

NEBRASKA SUPREME COURT

Walter Maclovi-Sierra v. City of Omaha, Nebraska

290 Neb. 443 (2015) · No. S-13-1139 · Decided March 27, 2015

SUMMARY

The Nebraska Supreme Court affirmed the dismissal of Walter Maclovi-Sierra’s claim against the City of Omaha under the Political Subdivisions Tort Claims Act. The court held that the district court was not clearly wrong in finding that Omaha police officers were not engaged in a statutory vehicular pursuit, and that their actions were not the proximate cause of the accident. The case involved injuries sustained when the plaintiff was struck by a stolen vehicle that had evaded police officers.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Nebraska Supreme Court                                                                                                                                                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Stephan, J.; Wright, J.; Connolly, J.; McCormack, J.; Miller-Lerman, J.; Cassel, J.; Heavican, C.J., participating on briefs                                                                                                                                                                                                                                                      |
| JURISDICTION          | Nebraska                                                                                                                                                                                                                                                                                                                                                                          |
| DECIDED               | March 27, 2015                                                                                                                                                                                                                                                                                                                                                                    |
| DOCKET                | S-13-1139                                                                                                                                                                                                                                                                                                                                                                         |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Maclovi-Sierra appealed after the Douglas County District Court dismissed his Political Subdivisions Tort Claims Act action following a bench trial.                                                                                                                                                                                                                              |
| STANDARD OF REVIEW    | The Supreme Court would not disturb the trial court's factual findings unless clearly wrong. In reviewing the sufficiency of the evidence, it viewed the evidence in the light most favorable to the successful party, resolved controverted facts in that party's favor, and gave that party the benefit of reasonable inferences. Questions of law were reviewed independently. |
| PRECEDENTIAL VALUE    | Published Nebraska Supreme Court opinion; precedential.                                                                                                                                                                                                                                                                                                                           |
| PARTIES               | Walter Maclovi-Sierra v. City of Omaha, Nebraska                                                                                                                                                                                                                                                                                                                                  |

TOPICS

- municipal liability
- strict liability
- proximate cause
- appellate procedure
- standard of review

## PRACTICE AREAS

municipal liability

torts

personal injury

appellate procedure

## QUESTIONS PRESENTED

1. Whether the Omaha officers' conduct constituted a vehicular pursuit under Neb. Rev. Stat. § 13-911(5).
2. Whether any vehicular pursuit had terminated before the accident.
3. Whether the officers' actions were a proximate cause of Maclovi-Sierra's injuries under Neb. Rev. Stat. § 13-911(1).
4. Whether the district court applied the correct proximate-cause standard.

## HOLDINGS

1. Section 13-911 creates strict liability for a political subdivision when a claimant suffers death, injury, or property damage proximately caused by the actions of the subdivision's law enforcement officer during a vehicular pursuit and the claimant is an innocent third party.
2. The district court was not clearly wrong in finding that Officer Cupak did not engage in a vehicular pursuit. The Supreme Court assumed without deciding that Officers Brown and Stiles may initially have initiated a pursuit, but held that any such pursuit terminated before the accident.
3. The district court did not clearly err in finding that the officers' actions were not a proximate cause of Maclovi-Sierra's injuries.
4. In a Political Subdivisions Tort Claims Act action, factual findings, including proximate-cause determinations based on conflicting evidence, will not be set aside unless clearly wrong, while legal questions are reviewed independently.

## KEY QUOTATIONS

*“Section 13-911 creates strict liability on the part of a political subdivision when (1) a claimant suffers death, injury, or property damage; (2) such death, injury, or property damage is proximately caused by the actions of a law enforcement officer employed by the political subdivision during vehicular pursuit; and (3) the claimant is an innocent third party.” (at 454)*

*“A law enforcement officer’s decision and action to terminate a vehicular pursuit do not instantaneously eliminate the danger to innocent third parties contemplated in § 13-911.” (at 457)*

*“The question of proximate cause, in the face of conflicting evidence, is ordinarily one for the trier of fact, and the court’s determination will not be set aside unless clearly wrong.” (at 459)*

## FACTUAL BACKGROUND

Walter Maclovi-Sierra was struck and permanently injured by a stolen pickup driven by Gino Main near the Q Street exit from Highway 75 in Omaha. Omaha officers attempted to stop or follow the pickup, and two officers followed it onto F Street and Highway 75 with emergency lights and sirens activated. The officers terminated the

pursuit, if one existed, before the pickup reached the accident location; the trial court found that Main could no longer see or hear the cruisers and continued driving recklessly because he feared other officers might respond.

## PROCEDURAL HISTORY

Maclovi-Sierra sought damages for injuries sustained when a stolen vehicle struck him, alleging that Omaha police officers were pursuing the vehicle. After a bench trial, the district court found that no statutory vehicular pursuit caused the accident and that the officers' actions were not the proximate cause of the injuries. The Nebraska Supreme Court moved the timely appeal to its docket and affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Blaser v. County of Madison, 285 Neb. 290, 826 N.W.2d 554 (2013)
- Werner v. County of Platte, 284 Neb. 899, 824 N.W.2d 38 (2012)
- Richter v. City of Omaha, 273 Neb. 281, 729 N.W.2d 67 (2007)
- Mutual of Omaha Bank v. Kassebaum, 283 Neb. 952, 814 N.W.2d 731 (2012)
- Tymar v. Two Men and a Truck, 282 Neb. 692, 805 N.W.2d 648 (2011)
- Staley v. City of Omaha, 271 Neb. 543, 713 N.W.2d 457 (2006)
- Stewart v. City of Omaha, 242 Neb. 240, 494 N.W.2d 130 (1993)
- Henery v. City of Omaha, 263 Neb. 700, 641 N.W.2d 644 (2002)
- Perez v. City of Omaha, 15 Neb. App. 502, 731 N.W.2d 604 (2007)
- Mid Century Ins. Co. v. City of Omaha, 242 Neb. 126, 494 N.W.2d 320 (1992)
- Meyer v. State, 264 Neb. 545, 650 N.W.2d 459 (2002)