grant its motion and dismiss the
13 case with prejudice.

14 THE COURT: So my question for you, Mr. Stephens,
15 focuses primarily on causation and proximate cause, and why you
16 think the Court could rule on those now, as a matter of law,
17 given that they're pretty fact dependent. I realize that
18 there's pleadings -- or there are statements in the pleadings
19 that indicate this timeframe that you mentioned. But it
20 strikes me that there are factual -- potentially factual
21 disputes that could factor into that. If you could address
22 those issues.

23 MR. STEPHENS: I'm happy to do so, Your Honor. And
24 I recognize that on a motion to dismiss, the Court has to refer
25 to the pleadings and take the facts as alleged and inferences

1 that can be drawn from those facts in the light most favorable
2 to the plaintiffs. We've done so.

3 But there also are facts that are alleged that are
4 not disputed that the Court can and has to accept. And those
5 facts include that Moab -- or sorry -- that Gabby and Brian
6 left Moab, and that the murder occurred 38 days later in
7 Wyoming. And given those undisputed facts, you're left with,
8 as a matter of law, a causation theory that is speculation.
9 And as the Court of Appeals said in the Thurston case, where
10 proximate cause is left to conjecture, the plaintiff must fail
11 as a matter of law.

12 Fundamentally, when we talk about the difference
13 between a summary judgment motion and a motion to dismiss, it's
14 simply a matter of where the Court can go to look at the facts.
15 On a summary judgment motion, I get the benefit of all the
16 facts that have been developed along the way after a
17 complaint's been filed. A motion to dismiss, I have to take
18 the facts from the pleadings.

19 But once you have that established body of facts,
20 once you can say, "These are the facts that are before the
21 Court," the Court's still obligated to take inferences from
22 those facts in the light most favorable to the plaintiff. And
23 then the Court still has to rule on whether or not the facts
24 that are either alleged or established in a summary judgment
25 motion are enough. Or whether it simply produces a speculative

1 causal theory.

2 What you have in front of you are facts that come
3 from the pleadings, and are well enough established that you
4 can reach that causal question.

5 THE COURT: Thank you.

6 Mr. Burton, I want to give you time, but I do have
7 a question for you at the outset I'd like you to address.
8 Question is, can the District Court, under existing law as
9 applied, give plaintiffs what they want here, given the
10 Governmental Immunity history of cases? Is there any
11 circumstance where I could?

12 MR. BURTON: I think the answer to that is yes,
13 Your Honor. As we've set forth in our briefing, Teed is
14 dealing with a state entity and political subdivisions of the
15 state. What we've argued is that municipalities at the time
16 that Utah achieved statehood were not immune from suit. And
17 Mr. Stephens has cited, I believe, Utah Code 10-1-201, which
18 says that municipality cities are subdivisions of the state.
19 But that statute, as I looked it up, was first enacted in 1977,
20 well after the time of statehood. And so there is a --

21 THE COURT: And so I would have to decide that a
22 municipality is not a governmental subdivision of the state,
23 even though case law like, you know, Parks and Tindley, extend
24 those protections to other governmental subdivisions. So for
25 me to rule in your favor, I would have to determine that Moab

1 City, as a municipality, is not a governmental subdivision, and
2 that Article 5 should be interpreted the way that it was
3 originally formed, rather than the way that it's been
4 interpreted for the last hundred years.

5 MR. BURTON: I think more narrowly framed, Your
6 Honor, you'd have to rule that Moab, as a municipality, is not
7 a political subdivision -- or was -- would not have been a
8 political subdivision of the state at the time the Section 5
9 was enacted, such that a wrongful death cause of action could
10 have been brought against it in these circumstances. And
11 recognizing that, it would render Teed, Parks, and Tindley
12 inapplicable to this case. None of those cases reach the
13 question of whether a municipality is immune from suit.

14 And I grant you, Your Honor, that's a narrow path.
15 And I would like to address more broadly whether or not
16 sovereign immunity even applied at the time of statehood. And
17 whether Teed was correctly decided. And as to that question,
18 this Court, of course, would have to dismiss. And that's a
19 question we'd have to take up to the Utah Supreme Court.

20 But we set forth a narrow path in our briefing
21 where this Court could decide that Teed and its equally
22 applicable Parks and Tindley, don't actually answer the
23 question for this Court.

24 THE COURT: Okay. Go ahead with the rest of your
25 argument. I started you off on a different track, I realize.

1 So --

2 MR. BURTON: Oh, no. That's okay, Your Honor. I
3 want to make sure I answer the questions that you have about
4 the case.

5 So for all the issues that have been raised in the
6 case, one is central, and in my judgment, dispositive. And
7 that's the issue of whether or not, at the time of statehood, a
8 wrongful death claim existed against a governmental entity, or
9 the state. Moab argues that no such cause of action existed
10 against the state or its political subdivisions, or its city at
11 the time of statehood.

12 And in that, at least partially, it's not alone.
13 The case of Teed v. State said that very same thing. That at
14 the time of statehood, there was no wrongful death cause of
15 action against the state. But Teed was decided on incomplete
16 briefing, and in reaching that conclusion, it actually was
17 wrong. There did exist such a cause of action at the time of
18 statehood. And beginning with that recognition changes our
19 understanding of what Section 5 of the Utah Constitution was
20 intended to achieve.

21 And so what I want to talk with Your Honor about
22 today is -- are four points. First of all, that a wrongful
23 death cause of action existed at the time of statehood.
24 Second, that sovereign immunity did not exist at the time of
25 statehood. Third, I want to discuss briefly that Teed on its

1 own terms was wrongly decided. And then fourthly, I'll briefly
2 address the proximate cause issue that opposing counsel had
3 raised.

4 So beginning with the question of whether or not a
5 wrongful death cause of action existed at the time of
6 statehood. The answer to that question is undoubtedly yes. In
7 1876, the territorial legislature enacted a statute that
8 created a wrongful death cause of action. And it did so in
9 response to this 1873 case of *Thomas v. Union Pacific Railroad*.

10 In that case, a father sued a railroad for the
11 wrongful death of his son. And the District Court presumably
12 dismissed the case, because at common law there was no wrongful
13 death cause of action.

14 And the legislature, in response to this, created
15 that wrongful death cause of action in an 1876 statute. And in
16 subsequent legislative sessions, it actually strengthened and
17 expanded the wrongful death cause of action.

18 In 1888, it expanded the wrongful death cause of
19 action by lifting a cap on damages, there was a \$10,000 damage
20 cap. And (inaudible) that in favor of allowing damages to,
21 quote, "Be given as under all circumstances of the case may be
22 just." So we see the legislature here creating cause of action
23 and strengthening it.

24 And then immediately before the Utah Constitution
25 is ratified, there is this -- this dispute in the Utah

1 territorial Supreme Court. And the dispute centered on whether
2 the wrongful death statute merely preserved one of their --
3 whatever cause of action the deceased could have brought, or if
4 it created a brand-new cause of action in the air. And the
5 Utah Territorial Supreme Court said it creates a brand-new
6 cause of action.

7 And it's telling that when Section 5 of the Utah
8 Constitution is enacted that it omits the language that the
9 dissenting opinion in that case used to say, "No. All the
10 wrongful death statute is doing is just preserving whatever
11 cause of action the deceased would have had." What this shows
12 is, is that the legislature, those who ratified the
13 Constitution, and the Territorial Supreme Court, recognized
14 that the wrongful death statutes that existed immediately
15 before statehood actually created a brand-new cause of action
16 in the heirs.

17 And as the Utah Supreme Court has noted repeatedly,
18 and this is contrary to what it said in Teed, but what it has
19 noted repeatedly over the years is that Section 5 of the Utah
20 Constitution actually incorporated the wrongful death statute,
21 thereby constitutionalizing a wrongful death cause of action.
22 It's not merely that Section 5 protected whatever cause of
23 action happened to exist. It actually constitutionalized a
24 wrongful death cause of action in the heirs.

25 I just want to give a few citations here for the

1 Court. In the case of *Bybee v. Abdulla*, which is a 2008 case
2 cited in our brief, the Utah Supreme Court explained that
3 quote, "The wrongful death cause of action entered Utah
4 Territorial Law in 1874 and was incorporated into the Utah
5 Constitution when Utah entered the Union." And so it's talking
6 about incorporating that statute into the Constitution.

7 In the case of *Berry v. Beechcraft*, the Court once
8 again said that the territorial wrongful death statute was,
9 quote, "Then included in the Utah Constitution itself." And
10 it's important to actually -- when we look at this idea that
11 the wrongful death cause of action was constitutionalized, that
12 it was incorporated into the Constitution, and vested a
13 wrongful death cause of action in heirs per the Constitution.

14 It's important to note that the language of Section
15 5 is even stronger, and has a categorical reach stronger than
16 the Utah Territorial statute. It says simply that it's
17 unconstitutional for a wrongful death cause of action to be
18 abrogated or limited in any way. And the Utah Supreme Court
19 has recognized that fact in a number of cases.

20 And so what we have is, from a very early period in
21 territorial history, a wrongful death cause of action is
22 created, it's strengthened, and then it's incorporated in a
23 categorical form into the Utah Constitution. So the wrongful
24 death cause of action, contrary to what Teed says, exists right
25 there in the Utah Constitution.

1 So then the question becomes whether or not that
2 cause of action could be brought against the State or a
3 governmental entity. Now, our briefing spends a good bit of
4 time discussing the distinction between a municipality and the
5 state. I don't want to talk about that here. I just want to
6 focus on the idea of sovereign immunity more generally.
7 Because it's very clear from the history leading up to the
8 adoption of the Utah Constitution, that sovereign immunity
9 actually didn't exist.

10 In 1854, the territorial legislature enacted a law
11 that prohibited parties from citing case law in court. The
12 intent was to reject the common law. It repeated that exercise
13 in 1884 when it enacted a law that abrogated all other laws,
14 statutes, and rules that weren't contained in the code. In
15 fact, as Justice Zimmerman recognized in a concurring opinion
16 in the case of *Craftsman Builders v. Butler Management*
17 *Corporation*, a 1999 case, the territorial legislature had
18 categorically rejected the common law.

19 And in fact, it wasn't until 1898 that the Utah
20 legislature adopted the common law into Utah law. And that was
21 two years after we achieved statehood. So all the way up to
22 that time, until two years after we achieved statehood, the
23 territorial legislature had been rejecting the common law.

24 And where it had rejected the common law, it stands
25 to reason, by implication, that the common law doctrine of

1 sovereign immunity did not exist. And there's a good reason
2 for why that -- the founders of the state didn't want that to
3 exist, given -- given the history of the people that came here.
4 A history where they faced a lot of violence and persecution at
5 the hands of government actors. They were suspicious of
6 government and wanted to ensure that they had their rights
7 protected.

8 And so where the, you know, original founders of
9 the state had rejected the common law, and then the common law
10 wasn't adopted until two years after statehood, there was no
11 sovereign immunity. Sovereign immunity is a court-made
12 doctrine that comes from the common law.

13 And so at the time of statehood, there was no
14 sovereign immunity. It stands to reason that a wrongful death
15 cause of action that's constitutionalized in Section 5 and
16 doesn't speak of any limits on who can be sued, that that cause
17 of action would have been asserted against the state and its
18 political subdivisions where there is no common law, and no
19 common law -- no common law doctrine of sovereign immunity.

20 And in that connection, defense -- defense counsel
21 rightly notes that we don't cite any cases where the state has
22 been sued for wrongful death during that -- you know, those
23 years surrounding statehood. But that doesn't mean the cause
24 of action didn't exist.

25 I think the line of reasoning I've just taken the

1 Court through strongly shows that there's no sovereign immunity
2 and no common law, and the cause of action is
3 constitutionalized and doesn't have any limits on who can be
4 sued, then the state could have been sued at this time.

5 And so with that understanding in hand, I want to
6 briefly pivot to the third point I wanted to discuss with the
7 Court. And that is that Teed was wrongly decided on its own
8 terms.

9 So again, in our briefing, we talk about a way to
10 distinguish Teed from this case, which was a path that could be
11 taken. But if Teed and its progeny, Parks and Tindley, are not
12 distinguishable from this case, then Teed ought to be
13 overturned on its own terms.

14 Now, briefly as an aside, Your Honor, Parks and
15 Tindley, they were subsequently rejected as giving an improper
16 interpretation of Section 5 as it relates to damage caps.
17 That's why we focused on Teed, because those cases are focusing
18 on damage caps. We're focused on the variability to bring a
19 wrongful death cause of action.

20 THE COURT: Are you aware of any challenge to Teed
21 prior to yours? As I look at it, as of this morning, there's
22 125 or so citing references, and none of them reflect a
23 negative decision or opinion against Teed until this case.
24 That -- at least as far as being challenged successfully on
25 appeal.

1 MR. BURTON: I am not aware of any case that
2 challenges Teed. This is likely the first. But as a judicial
3 system that's adversarial in nature, Courts rule on the issues
4 brought before them. So it may well be this is the first case
5 that's actually raised a challenge to Teed since then.

6 THE COURT: Okay.

7 MR. BURTON: But I have not found a case that it
8 was challenged either, Your Honor.

9 So in terms of why Teed was wrongly decided--this
10 will echo some of the points I just made--but central to Teed's
11 holding is this idea that there did not exist a wrongful death
12 cause of action against the state when Utah achieved statehood.

13 And as I've just argued, that's clearly wrong. A
14 wrongful death cause of action was incorporated in the
15 Constitution. It doesn't limit against -- it imposes no limit
16 on who can be sued. And the doctrine of sovereign immunity is
17 a common law doctrine that did not exist at the time of
18 statehood. And in fact, in the case of DeBry v. Noble, it's a
19 1995 case. It precedes Teed by one year.

20 The Court in that case -- we cited it at length for
21 this distinction between municipalities and the state. But the
22 Court also notes in that case that the doctrine of sovereign
23 immunity was court-made. It wasn't made by statute. In fact,
24 the first time that idea that the legislature has power to
25 decide when the state could be sued -- the first time that idea

1 arises, according to DeBry, is the 1913 case of Wilkinson v.
2 State.

3 And -- and so this is a judicially-created
4 doctrine, and a lot of the cases that are cited by defense
5 counsel--not all of them but a lot of them--are coming well
6 after the time of statehood, and in this timeframe that DeBry
7 discusses that there are new innovations, judicial innovations
8 on the law of sovereign immunity. It just didn't exist at the
9 time of statehood.

10 And so Teed, that very important predicate to its
11 decision to say that cause of action didn't exist at statehood,
12 it's wrong on that. And if it's wrong on that, it's wrong in
13 its conclusion that Section 5 is not violated by the act. As
14 it rightly notes, if a wrongful death cause of action did exist
15 at the time of statehood, then the legislature could not later
16 abrogate it.

17 And what we're contending is that in 1965, when the
18 legislature enacted the Governmental Immunity Act, it, by a
19 legislative act abrogated a cause of action that existed at the
20 time of statehood. And that undoubtedly violates Section 5.
21 And so Teed is relying on that false predicate. That cause of
22 action existed.

23 I also note that it relies on weak authority. And
24 again, this is touching on some things that I've already
25 mentioned. But Teed cites to Wilkinson v. State, again, a 1913

1 case, that introduces an innovation into the doctrine of
2 sovereign immunity. That does not express the state of the law
3 at the time of statehood. It also cites to State v. District
4 Court, a 1937 case, and Campbell Building Company v. State Road
5 Commission, another 1937 case. Again, these cases do not
6 discuss what the law of sovereign immunity was at the time of
7 statehood.

8 And so it's relying on weak authority. I also
9 point out, as an important point that we didn't mention in our
10 briefing but still bears mentioning here, is that there's no
11 indication from Teed that the Court had presented to it an
12 argument under the open courts clause.

13 The reason that's important is because as soon as
14 you recognize that a cause of action for wrongful death existed
15 in the years prior to and at the time of statehood, you now
16 have an open courts clause problem if the legislature later
17 tries to abrogate, or take away, or limit that cause of action.

18 And in this context where the -- where the right to
19 sue for wrongful death is constitutionalized, it's a
20 fundamental right under the Constitution, which additionally
21 reinforces an open courts clause problem.

22 So again, Teed is relying on weak authority. It's
23 relying on incomplete arguments and briefing that don't
24 consider all of the relevant issues. And so with those things,
25 we would contend that Teed needs to be revisited and

1 overturned.

2 And in this connection, in terms of these different
3 factors for stare decisis, I just want to note for the Court
4 that the Utah Supreme Court, the United States Supreme Court,
5 other authorities have repeatedly stated that the doctrine
6 stare decisis has limited application on the field of
7 Constitutional law.

8 The question when interpreting the Constitution is
9 a paramount one, and that is, what is the original public
10 meaning and original intent of the Constitution? And if a case
11 gets that interpretation wrong, these other factors that are
12 considered under stare decisis are not given as much weight.
13 The Court wants to get the interpretation of the Constitution
14 right.

15 And that's what we would encourage in this case, is
16 that -- is that the Court recognize that at the time of
17 statehood, parents, like Gabby's parents, had a right to pursue
18 a claim for wrongful death of a child, even against the state.
19 That no one at the time of statehood enjoyed immunity for
20 wrongful death causes of action.

21 And so those are the arguments that I wanted to
22 present to the Court on this topic of wrongful death.

23 Now, want to just briefly address proximate cause,
24 Your Honor, and I'll be quick. As we noted in our briefing,
25 each of the cases cited by defense counsel, out-of-jurisdiction

1 cases, were cases ruled upon under summary judgment. We have
2 the Alexander case, the Nichols case, and the Rodriguez case.
3 And as you rightly note, Your Honor, the proximate cause issue
4 is a fact-intensive one, and one that requires fact finding.

5 But I do want to emphasize some of the facts that
6 we've alleged here, that we think raise enough factual
7 allegations, if taken as true, would entitle us to relief.
8 They set out a cause of action. And so just a handful of these
9 facts I want to point out.

10 The first is that when Moab City Police officers
11 first encounter Brian and Gabby, and begin investigating the
12 domestic violence that had taken place, at a certain point,
13 Gabby called her parents. And her parents were insistent that
14 they wanted to fly her home. They wanted to pay to have
15 somebody drive her to the airport, pay for her ticket, and
16 bring her home.

17 But Gabby assured them that the police were
18 investigating this and would handle it. And Gabby's parents,
19 plaintiffs in this matter, relied on their beliefs that Moab
20 City was appropriately investigating and handling the
21 situation. So there's a reliance, here.

22 And that reliance, though reasonable, was
23 misplaced. As we set out in the complaint, the investigation
24 was grossly negligent. And so much so, in fact, that it
25 actually elevated the risk of harm to Gabby.

1 We note that soon after encountering Brian and
2 Gabby, Officer Robbins takes Gabby and puts her in the back of
3 his police cruiser, which would communicate to her that she was
4 in trouble.

5 Soon after, Officer Robbins and Officer Pratt begin
6 sympathizing with Brian. When Brian calls Gabby crazy, they
7 all laugh. When the officers communicate to Brian that they
8 had reached the conclusion that Gabby was the predominant
9 aggressor, he laughed.

10 So with this sympathizing with Brian, it could be
11 taken to actually embolden him. It could actually elevate the
12 risk of harm to Gabby. And in addition, the fact of getting
13 this investigation wrong was not necessarily lost on Officer
14 Pratt, because as we quote him at length in the complaint, and
15 it's pretty rare to have this candid of an admission in a case.
16 He actually talks about the domestic assault code.

17 And he says, quote, "It's there to protect people.
18 The reason they don't give us discretion on these things is
19 because too many times women who are at risk want to go back to
20 their abuser. They just want him to stop, and they don't want
21 to be separated. They don't want him charged. They want --
22 they don't want him to go to jail. And then they end up
23 getting worse and worse treatment, and then they end up getting
24 killed."

25 He understood the risks. He foresaw the risks. We

1 think factual development will show that he actually did
2 appreciate those risks. And in addition, and this fact is
3 very, very important and it's in our complaint and in the
4 briefing, after the investigation, and after Gabby's murder on
5 September 19th, the captain for the Price City Police
6 Department, Brandon Ratcliff, was tasked with an investigation
7 of Moab City officer's conduct. He found multiple violations
8 in their investigation.

9 And this point is crucial. He concluded, after
10 looking at their conduct, that he could not rule out that
11 Gabby's murder might have been prevented if the officers had
12 acted appropriately. I mean, that's a statement of somebody
13 who has an expertise in these investigations and how to handle
14 domestic violence investigations.

15 And if he is looking at everything and saying, "I
16 can't rule out that her murder might have been prevented,"
17 certainly we have alleged enough on the issue of proximate
18 causation to have our right to present our proof, to do
19 discovery.

20 And so we would ask that the Court deny the motion
21 on proximate causation. We would ask that the Court, as to the
22 issue of wrongful death, we understand that if the Court sees
23 that Teed and its progeny apply, that it can't, obviously,
24 overturn those. But that it recognize that a wrongful death
25 cause of action existed at statehood, and that cause of action

1 could have been asserted against the state and its political
2 subdivisions.

3 And with that, if you have any questions, Your
4 Honor, I'm more than happy to answer them.

5 THE COURT: I think you've answered the ones that
6 were front of mind. So thank you.

7 Mr. Stephens, you get the last word.

8 MR. STEPHENS: Thank you, Your Honor.

9 We attached that report that was just referenced,
10 as Exhibit A. As you've heard and as you saw from the
11 briefing, it was incorporated into the plaintiffs' pleadings
12 and into their opposition, and it was properly before the
13 Court. And I know that there's been a representation about
14 what that report indicated, particularly when it came to
15 causation or predominate aggressor. And let's just clarify
16 that.

17 Captain Ratcliff determined that, based on the
18 evidence of this interaction, Gabby would have been deemed the
19 predominant aggressor at this stop. He also did not support a
20 causation argument. Instead, he led exactly to the point that
21 we're making. Only speculation could answer that.

22 In fact, here's what Captain Ratcliff wrote.
23 "There are many what-ifs that have been presented as part of
24 this investigation. The primary one being, would Gabby be
25 alive today if this case was handled differently?" That's an

1 impossible question to answer. Nobody knows, and nobody ever
2 -- will ever know how to answer that question. That's the
3 definition of a speculative causation theory. And it does not
4 support plaintiffs' position in this case.

5 Want to, just continuing with causation, they make
6 an argument that cases were decided on summary judgment versus
7 a motion to dismiss. Your Honor, there is functionally no
8 difference between me accepting the pleadings as they've
9 alleged them, and copying and pasting those pleadings in a Rule
10 56 motion as a statement of undisputed facts. The facts would
11 be the same.

12 The facts would be that the Moab stop occurred
13 August 12th. Moab separated the couple. Facts would be that
14 the couple the next day got back together, left Moab. The
15 facts would be that they traveled together over a month after
16 leaving Moab. The facts would be that they traveled together
17 to Wyoming, where this murder occurred, more than a month after
18 the couple left Moab.

19 Those are the facts. Those are the facts that the
20 plaintiffs have alleged, and they wouldn't change if we copied
21 and pasted those allegations into a Rule 56 motion, because
22 those are the facts, and again, you can accept the plaintiffs'
23 pleadings, as we have, and that's the summary -- that's the
24 motion to dismiss standard.

25 I want to point out one more case that I didn't hit

1 in my initial motion, and that's the Mack versus Monroe case.
2 It's an interesting case, because in that case, the murderer
3 was actually deposed and testified that the murder would not
4 have occurred had he been under a peace bond. The actual
5 killer had his testimony.

6 And they sued the police department and said, "Well
7 you know, there you go. What better causation could you have?"
8 And the Court still dismissed the case on a civil claim,
9 because it refused to speculate about, quote, "What would have
10 happened absent the alleged police error."

11 Plaintiffs haven't cited a causation case that
12 supports their theory. There's not a case that they've cited,
13 or could provide to the Court, or have provided to the Court
14 that would allow this Court to have the plaintiffs continue on
15 a crime that occurred more than a month later and more than 400
16 miles away.

17 Turning to the immunity, I'm intrigued and
18 interested to talk about and debate the history of the state.
19 Facts, and as Judge Justice Stewart called it, the woof and the
20 warp of the common law and all those interesting details. But
21 this really is not the time to do it, because Your Honor is
22 bound by the existing law from the Supreme Court.

23 And I started my motion, I started my argument
24 today with really a simple challenge and a simple truth. For
25 all their arguments, the plaintiffs still have not identified

1 any case from the State of Utah, the Territory of Utah, the
2 Territory of Deseret that allowed a claim against a city for
3 alleged police error to move forward without legislative
4 approval.

5 Cases talk about pipes and sewers and ditches and
6 things that, at the time of statehood, were deemed to be
7 ministerial acts. Police work is not a ministerial act.

8 In contrast to plaintiff's inability to cite a case
9 that supports their position, we have cited cases from the time
10 of statehood, before statehood, through the present. After
11 Teed, you have Parks and Tindley. We've talked about them.

12 Before statehood -- or before Teed, you have the
13 Condemarin case from 1989 that recognizes immunity from
14 liability existed as a matter of common law in Utah for
15 government entities engaging in governmental, as opposed to
16 proprietary activities.

17 We have Ramirez versus Ogden City, 1955. It has
18 long been recognized in this jurisdiction that a municipal
19 corporation has immunity. Davis versus Park City, 1953. I can
20 keep going. Skip back.

21 They want to talk about the time of statehood.
22 Royce versus Salt Lake City, 1897, fining the police -- sorry
23 -- fining the city. Salt Lake City was not liable for police
24 error, because such actions were, quote, "In the interest of
25 the public."

1 Before statehood, Chamberlain versus Waters, 1894.
2 Finding the public municipal corporation was not subject to
3 garnishment statutes because its functions were exclusively of
4 a public character.

5 They talk about governmental immunity, and they
6 talk about municipal liability, and they want to present it as
7 a broad question. Really, the question is, before the Court,
8 immunity for police conduct. That's what's at issue.

9 We look at police conduct. Again, 1898, Everill
10 versus Swan, finding the city was not liable for police
11 conduct. Gilmore versus Salt Lake City, 1907, same thing.
12 Royce v. Salt Lake City, 1897, the same thing.

13 Whether you go back to statehood, whether you go
14 sometime after statehood. Whether you go right before Teed or
15 whether you go in the decades after Teed, the result's the
16 same. There's no case that allows the plaintiffs to pursue
17 claims against the -- against Moab City for alleged police
18 negligence. And there are multiple cases that have rejected
19 that.

20 They may have a chance to argue differently, but
21 what's before the Court requires dismissal, as the plaintiffs
22 have recognized every step until now.

23 THE COURT: Thank you.

24 MR. STEPHENS: Thank you.

25 THE COURT: Thank you, counsel, for your briefing.

1 It was compelling, it was interesting, and it was thorough.
2 And I rarely see this level of briefing, just because I think
3 the issues tend to be maybe less complex. And so I very much
4 appreciate the work that you've done here.

5 I've thought a lot about this case. I'm not going
6 to issue an opinion. I'm just going to state on the record a
7 short reasoning for my decision today, knowing that this was a
8 de novo appeal kind of decision that I'm making, and it will be
9 reviewed, based on your briefing and based on your arguments,
10 at the appellate level.

11 The Court at the District Court level has a
12 mandate, and that is to apply the law as it exists. And I am
13 bound by stare decisis at the District Court level, probably to
14 a degree that is higher than the appellate courts are bound by
15 stare decisis.

16 We've seen opinions at the national and the state
17 level that overturn prior decisions, and decisions that, upon
18 second look, appear to be -- appear to need changes. And the
19 Courts of Appeals have that authority, and they have that
20 decision-making capability. But at the District Court level,
21 stare decisis binds me to make decisions that apply the law as
22 it exists.

23 And the law that exists right now is Teed and its
24 cases that follow. And Teed has not been meaningfully
25 challenged on appeal, yet. This case probably, or may be the

1 first one to, and so while I respect the arguments of plaintiff
2 here that Teed -- that there may be reasons to overturn Teed,
3 even if I were to agree with that, I'm not in a position to be
4 able to do that.

5 And so court -- the Court finds that Teed and its
6 progeny apply. And the Court also finds that the existing case
7 law applies governmental immunity and extends the reach of
8 governmental immunity in this kind of case to the Moab Police
9 Department and Moab City.

10 As municipalities, they are -- they are
11 governmental entities performing a governmental function, and
12 under the case law as it exists, I don't see how that they are
13 possibly exempted.

14 The only workaround would be to say that, at the
15 time of statehood, municipalities didn't have governmental
16 immunity, nor did the state, potentially. But the case law in
17 the 125 years since, or more, indicates that they do. And
18 that's what I'm bound by.

19 And so the municipality here has governmental
20 immunity under the Governmental Immunity Act. Teed applies to
21 extend that governmental immunity. And so based on that, the
22 Court is going to grant the defense's motion to dismiss.

23 With respect to causation, I'm going to make a
24 ruling here so that it can be reviewed on appeal, if the Court
25 of Appeals chooses to take this case up on that issue. I do

1 think that plaintiffs have made a prima facie case that Moab's
2 officers' conduct here could have been a cause of death. Not
3 necessarily the cause of death, but a cause of death. And
4 based on the pleadings, and making every inference in favor of
5 plaintiffs, the Court is going to deny the motion to dismiss on
6 causation grounds, because that's a factually intensive
7 question, and favoring plaintiffs' statements here, I think
8 there are more facts to be developed before the Court could
9 rule.

10 With respect to that, the Court did not convert
11 this to a Rule 56 hearing. So that's why all of the inferences
12 are made in favor of the plaintiff on the pleadings.

13 And so the Court denies the motion to dismiss -- or
14 on that ground, but grants the motion to dismiss on
15 governmental immunity grounds. I think that includes all of
16 the issues that would make this case appealable.

17 But counsel, if you need additional rulings, I'm
18 happy to do that so that you can move forward as expeditiously
19 as possible.

20 MR. BURTON: No. I think that covers it, Your
21 Honor.

22 THE COURT: Mr. Stephens, do you agree?

23 MR. STEPHENS: Agree, and I think the -- just maybe
24 only clarification is as result of the Court's ruling, that the
25 case should be dismissed with prejudice.

1 THE COURT: And I will dismiss the case.

2 Based on that, Mr. Stephens, if you'll please
3 prepare the order. Circulate that for approval. I'll sign off
4 on it as soon as I see it.

5 I don't think my decision is probably a surprise to
6 anybody. Obviously, this -- we've talked before that this is
7 the -- this is where it's headed and I'm, frankly, more
8 comfortable having the Court of Appeals make those decisions
9 than the District Court, under these kinds of arguments for
10 these kinds of legal issues.

11 So anything else today, then, counsel?

12 MR. STEPHENS: No, Your Honor. Thank you.

13 MR. BURTON: Your Honor, thank you for your time.
14 We really appreciate it.

15 THE COURT: Again, thank you for your briefing and
16 your efforts, and your arguments. I'll be in recess then.
17 Have a good day.

18 (Proceedings concluded.)

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1 STATE OF UTAH)
)
2 COUNTY OF SALT LAKE)

3 I, CECILEE WILSON, Certified Shorthand
4 Reporter for the State of Utah, certify:

5 That I received the audio recording in this
6 matter, that I transcribed it into typewriting, and that a
7 full, true, and correct transcription of said audio recording
8 so recorded and transcribed is set forth in the foregoing pages
9 inclusive, except where it is indicated that the recording was
10 inaudible.

11 I FURTHER CERTIFY that I am neither counsel
12 for nor related to any party to said action nor in anywise
13 interested in the outcome thereof.

14 Certified and dated this 17th day of December,
15 2024.

16 

17 CECILEE WILSON, CSR, RDR, CRR
18 Certified Shorthand Reporter
19 for the State of Utah
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