

SUPREME COURT OF NEW HAMPSHIRE

Scott Kukesh & a. v. Beverly P. Mutrie, Individually and as Trustee  
of the Beverly P. Mutrie Revocable Trust

168 N.H. 76 (2015) · No. Rockingham No. 2014-402 · Decided August 4, 2015

SUMMARY

The Supreme Court of New Hampshire affirmed dismissal of four police officers' claims against Beverly P. Mutrie arising from injuries inflicted by her adult son during execution of a search warrant. The court held that the claims were barred by New Hampshire's Firefighter's Rule because the plaintiffs did not establish reckless, wanton, or willful misconduct, causation, or a duty arising from Mutrie's ownership of the property and support of her adult son. The court also rejected the plaintiffs' challenges concerning discovery and consideration of facts outside the writ.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                  |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of New Hampshire                                                                                                                                                                                                                                                                                   |
| WRITING FOR THE COURT | Bassett, J.; Dalianis, C.J.; Hicks, J.; Conboy, J.; Lynn, J.                                                                                                                                                                                                                                                     |
| JURISDICTION          | New Hampshire                                                                                                                                                                                                                                                                                                    |
| DECIDED               | August 4, 2015                                                                                                                                                                                                                                                                                                   |
| DOCKET                | Rockingham No. 2014-402                                                                                                                                                                                                                                                                                          |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | The plaintiffs appealed the Superior Court's dismissal of their claim alleging that the defendant's reckless and wanton misconduct caused them to be shot and injured by her adult son.                                                                                                                          |
| STANDARD OF REVIEW    | The court reviewed the grant of the motion to dismiss de novo, determining whether the allegations, supplemented by additional facts, were reasonably susceptible of a construction permitting recovery. Discovery-management and evidentiary rulings were reviewed for an unsustainable exercise of discretion. |
| PRECEDENTIAL VALUE    | Published and precedential decision of the Supreme Court of New Hampshire                                                                                                                                                                                                                                        |
| PARTIES               | Scott Kukesh, Eric Kulberg, Jeremiah Murphy, Gregory Turner v. Beverly P. Mutrie, individually and as trustee of the Beverly P. Mutrie Revocable Trust                                                                                                                                                           |

## TOPICS

personal injury   negligence   duty of care   motions to dismiss   appellate procedure

## PRACTICE AREAS

torts   civil procedure   appellate procedure   trusts   real estate

## QUESTIONS PRESENTED

1. Whether the plaintiffs' claim fell within the reckless, wanton, or willful misconduct exception to New Hampshire's Firefighter's Rule.
2. Whether the trial court erred by considering factual allegations outside the writ when ruling on the motion to dismiss.
3. Whether the trial court abused its discretion in limiting discovery and quashing a subpoena for the defendant's telephone records.
4. Whether the defendant's ownership of the property and alleged provision of housing, cars, financial assistance, or weapons created a duty to protect the plaintiffs from her adult son's criminal conduct.

## HOLDINGS

1. The plaintiffs' claim was barred by the Firefighter's Rule because they failed to allege facts establishing that the defendant engaged in reckless, wanton, or willful misconduct that caused their injuries.
2. The defendant's ownership of the residential property and alleged provision of housing, cars, and financial assistance did not constitute a special circumstance creating a duty to protect the plaintiffs from her adult son's criminal act.
3. The trial court did not err by considering supplemental factual allegations because the plaintiffs themselves submitted the additional facts, acquiesced in the procedure, and received the benefit of having their affirmative allegations accepted as true and viewed favorably.
4. The trial court did not unsustainably exercise its discretion by denying the motion to compel and quashing the subpoena for telephone records.

## KEY QUOTATIONS

*“Thus, because the plaintiffs were injured “while responding in [their] professional capacity to the very type of situation for which [they were] paid and trained to cope,” Boulter, 166 N.H. at 420 (quotation omitted), and because they have failed to allege facts sufficient to establish that the defendant’s alleged conduct was “reckless, wanton or willful,” we hold that the trial court did not err when it concluded that the plaintiffs’ claim was barred by the Firefighter’s Rule.” (at 9)*

## FACTUAL BACKGROUND

The plaintiffs were four police officers assigned to a drug task force who went to a Greenland property to execute a search warrant on the defendant's 29-year-old son, whom police suspected of illegal drug activity and weapons possession. During the execution of the warrant, the son shot and injured the officers and then killed

himself. The property was owned by the Beverly P. Mutrie Revocable Trust, of which the defendant was trustee, and the plaintiffs alleged that she knowingly supported her son's criminal activity by providing housing, cars, financial assistance, and weapons.

## PROCEDURAL HISTORY

Four police officers sued Beverly P. Mutrie individually and as trustee after being shot by her adult son while the officers were executing a search warrant at trust-owned property. The Superior Court considered the allegations in the writ and supplemental factual assertions, permitted an evidentiary opportunity concerning whether Mutrie supplied the weapon, and ultimately dismissed the claim because the plaintiffs identified no evidence that she owned or provided the gun used in the shooting. The Supreme Court of New Hampshire affirmed.

## DISPOSITION

affirmed

## CASES CITED

- England v. Tasker, 129 N.H. 467 (1987)
- Boulter v. Eli & Bessie Cohen Found., 166 N.H. 414 (2014)
- Petition of Stompor, 165 N.H. 735 (2013)
- N.H. Ball Bearings v. Jackson, 158 N.H. 421 (2009)
- Chasan v. Village District of Eastman, 128 N.H. 807 (1986)
- Plaisted v. LaBrie, 165 N.H. 194 (2013)
- Chatman v. Brady, 162 N.H. 362 (2011)
- Amica Mutual Insurance Co. v. Mutrie, 167 N.H. 108 (2014)
- Jespersen v. U.S. Fidelity & Guaranty Co., 131 N.H. 257 (1988)
- Beane v. Dana S. Beane & Co., 160 N.H. 708 (2010)
- Migdal v. Stamp, 132 N.H. 171 (1989)
- Macie v. Helms, 156 N.H. 222 (2007)
- Palsgraf v. Long Island R. Co., 162 N.E. 99 (N.Y. 1928)
- Berry v. Watchtower Bible & Tract Society of New York, Inc., 152 N.H. 407 (2005)
- Iannelli v. Burger King Corp., 145 N.H. 190 (2000)
- Alioto v. Marnell, 520 N.E.2d 1284 (Mass. 1988)
- Reinert v. Dolezel, 383 N.W.2d 148 (Mich. Ct. App. 1985)
- Hartsock v. Hartsock, 592 N.Y.S.2d 512 (App. Div. 1993)