

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Sergeant v. City of Charleston, 209 W. Va. 437

549 S.E.2d 311 (2001) · No. No. 28479 · Decided July 9, 2001

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed summary judgment for municipalities and police officers in a wrongful-death action arising from a police pursuit. The court held that the officers' conduct during the pursuit and their earlier conduct in arranging a drug transaction did not constitute negligent, wanton, or reckless conduct that proximately caused the decedent's death. Separate dissents argued that the issues of negligence, foreseeability, and causation should have been submitted to a jury.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	West Virginia
DECIDED	July 9, 2001
DOCKET	No. 28479
DISPOSITION	affirmed
PROCEDURAL POSTURE	The administrator of a decedent's estate appealed an order granting the defendant municipalities and police officers summary judgment in a wrongful-death action arising from a police pursuit and preceding undercover operation.
STANDARD OF REVIEW	Summary judgment is reviewed de novo.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Appeals of West Virginia
PARTIES	John D. Sergeant, as Administrator of the Estate of David Sergeant, Deceased v. The City of Charleston, West Virginia, William H. Hart, Greg White, The City of St. Albans, J.H. Crawford, Terryonto McGrier, Jerome Thomas

TOPICS

- summary judgment
- wrongful death
- municipal liability
- proximate cause
- negligence

PRACTICE AREAS

Torts

Municipal liability

Civil procedure

QUESTIONS PRESENTED

1. Whether the circuit court improperly reconsidered its prior denial of the defendants' motions for summary judgment.
2. Whether the police officers' conduct during the vehicle pursuit constituted negligence, wantonness, or recklessness under West Virginia law.
3. Whether the officers' conduct during the Motel 6 undercover operation constituted wanton or reckless conduct.
4. Whether any allegedly negligent or reckless conduct during the Motel 6 operation was a proximate cause of the decedent's death.
5. Whether summary judgment was proper for the municipalities and police officers under the West Virginia Governmental Tort Claims and Insurance Reform Act.

HOLDINGS

1. A trial court may reconsider, revise, alter, or amend an interlocutory order denying summary judgment; therefore, the renewed summary-judgment motions were not procedurally improper.
2. When police pursue a known or suspected law violator and the pursued vehicle collides with a third party, the pursuing officer is not liable unless the officer's conduct amounted to reckless conduct or gross negligence and was a substantial factor in bringing about the collision.
3. The undisputed evidence did not establish negligent, wanton, or reckless conduct by the officers during the pursuit, and summary judgment was proper on that claim.
4. Even assuming the officers' conduct during the Motel 6 operation could be characterized as negligent or reckless, the criminal acts of the suspects were intervening efficient causes that were not foreseeable as a matter of law and therefore broke the chain of causation as to the pedestrian's death.
5. The plaintiff failed to produce concrete evidence sufficient for a reasonable jury to find negligent, wanton, or reckless conduct or proximate causation.

KEY QUOTATIONS

"An order denying a motion for summary judgment is merely interlocutory, leaves the case pending for trial, and is not appealable except in special instances in which an interlocutory order is appealable." (209 W. Va. 442)

"Where the police are engaged in a vehicular pursuit of a known or suspected law violator, and the pursued vehicle collides with the vehicle of a third party, under W.Va.Code, 17C-2-5 (1971), the pursuing officer is not liable for injuries to the third party arising out of the collision unless the officer's conduct in the pursuit amounted to reckless conduct or gross negligence and was a substantial factor in bringing about the collision." (209 W. Va. 444)

“It is the duty of police officers to apprehend and arrest suspected law violators.” (209 W. Va. 445)

“Therefore, we conclude that the intentional, criminal acts of the suspects, after the initial confrontation and the officers' withdrawal, were intervening efficient acts which were not foreseeable by Officers Crawford and Hart, thereby breaking the chain of causation which originally began with their arguably negligent conduct and relieving them, and their employers, of any liability.” (209 W. Va. 447)

FACTUAL BACKGROUND

Police officers arranged an undercover drug transaction and relocated an informant to another motel after the suspects failed to appear. The suspects confronted the officers, exchanged gunfire, and fled in a vehicle; police pursued them for approximately 2.7 miles on Route 61. The fleeing vehicle attempted to pass traffic on the shoulder and struck and killed David Glenn Sergeant, who was riding a bicycle. The undisputed evidence showed that the pursuing officers remained behind the suspect vehicle and did not force it off the road, establish a roadblock, pass it, or otherwise interfere with its control.

PROCEDURAL HISTORY

The administrator filed a wrongful-death action in 1993 alleging that the police officers' negligent, wanton, and reckless conduct caused the decedent's death. The circuit court initially denied summary judgment, but the motions were renewed and granted on December 2, 1999. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York, 148 W. Va. 160, 133 S.E.2d 770 (1963)
- Coleman v. Sopher, 201 W. Va. 588, 499 S.E.2d 592 (1997)
- Peak v. Ratliff, 185 W. Va. 548, 408 S.E.2d 300 (1991)
- Williams v. Precision Coil, Inc., 194 W. Va. 52, 459 S.E.2d 329 (1995)
- Miller v. City Hosp., Inc., 197 W. Va. 403, 475 S.E.2d 495 (1996)
- McCoy v. Cohen, 149 W. Va. 197, 140 S.E.2d 427 (1965)
- Hartley v. Crede, 140 W. Va. 133, 82 S.E.2d 672 (1954)
- Anderson v. Moulder, 183 W. Va. 77, 394 S.E.2d 61 (1990)
- Yourtee v. Hubbard, 196 W. Va. 683, 474 S.E.2d 613 (1996)
- Evans v. Farmer, 148 W. Va. 142, 133 S.E.2d 710 (1963)
- Jividen v. Law, 194 W. Va. 705, 461 S.E.2d 451 (1995)
- State, Department of Health v. Robert Morris N., 195 W. Va. 759, 466 S.E.2d 827 (1995)
- Powderidge Unit Owners v. Highland Properties, 196 W. Va. 692, 474 S.E.2d 872 (1996)

- State v. Vollmer, 163 W. Va. 711, 259 S.E.2d 837 (1979)
- Estate of Hough v. Estate of Hough, 205 W. Va. 537, 519 S.E.2d 640 (1999)
- U.S. v. Thomas, 55 F.3d 144 (4th Cir. 1995)
- U.S. v. McGrier, 848 F. Supp. 649 (S.D.W. Va. 1994)

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