

Bond Case Briefs

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Kerr v. City of Salt Lake

Supreme Court of Utah - December 17, 2013 - P.3d - 2013 UT 75

Pedestrian who was injured after tripping over uneven portion of sidewalk filed negligence action against city. Following a second jury trial, the district court entered judgment for pedestrian. City appealed.

The Supreme Court of Utah held that:

- City did not qualify for discretionary-function immunity;
- Supreme Court would decline to review trial court's grant of new trial to pedestrian after directed verdict in favor of city and dismissing jury at close of pedestrian's case in chief in first trial;
- Whether city had sufficient constructive and actual notice of sidewalk defect in order to remedy it was question for jury; and
- City invited any error by trial court in excluding lay opinions that the sidewalk displacement was not dangerous.

When determining if the discretionary-function exception to a statutory waiver of governmental immunity applies to a particular case, courts ask four questions: (1) whether challenged act, omission, or decision necessarily involves a basic governmental policy, program, or objective; (2) whether act, omission, or decision is essential to realization or accomplishment of that policy, program, or objective as opposed to being one which would not change course or direction of the policy, program, or objective; (3) whether act, omission, or decision requires exercise of basic policy evaluation, judgment, and expertise on the part of governmental agency involved; and (4) whether governmental agency involved possesses requisite constitutional, statutory, or lawful authority and duty to do or make challenged act, omission, or decision.

City did not qualify for discretionary-function immunity, as city's decision not to remedy displaced sidewalk was not essential to its program of building and maintaining sidewalks. Decision of city employee not to directly remedy sidewalk defect by horizontal saw cutting, but instead to provide a sidewalk replacement estimate to adjacent business owner, was a classic operational determination that did not implicate policy-making or thrust the decision into the political process.