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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.

**REPLY MEMORANDUM IN SUPPORT
OF MOTION TO DISMISS WITH
PREJUDICE**

Civil No. 230905528

Judge Chelsea Koch

Defendants Bluffdale City and Natalie Hall in her official capacity as Bluffdale City Mayor (“Mayor Hall”) respectfully file this Reply Memorandum in Support of their Motion to Dismiss with Prejudice all claims against Bluffdale City and Natalie Hall in her official capacity as Bluffdale City Mayor (collectively, “Bluffdale City”).

INTRODUCTION

Plaintiff Jeffrey D. Gaston (“Gaston”) does not contest Bluffdale City’s Motion to Dismiss with respect to Bluffdale City and stipulates to its dismissal. Gaston contests the motion, however, as it relates to Mayor Hall, arguing that (1) some of his allegations concern the mayor

in her personal capacity; (2) the notice of claim met all the requirements under the Utah Governmental Immunity Act (“UGIA”); and (3) his claims against the mayor are based on willful misconduct. This memorandum will briefly explain why none of these arguments has merit.

ARGUMENT

I. THE MOTION SEEKS DISMISSAL ONLY OF OFFICIAL-CAPACITY CLAIMS.

Gaston’s defense that his claims against the mayor in her official capacity should not be dismissed because he has also made allegations against the mayor in her personal capacity is no defense at all. This motion seeks only to dismiss the official-capacity claims. If Gaston has, in fact, alleged claims in the mayor’s personal capacity, those would be beyond the scope of this motion and would need to be addressed in a separate motion filed by the mayor’s personal legal counsel. However, the possible existence of personal-capacity claims does not preclude the dismissal of official-capacity claims, all of which must be dismissed under the UGIA as addressed next.

II. MENTIONING THE NAME OF AN EMPLOYEE DOES NOT MEET THE STRICT REQUIREMENT OF THE UGIA.

Gaston argues that his notice of claim was not deficient because his notice of claim identifies Mayor Hall by name throughout the notice. Gaston’s argument misapprehends the strict notice requirements of the UGIA, which mandates that the notice identify those governmental employees, if any, against whom a “claim is being pursued.” *See* Utah Code § 63G-7-401(3)(a). Simply mentioning a name, even repeatedly, is insufficient. The person must be identified as a defendant. Here, Gaston’s notice of claim never identifies Mayor Hall as a person against whom a claim is being pursued. In fact, it does just the opposite; it confirms the

notice of claim is only against Bluffdale: “Pursuant to Utah Code 63G-7-401 et al., this letter shall serve as a Notice of Claim *against Bluffdale*.” See Notice of Claim at 1 (emphasis added).

This fact also distinguishes this case from the *Nunez* case on which Gaston relies in his opposition. In *Nunez v. Albo*, the Utah Court of Appeals held that a notice of claim against a doctor satisfied the notice requirement for the state hospital where the doctor worked because the doctor’s notice specified that the claimant “was asserting a claim against [the doctor] and ‘any others that may latter [sic] be shown to be liable.’” 2002 UT App 247, ¶ 26, 53 P.3d 2. In contrast, Gaston’s notice was limited only to claims “against Bluffdale.” Moreover, *Nunez* did not even concern the specific statutory requirement that the notice identify each government employee against whom claims would be asserted, a provision that would not be able to be ignored under any circumstance.

Gaston also relies on *Xiao Yang Li v. Univ. of Utah*. However, this case undercuts rather than supports Gaston’s position. The issue in *Xiao* was whether all the *claimants* (not defendants) must be named in the notice of claim. See 2006 UT 57, ¶ 15, 144 P.3d 1142. The court of appeals strictly construed the statutory requirements of the UGIA and specifically held that the act “does not specify whether a notice of claim must include the names of each individual claimant. Rather, it merely provides that the notice must be ‘signed by the person making the claim or that person’s agent, attorney, parent, or legal guardian.’” *Id.* Because the notice was signed by the representative of the heirs bringing the claims, the Utah Supreme Court ruled that it satisfied the statutory requirement. *Id.*

The supreme court also took note that its holding in *Xiao* was unlike its typical holdings in other UGIA cases:

We have previously addressed questions regarding failure to include a brief statement of the facts, failure to file timely notice, failure to set forth the nature of the claim asserted, and delivery of notice to the wrong party. In each of those

instances, we have dismissed claims when they fail to follow the unambiguous language of the Immunity Act.

Id. Gaston’s claim, which failed to satisfy the specific statutory requirement to name all employees against whom a claim is being asserted, falls into this latter category, which the supreme court affirmed requires dismissal.

Last, Gaston argues that he not need strictly comply with the statute because *Wheeler*, a case cited in Bluffdale City’s first memorandum for the proposition that courts require strict compliance with the UGIA’s requirements, did not concern the specific requirement to identify all employees against whom a claim is asserted. However, the standard *Wheeler* reiterated is far broader than Gaston suggests. As stated by the Utah Supreme Court: “We have consistently and uniformly held that suit may not be brought against the state or its subdivisions unless the requirements of the Governmental UGIA are *strictly* followed.” *Wheeler v. McPherson*, 2002 UT 16, ¶ 9, 40 P.3d 632 (emphasis added) (quoting *Hall v. Utah State Dep’t of Corr.*, 2001 UT 34, ¶ 23, 24 P.3d 958).

Hall and every other case concerning this issue makes clear that *all* the “notice requirements” must be strictly followed. *See Hall* at ¶ 23; *see also Davis v. Cent. Utah Counseling Ctr.*, 2006 UT 52, ¶ 44, 147 P.3d 390 (affirming dismissal and reiterating, “[W]e have allowed for ‘less than strict compliance [only] in cases which depended upon ambiguities in the [Immunity] Act; ambiguities clarified by the 1998 amendments.’”); *Greene v. Utah Transit Auth.*, 2001 UT 109, ¶ 17, 37 P.3d 1156 (affirming case dismissal for plaintiff’s failure to “strictly comply with the Immunity Act”); *Park City Mun. Corp. v. Bureau of Reclamation*, No. 1:09-CV-144 TS, 2010 WL 4568687, at *4 (D. Utah Nov. 3, 2010) (holding court lacked subject matter jurisdiction to hear case because plaintiff failed to strictly comply with notice requirements).

In short, Gaston's argument that Bluffdale City had actual notice of his claims against Mayor Hall despite not naming her as one against whom he intended to bring a claim fails, as even "[a]ctual notice of a claim by a governmental entity does not excuse a claimant's strict compliance with the requirements of the" UGIA. *Greene*, 2001 UT 109 at ¶ 15.

III. WHETHER GASTON ALLEGED WILLFUL CONDUCT IS OF NO MOMENT.

Finally, Gaston also argues that the claims against the mayor are exempted from immunity under the UGIA as they are based on willful misconduct. Whether or not this be the case is of no moment to this motion. This motion is not based on an immunity defense but on the deficiency of Gaston's notice of claim, which must still be filed regardless of whether the UGIA provides a specific immunity exemption for the claims being alleged. As set forth in the UGIA:

Any person having a claim against a governmental entity, or against the governmental entity's employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless of whether or not the function giving rise to the claim is characterized as governmental.

Utah Code 63G-7-401(2). Accordingly, whether or not Mayor Hall would enjoy immunity for the alleged conduct in the complaint, Gaston's claims against the mayor must be dismissed for failing to strictly comply with the act's notice requirements.

CONCLUSION

For the foregoing reasons, and those set forth in its first memorandum, Bluffdale City respectfully submits that its motion should be granted.

DATED this 1st day of April 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 1st day of April 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