

Gregory N. Hoole (7894)
HOOLE & KING, L.C.
4276 South Highland Drive
Salt Lake City, Utah 84124
Telephone: 801-272-7556
gregh@hooleking.com

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Attorneys for Bluffdale City
and Mayor Natalie Hall

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

JEFFREY D. GASTON,

Plaintiff,

vs.

JASON HALL, an individual, NATALIE
HALL, an individual, GEORGE
SCHLIESSER, an individual, WOODCRAFT
MILL & CABINET, INC., a Utah corporation,
and BLUFFDALE CITY, a municipality of the
State of Utah,

Defendants.

**MOTION TO DISMISS WITH
PREJUDICE**

Civil No. 230905528

Judge Chelsea Koch

Defendants Bluffdale City (sometimes, the “City”) and Natalie Hall in her official capacity as Bluffdale City Mayor (“Mayor Hall”) respectfully file this Motion to Dismiss with Prejudice all claims in the Second Amended Complaint against the City under Rule 12(b)(6) of the Utah Rules of Civil Procedure for failure to state a claim upon which relief can be granted. The Second Amended Complaint fails to state a claim upon which relief can be granted against Bluffdale City because the City is immune from liability for the torts alleged in the complaint.

INTRODUCTION

Plaintiff Jeffrey D. Gaston (“Gaston”) has brought claims against Bluffdale City and Mayor Hall for false light (third cause of action), intentional infliction of emotional distress (fourth cause of action), and civil conspiracy (fifth cause of action). Gaston’s false light claim alleges that Mayor Hall used her “official Bluffdale Mayor account on social media” to publish falsehoods about Plaintiff. *See* Second Amended Complaint (“Complaint”) at ¶¶ 126, 235–254.

Gaston’s intentional infliction of emotional distress claim alleges that Bluffdale, its mayor, and its employees intended to cause Gaston emotional distress by engaging in unlawful conduct toward him, “including harassment and intimidation of Gaston, portraying Gaston in a false light, impeding the investigation into the threats against Gaston, committing battery against Gaston, and assaulting Gaston, including through the communication of numerous death threats directed to Gaston at both his public office as well as his home.” *See id.* at ¶¶ 255–254 (¶ 256).

Gaston’s civil conspiracy claim alleges Bluffdale City and the other defendants “had a common objective to cause injury to Gaston in the manner described herein, which included but was not limited to, causing Gaston severe emotional distress and mental anguish, civil assault, and casting Gaston in a false light.” *See id.* at ¶¶ 263–270 (¶ 265).

Putting aside the lack of merit inherent in these claims, the claims each fail to state a claim upon which relief can be granted against the City, as governmental entities are immune from liability related to torts stemming from intentional rather than negligent conduct. Accordingly, the complaint should be dismissed against Bluffdale City.

LEGAL STANDARD

“A complaint states a claim upon which relief can be granted if it alleges the facts and sets forth the legal basis for an available legal remedy.” *Simmons Media Group, LLC v. Waykar, LLC*,

2014 UT App 145, ¶ 15, 335 P.3d 885 (quotation simplified). Courts “assume the truth of the factual allegations in the complaint and draw all reasonable inferences therefrom in the light most favorable to the plaintiff.” *Fehr v. Stockton*, 2018 UT App 136, ¶ 8, 427 P.3d 1190 (quotation simplified). However, courts need not accept legal conclusions couched as facts as true. *See Osguthorpe v. Wolf Mountain Resorts, L.C.*, 2010 UT 29, ¶ 11, 232 P.3d 999. Courts “may also consider outside documents of which [they] would be entitled to take judicial notice, such as public records.” *Pierucci*, 2015 UT App 80 at ¶ 7.

ARGUMENT

I. THE GOVERNMENTAL IMMUNITY ACT DOES NOT WAIVE LIABILITY FOR TORTS ARISING FROM INTENTIONAL CONDUCT.

Plaintiffs’ claims fail to state a claim against Bluffdale City because the Utah Governmental Immunity Act (“UGIA”) has not waived liability for torts based on intentional conduct. Generally, to determine whether a governmental entity is immune from suit under the Act, courts apply a three-part test, which assesses (1) whether the activity undertaken is a governmental function; (2) whether governmental immunity was waived for the particular activity; and (3) whether there is an exception to that waiver. *Blackner v. State, Dep’t of Transp.*, 2002 UT 44, ¶ 10, 48 P.3d 949.

A. Gaston’s Allegations Relate to Government Functions.

With respect to the first inquiry, the UGIA defines what constitutes a governmental function. Governmental function “means each activity, undertaking, or operation of a governmental entity” and “includes each activity, undertaking, or operation performed by a department, agency, employee, agent, or officer of a governmental entity.” Utah Code § 63G-7-102(5)(a) and (b). It also “includes a governmental entity’s failure to act.” *Id.* at 5(c). Here, all the wrongful conduct attributed to Bluffdale city is alleged to have been part of official

governmental functions. This includes alleged false statements made on “official Bluffdale Mayor account on social media” and in the mayor’s official capacity at city council meetings, *E.g.*, Complaint at ¶¶ 126, 131, 197–98; alleged unlawful instructions given to city law enforcement, *E.g., id.*, ¶¶ 148–49, 152, 157, 160–61; alleged unlawful access to and tampering with evidence maintained in the city police’s “evidence storage locker,” *E.g., id.*, ¶¶ 171–73; alleged improper refusal to comply with GRAMA requests, *id.* at ¶ 184; and alleged unlawful exclusion of Gaston from official city communications, *id.* at ¶ 191. In short, the alleged improper conduct relates to a governmental function.

B. The UGIA Has Not Waived Immunity for Gaston’s Claims.

With respect to the second inquiry, the UGIA has *not* waived immunity on behalf of governmental entities for claims based on intentional conduct, such as false light, intentional infliction of emotional distress and civil conspiracy. In this regard, it is critical to remember that the UGIA was passed to waive immunity for certain claims only: “A governmental entity and an employee of a governmental entity retain immunity from suit unless that immunity has been *expressly* waived in this chapter.” Utah Code § 63G-7-101(3) (emphasis added). Accordingly, one cannot bring a claim against the government or a government employee unless immunity for that specific claim has been waived.

The UGIA’s waivers are set forth in Utah Code section 63G-7-301. Nowhere in this section is there a general waiver for tort claims based on intentional conduct. Instead, immunity is waived only for torts based on negligent conduct. *See id.* at § 63G-7-301(2)(i) (waiving immunity for “any injury proximately caused by a negligent act or omission of an employee”).¹ Because

¹ Immunity is also waived for other specific claims, such as those related to contractual obligations, quiet title, government takings, dangerous highway conditions § 63G-7-301(2)

there is no waiver under the UGIA for false light, intentional infliction of emotional distress and civil conspiracy, the immunity analysis can stop here. There is no need to analyze whether there may be an exception to an immunity waiver. *See Atiya v. Salt Lake County*, 852 P.2d 1007 (1993) (holding immunity from liability for torts such as intentional infliction of emotional distress not waived under UGIA).

CONCLUSION

For the foregoing reasons, Bluffdale City respectfully submits that its motion should be granted.

DATED this 31st day of January 2024.

HOOLE & KING, L.C.

/s/ Gregory N. Hoole
Gregory N. Hoole
Attorneys for Bluffdale City
and Mayor Natalie Hall

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of January 2024, a true and correct copy of the foregoing document was filed electronically with the Court, which sent notice of the same via email to all parties who have appeared in this case.

/s/ Gregory N. Hoole

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