

NEBRASKA SUPREME COURT

McGauley v. Washington County

297 Neb. 134 (2017) · No. S-16-897 · Decided July 7, 2017

SUMMARY

The Nebraska Supreme Court affirmed dismissal of a wrongful death action against Washington County based on sovereign immunity under the Political Subdivisions Tort Claims Act. The court held that the County’s decision to allow Martin Marietta Materials to raise a road during an emergency flood situation was protected by the discretionary function exception. The court also concluded that the County had no nondiscretionary duty to provide additional warnings or protective measures because the dangerous conditions were readily apparent to the workers.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Kelch, J.; Heavican, C.J.; Wright, J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	July 7, 2017
DOCKET	S-16-897
DISPOSITION	affirmed
PROCEDURAL POSTURE	The personal representative appealed from a Washington County District Court order, entered after a bench trial limited to sovereign immunity, dismissing the wrongful death claims against Washington County on the ground that the Political Subdivisions Tort Claims Act discretionary function exception preserved the County's sovereign immunity.
STANDARD OF REVIEW	The district court's factual findings in a Political Subdivisions Tort Claims Act proceeding are reviewed for clear error. The interpretation of statutes and regulations presents a question of law reviewed independently.
PRECEDENTIAL VALUE	published
PARTIES	Dawn McGauley, as Personal Representative of the Estate of James E. McGauley, deceased v. Washington County, Martin Marietta Materials, Inc.

TOPICS

municipal liability

wrongful death

statutory interpretation

standard of review

appellate procedure

PRACTICE AREAS

torts

municipal law

wrongful death

sovereign immunity

QUESTIONS PRESENTED

1. Whether Washington County's decision to allow Martin Marietta Materials to raise CR P30 during an emergency flooding situation was protected by the discretionary function exception to the Political Subdivisions Tort Claims Act.
2. Whether the County's failure to supervise Marietta's work or enforce County safety standards constituted separate, nondiscretionary conduct outside the discretionary function exception.
3. Whether the County had a nondiscretionary duty to warn or take protective measures because it had notice or control of a dangerous condition that was not readily apparent to persons likely to be injured.

HOLDINGS

1. The County's decision to grant Marietta an easement and allow it to raise CR P30 was a discretionary function protected by the Political Subdivisions Tort Claims Act's discretionary function exception.
2. The County's failure to supervise Marietta's work or enforce its own safety standards was part of the overall discretionary policymaking decision to allow Marietta to raise the road and was protected by the exception.
3. The County did not have a nondiscretionary duty to warn or take other protective measures because the dangerous conditions on CR P30 were readily apparent to the Marietta workers likely to be injured.

KEY QUOTATIONS

“The PSTCA provides limited waivers of sovereign immunity, which are subject to statutory exceptions.” (297 Neb. at 139)

“First, the court must consider whether the action is a matter of choice for the acting employee. Second, if the court concludes that the challenged conduct involves an element of judgment, it must then determine whether that judgment is of the kind that the discretionary function exception was designed to shield.” (297 Neb. at 140)

“The County's decision to allow Marietta to build up CR P30 involved balancing the competing needs of commerce, retaining access to supplies needed to combat the flood in other areas, and flood and road safety—all of which the County had to balance in light of the emergency situation and its limited resources.” (297 Neb. at 141)

FACTUAL BACKGROUND

During severe Missouri River flooding, Washington County granted Martin Marietta Materials an easement to raise County-owned road CR P30, the sole truck-access route to Marietta's quarry and a barrier protecting it from

floodwaters. The County lacked the resources and equipment to perform the work and did not supervise or assist Marietta's construction. The partially raised road had soft shoulders, and James E. McGauley, a Marietta quarry worker, drove a dump truck onto a shoulder while backing up, causing the shoulder to collapse and the truck to overturn into floodwaters. Marietta had warned workers about the soft shoulders at safety meetings, and the district court found that the dangerous conditions were readily apparent to the workers.

PROCEDURAL HISTORY

McGauley's personal representative brought a wrongful death action against Washington County and Martin Marietta Materials after McGauley died in a dump-truck accident on CR P30. Washington County asserted sovereign immunity and filed a cross-claim against Martin Marietta. Following a bench trial solely on the immunity issue, the district court held that the discretionary function exception applied, dismissed the claims against the County, and dismissed the County's cross-claim. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Mix v. City of Lincoln, 244 Neb. 561, 508 N.W.2d 549 (1993)
- Cotton v. State, 281 Neb. 789, 810 N.W.2d 132 (2011)
- Shipley v. Department of Roads, 283 Neb. 832, 813 N.W.2d 455 (2012)
- Kimminau v. City of Hastings, 291 Neb. 133, 864 N.W.2d 399 (2015)
- McCormick v. City of Norfolk, 263 Neb. 693, 641 N.W.2d 638 (2002)