

SUPREME COURT OF IOWA

Messerschmidt v. City of Sioux City

654 N.W.2d 879 (Iowa 2002) · No. No. 01-1209 · Decided November 14, 2002

SUMMARY

The Supreme Court of Iowa held that the City of Sioux City was not immune from liability for removing a barricade during the Big Parade before the area was clear, resulting in injuries caused by a drunken driver. The court rejected discretionary-function immunity under Iowa Code section 670.4(3) and third-party-causation immunity under section 670.4(10), and found that the city had not preserved its section 668.10(1) argument. The court also upheld the jury’s apportionment of eighty-five percent fault to the city and fifteen percent to the driver, affirming on both the appeal and cross-appeal.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Streit, Justice
JURISDICTION	Iowa
DECIDED	November 14, 2002
DOCKET	No. 01-1209
DISPOSITION	affirmed
PROCEDURAL POSTURE	The City of Sioux City appealed after a jury found it 85 percent at fault for Cheryl Messerschmidt's injuries and entered a million-dollar verdict for Cheryl and Kelvin Messerschmidt. The Messerschmidts cross-appealed the trial court's allowance of the City's late amendment adding an Iowa Code section 670.4(10) immunity defense.
STANDARD OF REVIEW	Immunity issues and the applicability of statutory immunity are reviewed for correction of errors at law. The jury's apportionment of fault is reviewed to determine whether substantial evidence supports it. The allowance of an amendment to pleadings is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	City of Sioux City v. Cheryl Messerschmidt, Kelvin Messerschmidt

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QUESTIONS PRESENTED

1. Whether the City's decision to remove the temporary road barricade was protected by discretionary-function immunity under Iowa Code section 670.4(3).
2. Whether the City could assert immunity under Iowa Code section 668.10(1) for liability relating to a traffic-control device when the defense was not raised below.
3. Whether Iowa Code section 670.4(10), concerning damage caused by a third party or event not under municipal supervision or control, immunized the City from liability for removing the barricade.
4. Whether substantial evidence supported the jury's apportionment of 85 percent fault to the City and 15 percent fault to the drunken driver.
5. Whether the trial court abused its discretion by allowing the City to amend its answer after the close of the Messerschmidts' case in chief to add the section 670.4(10) defense.

HOLDINGS

1. The City's decision to remove the barricade was not protected by discretionary-function immunity because, although the decision involved judgment or choice, it was an ad hoc operational decision rather than a policy-making decision involving social, economic, or political considerations.
2. The City failed to preserve its claim that Iowa Code section 668.10(1) barred assigning it a percentage of fault because the City did not raise the defense below and the trial court had no opportunity to rule on it.
3. Section 670.4(10) did not immunize the City because the City's removal of a barricade was not an action similar to the statute's enumerated examples of issuing permits, inspecting, or investigating.
4. Substantial evidence supported the jury's determination that the City was negligent, that its negligence was a proximate cause of Cheryl Messerschmidt's injuries, and that fault should be apportioned 85 percent to the City and 15 percent to the drunken driver.
5. The court did not decide whether the trial court abused its discretion by allowing the City to amend its answer after the close of the Messerschmidts' case because section 670.4(10) did not immunize the City and the issue was therefore unnecessary to the disposition.

KEY QUOTATIONS

"If the city's action involved a "high degree of discretion and judgment... in weighing alternatives and making choices with respect to public policy and planning," the city should be immune from liability." (654 N.W.2d at 882)

"The term "otherwise" is not so broad as to include every municipality action or omission." (654 N.W.2d at 884)

“Substantial evidence in the record supports the jury's conclusion that the city was liable in part for Cheryl's injuries.” (654 N.W.2d at 886)

FACTUAL BACKGROUND

During Sioux City's Big Parade, the City provided barricades to block a riverfront frontage road while large crowds remained in the area. After the evening parade and fireworks, a parade security official ordered the barricades removed even though approximately 1,500 to 2,000 people were still present. Shortly afterward, an underage drunken driver drove onto the road and struck the golf cart occupied by Cheryl Messerschmidt, who was injured. The golf carts lacked lights or reflective material, the area was poorly lit, and there were no warning signs alerting drivers that people remained in the area.

PROCEDURAL HISTORY

The Messerschmidts sued Sioux City after Cheryl was injured when a drunken driver struck the golf cart in which she was seated after the City removed a road barricade during the Big Parade. The City asserted discretionary-function immunity and later added an immunity defense based on third-party fault. The trial court denied the City's directed-verdict and new-trial arguments, allowed the late amendment, and upheld the jury's apportionment of fault. The Supreme Court of Iowa affirmed on both the appeal and cross-appeal.

DISPOSITION

affirmed

CASES CITED

- Pinkerton v. Jeld-Wen, Inc., 588 N.W.2d 679, 680 (Iowa 1998)
- Doe v. Cedar Rapids Community School District, 652 N.W.2d 439, 443-44 (Iowa 2002)
- Goodman v. City of LeClaire, 587 N.W.2d 232, 237-38 (Iowa 1999)
- Hacking v. Town of Belmont, 143 N.H. 546, 736 A.2d 1229, 1232 (1999)
- State v. Livengood by Livengood, 688 N.E.2d 189, 196 (Ind. Ct. App. 1997)
- Guerrero v. Alaska Housing Finance Corp., 6 P.3d 250, 261 (Alaska 2000)
- Department of Transportation v. Brown, 267 Ga. 6, 471 S.E.2d 849, 851 (1996)
- Metier v. Cooper Transportation Co., 378 N.W.2d 907, 910 (Iowa 1985)
- Butler v. State, 336 N.W.2d 416, 419-20 (Iowa 1983)
- Baker v. Seal, 694 S.W.2d 948, 950 (Tenn. Ct. App. 1984)
- Shatzer v. Globe American Casualty Co., 639 N.W.2d 1, 5 (Iowa 2001)
- Williams v. Bayers, 452 N.W.2d 624, 626 (Iowa Ct. App. 1990)
- Morgan v. Perlowski, 508 N.W.2d 724, 728 (Iowa 1993)
- Cook v. State, 431 N.W.2d 800, 807 (Iowa 1988)
- Fox v. Interstate Power Co., 521 N.W.2d 762, 764 (Iowa Ct. App. 1994)
- Hawkeye Bank v. State, 515 N.W.2d 348, 351 (Iowa 1994)

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