THE UTAH COURT OF APPEALS

SPENCER CHRISTENSEN, Plaintiff/Appellant, v. SALT LAKE COUNTY, Defendant/Appellee.	**APPELLEE'S BRIEF** Appeal No. 20200220-CA Case No. 170907640

APPEAL FROM A FINAL ORDER OF
SUMMARY JUDGMENT,
SALT LAKE COUNTY, SALT LAKE CITY, STATE OF UTAH
THE HON. LAURA SCOTT, CASE NO. 170907640

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INTRODUCTION

On April 8, 2015, Spencer Christensen, commenced a lawsuit in the United States District Court for the District of Utah against "Salt Lake County, Unified Police Department, and John and Jane Does 1-10"[1] asserting the following causes of action: 42 U.S.C. §1983 (Eighth and Fourteenth Amendment) and Wrongful Death under Utah state law (the Federal Action). (R[2]. 547 - 552.) The Federal Action (and the present suit) focused on the approximately 72 hours that Mr. Christensen's daughter, Cassie Christensen, was in the Salt Lake County Adult Detention Center ("ADC") when she committed suicide on January 8, 2014. (R. 549 at ¶¶ 10 - 21.)

Following completion of discovery, Salt Lake County moved for summary judgment on February 13, 2017, asserting: (1) the undisputed material facts demonstrated Mr. Christensen could not sustain his burden as a matter of law to show "'deliberate indifference' on the part of any individual staff member who interacted with Ms. Christensen or the County"; and (2) the "state law claim premised on Utah's wrongful death statute fail[ed] [as a matter of law] because the County and its employees [we]re immune under Utah's Governmental Immunity Act from suit for injuries (including death) that result from or arise form an inmate's incarceration in its Jail." (R. 555 – 614.) The

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[1] John and Jane Does 1-10 were identified in the Federal Complaint as "police officers, corrections officers, or employees of Salt Lake County . . . who acted under color of state law and in the scope of his or her employment in the performance of his or her duties as a police officer, corrections officer, or County employee." (R. 548 at ¶ 7.)

[2] Citations here to R.______are to the appellate record.

federal court granted Defendants' motion for summary judgment and dismissed with prejudice "the exact claims brought in the Complaint at issue and addressed in the summary-judgment motion." (R. 644 – 645.)

A year later, on November 30, 2018, Plaintiff filed a Complaint & Jury Demand in state court asserting Utah constitutional claims of unnecessary rigor and due process. (R. 1 – 38.) There, Appellant alleged Casie Christensen was subject to unnecessary rigor and a deprivation of due process when Defendants "knowingly us[ed] an improper, inappropriate, and inaccurate evaluation protocol to determine Casie's risk of serious harm" for suicide. (R. 15 - 16 at ¶¶ 54, 58-61, 65, 73.) However, the appropriateness of Casie Christensen's medical treatment while incarcerated and whether Defendants utilized proper, appropriate, and accurate evaluation protocols to assess her mental health status were litigated and adjudicated in the prior Federal Action. (R. 559 – 578.) Specifically, the prior adjudicated facts establish that while incarcerated Ms. Christensen was (i) extensively screened during booking; (ii) regularly monitored and assessed by medical professionals for symptoms related to drug withdrawal; (iii) checked regularly by officers; (iv) evaluated and treated by nursing professionals (in consultation with doctors when necessary); and (v) assessed twice by a mental health professional—adjudged to be all within the standard of care required by health professionals. (Id.) And though the staff with whom Ms. Christensen interacted understood that suicide is a risk for all inmates, no

staff who had contact with Ms. Christensen had any reason to suspect she was at a substantial risk of suicide.

The adjudicated facts the court found material and without dispute in the prior Federal Action were found to be dispositive to Plaintiff's "unnecessary rigor" and due process claims under the Utah State Constitution. (R. 975 – 980.) And on those adjudicated facts, state constitutional claims against the County Defendants were properly found to fail as a matter of law. (Id.)

STATEMENT OF THE ISSUES ON APPEAL

Whether the District Court, pursuant to Utah Rule of Civil Procedure 56, erred in determining Mr. Christensen is collaterally estopped from prosecuting Utah Constitutional claims of unnecessary rigor and due process based on County Defendants' alleged failure to assess decedent, Casie Christensen's vulnerability to suicide as a heroin addict.

A grant of summary judgment by a district court is reviewed for correctness. *Fire Insurance Exchange v. Oltmanns*, 2018 UT 10, ⁋ 7, 416 P.3d 1148. "When reviewing motions for summary judgment, appellate courts 'view any facts and any reasonable inferences in light most favorable to the party opposing summary judgment.'" *Luna v. Luna*, 2020 UT 63, ⁋ 17, 474 P.3d 966 (quoting *Fire Insurance Exchange*, supra, at *Id*.)

Pursuant to Rule 56(c) of the Utah Rules of Civil Procedure, a motion for summary judgment should be granted "if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." UTAH

R. CIV., P. 56(a); *Salo v. Tyler*, 2018 UT 7, ¶ 29. "The operative requirement is a *showing* of an absence of a genuine issue of material fact and an entitlement to judgment as a matter of law." *Id.* (emphasis in original). The moving party may show the absence of a genuine issue of material fact and entitlement to judgment as a matter of law by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." UTAH R. CIV. P. 56(c)(1)(A).

Only disputes over facts that might affect the outcome will properly exclude summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Helsop v. Bear River Mutual Insurance Company*, 2017 UT 5, ¶ 21, 390 P.3d 314 (Utah 2017). Moreover, a genuine issue of material fact exists only "where, on the basis of the facts in the record, reasonable minds could differ." *West One Trust Co. v. Morrison*, 861 P.2d 1058, 1060 (Utah Ct. App. 1993)

Here, the District Court properly analyzed the undisputed, adjudicated facts and issues in the prior Federal Action and those admitted in this action to the state constitutional claims and determined upon those facts the Court could not "possibly conclude Defendants were deliberately indifferent or otherwise violated Ms. Christiansen's constitutional rights to be free from "unnecessary rigor" or due process under the Utah Constitution." (R. 979.)

STATEMENT OF THE CASE

After discovery had completed, on February 13, 2017, Salt Lake County, among others, filed its Motion for Summary Judgment in the Federal Action asserting: (1) that the undisputed material facts demonstrate as a matter of law that Mr. Christensen could not sustain his burden of showing "'deliberate indifference' on the part of any individual staff member who interacted with Ms. Christensen or the County"; and (2) that the "state law claim premised on Utah's wrongful death statute fail[ed] [as a matter of law] because the County and its employees are immune under Utah's Governmental Immunity Act from suit for injuries (including death) that result from or arise form an inmate's incarceration in its Jail." (R. 555 – 556.) On September 19, 2017, Mr. Christensen filed his Response to Defendants' Motion for Summary Judgment stating his intention to not oppose Defendants' Motion for Summary Judgment. (R. 644.) However, Plaintiff requested that the Federal Court issue an order granting summary judgment to "'only on the matters that were brought before the Court in the Motion for Summary Judgment.'" (Id.) On September 22, 2017, the Honorable Judge Dee Benson entered a Memorandum Decision & Dismissal Order granting Salt Lake County's Motion for Summary Judgment dismissing with prejudice "only . . . the exact claims brought in the Complaint at issue and addressed in the summary-judgment motion" and closed the case. (Id.)

Thereafter, Plaintiff filed a complaint in this action asserting claims for unnecessary rigor in violation of the Utah Constitution, Article I, § 9 and denial of due process in

violation of Utah Constitution, Article I, Section 7. (R. 1 – 38.) County Defendants, pursuant to Utah Rule of Civil Procedure 12(b)(6), moved for dismissal based on both prongs of the res judicata doctrine—claim preclusion and issue preclusion ("Motion to Dismiss"). (R. 71 – 138, 144 – 146.) The District Court denied the Motion to Dismiss and in doing so ruled that "whether collateral estoppel barred Plaintiff's claims, . . . that it 'was unable [at this juncture] to conclude that Plaintiff's claims are barred by issue preclusion' because Defendants' had not 'moved to dismiss . . . on the ground that the undisputed material facts – whether based on the allegations of the complaint and/or the undisputed material facts as established in the Federal Action – demonstrate Plaintiff's constitutional claims fail as a matter of law." (R. 231 – 236, 977.)

After discovery, on July 15, 2019, County Defendants sought summary judgment on the grounds that the undisputed material facts as established in the Federal Action collaterally estop Mr. Christensen's claims as a matter of law. (R. 382 – 541.) Concurrently, County Defendants also moved for the Court to take judicial notice of: (1) the Complaint filed in the Federal Action; (2) Defendant's Motion for Summary Judgment filed in the Federal Action; and (3) the Memorandum and Decision granting summary judgment in the Federal Action. (R. 542 – 645.) On September 18, 2019, Mr. Christensen filed his opposition to the summary judgment motion. (R. 693 – 721.) Mr. Christensen also filed his "Response to Defendants Motion to Take Judicial Notice" alleging the Federal Court "did not 'adopt' any facts in its Order" or "adjudicate the state constitutional

claims." (R. 899 - 902.) After full briefing and oral argument on December 30, 2019, the District Court issued its order granting summary judgment in County Defendants' favor and this appeal ensued thereafter. (R. 975 – 980, 983 – 985.)

SUMMARY OF ARGUMENT

The District Court correctly held that the doctrine of issue preclusion bars Mr. Christensen from re-litigating whether the County, or its agent or employees, were deliberately indifferent to Casie Christensen's medical needs or subjected her to clearly excessive or deficient or unjustified treatment. (R. 975 – 980.) The appropriateness of Casie Christensen's medical treatment while incarcerated and whether Defendants utilized proper, appropriate, and accurate evaluation protocols to assess her mental health status—the identical issue underpinning the subject state constitutional claims—were litigated and adjudicated in the prior Federal Action. (R. 382 – 541, 542 – 645.) Thus, Mr. Christensen is bound by the undisputed, adjudicated facts and issues of that Casie Christensen's medical care while incarcerated was appropriate and within the standard of care. And those adjudicated factual issues bar him from re-litigating them to reach opposite factual findings irrespective of whether the causes of action in the Federal Action and the State Action differ in constitutional footing.

ARGUMENT

I. The District Court's Summary Judgment Order Is Correct Because Mr. Christensen Is Precluded from Re-litigating the Issue Concerning the Appropriateness of Casie Christensen's Medical Care While Incarcerated.

Mistakenly, Mr. Christensen's appeal rests on the proposition that he should be allowed to press state constitutional claims in this subsequent action because those *claims* were not before the federal district court therefor any prior adjudicated facts and issues in the Federal Action cannot bar his claims. (Brief of Appellant ("Appl. Brief"), pp. 10 - 12, 34 – 35, 38 – 40, 55 – 60.) Mr. Christensen errs, and his contentions improperly conflate claim preclusion (which requires identical claims) with issue preclusion (which requires only identical factual or legal issues, regardless of whether the claims are the same). *Haik v. Salt Lake City Corporation*, 2017 UT 14, ¶ 14, 393 P.3d 285.

Issue preclusion - unlike claim preclusion - bars issues already litigated even if the claims are not the same. *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) ("Issue preclusion... 'bars successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment,' even if the issue recurs in the context of a different claim.") (quoting *New Hampshire v. Maine*, 532 U.S. 742, 748-49 (2001); *Mack v. Utah Dep't of Commerce*, 2009 UT 47, ¶ 29, 221 P.3d 194) (Issue preclusion bars already adjudicated facts and issues that underlie causes of action even if the claims are not the same.)). Thus, any substantive differences between the present causes of action of "unnecessary rigor" and "due process" under the Utah Constitution and those previously litigated in the Federal Action are not dispositive here. *Fowler v. Teynor*, 2014 UT App. 66, ¶ 14, 323 P.3d 594 (quoting *Robertson v. Campbell*, 674 P.2d 1226, 1230 (Utah 1983)). "'[W]hat is critical is whether the *issue* that was actually litigated in the first suit was

essential to resolution of that suit and is the same factual issue as that raised in the second suit." *Id*. (quoting *Collins v. Sandy City Bd. of Adjustment*, 2000 UT App 371, ¶12, 16 P.3d 1251) (emphasis in *Fowler*)).

To determine whether issue preclusion applies to bar a plaintiff's subsequent litigation, Utah courts utilize a four-part test: (1) whether the party against whom issue preclusion is asserted was a party, or in privy with a party, to the prior adjudication; (2) whether the facts or issues decided in the prior adjudication are identical to the ones presented in the instant action; (3) whether the first action was completely, fully, and fairly litigated; and (4) whether the first suit resulted in a final judgment on the merits. *Oman v. Davis County Sch. Dist.,* 2008 UT 70, ¶ 29, 194 P.3d 965; *accord* Snyder *v. Murray City Corp.*, 2003 UT 13, ¶ 35. All four requirements required to collaterally estop Mr. Christensen's state constitutional claims are present and the District Court properly entered summary judgment accordingly. (R. 975 – 980.)

First, there is no dispute that the Federal Action and this case involve the same parties and that the Federal Action resulted in a judgment on the merits. (R. 233, 979.) Additionally, after a full and fair discovery period, Mr. Christensen neither opposed the undisputed material facts nor entry of judgment in Defendants' favor on the merits for all the claims before the Federal Court "at issue and addressed in the Summary-Judgment Motion." (R. 233, 694, 734, 979). Therefore, the material facts and issues were fully and fairly adjudicated and the material facts properly deemed admitted for purposes of

summary judgment in the Federal Action. To have been fully litigated does not mean litigants have their day in court, but merely requires an "*opportunity* to litigate the issue"; it does not require "an actual trial or its equivalent." *3D Const. & Dev., L.L.C. v. Old Standard Life Ins. Co.*, 2005 UT App 307, ¶19, 117 P.3d 1082. (emphasis added); *see also Davis & Sanchez, PLLC v. Univ. of Utah Health Care*, 2015 UT 47, ¶12, 349 P.3d 748 (issue preclusion applied because the party "had every opportunity to assert the basis and grounds for its position"); *Maoris & Assocs., Inc. v. Neways, Inc.*, 2000 UT 93, ¶44, 16 P.3d 1214 ("the issue in the first case was competently, fully, and fairly litigated" because the party "had a full and fair opportunity to litigate the issue") (brackets omitted).

What's more the lower court in the present action was obligated to take judicial notice of those adjudicated facts and issues in the Federal Action to determine whether those same facts and issues bar Mr. Christensen's State Constitutional Claims of "unnecessary rigor" and "due process." (R. 978); Utah R. Evid. 201(c)(2). The District Court determined that they do bar Mr. Christensen's state law claims and this Court should hold the same.

A. THE FACTUAL ISSUES IN THE FEDERAL ACTION ARE IDENTICAL TO THE PRESENT ACTION.

Article I, section 9 of the Utah Constitution states, in pertinent part, "[p]ersons arrested or imprisoned shall not be treated with unnecessary rigor." Utah Const., art. 1, § 9; *see also State v. M.L.C.*, 933 P.2d 380, 385 (Utah 1997). In the seminal case, *Dexter v. Bosko*, the Utah Supreme Court explained the "unnecessary rigor" clause protects prisoners

and arrestees from "unnecessary abuse." *Dexter v. Bosko* , 2008 UT 29, ¶ 8, 184 P.3d 592, 597 (citing *Bott v. DeLand*, 922 P.2d 732, 737 (Utah 1996) abrogated on other grounds by *Spackman ex rel. Spackman v. Bd. of Educ. of Box Elder Cty*. Sch. Dist., 16 P. 3d 533 (Utah 2000)). "Abuse," in this context, means "needlessly harsh, degrading, or dehumanizing" treatment. *Bott*, 922 P.2d at 740 (quoting *Sterling v. Cupp*, 625 P.2d 123, 131 (1981)).

"When the claim of unnecessary rigor arises from an injury, a constitutional violation is made out only when the act complained of presented a substantial risk of serious injury for which there was no reasonable justification at the time." *Dexter*, 2008 UT 29 at ¶ 19. "[T]he conduct at issue" must thus be "more than negligent to be actionable." *Id.* at ¶ 21; *Bott*, 922 P.2d at 740 (a Plaintiff may not recover damages under article I, section 9 unless he shows the injury was caused by a jail employee who acted with deliberate indifference or inflicted unnecessary abuse upon her.)[3] In addition to these demanding standards, to prevail on a state constitutional claim, a complainant must also establish: (1) presence of a "flagrant violation" of the Utah Constitution: (2) that "existing remedies" do not redress the injuries: and (3) that equitable relief is inadequate. *See*

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[3] "For example, a physician who is guilty of medical malpractice is not guilty of a constitutional violation "merely because the victim is a prisoner." [*Estelle*, 429 U.S.] at 106; *El'Amin v. Pearce*, 750 F.2d 829, 832 (10th Cir. 1984); *Brown v. Schiff*, 614 F.2d 237, 239 (10th Cir. 1980). Similarly, a prison worker's inadvertent failure to provide adequate medical care would not support a constitutional claim for damages. *Estelle*, 429 U.S. at 105; *Olson v. Stotts*, 9 F.3d 1475, 1476–77 (10th Cir. 1993); *Daniels v. Gilbreath*, 668 F.2d 477, 488 (10th Cir. 1982)." *Bott v. DeLand*, 922 P.2d 732, 740 (Utah 1996).

Redmond v. Crowther, 882 F.3d 927, 942 (10th Cir. 2018); *Jensen ex rel. Jensen v. Cunningham*, 2011 UT 17 ¶ 48, 250 P.3d 465, 478 (Utah 2011).

Regarding an arrestee (i.e., a pretrial detainee), a flagrant violation of Article 1, § 9 of the Utah Constitution occurs when an act presents an obvious and known substantial risk of serious harm to the prisoner, and knowing of that risk, the official acts without other reasonable justification. *Dexter*, 2008 UT 29 at ¶¶ 16-17; *see also Redmond*, 882 F.3d at 942 (citing *Jensen*, 2011 UT 17 ¶ 48); *Brown v. Larsen*, 653 Fed. Appx. 577, 578-579 (10th Cir. 2016). Pertinent here, absent any other clear precedent, a defendant's conduct must be egregious and unreasonable to be actionable. *Dexter*, 2008 UT at ¶ 25 ("If an official knowingly and unjustifiably subjects an inmate to circumstances previously identified as being unnecessarily rigorous, that is obviously a flagrant violation. Where a clear prohibition has not been previously identified to the official, more may be required to establish a flagrant violation."); *see also Jensen*, 2011 UT ¶ 67.

Further, claims, such as the one here, that are "based on a jail suicide are considered and treated as claims based on the failure of jail officials to provide medical care for those in their custody." *Barrie v. Grand County*, 119 F.3d 862, 866 (10th Cir. 1997); *Cox v. Glanz*, 800 F.3d 1231, 1247-48 (10th Cir. 2015). And the protections afforded an inmate in a failure to provide medical treatment arising under the "unnecessary rigor" clause are identical to those afforded federal court plaintiffs under the Eighth and Fourteenth Amendments to the United States Constitution, and "appl[y] where a prisoner shows that

a prison employee was deliberately indifferent to the prisoner's medical needs or subjected him[/her] to clearly excessive or deficient or unjustified treatment." *Redmond v. Crowther,* 2016 WL 3546292. (Dist. Utah June 17, 2016) (unpublished) (citing *State v. M.L.C.*, 933 P.2d 380, 385 (Utah 2008).

Finally, "[t]he due process clause of the Utah Constitution protects individuals from state-induced deprivations of 'of life, liberty or property, without due process of law.'" *Kuchcinski v. Box Elder County*, 2019 UT 21, ¶ 42. Here, however, the claim of the deprivation of due process is predicated upon the same facts serving as the basis of unnecessary rigor, deliberate indifference of, and failure to treat Casie Christensen. (R. 1 - 38 at ¶¶ 70-74.) Because the particular Article I, Section 9 claim addresses Plaintiff's failure to provide adequate medical treatment, the more generalized due process claim under Article I, Section 7 is not controlling and should be dismissed as redundant and/or upon the same grounds. *County of Sacramento v. Lewis*, 523 U.S. 833, 842 (1998) (quoting *Albright v. Oliver*, 510 31 U.S. 266, 273 (1994) (holding where a "particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims.")).

Mr. Christensen identifies one act by County Defendants that potentially violated the unnecessary rigor and due process clauses—County Defendants' "'unnecessarily exposed [Casie] to an increased risk of serious harm' by suicide when they screened and

treated her as an alcoholic instead of as a withdrawing heroin addict." (Appl. Brief, p. 40; R. 16 at ⁋ 58.) In other words, County Defendants' failed to utilize an allegedly better or more accurate protocol to assess Ms. Christensen's suicidal tendencies during her incarceration, i.e. provided deficient medical treatment. (R. 979.) The lower court addressed Mr. Christensen's disputed material facts regarding the use of a different protocol and applied them, along with all other admitted and controlling material facts, to determine whether those facts precluded Mr. Christensen's claims under state constitutional standards.[4] (R. 975 – 980.)

This is in-line, not contrary, with the Utah Supreme Court ruling in *Jensen ex rel. Jensen v. Cunningham*, 2011 UT 17, 250 P.3d 465, that requires a state court to determine the adjudicated facts in the prior Federal Action give rise to a state constitutional violation. *Id.* at ⁋ 49. In *Jensen*, the plaintiffs initiated suit in Utah's Third Judicial District Court against the State of Utah and others setting forth both federal and state constitutional claims. *Id*. at ¶ 32. The defendants promptly removed the case to federal court, *id.* at ¶ 33, and after extensive discovery, the court granted defendants' motion for summary judgment

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[4] Plaintiff's arguments seem to imply that that the right at issue is best defined as an incarcerated person's right to the proper implementation of adequate suicide prevention protocols for opioid withdrawal. (Appl. Brief at p. 40). However, no Utah decision or federal decision within this jurisdiction establishes a right to the proper implementation and use of adequate suicide prevention protocols for heroin withdrawal at the time of Casie Christensen's death on January 10, 2014. Accordingly, this purported right was not clearly established in in a way that placed beyond debate the unconstitutionality of County's use of other protocols to know or should know of Casie Christensen's particular vulnerability to suicide.

on all federal claims, but declined to continue to exercise supplemental jurisdiction over the remaining, state law claims and remanded those to state court. *Id.* On remand, the state court, without analyzing the facts as applied to the state constitutional claims, determined the state law claims were barred under the doctrine of issue preclusion and dismissed them. *Id.* at ¶ 49.

On appeal, the Utah Supreme Court held that "[b]ecause the state and federal standards for determining whether a plaintiff is entitled to damages for a constitutional violation are different, a federal court determination that the material undisputed facts do not give rise to a federal constitutional violation does not preclude a state court from deciding whether those same facts will give rise to a state constitutional violation." *Id.* In other words, the Supreme Court determined that a state court cannot simply rely on the premise that because federal claims were dismissed that fact alone bars litigation of state constitutional claims <u>brought in the same action</u>. *Id.* (emphasis added). The Court, however, did not hold the doctrine of issue preclusion was inapplicable to the state constitutional claims. *Id.* Rather, the Supreme Court directed that when considering whether collateral estoppel would apply a court must perform an analysis of the undisputed material facts under state constitutional standards. *Id.* That is exactly what the lower court did here in determining whether summary judgment in Defendants' favor was warranted. Mr. Christensen's contentions to the contrary are misplaced. (R. 231 – 236, 975 – 980.)

B. CHRISTENSEN'S UNNECESSARY RIGOR & DUE PROCESS CLAIMS FAIL IN LIGHT OF THE UNDISPUTED MATERIAL FACTS.

Underlying Mr. Christensen's state constitutional unnecessary rigor and due process claims are the material, dispositive facts and issues of whether the County knew or should have known Cassie Christensen was at significant risk of suicide and whether it failed to protect against that risk by improperly monitoring and assessing Ms. Christensen, including in utilizing the Clinical Institute Withdrawal Assessment for Alcohol, Revised ("CIWA-Ar") protocol in lieu of other protocols, such as the Clinical Institute of Narcotic Assessment ("CINA"), Clinical Opiate Withdrawal Scale ("COWS") or Subjective Opiate Withdrawal Scale ("SOWS"). (R. 1- 38 at ¶¶ 16-26, 36-46, 54-61, 65-66, 73-74.) These are the same substantive facts and issues that underlined the federal deliberate indifference and wrongful death claims asserted in the prior federal action.

In the prior action, the Federal Court addressed and dismissed with prejudice the parallel federal constitutional claim that County Defendants were deliberately indifferent to a substantial risk of suicide or ignored an excessive risk to Ms. Christensen's health or safety in violation of the United States Constitution. (R. 385 – 405, 559 – 579, 644.) In granting summary judgment to the County Defendants in the Federal Action, the undisputed material facts prove that the County Defendants did not know Ms. Christensen was suicidal nor that through their interactions with or evaluations of Ms. Christensen, they should have concluded she was suicidal. (Id.) Of equal import, the adjudicated facts also established that:

1. "Medical and mental health staff and others at all times monitored, assessed, and treated Ms. Christensen utilizing their best clinical judgment and consistent with all applicable standards of care." (R. 403 at ¶ hhhh.)
2. "The mental health professionals and nurses also property screened Ms. Christensen for risk of suicide and self-harm during their encounters with her . . ." and found "Ms. Christensen's needs were primarily medical in nature and that she did not appear to be at risk of suicide or self-harm" and that such care "meets the standard of care in correctional facilities nationally." (R. 401 – 402.)
3. "There is no evidence . . . that any custom, policy, or practice of the County contributed to, let alone caused, Ms. Christensen's death." (R. 403 at ¶ JJJJ.)
4. "Ms. Christensen was appropriately referred and assessed multiple times during her 72 hours at the Jail under the policies and procedures in place at the Jail, with such policies and procedures resulting in the individuals who assessed and cared for her both medically and from a mental health perspective providing appropriate and individualized treatment that met the applicable standard of care." (R. 404 – 405.)

These adjudicated – and now preclusive - facts and issues—as found by the lower court—are fatal to Plaintiff's state constitutional "unnecessary rigor" and "due process" claims in several, material ways. First, as the State Court recognized, it is bound by the material, dispositive factual findings that the County Defendants didn't know nor should have known Ms. Christensen was at significant risk of suicide. (R. 389 at ¶ s, R. 390 at ⁋⁋

x - z, R. 391 – 396, R. 399 at ⁋ ppp., R. 401 – 402.) Second, it is bound by the dispositive findings the County Defendants protected against the risk of suicide by properly monitoring and assessing Ms. Christensen, including in utilizing the Clinical Institute Withdrawal Assessment for Alcohol, Revised ("CIWA-Ar") protocol. (Id.) Additionally, the County Defendants properly screened Ms. Christensen for risk of suicide and self-harm during their encounters with her" and that "at all times monitored, assessed, and treated Ms. Christensen utilizing their best clinical judgment and consistent with all applicable standards of care." (at R. 403 – 404.) Lastly, no County custom, policy, or practice contributed to, let alone caused, Ms. Christensen's death." (R. 404.)

What's more, with respect to the subject summary judgment determination at issue here, the Court found that Mr. Christensen only opposed the County Defendants' "statement of material facts at 'aa.' and 'bb.' and did not oppose any other material statement of facts, thus pursuant to Utah Rule Civ. P. 56(a)(4), they [were] deemed admitted." (R. 975 – 980.) The disputed facts are:

> aa. One of the assessments for withdrawal from drugs or alcohol that is routinely used by medical personnel at the Jail and most other correctional facilities and hospitals in the United States is a "CIWA score," which stands for "Clinical Institute Withdrawal Assessment."
>
> **RESPONSE: Deny.** CIWA stands for "Clinical Institute Withdrawal Assessment," but it is used for alcohol withdrawal. *See* Exhibit 4, Wikipedia article. It is not appropriately used for "withdrawal from drugs." *See* Exhibits 4 and 5 herein; also, compare Casie's CIWA protocol to Wilcox's WOW.

> bb. The CIWA score is an internationally validated assessment tool that has been in use for many years and is the gold standard for assessing patients experiencing signs and symptoms of withdrawal.
>
> **RESPONSE: Deny.** The CIWA test is not appropriate for assessing withdrawal from opiate drugs. This was admitted by Dr. Wilcox in 2013, at least six months before Casie died.

(R. 978 – 979.)

However, the Court found that even in accepting Mr. Christensen's assertions the use of a different protocol should have been used, "based on the remaining undisputed facts this Court cannot possibly conclude Defendants were deliberately indifferent or otherwise violated Ms. Christiansen's constitutional rights to be free from "unnecessary rigor" or due process under the Utah Constitution." (R. 979.)

Here, the prior established relevant facts and those admitted that show County Defendants' assessed, monitored, supervised, and treated Ms. Christensen both medically and from mental a health perspective appropriately and "provid[ed] appropriate and individualized treatment that met the applicable standard of care." And those facts and issues cannot be altered or re-litigated, despite Mr. Christensen's recast of argument, claim, or theory. *Penrod*, 669 P.2d at 875; *Berry v. Berry*, 738 P.2d 246, 248 (Utah Ct. App. 1987); see also *Nipper v. Douglas*, 2004 UT App 118, ¶ 11 (holding that the addition of new claim "does not negate the preclusive effects of the prior dismissal.) Accordingly, because at all times it is established, undisputed, and unchanged that County Defendants' utilized appropriate treatment and protocols in administering treatment to Ms. Christensen

and all care and treatment was appropriate, dismissal with prejudice of Plaintiff's "unnecessary rigor" and "due process" claims was and remains warranted.

CONCLUSION

Appellant's attempt to circumvent the long-established principle of collateral estoppel is legally unsustainable. Because the state constitutional claims of unnecessary rigor and due process asserted in this suit are entirely predicated on the same set of operative facts, the same issues, and the same alleged injury, the federal court's prior judgment on the merits precludes those claims as a matter of law. Therefore, Mr. Christensen's claims in the present suit are barred and the District Court's summarily dismissing them with prejudice should be upheld.

RESPECTFULLY SUBMITTED this 29th day of January 2021.

SIM GILL
Salt Lake County District Attorney

/s/ Jacque M. Ramos
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CERTIFICATE OF COMPLIANCE WITH UTAH RULE OF APPELLATE PROCEDURE 24(a)(11)

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1. This brief complies with the type-volume limitation of Utah R. App. P. 24(g)(1) because:

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   Dated this 29th day of January 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of January 2021, I electronically filed with the clerk of the court the foregoing Appellee's Brief, which sent notification of such filing to the following:

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