CASE NOTE

CIVIL PROCEDURE—Wyoming Governmental Claims Act: Back to the Future; *Brown v. City of Casper*, 248 P.3d 1136 (Wyo. 2011)

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INTRODUCTION

For nearly the last thirty years, Wyoming citizens have been consistently kicked out of the court system in the context of government claims, for inadvertent mistakes in pleading, thanks to the Wyoming Supreme Court's judicially created pleading requirements in 1983.[1] Following this line of precedent, in Brown v. City of Casper, the District Court dismissed Robert Brown's claim because he inadvertently failed to attach a Notice of Claim to the Complaint, even though he did in fact present the Notice to the City of Casper, as required by Wyoming Government Claims Act.[2] Brown appealed, hoping that the Wyoming Supreme Court would recognize that the injuries he sustained when a Casper Police Officer ran a red light and collided with Brown's vehicle, were more important than the simple error he committed in failing to attach his Notice of Claim to his Complaint.[3]

On appeal, the Wyoming Supreme Court overruled twenty-eight years of precedent when it held that if a claimant satisfies the conditions precedent pursuant to the Wyoming Governmental Claims Act (WGCA), district courts have jurisdiction to allow a claimant to amend their governmental claim to allege compliance with the WGCA and the Wyoming Constitution.[4] For the previous twenty-eight years, district courts were deprived of jurisdiction over WGCA lawsuits if a claimant failed to allege in its complaint that it presented a governmental entity with a notice that it was initiating suit.[5] In 1983, the Wyoming

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[1] Bd. of Tr. of Univ. of Wyo. v. Bell, 662 P.2d 410, 415 (Wyo. 1983), *overruled by* Brown v. City of Casper, 248 P.3d 1136 (Wyo. 2011).

[2] *Brown*, 248 P.3d 1136, 1139 (Wyo. 2011).

[3] Am. Claim Under Wyoming Governmental Claims Act at 2, *Brown*, 248 P.3d 1136 (No. S-09-0263).

[4] *Brown*, 248 P.3d at 1147–48 (holding that in cases where a notice of claim has been properly presented, district courts have subject matter jurisdiction to allow claimants to amend their complaint to so allege).

[5] *Bell*, 662 P.2d at 415 (concluding district courts are deprived of jurisdiction over governmental claims if a claimant "fails to allege the filing of the claim pursuant to [the WGCA]").

Supreme Court created this heightened pleading requirement in *Board of Trustees of University of Wyoming v. Bell*.[6] No statute, constitutional provision, or case law required this heightened requirement.[7] In *Brown*, the Wyoming Supreme Court overruled *Bell*, recognizing district courts have original and exclusive jurisdiction over governmental claims,[8] and courts are not at liberty to create pleading rules restricting jurisdiction that the constitution granted to district courts.[9]

This case note argues that *Brown* corrects a flaw in Wyoming jurisprudence that stood for nearly thirty years and wrongly deprived district courts of jurisdiction over governmental claims.[10] This note first discusses the law before *Board of Trustees of University of Wyoming v. Bell*.[11] Then this note demonstrates how the Wyoming Supreme Court misinterpreted the statute in *Bell*.[12] This note then explains why the court was justified in overturning *Bell* in spite of the doctrine of stare decisis.[13] Finally, this note emphasizes the positive impact *Brown* is likely to have on Wyomingites who suffer harm as a result of unlawful government action.[14]

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[6] *Id.* In *Brown*, however, the Wyoming Supreme Court recognized that *Bell* had been misinterpreted because claimant's notice of claim was never at issue. *Brown*, 248 P.3d at 1139. The court stated:

> *Bell* has mistakenly been interpreted to mean that courts have no power to act in a case against a governmental entity unless the complaint alleges presentation of a notice of claim. Contrary to that interpretation, *Bell* had to have meant dismissal was appropriate in that case because it did not appear the condition precedent to suit had been met.

Id. at 1140.

[7] *Brown*, 248 P.3d at 1143 (reviewing the law at the time *Bell* was decided and concluding there was no requirement under Wyoming law that presentation of notice of claim had to be alleged in the complaint); *see infra* notes 40–47 and accompanying text (discussing cases decided before *Bell* that allowed claimants to amend complaints that failed to allege compliance with the statutory requirements of the WGCA).

[8] *Brown*, 248 P.3d at 1139. *Brown* relied on section 1-39-117 of the Wyoming Statutes, which states in pertinent part "[o]riginal and exclusive jurisdiction for any claim filed in state court under this act shall be in the district courts of Wyoming." WYO. STAT. ANN. § 1-39-117 (2011); *see also* WYO. CONST. art. V, § 10 ("The district court shall have original jurisdiction of all causes both at law and in equity . . . and of such special cases and proceedings as are not otherwise provided for.").

[9] *Brown*, 248 P.3d at 1139. *Brown* relied on section 5-2-115 of the Wyoming Statutes for the proposition that rules governing pleading and procedure "shall neither abridge, enlarge nor modify the substantive rights of any person nor the jurisdiction of any of the courts . . . ." WYO. STAT. ANN. § 5-2-115 (2011).

[10] *See infra* notes 15–214 and accompanying text.

[11] *See infra* notes 39–47 and accompanying text.

[12] *See infra* notes 48–90 and accompanying text.

[13] *See infra* notes 145–95 and accompanying text.

[14] *See infra* notes 196–207 and accompanying text.

BACKGROUND

The Wyoming Governmental Claims Act

As a general matter, the government is immune to suit.[15] The purpose of the WGCA is to provide a limited waiver of immunity and thus permit recovery from governmental entities for injuries received from the government's exercise of its authority.[16] The WGCA encompasses sections 1-39-101 through 1-39-121 of the Wyoming Statutes and controls governmental claims.[17] The Wyoming Legislature adopted the WGCA in 1979 "to balance the respective equities between persons injured by governmental actions and the taxpayers of the state of Wyoming . . . ."[18] However, the legislature created conditions precedent that must be satisfied in order for an entity to bring suit against the government.[19]

Specifically, the WGCA requires claimants to present a notice of claim to the governmental entity that the claim is against.[20] A notice of claim is an itemized statement, separate from the actual complaint.[21] The notice of claim must state the time, place, and circumstances of the alleged injury; the name and address of the claimant; the claimant's representative or attorney; and the amount of compensation or other relief demanded.[22] A notice of claim must be presented within two years of the alleged injury.[23] Once a notice of claim is presented, a complaint may be filed stating generally that the notice of claim was filed in accordance with the requirements of the WGCA.[24] This complaint must also be

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[15] WYO. STAT. ANN. § 1-39-104 (2011) (stating that except as provided in the WGCA, a governmental entity is granted immunity from liability for any tort).

[16] *Id.* § 1-39-102 (recognizing the possible unfairness resulting in the government's sovereign immunity and thus allowing a limited waiver of this immunity).

[17] *Id.* §§ 1-39-101 to -121 (establishing the statutory provisions that are part of the WGCA).

[18] *Id.* § 1-39-102 (discussing the purpose of the WGCA); Lawrence J. Wolfe, *Wyoming's Government Claims Act: Sovereign Immunity With Exceptions—A Statutory Analysis*, 15 LAND & WATER L. REV. 619, 619 (1980) (recognizing that the WGCA was enacted in 1979 to balance the equities between persons injured by government actors and the taxpayers).

[19] WYO. STAT. ANN. § 1-39-113 (requiring a notice of claim be presented to the governmental entity in which the suit is against, in the form of an itemized statement within two years of the alleged act).

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.* ("[I]n any action under this act, the complaint shall state . . . [t]hat the claim . . . was filed in accordance with this section.").

filed within two years from the date of the alleged act.[25] Finally, Wyoming district courts exercise original and exclusive jurisdiction over governmental claims pursuant to the WGCA.[26]

Subject Matter Jurisdiction and Pleading Requirements

The Wyoming Supreme Court has defined subject matter jurisdiction as "'the power to hear and determine cases of the general class to which the proceedings in question belong.'"[27] Jurisdiction is essential for a court to exercise its power over a case or controversy.[28] Wyoming district courts are courts of superior and general jurisdiction and exercise authority over all subject matters.[29] A district court's jurisdiction is not dependent upon the sufficiency of the pleadings, the validity of the demand set forth in the complaint, the plaintiff's right to the relief demanded, the regularity of the proceedings, or the correctness of the decision rendered.[30]

Article five, section ten of the Wyoming Constitution states district courts shall have original jurisdiction over all cases in law and equity.[31] A court's jurisdictional powers are either impliedly or explicitly conferred on it by the constitution or legislature.[32] Generally, a court with jurisdiction over a case has not only the right, but also the duty to exercise that jurisdiction.[33]

The Wyoming Rules of Civil Procedure state that each averment of a pleading shall be simple, concise, direct, and that no technical forms of pleading or motions are required.[34] A party may amend its pleading by leave of the court

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[25] *Id.* (establishing the time limitations of the WGCA).

[26] *Id.* § 1-39-117 (stating district courts have exclusive jurisdiction under this Act).

[27] Fuller v. State, 568 P.2d 900, 902–03 (Wyo. 1977) (quoting Booth v. Magee Carpet Co., 548 P.2d 1252, 1256 (Wyo. 1976)).

[28] 21 C.J.S. *Courts* § 20 (2011) ("[J]urisdiction of the subject matter is essential to the determination of every case.").

[29] Urbach v. Urbach, 73 P.2d 953, 955 (Wyo. 1937) (stating district courts are courts of superior and general jurisdiction and administer over suits in common law, statutory law, and principles of equity).

[30] *Id.* (explaining Wyoming district courts' jurisdictional authority).

[31] WYO. CONST. art. V, §10 ("The district court shall have original jurisdiction of all causes both at law and in equity and in all criminal cases, of all matters of probate and insolvency and of such special cases and proceedings as are not otherwise provided for.").

[32] 20 AM. JUR. 2D *Courts* § 58 (2011) ("A court possesses only such jurisdictional powers as are directly, or indirectly, expressly or by implication, conferred on it by the constitution or legislation of the sovereignty on behalf of which it functions.").

[33] Buckman v. United Mine Workers of Am., 339 P.2d 398, 400 (Wyo. 1959) ("If that complaint stated a cause of action, then and in that event the court acquired jurisdiction and the power and the duty to decide the case."); *see* 20 AM. JUR. 2D *Courts* § 58 (2011).

[34] WYO. R. CIV. P. 8(e) (requiring a pleading to be concise and direct).

and leave shall be freely given when justice so requires.[35] The Wyoming Rules of Civil Procedure state that when pleading a condition precedent, "it is sufficient to aver generally that all conditions precedent have been performed or have occurred."[36] Additionally, motions to dismiss should only be granted when a party fails to plead the operative facts that would place the opposing party on notice.[37] Moreover, when considering a motion to dismiss, the facts alleged in the complaint are admitted and the allegations must be viewed in a light most favorable to the non-moving party.[38]

Wyoming Law Before Bell

Initially, the Wyoming Supreme Court recognized the broad jurisdictional authority of Wyoming district courts over governmental claims prior to the enactment of the WGCA.[39] In *State v. Kusel* the Wyoming Supreme Court held deficient information in a complaint against the government does not deprive district courts of jurisdiction.[40] The court went on to state in *Kusel* that facts essential to invoke jurisdiction are different from those needed to state a cause of action.[41] In *Houtz v. Board of Commissioners of Uinta County*, the claimant

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[35] WYO. R. CIV. P. 15(a) (allowing for amendments of pleadings when justice so requires).

[36] WYO. R. CIV. P. 9(c).

[37] WYO. R. CIV. P. 8(a)–(b); Johnson v. Aetna Cas. & Sur. Co. of Hartford, Conn., 608 P.2d 1299, 1302 (Wyo. 1980). In *Johnson*, the court stated:

> Wyoming Rules of Civil Procedure are based upon the theory of notice pleading. The plaintiff need only plead the operative facts involved in the litigation so as to give fair notice of the claim to the defendant . . . . [P]leadings must be liberally construed in order to do justice to the parties and motions to dismiss must be sparingly granted.

Id. (citations omitted).

[38] Baessle v. Freir, 258 P.3d 720, 723 (Wyo. 2011) (recognizing when reviewing a motion to dismiss the court will accept the facts alleged in the complaint as true, view them in the light most favorable to the non-moving party, and dismissal is appropriate only if the complaint is clear on its face that the plaintiff does not assert any facts that create entitlement to relief (citing Swinney v. Jones, 199 P.3d 512, 515 (Wyo.2008)).

[39] Price v. State Highway Comm'n, 167 P.2d 309, 312 (Wyo. 1946) (noting that despite the failure of the plaintiff to present a notice of claim, the district court clearly had jurisdiction over the dispute); Utah Constr. Co. v. State Highway Comm'n, 19 P.2d 951, 953 (Wyo. 1933) (stating even though the claimant failed to provide notice to the county, jurisdiction over the claim resided with the district court); Bd. of Comm'rs of Sheridan Cnty. v. Denebrink, 89 P. 7, 10 (Wyo. 1907) (upholding an action brought in district court asserting malpractice against a county hospital); Houtz v. Bd. of Comm'rs of Uinta Cnty., 70 P. 840, 843 (Wyo. 1902) (recognizing when a plaintiff seeks recovery from the county its claim must be heard in district court).

[40] 213 P. 367, 369 (Wyo. 1923) ("[I]n order to enable a court of general jurisdiction to proceed in the cause in its earlier stages, it is not essential . . . that the information or complaint before it be perfect or state a cause of action.").

[41] *Id.* ("'The cause of action may be defectively stated, but that does not destroy jurisdiction.'" (quoting O'Brien v. People, 75 N.E. 108 (Ill. 1905))).

failed to allege his notice of claim was properly presented in his complaint as required by the constitution.[42] However, the district court exercised jurisdiction and allowed claimant to amend his complaint to be in compliance with the Wyoming Constitution's requirement to present a notice of claim.[43] Even though the Wyoming Supreme Court ultimately found claimant failed to provide actual notice to the government, this defect did not deprive the district court of jurisdiction.[44]

Before *Bell*, when the condition precedent requiring presentation of a notice of claim was inadequately pleaded in a complaint, district courts had the discretion to allow litigants to amend their complaints to properly allege that a condition precedent was met.[45] Prior to 1983, Wyoming courts recognized a notice of claim had to be presented before an action could be brought against a governmental entity, however courts did not require that a complaint allege presentation of a notice of claim before suit could be brought against a governmental entity.[46] It was not until *Bell* that district courts were deprived of jurisdiction when a claimant failed to allege a presentation of notice of claim.[47]

Judicially Created Pleading Requirements and Bell

In *Bell*, Rosemarie Bell brought an action against the University of Wyoming claiming slander, harassing conduct, and threats of termination forced her resignation.[48] Because the issue was never raised by the parties, the district court

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[42] 70 P. 840, 842 (Wyo. 1902).

[43] *Id.*

[44] *Id.* (holding that the plaintiff had no right to recover from the county without previously presenting his claim to the board of county commissioners, however, this defect did not affect the district court's jurisdiction).

[45] *See, e.g.*, Matter of Larsen, 770 P.2d 1089, 1092 (Wyo. 1989) (stating the district court has subject matter jurisdiction despite failures to comply with statutory requirements); State *ex. rel.* Yohe v. Dist. Ct. of Eighth Judicial Dist., 238 P. 545, 548 (Wyo. 1925) (holding the district court is a court of superior and general jurisdiction, and there can be no question that it had jurisdiction over the governmental claim); *Houtz*, 70 P. at 842 (allowing the district court to exercise jurisdiction over a deficient governmental claim).

[46] Bd. of Comm'rs of Sheridan Cnty. v. Denebrink, 89 P. 7, 10 (Wyo. 1907) (finding that even though the notice of claim was not attached to the complaint, the missing attachment did not contain the necessary allegations of the complaint and therefore the action was not dismissed); *Houtz*, 70 P. at 844 (finding after review of the facts the complaint did comply not with the constitutional and statutory requirements, however this defect did not prevent the district court from exercising subject matter jurisdiction).

[47] Bd. of Tr. of Univ. of Wyoming v. Bell, 662 P.2d 410, 415 (Wyo. 1983), *overruled by* Brown v. City of Casper, 248 P.3d 1136 (Wyo. 2011). In *Dee v. Laramie County*, the Wyoming Supreme Court relied solely on *Bell* in holding that a failure to allege compliance with the notice of claim requirement in the complaint deprives the district court of jurisdiction. 666 P.2d 957, 959 (Wyo. 1983), *overruled by Brown*, 248 P.3d 1136; *see infra* note 53 (listing cases that have relied on *Bell* and its progeny).

[48] 662 P.2d at 415.

did not determine if notice was properly presented to the University.[49] The University failed to reply to Bell's complaint and a default judgment was entered against the University.[50]

On appeal, the Wyoming Supreme Court held "even though [the WGCA] is not explicit with respect to whether the filing of a claim is a jurisdictional prerequisite to suit[,] . . . failure to file a claim under [the WGCA] results in a district court having no jurisdiction . . . ."[51] The court determined Bell's complaint was defective because it failed to allege that she presented a notice of claim to the University and this defect deprived the district court of jurisdiction.[52]

Effect of Bell

For the next twenty-eight years, Wyoming courts interpreted *Bell* to mean that when a governmental claim failed to allege compliance with the WGCA in its complaint, district courts were deprived of jurisdiction.[53] Courts' strict adherence to the pleading requirements created in *Bell* produced some unfortunate consequences.[54] In *McCann v. City of Cody* a waterline broke in the course of a construction project at the behest of the City.[55] Water from the broken line backed

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[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.* at 414 ("We can only conclude that in the absence of an allegation of the filing of such a claim the district court did not have jurisdiction over the subject matter of the action . . . .").

[53] Churchill v. Campbell Cnty. Mem'l Hosp., 234 P.3d 365, 366 (Wyo. 2010) (upholding the dismissal of a complaint for failure to allege compliance with constitutional requirements), *overruled by* Brown v. City of Casper, 248 P.3d 1136 (Wyo. 2011); Uptown Café, Inc. v. Town of Greybull, 231 P.3d 257, 257–58 (Wyo. 2010) (upholding the dismissal of a complaint for failure to allege compliance with the constitution), *overruled by Brown*, 248 P.3d 1136; McCann v. City of Cody, 210 P.3d 1078, 1082 (Wyo. 2009) (upholding the dismissal of a complaint for failing to allege compliance with the constitutional and statutory requirements), *overruled by Brown*, 248 P.3d 1136; Motley v. Platte Cnty., 220 P.3d 518, 519–20 (Wyo. 2009) (upholding dismissal of a complaint for failure to allege compliance with the constitution), *overruled by Brown*, 248 P.3d 1136; Gose v. City of Douglas, 193 P.3d 1159, 1164 (Wyo. 2008) (upholding the dismissal of a complaint for failing to allege compliance with constitutional requirements even though the notice of claim was in compliance), *overruled by Brown*, 248 P.3d 1136; Garnett v. Brock, 2 P.3d 558, 563 (Wyo. 2000) (dismissing the complaint because it did not allege presentation of a notice of claim), *overruled by Brown*, 248 P.3d 1136; Allen v. Lucero, 925 P.2d 228, 230–31 (Wyo. 1996) (dismissing the complaint because no notice of claim was presented), *overruled by Brown*, 248 P.3d 1136; Boyd v. Nation, 909 P.2d 323, 326 (Wyo. 1996) (dismissing the complaint because it did not allege the date of the notice of claim was presented), *overruled by Brown*, 248 P.3d 1136; Amrein v. Wyo. Livestock Bd., 851 P.2d 769, 771 (Wyo. 1993) (dismissing the complaint for failure to allege the date that notice of the claim was presented), *overruled by Brown*, 248 P.3d 1136; Dee v. Laramie Cnty., 666 P.2d 957, 958 (Wyo. 1983) (dismissing a governmental claim for failure to allege presentation of a notice of claim), *overruled by Brown*, 248 P.3d 1136.

[54] *See infra* notes 55–77 and accompanying text.

[55] 210 P.3d at 1079, *overruled by Brown*, 248 P.3d 1136.

up onto the roadway and instantly froze.[56] When McCann came across the street there was no signage or other warning devices to make her aware of the hazard.[57] The icy conditions caused McCann's car to flip, both totaling the car and causing her significant personal injuries.[58] McCann presented a timely notice of claim to the City, but she failed to allege compliance with statutory requirements in her complaint.[59] Because of this failure, the district court dismissed her complaint and the Wyoming Supreme Court affirmed the dismissal.[60] Despite suffering serious injuries, McCann received no compensation and never had her day in court.[61]

The court applied this heightened pleading requirement in subsequent cases and continued to apply the notice of claim requirements strictly.[62] For example, in *Beaulieu v. Florquist* (*Beaulieu II*), the court further applied *Bell* to even more technical defects involving the notice of claim.[63] Bruce Florquist, in the course of his employment by the city of Rawlins, struck the Beaulieu's family vehicle while it was properly stopped at a stop sign.[64] Beaulieu, her unborn child, and her daughter were all injured in the accident.[65] Applying *Bell's* rationale, the court dismissed the plaintiff's complaint because it did not allege that the notice of claim met the signature and certification requirements of the Wyoming Constitution, thus depriving the court of its jurisdiction simply because the complaint was not pleaded correctly.[66] Just as it had in *Bell*, the court in *Beaulieu II* failed to consider the practical consequences of its decision, and Beaulieu was denied her day in court.[67]

In *Churchill v. Campbell County Memorial Hospital*, Ashlie Churchill was injured while awakening from a tonsillectomy and adenotonsillectomy.[68] In a two-page decision, the Wyoming Supreme Court relied on *Beaulieu II* and stated even though Churchill's complaint "indicate[d] compliance with the statutory notice of claim requirements, the complaint [did] not allege that Ms. Churchill

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[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] *Id.* at 1082.

[60] *Id.*

[61] *Id.*

[62] *See infra* notes 63–71 and accompanying text.

[63] 86 P.3d 863, 867 (Wyo. 2004), *overruled by* Brown v. City of Casper, 248 P.3d 1136 (Wyo. 2011).

[64] Beaulieu v. Florquist (*Beaulieu I*), 20 P.3d 521, 524 (Wyo. 2001) (reversing summary judgment based on a statute of limitations issue and remanding for further proceedings).

[65] *Id.*

[66] *Beaulieu II*, 86 P.3d at 872 (affirming the grant of summary judgment for the complaint's failure to adequately plead compliance with the WGCA).

[67] *Id.*

[68] 234 P.3d 365, 365 (Wyo. 2010), *overruled by Brown*, 248 P.3d 1136.

complied with the signature and certification requirements . . . ."[69] Once again, the court allowed technical deficiencies involving the notice of claim to deprive the district court of jurisdiction.[70] These are just a fraction of Wyoming cases dismissed because of failure to comply with judicially created pleading requirements.[71]

The State of Wyoming, in responding to governmental claims during the *Bell* era, used the technicalities of pleading requirements to consistently dismiss claims.[72] In *Lavati v. State*, the State waited until the day after the two-year statute of limitations expired to file a motion for summary judgment alleging the plaintiff's claim was deficient.[73] Lavati, did in fact fail to comply with the signature requirements pursuant to the WGCA, and the Wyoming Supreme Court upheld the district court's summary judgment and dismissed the case.[74] Justice Kite, in her concurring opinion, stated the State's "calculated effort" to delay the claimant's recognition of his technical error "resulted in a win for the State, but at what cost?"[75] Justice Kite explained the handling of a lawsuit is not a game, and that there is an "absolute duty of candor and fairness."[76] Justice Kite recognized the State's actions did not demonstrate the high standard of candor, honesty, and good faith required by the Wyoming Rules of Civil Procedure, rules of professional conduct, and precedent.[77]

A Different Approach

Other courts reject *Bell's* rationale, claiming such reasoning is contrary to the rules of civil procedure and other government claims acts.[78] Federal courts do not require technical forms of pleading when determining whether subject matter jurisdiction has been properly pleaded.[79] Federal Rule of Civil Procedure

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[69] *Id.* at 366. Churchill alleged that she presented a notice of claim, but did not allege that the notice of claim was signed under penalty of perjury. *Id.* The lack of such allegation, even though her notice was in fact signed, kept her out of court. *Id.*

[70] *Id.*

[71] *See supra* note 53 (discussing cases that dismissed governmental claims in adherence to *Bell* and its progeny).

[72] *See infra* text and accompanying notes 73–77.

[73] Lavati v. State, 121 P.3d 121, 123 (Wyo. 2005).

[74] *Id.* at 125 (Kite, J., concurring).

[75] *Id.* at 125–26 (quoting Kath v. Western Media, Inc., 684 P.2d 98, 100–02 (Wyo. 1984)).

[76] *Id.* at 126; *see also Kath*, 684 P.2d at 100–01 (recognizing the duty of candor, fairness, and honesty in litigating a lawsuit).

[77] *Lavati*, 121 P.3d at 126.

[78] *See infra* notes 79–99 and accompanying text.

[79] CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1206 (3d ed. 2011) ("[T]he district court may sustain jurisdiction when an examination of the entire complaint reveals a proper basis for assuming subject matter jurisdiction other than one that has been improperly asserted by the pleader or otherwise demonstrates that jurisdiction exists when the Rule 8(a)(1) allegation is defective in some regard. In some cases federal courts have excused the nonexistence

15(a)(2) allows courts to freely grant leave to cure a defective statement of jurisdiction.[80] Some courts will even sustain jurisdiction if an examination of the entire complaint reveals a proper basis for assuming subject matter jurisdiction.[81] Likewise, despite a failure to properly plead a case under the Federal Tort Claims Act constituting grounds for dismissal, federal district courts do not apply pleading requirements stringently.[82]

The United States Supreme Court allows a claimant to amend its government claim unless it prejudices the adverse party.[83] Additionally, many state courts also take a more lenient approach to the pleading requirements in regard to governmental claims.[84] The Oklahoma Supreme Court permits a claimant to amend its complaint in order to comply with statutory requirements of the Governmental Tort Claims Act [85] and only requires substantial compliance, rather than strict compliance.[86] The New Mexico Supreme Court permits amendments to a claimant's complaint against the government even after the applicable limitation period has run, as long as all parties are on notice of the claim and the facts from which it arose.[87] Furthermore, the Utah Supreme Court recognizes that factual defects in the notice of claim will not bar a governmental claim so long as the claim gives general notice of intent to sue.[88] The Colorado Supreme Court emphasizes

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of a jurisdictional allegation or an insufficient allegation when information outside the complaint demonstrates the actual existence of the court's jurisdiction." (citations omitted)); *see also* Mountain Fuel Supply Co. v. Johnson, 586 F.2d 1375, 1382 (10th Cir. 1978) ("[A] motion to dismiss an action for lack of subject matter jurisdiction will be denied even though the allegation of jurisdiction is insufficient or entirely lacking if there are facts pleaded in the complaint from which jurisdiction may be inferred in essence and effect."); Massachusetts v. U.S. Veterans Admin., 541 F.2d 119, 122 (1st Cir. 1976) (determining although jurisdiction was plead improperly, an examination of the entire complaint reveals jurisdiction is proper).

[80] FED. R. CIV. P. 15 (a)(2); *see also* WRIGHT ET AL., *supra* note 79, at § 1206.

[81] *See supra* note 79.

[82] Drakatos v. R. B. Denison, Inc., 493 F.Supp. 942, 946 (D. Conn. 1980) (allowing claimant, who improperly alleged jurisdiction under the FTCA, to amend her complaint).

[83] Foman v. Davis, 371 U.S. 178, 182 (1962) (reasoning that in the absence of undue delay, bad faith, or undue prejudice to the opposing party, leave to amend a complaint should be freely granted, and an outright denial to grant amendment without justification is an abuse of discretion by district courts and is inconsistent with the Federal Rules of Civil Procedure).

[84] *See infra* notes 85–90 and accompanying text.

[85] Calvert v. Tulsa Pub. Sch., Indep. Sch. Dist. No. 1 of Tulsa Cnty., 932 P.2d 1087, 1090–91 (Okla. 1996), *superseded on other grounds by statute*, OKLA. STAT. tit. 51, § 156(D) (1992) (allowing amendments under the Governmental Tort Claims Act).

[86] *Id.*

[87] Chavez v. Regents of the Univ. of N.M., 711 P.2d 883, 887–88 (N.M. 1985) (permitting amendments to a complaint brought under New Mexico's governmental claims act after the time period had expired).

[88] Brittain v. State, 882 P.2d 666, 669 (Utah Ct. App. 1994); *cf.* Behrens v. Raleigh Hills Hosp., Inc., 675 P.2d 1179, 1183 (Utah 1983); Spencer v. Salt Lake City, 412 P.2d 449, 450 (Utah 1966) (finding the city received a sufficient notice of claim, even though claimant failed to satisfy statutory requirements).

the necessity of going beyond the pleadings to determine if a condition precedent is actually met, and remands complaints in order to determine whether a notice of claim was timely filed.[89] Finally, the Nebraska Supreme Court adamantly defends the subject matter jurisdiction constitutionally conferred on the district courts, and has held that the legislature cannot limit or take from the courts their broad and general jurisdiction.[90]

Stare Decisis

"Liberty finds no refuge in a jurisprudence of doubt."[91] Stare decisis is the doctrine of precedent, in which courts must follow earlier binding judicial decisions when the same facts are at issue.[92] The doctrine of stare decisis furthers "the 'evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'"[93] As Justice Cardozo stated, precedent is adhered to because, "it will not do to decide the same question one way between one set of litigants and the opposite way between another."[94]

However, stare decisis is not an "inexorable command."[95] The United States Supreme Court outlined when precedent should be overruled in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.[96] In *Casey*, the Court held that when abandoning precedent, courts should be "informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling a prior case."[97] The Court determined precedent

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[89] Trinity Broad. of Denver, Inc. v. City of Westminster, 848 P.2d 916, 927 (Col. 1993) (stating that on remand, the trial court should conduct such further proceedings as necessary to determine whether Trinity gave timely notice to Westminster under the Governmental Immunity Act).

[90] Arant v. G.H., Inc., 428 N.W.2d 631, 635 (Neb. 1988); State *ex rel.* Wright v. Barney, 276 N.W. 676, 680 (Neb. 1937); State *ex rel.* Sorensen v. State Bank of Minatare, 242 N.W. 278, 281 (Neb. 1932) (holding that in the context of governmental claims, it is an imperative duty of the courts to protect their jurisdiction granted to them by the Constitution).

[91] Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 844 (1992).

[92] BLACK'S LAW DICTIONARY 672 (9th ed. 2009).

[93] Brown v. City of Casper, 248 P.3d 1136, 1146 (Wyo. 2011) (citations omitted) (quoting State *ex rel.* Wyo. Workers' Comp. Div. v. Barker, 978 P.2d 1156, 1161 (Wyo.1999)).

[94] B. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 149 (1st ed. 1921). The Supreme Court has stated that stare decisis ensures "the law will not merely change erratically" and "permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals." Vasquez v. Hillery, 474 U.S. 254, 265 (1986).

[95] Payne v. Tennessee, 501 U.S. 808, 842 (1991); Arizona v. Rumsey, 467 U.S. 203, 212 (1984); Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 405–11 (1932).

[96] 505 U.S. at 854.

[97] *Id.*

should be overruled when: an earlier rule has become unworkable, there is minimal societal reliance on the rule, the rule is without doctrinal support, or society's perceptions of the facts have so changed that there is no longer a factual foundation for the original decision.[98] If any of these circumstances exist, the doctrine of stare decisis may be abandoned.[99]

2010 Amendments to WGCA

While *Brown* was being decided, the legislature amended the WGCA, effective July 1, 2010.[100] Before these amendments, the WGCA lacked specific pleading requirements; instead, all requirements under the WGCA were judicially created.[101] These amendments introduced language that seemingly heightened the pleading requirements of the WGCA, possibly conflicting with the *Brown* decision.[102] Realizing this potential confusion, *Brown* acknowledged these amendments, and stated that claimants are required to comply with the statutory requirements.[103] However, *Brown* allowed district courts to freely grant parties leave to amend their complaints to comply with these statutory requirements.[104]

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[98] *Id.* To determine whether precedent should be abandoned the Court stated:

> [W]e may ask whether the rule has proven to be intolerable simply in defying practical workability; whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation; whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine; or whether facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification.

Id. at 854–55 (citations omitted).

[99] *Id.*

[100] *See* WYO. STAT. ANN. § 1-39-113 (2011) (containing the 2010 amendments).

[101] *See* WYO. STAT. ANN. § 1-39-113 (1982) (lacking any specific pleading requirements until the 2010 amendments); *see also* Bd. of Tr. of Univ. of Wyo. v. Bell, 662 P.2d 410, 415 (Wyo. 1983) (creating pleadings requirements in which claimants must abide by in order to bring a claim against the government under the WGCA).

[102] Brown v. City of Casper, 248 P.3d 1136, 1139 n.4 (Wyo. 2011). The 2010 amendment, effective July 1, 2010, added subparts (c)(i) through (c)(v) and (d) through (e) to section 1-39-113 of the Wyoming Statutes. *See* WYO. STAT. ANN. § 1-39-113 (2011).

[103] *Brown*, 248 P.3d at 1139 n.4 (recognizing the 2010 amendments do not, nor have the provisions ever, address the courts' jurisdiction over claims under the WGCA, thus, the amendments do not affect the outcome of *Brown*).

[104] *Id.* at 1139. The court stated:

> We continue to require that complaints alleging claims against governmental entities must also allege compliance with the statutory and constitutional provisions governing notices of claim. However, we clarify that in cases where a notice of claim has been properly presented but the complaint fails to allege that fact, district courts have the discretion to allow amendment of the complaint to cure the failure.

Id. (citations omitted).

PRINCIPAL CASE

On April 28, 2007, Robert K. Brown entered an intersection traveling northbound at about twenty-five miles per hour.[105] The traffic signal at the intersection was green for northbound traffic.[106] As Brown entered the intersection, Officer Walters of the Casper Police Department entered the intersection against a red light and hit Brown's vehicle.[107] Brown claimed Officer Walters was traveling sixty-three miles per hour and did not have his lights flashing or his siren turned on.[108] Brown's car was totaled and he suffered physical injuries resulting in $22,741.75 in medical bills.[109]

Brown presented a Notice of Claim to the City of Casper within one year of the collision in compliance with the WGCA.[110] Within two years of the collision, Brown presented an amended Notice of Claim, detailing the damages he sustained in the collision.[111] On April 23, 2009 and within two years of the collision, Brown filed a complaint against the City in district court.[112] His Complaint alleged "all requirements of the Wyoming Governmental Claims Act . . . have been complied with, and a claim in conformity therewith was served upon the City of Casper. . . ."[113] Brown, however, inadvertently failed to attach the Notice of Claim to his Complaint.[114]

The City of Casper, in its Answer, asserted an affirmative defense claiming Brown had not met the requirements of the WGCA.[115] Specifically, the City claimed that because the Notice of Claim was not attached to Brown's Complaint, there was no proof the Claim had been signed and certified in accordance with requirements of the WGCA and the Wyoming Constitution.[116] On July 16,

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[105] Am. Claim Under Wyoming Governmental Claims Act at 2, *Brown*, 248 P.3d 1136 (No. S-09-0263).

[106] *Id.*

[107] *Id.*

[108] *Id.*

[109] *Id.*

[110] *Id.*

[111] *Id.*

[112] *Id.*

[113] *Brown*, 248 P.3d at 1138.

[114] *Id.*

[115] *Id.* at 1138–39.

[116] *Id.* at 1138. The City of Casper was mainly arguing Brown had failed to comply with the signature and certification requirements set forth both in the WGCA and the Wyoming Constitution. *Id.* at 1139. This requirement was addressed in *Baeulieu II* and *Churchill*, on which the district court in *Brown* relied. *Id.* Casper and the district court claimed Brown's Complaint failed to allege that he complied with the Wyoming Constitution, which states:

2009, the City filed a motion for judgment as matter of law claiming the district court lacked jurisdiction because of Brown's defective Complaint.[117] The next day, Brown filed a motion to amend his Complaint, so that he could allege compliance with the Wyoming Constitution.[118]

The District Court's Decision

Relying on *Bell* and its progeny, the district court determined that Brown's Complaint did not confer jurisdiction upon it, and granted summary judgment in favor of the City.[119] Specifically, the district court held it lacked jurisdiction because Brown failed to allege compliance with the constitutional requirements necessary to bring an action against the government.[120]

Wyoming Supreme Court's Majority Decision

Writing for the majority, Chief Justice Kite, joined by Justices Golden, Hill, and Burke, recognized that *Bell* was binding precedent, but acknowledged that precedent should be abandoned when it is necessary "'to vindicate plain, obvious principles of law and remedy continued injustice.'"[121] The court reasoned stare decisis should not be adhered to when prior decisions are "'poorly reasoned'" and the doctrine does "'not require automatic conformance to past decisions.'"[122] Relying on these principles, the court departed from precedent, and held the district court had subject matter jurisdiction over Brown's action.[123] Because

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> No money shall be paid out of the state treasury except upon appropriation by law and on warrant drawn by the proper officer, and no bills, claims, accounts or demands against the state, or any county or political subdivision, shall be audited, allowed or paid until a full itemized statement in writing, certified to under penalty of perjury, shall be filed with the officer or officers whose duty it may be to audit the same.

WYO. CONST., art. 16, § 7.

[117] *Brown*, 248 P.3d at 1139.

[118] *Id.*

[119] *Id.* The district court's order stated:

> [Mr. Brown]'s complaint fails to contain an allegation that he complied with the Wyoming Constitution and, therefore, this Court lacks subject matter jurisdiction under Wyoming Supreme Court precedent. . . . Without subject matter jurisdiction, the Court FURTHER FINDS it lacks any authority to grant [Mr. Brown]'s motion to amend his Complaint. . . . The only action the Court can take is to deny [Mr. Brown]'s motion to amend his Complaint . . . .

Id. (citations omitted) (quoting the district court's order).

[120] *Id.* at 1138; *supra* note 119 and accompanying text (explaining the district court's holding).

[121] *Brown*, 248 P.3d at 1146 (citations omitted) (quoting State *ex rel.* Wyo. Workers' Comp. Div. v. Barker, 978 P.2d 1156, 1161 (Wyo. 1999)).

[122] *Id.* (citations omitted) (quoting *Barker*, 978 P.2d at 1161).

[123] *Id.* at 1147.

Brown actually presented the State with a notice of claim, and his Complaint inadvertently failed to attach his Notice of Claim to the Complaint, the district court had discretion to allow Brown to amend his Complaint and cure the defect.[124] The majority recognized that subject matter jurisdiction is invoked with the filing of a timely complaint stating a cause of action against the government.[125] The court went on to state that a litigant's failure to allege compliance with the WGCA's requirements does not and cannot affect the district court's subject matter jurisdiction.[126] This effectively overruled *Bell* and its progeny.[127]

Justice Golden's Concurrence

In his concurring opinion, Justice Golden, the senior member of the court, conceded the court's prior decisions involving the WGCA had been untenable.[128] Justice Golden described these decisions by quoting: "'I can only say that I am amazed that a man of my intelligence should have been guilty of giving such an opinion.'"[129] Justice Golden admitted claims against the government now appear in a different light, and the Wyoming Supreme Court has shown ignorance in its handling of such issues.[130]

Justice Golden relied on the requirements of the Wyoming and Federal Rules of Civil Procedure to support the majority's holding.[131] He recognized that under the rules of civil procedure and the WGCA, a complaint only needs to be a short plain statement of the court's jurisdictional grounds, with simple and concise claims for relief, and technical pleading forms are not required.[132] Further, a claimant needs only state generally that all conditions precedent have been

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[124] *Id.* at 1149 (Golden, J., concurring).

[125] *Id.*

[126] *Id.*

[127] *Id.* at 1146–47. The court explained that district courts have jurisdiction over governmental claims even when a claimant fails to allege compliance with the WGCA, and that district courts may allow amendments of complaints to comply with the WGCA. *Id.* ("To the extent that *Bell* and its progeny held otherwise, those decisions are overruled.").

[128] *Id.* at 1149 (Golden, J., concurring).

[129] *Id.* (quoting McGrath v. Kristensen, 340 U.S. 162, 178 (1950)).

[130] *Id.* Justice Golden quoted Justice Robert Jackson: "The matter does not appear to me now as it appears to have appeared to me then . . . . My own error, however, can furnish no ground for its being adopted by this Court. . . . Ignorance, sir, ignorance." *Id.* at 1149 (quoting *McGrath v. Kristensen*, 340 U.S. at 178) (internal quotation marks omitted).

[131] *Id.* at 1148–50.

[132] *Id.* Justice Golden set forth the pleadings requirements of the rules of civil procedure:

> [A] short and plain statement of the court's jurisdictional grounds; each averment of a pleading shall be simple, concise, and direct and not technical forms of pleading are required; all pleadings shall be so construed as to do substantial justice; and it is sufficient to aver generally that all conditions precedent have been performed.

Id. at 1149.

met.[133] Requiring anything more under the WGCA, Justice Golden argued, is contrary to purpose of the Wyoming Rules of Civil Procedure.[134]

The Dissent

Justice Voigt dissented. He contended the Wyoming Supreme Court had consistently held for twenty-eight years district courts do not have jurisdiction over governmental claims absent sufficient allegations of compliance with procedural requirements in the complaint.[135] Justice Voigt reasoned the WGCA requires litigants to satisfy several conditions precedent in order to bring suit against the government.[136] Failure to satisfy such requirements prevents the district courts from acquiring subject matter jurisdiction.[137] Justice Voigt feared claimants would not necessarily be forced to comply with the WGCA if claimants are not required to allege compliance with the WGCA.[138] Moreover, the WGCA provides a limited waiver of the government's sovereign immunity; therefore the legislature could have not granted the district court jurisdiction over all cases simply alleging a claim against a governmental entity, rather, only over claims that properly allege compliance the WGCA.[139]

ANALYSIS

Until *Bell*, neither the Wyoming Constitution nor precedent suggested district courts were deprived of subject matter jurisdiction over a defective governmental claim.[140] In the context of governmental claims, the Wyoming Supreme Court has traditionally held that a party seeking to bring an action against a governmental

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[133] *Id.*; *see* WYO. R. CIV. P. 9(c) (setting forth pleading requirements for condition precedents).

[134] *Brown*, 248 P.3d at 1149 (Golden, J., concurring).

[135] *Id.* at 1150 (Voigt, J., dissenting).

[136] *Id.*

[137] *Id.*

[138] *Id.* Justice Voigt claimed:

> [I]f . . . a plaintiff fails to allege compliance with the statute and constitution, and the defending government entity follows up that failure with a failure of its own to raise the issue, it is waived and the district court can proceed to adjudicate the claim, whether or not . . . any procedural requirements were met.

Id.

[139] *Id.* ("The nature of the WGCA, with immunity being the rule and liability the exception, convinces me that . . . the legislature did not grant the district courts jurisdiction over all cases alleging a claim against a governmental entity, but only over those cases alleging claims made 'under [the] act.' For that reason, I believe that making one's claim under the act is jurisdictional." (quoting WYO. STAT. ANN. § 1-39-113 (2010)).

[140] *See supra* notes 39–47 and accompanying text (discussing cases leading up to *Bell* that sustained district courts' jurisdiction over defectively pleaded WGCA claims).

entity must comply with the notice of claim requirement of the WGCA.[141] This requirement, however, was not meant to prevent the district from exercising jurisdiction to determine if the claimant substantially complied with WGCA's notice requirements.[142] Before *Bell*, the Wyoming Supreme Court recognized that a district court's jurisdiction did not depend on the allegations in the pleading or the sufficiency of the complaint.[143] *Brown* corrected the perversion created by *Bell* in holding that a district court's jurisdiction cannot be destroyed over a deficiently pleaded governmental claim.[144]

Abandoning Precedent

The Wyoming Constitution states: "All courts shall be open and every person for an injury done to person, reputation or property shall have justice administered without sale, denial or delay."[145] Over the last thirty years, victims suffered serious injuries at the hand of government employees.[146] Despite having meritorious claims, these victims were denied justice by the courts because of their reliance on *Bell* and its progeny.[147]

In *Brown*, the court recognized that the cases relying on *Bell* had continued in an unsustainable direction, suffering from lack of authority, and ultimately creating an unsupportable legal proposition.[148] The dissent insisted courts should

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[141] *Brown*, 248 P.3d at 1140–43; *see supra* notes 39–47 and accompanying text (reviewing case law prior to *Bell*).

[142] *Brown*, 248 P.3d at 1142; *see also* WYO. STAT. ANN. § 1-39-113 (1977 & Cum.Supp. 1982) (prior to 2010 amendments) (requiring only that a claimant provide a governmental entity a notice of claim before initiating suit).

[143] *Brown*, 248 P.3d at 1140–43; s*ee In re* Plymouth Cordage Co., 135 F.1000, 1004 (8th Cir. 1905); *supra* notes 39–47 and accompanying text. The *Plymouth* court stated:

> The facts essential to invoke jurisdiction differ materially from those essential to constitute a good cause of action for the relief sought. . . . [A]n insufficient complaint at law, accompanied by proper service upon the defendants, gives jurisdiction to the court to determine the questions it presents, although it may not contain averments which entitle the complainant to any relief; and it may be the duty of the court to determine either the question of its jurisdiction or the merits of the controversy against the petitioner or plaintiff. Allegations indispensable to a favorable adjudication . . . are not requisite to the jurisdiction of the suit or proceeding.

Id.

[144] *Brown*, 248 P.3d at 1147–48; *see also* 20 AM. JUR. 2D *Courts* § 58 (2011) ("[I]t is well settled that jurisdiction does not depend upon the sufficiency of the bill . . . . The cause of action may be defectively stated, but that does not destroy jurisdiction.").

[145] WYO. CONST. art. I, § 8.

[146] *See supra* notes 48–77 and accompanying text (discussing specific instances that an individual was injured because of unlawful action by a government employee, however was never compensated because of claimant's failure to allege compliance with the WGCA in the complaint).

[147] *Id.*

[148] *Brown*, 248 P.3d at 1144–46 ("In subsequent cases relying on *Bell*, this Court continued in [an] unsustainable direction.").

respect the doctrine of stare decisis and adhere to precedent.[149] The majority recognized precedent "'contributes to the actual and perceived integrity of the judicial process'"[150] and "furthers the 'evenhanded, predictable, and consistent development of legal principles . . . .'"[151] However, the majority explained that courts should not be compelled to follow flawed precedent simply because of blind adherence to stare decisis.[152] The United States Supreme Court is instructive on the issue of when to abandon precedent in Wyoming, because where federal law is analogous to state law Wyoming has looked to the federal courts to aid in its decisions.[153] The United States Supreme Court outlined when precedent should be overruled in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.[154] According to *Casey*, precedent should be overruled when an earlier rule has become unworkable, when there is minimal societal reliance on the rule, the rule is without doctrinal support, or society's perceptions of the facts have so changed that there is no longer a factual foundation for the original decision.[155] Applying the *Casey* factors to the *Brown* decision, it becomes evident that the Wyoming Supreme Court was correct in abandoning twenty-eight years of precedent.[156]

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[149] *Id.* at 1150 (Voigt, J., dissenting) (arguing for the last twenty-eight years the Wyoming Supreme Court had consistently held a claimant's failure to allege compliance the WGCA deprived district courts of jurisdiction).

[150] *Id.* at 1146 (majority opinion) (quoting Cook v. State, 841 P.2d 1345, 1353 (Wyo. 1992)).

[151] *Id.* (quoting *Cook*, 841 P.2d at 1353).

[152] *Id.*

[153] Robert B. Keiter, *An Essay on Wyoming Constitutional Interpretation*, 21 LAND & WATER L. REV. 527, 550 (1986) (stating that where federal law is analogous, Wyoming has looked to federal courts to aid in interpreting the state law); *see, e.g.*, State v. Naple, 143 P.3d 358, 362 (Wyo. 2006) (stating that where the text of a state rule is substantially similar to that of a federal rule, interpretations of the federal rule are instructive to the Wyoming Supreme Court).

[154] 505 U.S. 833, 854–55 (1992); *see* Daniel A. Farber, *The Rule of Law and the Law of Precedents*, 90 MINN. L. REV. 1173, 1194 (2006) ("Discussing stare decisis today without mentioning Casey is like presenting Hamlet without Hamlet—or, some might say, Harry Potter without the evil Voldemort."); Robert A. Sedler, *The Michigan Supreme Court, Stare Decisis, and Overruling the Overrulings*, 55 WAYNE L. REV. 1911, 1915 (2009) (recognizing that the *Casey* factors are the foremost pronouncement by the United States Supreme Court as to when precedent should be abandoned, and provide guidance to other courts in that regard); *see also* Caleb Nelson, *Stare Decisis and Demonstrably Erroneous Precedents*, 87 VA. L. REV. 1, 2 (2001) (reiterating that the *Casey* factors are the current test for overruling precedent).

[155] *Casey*, 505 U.S. at 854; *see* Montejo v. Louisiana, 129. S. Ct. 2079, 2088–89 (2009) ("Beyond workability, the relevant factors in deciding whether to adhere to the principle of *stare decisis* include the antiquity of the precedent, the reliance interests at stake, and of course whether the decision was well reasoned."); 20 AM. JUR. 2D *Courts* § 131 (2011) ("[T]he 'stare decisis' doctrine counsels that a court should not overrule its earlier decisions unless the most cogent reasons and inescapable logic require it."); *see also supra* note 98 (outlining the test set forth in *Casey*).

[156] *See* Mortimer N. S. Sellers, *The Doctrine of Precedent in the United States of America*, 54 AM. J. COMP. L. 67, 82 (2006) ("The Supreme Court of the United States has felt particularly free to overrule its own constitutional precedents when . . . they concern procedural and evidentiary rules rather than property rights or contracts."); *see also infra* text accompanying notes 157–95 (applying the test set forth in *Casey* to the facts in *Brown*).

Practical Workability

The first factor outlined in *Casey* is whether the rule has become unworkable.[157] Precedent should be abandoned when "consequences to litigants and courts alike from the perpetuation of an unworkable rule are too great."[158] The policy implications behind allowing litigants to simply amend their complaint when the individual has provided actual notice to the governmental entity far outweigh a dismissal of their case based on a judicially created pleading requirement.[159] The purpose of the WGCA is to provide compensation to individuals who have been injured by the government.[160] Strict application of a judicially created pleading requirement prevented the WGCA from serving its purpose.[161] For some time now, certain justices of the Wyoming Supreme Court realized the rule created in *Bell* was defeating the purpose of the WGCA and therefore was unworkable.[162]

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[157] *Casey*, 505 U.S. at 855.

[158] Swift & Co. v. Wickman, 382 U.S. 111, 116 (1965); *see* Randy J. Kozel, *Stare Decisis As Judicial Doctrine*, 67 WASH. & LEE L. REV. 411, 423 (2010) ("Unworkable rules are clumsy and unpredictable, creating needless costs and diluting the benefits of a stable society governed by the rule of law.").

[159] Brown v. City of Casper, 248 P.3d 1136, 1139 (Wyo. 2011). The injustices caused by the court's reliance on *Bell* in cases such as *McCann v. City of Cody*, support this proposition. 210 P.3d 1078, 1080 (Wyo. 2009). Further, in *Brown* the court recognized *Bell* might not have intended to create the judicial pleadings requirements courts interpreted *Bell* to create. *Brown*, 248 P.3d at 1139; *see also* Kozel, *supra* note 158, at 425 (stating "[t]here is no way to know in the abstract without investigating the specific facts and circumstances surrounding a precedent" whether precedent should be overturned).

[160] WYO. STAT. ANN. § 1-39-102 (2011) (stating the purpose of the WGCA is to compensate those injured by government employees); Wolfe, *supra* note 18 at 619 (recognizing the WGCA was enacted in 1979 to balance the equities between persons injured by government actors and the taxpayers).

[161] *See supra* notes 53–77 and accompanying text (discussing the governmental claims that were dismissed because of courts' reliance on *Bell*, despite actual compliance with the WGCA requirements in fact).

[162] *McCann*, 210 P.3d at 1086 (Burke, J., dissenting) (arguing the judicially created pleading requirements are not required by the WGCA and if the rules mandate dismissal they should be abolished and claimants should be allowed to amend their complaints); Lavati v. Wyoming, 121 P.3d 121, 125–26 (Wyo. 2005) (Kite, J., concurring) (criticizing the gamesmanship of the State in using the pleading requirements to systematically dismiss legitimate WGCA claims); Amrein v. Wyo. Livestock Bd., 851 P.2d 769, 772–72 (Wyo. 1993) (Urbikit, J., dissenting) (stating a claimant is denied due process and access to the courts when his governmental claim is dismissed simply because of inadequate allegations in his complaint); *see also* Sellers, *supra* note 156, at 83–84 (stating that courts consider whether precedents have been subject to "substantial and continuing" criticism in determining whether to abandon stare decisis and create a new rule).

Societal Reliance

The second factor of the *Casey* test requires an evaluation of society's reliance on the rule to determine if overruling precedent will cause special hardships.[163] As Justice Cardozo recognized, the inverse determination of whether adherence to precedent would create an injustice is also relevant; and if so, the court should depart from that precedent.[164] The court's adherence to *Bell*, and reliance on its principles, caused countless injustices and placed special hardships on society, ultimately depriving victims of their constitutionally protected rights.[165] More specifically, the court's reliance on *Bell* caused special hardships and injustices in cases such as *McCann v. City of Cody*, *Bealieu II*, and *Churchill v. Campbell County Memorial Hospital*.[166] In these cases, individuals, at no fault of their own, were seriously injured by government officials.[167] A technically inadequate pleading, however, prevented them from obtaining compensation for those injuries.[168] Alarmingly, the State used these judicially created pleading requirements as a tactic to dismiss cases.[169] The State abandoned the legal standards required by the Wyoming Rules of Civil Procedure, Wyoming Rules of Professional Conduct, and precedent requiring candor and honesty in order to take advantage of a judicially created loophole.[170] Thus, by overturning precedent such as this, the court could eliminate these hardships.[171]

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[163] Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 855–56 (1992); *see also* Sellers, *supra* note 156, at 79 (stating that one of the *Casey* factors is whether changing a rule relied on by society would create special hardships).

[164] CARDOZO, *supra* note 94, at 150; *see* Christopher P. Banks, *Reversals of Precedent and Judicial Policy-Making: How Judicial Conceptions of Stare Decisis in the U.S. Supreme Court Influence Social Change*, 32 AKRON L. REV. 233, 236 (1999) (recognizing Justice Cardozo as a highly regarded jurist on stare decisis).

[165] Churchill v. Campbell Cnty. Mem'l Hosp., 234 P.3d 365 (Wyo. 2010); *McCann*, 210 P.3d at 1082; *Beaulieu II*, 86 P.3d 863, 872 (Wyo. 2004); *see supra* notes 53–77 and accompanying text (discussing governmental claims that were dismissed in adherence to *Bell* and its progeny).

[166] *Churchill*, 234 P.3d at *passim*; *McCann*, 201 P.3d at *passim*; *Beaulieu II*, 86 P.3d at *passim*; *see supra* text accompanying notes 53–71.

[167] *Churchill*, 234 P.3d at *passim*; *McCann*, 201 P.3d at *passim*; *Beaulieu II*, 86 P.3d at *passim*; *see supra* text accompanying notes 53–71.

[168] *Churchill*, 234 P.3d at *passim*; *McCann*, 201 P.3d at *passim*; *Beaulieu II*, 86 P.3d at *passim*; *see supra* text accompanying notes 53–71.

[169] Lavati v. Wyoming, 121 P.3d 121, 123 (Wyo. 2005) ("[T]he State willfully withheld the information about its defense from Mr. Lavatai, in hopes the two-year period under the Governmental Claims Act would expire before he realized his mistake.").

[170] *Id.* at 126 (noting the State's lack of candor, honesty, and good faith in the handling of the lawsuit); *see also* Kath v. Western Media, Inc., 684 P.2d 98, 100–01 (Wyo. 1984) (explaining an attorney's affirmative ethical standard to litigate in good faith).

[171] Brown v. City of Casper, 248 P.3d 1136, 1147 (Wyo. 2011). By overruling *Bell*, the district court gained authority to exercise its discretion and allow Brown to amend his Complaint. *Id.* This enabled Brown to proceed with his claim, instead of being dismissed on technicalities. *Id.*

As the court realized in *Brown*, "the [c]ourt seems to have confused the principle . . . that a notice of claim is a condition precedent to suing the government with the pleading requirement the court created in *Bell*."[172] Further, the Wyoming Supreme Court has long elevated substance over form.[173] In 1917, the court held "judgments are to be liberally construed, and with more regard to substance than to form."[174] *Bell* seemingly departed from this reasoning, implying the form of the complaint was more important than the substance.[175] However, the court in *Brown* returned to the principles of recognizing meritorious claims despite technical pleading defects, which cured the injustices caused by reliance on *Bell*.[176]

Current Principles of Law

The third *Casey* factor is whether the evolution of the law has left a prior rule without doctrinal support.[177] The Wyoming Rules of Civil Procedure have been amended over time, addressing conditions precedent and requiring plaintiffs to generally aver that all conditions precedent are met.[178] The purpose of these rules is to "prevent dismissals of meritorious cases if the plaintiff fails specifically to plead occurrence of conditions precedent."[179] The court has also held plaintiffs only need plead the operative facts of the litigation so that the defendants have fair notice of the claim.[180] Therefore, *Bell* and its progeny failed to adhere to the

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[172] *Id.* at 1145.

[173] Garber v. Spray, 164 P. 840, 842 (Wyo. 1917). The Wyoming Supreme Court stated:

> Strict formality and accuracy are not required of pleadings in such courts, and mere technical defects are to be disregarded . . . the general rule is that in such courts it is only necessary that the pleadings shall clearly apprise the opposite party of the grounds relied on to support or defeat the action, and that the petition or complaint shall contain enough of substance to inform the defendant of the nature of plaintiff's claim, and be so explicit that a judgment thereon will bar another suit for the same cause of action.

Id.

[174] *Id.* at 843.

[175] Bd. of Tr. of Univ. of Wyo. v. Bell, 662 P.2d 410, 412 (Wyo. 1983) (dismissing a claim based on the form of the complaint rather than the substance of the claim), *overruled by Brown*, 248 P.3d 1136.

[176] *Brown*, 248 P.3d at 1147–48 (holding deficient allegations in a complaint do not prevent a district court from exercising jurisdiction over a governmental claim).

[177] Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 857 (1992).

[178] WYO. R. CIV. P. 9(c) (discussing general pleading requirements).

[179] Johnson v. Aetna Cas. & Sur. Co., 608 P.2d 1299, 1304 (Wyo. 1980).

[180] Washakie Cnty. Sch. Dist. No. One v. Herschler, 606 P.2d 310, 316 (Wyo. 1980) (reiterating the specificity standard is satisfied when the pleadings give fair notice to the opposing party); Harris v. Grizzle, 599 P.2d 580, 583 (Wyo. 1979) (stating complaint should be construed liberally to do substantial justice and the claim should only be specific enough to put the opposing part on fair notice).

policies of the rules of civil procedure by failing to liberally construe pleadings, and the rule in *Bell* was without doctrinal support.[181]

Further, other courts have recognized that reasoning, like that in *Bell*, has little credibility in the midst of current legal principles.[182] The United States Supreme Court has reasoned, in the context of governmental claims, it is entirely contrary to the spirit of the Federal Rules of Civil Procedure that mere technicalities prevent a decision on the merits of the claim.[183] Moreover, district courts abuse their discretion when they refuse to grant a claimant leave to amend the complaint in the absence of bad faith or undue prejudice.[184] Wyoming looks to federal courts as persuasive authority where they interpret statutes and language similar to Wyoming law, and thus the United States Court of Appeals for the Tenth Circuit's interpretations of the FTCA are persuasive regarding the ability to amend a complaint, and Wyoming should therefore look to Tenth Circuit precedent in interpreting its own statute.[185] The FTCA's language is similar to the WGCA's.[186] The Tenth Circuit has stated even if the allegation of jurisdiction is insufficient or lacking, so long as there are facts pleaded in the complaint from which jurisdiction may be inferred, a motion to dismiss for lack of subject matter jurisdiction will be denied.[187] As such, if the State is provided a notice of claim, simple failure to allege statutory compliance would not interfere with the ultimate purpose of the notice requirement.[188] When faced with a motion to dismiss a governmental claim, the Oklahoma Supreme Court stated the requirements of governmental claims "must

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[181] *See supra* notes 48–77 and accompanying text (discussing governmental claims that were dismissed because of technical pleading defects).

[182] *See infra* notes 183–91 and accompanying text.

[183] Foman v. Davis, 371 U.S. 178, 181–82 (1962) ("In the absence of . . . undue delay, bad faith or . . . undue prejudice to the opposing party . . . the leave sought should, as the rules require, be 'freely given.'"); WRIGHT ET AL., *supra* note 79, at § 1206 (stating that federal courts freely grant leave to parties to amend their complaints).

[184] *Foman*, 371 U.S. at 182.

[185] *See, e.g.*, Powder River Basin Res. Council v. Wyo. Dept. of Envtl. Quality, 226 P.3d 809, 813 (Wyo. 2010) (recognizing that where the Wyoming air quality protections were drafted with the intent to be at least as stringent as the federal regulations, the federal regulations and coinciding precedent is persuasive authority in Wyoming); State v. Naple, 143 P.3d 358, 362 (Wyo. 2006) (stating that where the text of a state rule is substantially similar to that of a federal rule, interpretations of the federal rule are instructive to the Wyoming Supreme Court).

[186] *Compare* 28 U.S.C. § 2675 (2011) (requiring that a notice of claim was presented to the relevant federal agency prior to suit), *with* WYO. STAT. ANN. § 1-39-113 (2011) (requiring that a notice of claim be presented to the relevant state entity prior to suit).

[187] Mountain Fuel Supply Co. v. Johnson, 586 F.2d 1375, 1381 (10th Cir. 2001) ("[A] motion to dismiss an action for lack of subject matter jurisdiction will be denied even though the allegation of jurisdiction is insufficient or entirely lacking if there are facts pleaded in the complaint from which jurisdiction may be inferred in essence and effect.").

[188] WRIGHT ET AL., *supra* note 79, at § 3658 (stating the purpose of the notice requirement under the FTCA is to "give the governmental agency enough notice of the nature and basis of the claim so that it can begin its own investigation and evaluation . . .").

not be construed to defeat its purpose of permitting recovery from governmental entities . . . ."[189] Other state and federal courts do not apply *Bell*'s reasoning, and therefore, *Bell* has almost no doctrinal support.[190] In the light of other courts' approaches to governmental claims, it is clear *Brown* was correct in overruling *Bell*, as the legal principles enunciated in *Bell* are no longer, and likely never were, valid.[191]

Inapplicability

The fourth and final *Casey* factor is whether facts have so changed that there is no longer a foundation for the original decision.[192] Although strict adherence to pleading technicalities is no longer necessary in light of current WGCA amendments, this factor of the test is not applicable.[193] The injustices resulting from courts' reliance on *Bell* alone justify the court in overruling *Bell* and its progeny.[194] Therefore, it is clear the court's logic and reasoning in *Brown* was correct in abandoning precedent, as three of the four factors of the *Casey* test are easily met.[195]

One Giant Leap for the Supreme Court, One Small Step for the WGCA

In *Brown*, the Wyoming Supreme Court took a huge step in the right direction in clearing up confusion related to the WGCA.[196] The WGCA, however, is still

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[189] Calvert v. Tulsa Pub. Sch., 932 P.2d 1087, 1091 (Okla. 1996) (citing *Walker v. City of Moore*, 836 P.2d 1289 (Okla.1992)), *superseded on other grounds by statute*, OKLA. STAT. tit. 51, § 156(D) (1992) (allowing amendments under the Governmental Tort Claims Act).

[190] *See supra* 182–89 and accompanying text (discussing how other courts approach governmental claims).

[191] *See supra* 182–90 and accompanying text.

[192] Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 854 (1992) (noting that although some of the factual assumptions about neonatal care in Roe v. Wade, 410 U.S. 113 (1972), had changed, the issue as to when life begins medically was still unresolved, and thus the factual premise of *Roe*'s central holding was intact, and the case could not be overturned).

[193] Brown v. City of Casper, 248 P.3d 1136, 1136–50 (Wyo. 2011). There is nothing in *Brown* that suggests the court overruled *Bell* because facts today are different than they once were. *Id.*

[194] *See, e.g.*, *Brown v. Board of Education,* 347 U.S. 483 (1954) (overturning the separate but equal doctrine of *Plessy v. Ferguson,* 163 U.S. 537 (1896), because it had been shown that the doctrine created injustices); W. Coast Hotel Co. v. Parrish, 300 U.S. 379, 398, (1937) (overturning the doctrine of *Lochner v. New York,* 198 U.S. 45 (1905), by holding that legislatures could not regulate labor standards because of the injustices created during the Great Depression). In the context of *Bell* and its progeny, similar injustices have occurred. *See supra* text accompanying notes 48–77 (discussing governmental claims that were dismissed, even though meritorious, because of the pleading requirements created in *Bell*).

[195] *See supra* 157–94 and accompanying text (applying the *Casey* test to *Brown*).

[196] *Brown*, 248, P.3d at 1145 (stating the "confusion between what is required by the constitution and statute for a notice of claim, and what must be alleged in a complaint, has continued" since *Bell*).

misinterpreted by courts.[197] For example, the WGCA also requires a claimant to itemize damages in its complaint.[198] In *Excel Construction, Inc. v Town of Lovell*, the claimant alleged the Town of Lovell owed Excel $2,688,173.80, referencing an itemized statement of damages as attached to the notice of claim.[199] However, the claimant inadvertently failed to attach the itemized statement.[200] The claimant tried to correct its mistake; however, the amended notice was not filed within the two-year limitation.[201] The district court relied on cases that were overruled by *Brown*, holding that the court has made its position clear—litigants who bring claims against the government must strictly comply with the requirements of the WCGA[202] and failure to comply prevents the district court from attaining subject matter jurisdiction over the claim.[203] This case is currently under advisement by the Wyoming Supreme Court.[204]

Courts, however, are no longer faced with binding precedent that prevents them from exercising their own discretion in such matters.[205] Now, courts may allow a claimant to amend its complaint in order to comply with the WGCA and its pleading requirements.[206] Further, in accordance with Wyoming Rules of Civil Procedure, amendments curing a defective complaint will relate back to the date the complaint was originally filed; therefore such amendments would not be barred by the two-year statute of limitation.[207]

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[197] *See infra* notes 198–207 and accompanying text.

[198] WYO. STAT. ANN. § 1-39-113(b) (2011) ("The claim shall state . . . [t]he amount of compensation or other relief demanded.").

[199] Appellant's Reply Brief at 5, Excel Constr., Inc. v. Town of Lovell, No. S-11-001 (Wyo. Apr. 25, 2011), 2011 WL 2550881.

[200] *Id.*

[201] *Id.* at 6.

[202] *Id.*

[203] *Id.* at 7.

[204] *Id.*

[205] Brown v. City of Casper, 248 P.3d 1136, 1147–48 (Wyo. 2011) (overruling Bd. of Tr. of Univ. of Wyo. v. Bell, 662 P.2d 410, 415 (Wyo. 1983)).

[206] *Id.*

[207] WYO. R. CIV. P. 15(c)(2) ("An amendment of a pleading relates back to the date of the original pleading when . . . [t]he claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading."); *Brown*, 248 P.3d at 1147 (recognizing an amendment will relate back to the date the original claim was filed).

CONCLUSION

Before *Bell*, Wyoming law was clear that a claimant must provide a notice of claim to the governmental entity in order to bring an action under the WGCA.[208] However, failure to allege presentation of notice of claim in the complaint did not deprive district courts of jurisdiction over a governmental claim.[209] *Brown* returned to this reasoning and corrected nearly thirty years of flawed precedent.[210] *Brown* held that if a notice of claim was properly provided to the State and the claimant simply failed to allege notice in the complaint, a claimant may amend the complaint and pursue its constitutionally protected day in court.[211] Thanks to *Brown*, no longer will thousands of dollars be wasted, countless hours spent, and cases be dismissed over mere technicalities rather than the actual merits of the governmental claim.[212] This change in law puts an end to attorneys and judges taking advantage of a judicially created loophole.[213] Now, when individuals suffer injuries at the hand of the State, their claims will not be denied due to simple technicalities.[214]

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[208] *See supra* notes 39–47 and accompanying text (discussing cases leading up to *Bell* that required claimants to present a governmental entity with a notice of claim before initiating suit).

[209] *See supra* notes 39–47 and accompanying text (explaining cases before *Bell* did not require a claimant to allege compliance with statutory requirements in order for district courts to gain jurisdiction over WGCA claims).

[210] *See supra* notes 105–34 and accompanying text (discussing the holding in *Brown*).

[211] *See supra* notes 105–34 and accompanying text (discussing the holding in *Brown*).

[212] *See supra* notes 48–77 and accompanying text (highlighting governmental claims that were dismissed in reliance on *Bell* and its progeny).

[213] *See supra* notes 72–77 and accompanying text (discussing Justice Kite's disapproval of the State's display of dishonesty and covertness).

[214] *See supra* notes 105–34 and accompanying text (discussing the holding in *Brown*, which allows claimants to amend their complaints instead of being dismissed due to mere technicalities).