

SUPREME COURT OF FLORIDA

Wallace v. Dean

3 So. 3d 1035 (Fla. 2009) · No. No. SC08-149 · Decided January 29, 2009

SUMMARY

The Supreme Court of Florida held that the undertaker's doctrine may impose a common-law duty on law-enforcement officers who respond to a 911 call, engage an injured person, and undertake a safety check. The court also held that the deputies' affirmative conduct was operational rather than discretionary, so sovereign immunity did not bar the plaintiff's negligence-based wrongful-death claim. The decision quashed the Fifth District Court of Appeal's dismissal and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Lewis, J.; Quince, C.J.; Pariente, J.; Anstead, Senior Justice; Wells, J.; Canady, J.; Polston, J.
JURISDICTION	Florida
DECIDED	January 29, 2009
DOCKET	No. SC08-149
DISPOSITION	quashed
PROCEDURAL POSTURE	Petition for review based on alleged express and direct conflict with a decision of the Fifth District Court of Appeal. The Supreme Court reviewed dismissal with prejudice of a wrongful-death negligence complaint for failure to state a cause of action.
STANDARD OF REVIEW	De novo review of dismissal of a complaint for failure to state a cause of action. The allegations are assumed true and all reasonable inferences are drawn in favor of the plaintiff.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Florida
PARTIES	Kelly Wallace v. Ed Dean, Sheriff of Marion County

TOPICS

- negligence
- duty of care
- wrongful death
- municipal liability
- appellate jurisdiction

PRACTICE AREAS

torts

negligence

governmental liability

sovereign immunity

wrongful death

appellate jurisdiction

QUESTIONS PRESENTED

1. Whether Florida's undertaker's doctrine creates a common-law duty of care when law-enforcement officers respond to a 911 call, engage an apparently injured or helpless individual, and undertake a safety check.
2. Whether the allegations that the deputies increased the decedent's risk of harm and induced third-party reliance stated a negligence-based wrongful-death cause of action.
3. Whether the deputies' affirmative conduct in implementing an existing 911 response program was operational rather than planning-level conduct and therefore was not protected by sovereign immunity.
4. Whether the Supreme Court of Florida possessed discretionary conflict jurisdiction under article V, section 3(b)(3), of the Florida Constitution.

HOLDINGS

1. When law-enforcement officers respond to a 911 call, actually engage an injured or helpless individual, and undertake a safety check, the undertaker's doctrine may impose a common-law duty to exercise reasonable care where the officers' conduct increases the individual's risk of harm or induces others who would have rendered aid to refrain from doing so.
2. The second amended complaint stated a valid negligence-based wrongful-death cause of action against the Sheriff in his official capacity.
3. Whether a governmental defendant owes a duty of care is analytically distinct from whether sovereign immunity bars suit; sovereign immunity is considered only after a duty and potential liability have been established.
4. The deputies' alleged conduct in carrying out a safety check under an existing 911 system was operational in nature, not quasi-legislative planning-level conduct, and sovereign immunity did not bar the claim.
5. The Supreme Court possessed and exercised discretionary conflict jurisdiction because the Fifth District's decision announced a rule conflicting with prior Florida decisions and applied law to substantially similar facts in conflict with *Hartley v. Floyd*.

KEY QUOTATIONS

"Having undertaken to respond to the 911 call, engaged the decedent, and completed this safety check and having allegedly placed the decedent in a "zone of risk" by failing to exercise reasonable care, which, as alleged, both increased the risk of harm to decedent and induced third parties—who would have otherwise rendered further aid—to forebear from doing so, we conclude that the Sheriff owed the decedent a common-law duty of care." (1046)

"This alleged behavior satisfies the requirements of the undertaker's doctrine because the deputies, in a position of authority, increased the risk of harm that the decedent faced by inducing third parties—who would

have otherwise rendered further aid (and actually requested that the deputies provide additional assistance, but were rebuffed)—to forebear from doing so.” (1052-1053)

“Planning level functions are generally interpreted to be those requiring basic policy decisions, while operational level functions are those that implement policy.” (1054)

FACTUAL BACKGROUND

After Kelly Wallace could not reach her mother, Brenda Wallace, she asked neighbor Marjorie Ginder to check on Brenda and call 911 if necessary. Marion County Sheriff's deputies responded, entered the home, found Brenda breathing but wholly unresponsive, attempted to awaken her, and rejected requests to summon an ambulance while assuring the neighbor that Brenda was merely sleeping. The deputies left Brenda alone with a side door unsecured; she was later transported to a hospital and died without regaining consciousness. The complaint alleged that the deputies' conduct increased Brenda's risk of harm and induced the neighbor and daughter to rely on the deputies' assurances rather than obtain further emergency assistance.

PROCEDURAL HISTORY

Kelly Wallace filed a wrongful-death action against the Marion County Sheriff in his official capacity, alleging that deputies responding to a 911 welfare check undertook to assess Brenda Wallace's safety, negligently failed to summon an ambulance, and increased the risk of harm. The circuit court dismissed the amended complaint with prejudice under Florida Rule of Civil Procedure 1.140(b)(6). The Fifth District Court of Appeal affirmed. The Supreme Court of Florida accepted discretionary conflict jurisdiction, quashed the Fifth District's decision, and remanded for further proceedings.

DISPOSITION

quashed

REMAND INSTRUCTIONS

The decision of the Fifth District Court of Appeal is quashed, and the case is remanded for further proceedings consistent with the opinion. The trier of fact must determine breach, negligence, legal or proximate causation, damages, and any applicable affirmative defenses.

CASES CITED

- Wallace v. Dean, 970 So. 2d 864 (Fla. 5th DCA 2007)
- Hartley v. Floyd, 512 So. 2d 1022 (Fla. 1st DCA 1987)
- Kaisner v. Kolb, 543 So. 2d 732 (Fla. 1989)
- Everton v. Willard, 468 So. 2d 936 (Fla. 1985)
- Trianon Park Condominium Ass'n v. City of Hialeah, 468 So. 2d 912 (Fla. 1985)
- Nielsen v. City of Sarasota, 117 So. 2d 731 (Fla. 1960)
- Pollock v. Florida Department of Highway Patrol, 882 So. 2d 928 (Fla. 2004)
- Henderson v. Bowden, 737 So. 2d 532 (Fla. 1999)

- *McCain v. Florida Power Corp.*, 593 So. 2d 500 (Fla. 1992)
- *Union Park Memorial Chapel v. Hutt*, 670 So. 2d 64 (Fla. 1996)
- *Clay Electric Cooperative, Inc. v. Johnson*, 873 So. 2d 1182 (Fla. 2003)
- *Commercial Carrier Corp. v. Indian River County*, 371 So. 2d 1010 (Fla. 1979)
- *Slemp v. City of North Miami*, 545 So. 2d 256 (Fla. 1989)
- *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005)
- *Department of Health & Rehabilitative Services v. Yamuni*, 529 So. 2d 258 (Fla. 1988)
- *Banfield v. Addington*, 140 So. 893 (Fla. 1932)
- *Ralph v. City of Daytona Beach*, 471 So. 2d 1 (Fla. 1985)
- *Fla. Department of Corrections v. Abril*, 969 So. 2d 201 (Fla. 2007)
- *Siegle v. Progressive Consumers Insurance Co.*, 819 So. 2d 732 (Fla. 2002)
- *Wilson v. Miami-Dade County*, 370 F. Supp. 2d 1250 (S.D. Fla. 2005)

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