

SUPREME COURT OF NEBRASKA

Edwards v. Douglas County

308 Neb. 259 (2021) · No. No. S-19-1195 · Decided January 29, 2021

SUMMARY

The Nebraska Supreme Court affirmed the dismissal of Julie Edwards's negligence action against Douglas County, holding that the claim was barred by the Political Subdivisions Tort Claims Act's exemption for claims arising out of assault. The court held that the exemption is jurisdictional and cannot be avoided through artful pleading alleging negligent handling of 911 calls. The court also concluded that the Emergency Telephone Communications Systems Act did not waive sovereign immunity.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Stacy, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	January 29, 2021
DOCKET	No. S-19-1195
DISPOSITION	affirmed
PROCEDURAL POSTURE	Edwards appealed from a district court judgment granting Douglas County summary judgment and dismissing her negligence action. The Nebraska Supreme Court affirmed the dismissal on sovereign-immunity grounds rather than the district court's no-duty rationale.
STANDARD OF REVIEW	The applicability of a Political Subdivisions Tort Claims Act exemption and statutory interpretation are questions of law reviewed independently. Because the exemption is jurisdictional, the court determines it before addressing nonjurisdictional summary-judgment grounds.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Julie Edwards v. Douglas County

TOPICS

municipal liability

assault

statutory interpretation

appellate procedure

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Edwards's negligence claim based on Douglas County's alleged mishandling of 911 calls was barred by the Political Subdivisions Tort Claims Act exemption for any claim arising out of assault.
2. Whether Neb. Rev. Stat. § 86-441 of the Emergency Telephone Communications Systems Act independently waived Douglas County's sovereign immunity.
3. Whether the Supreme Court could affirm the district court's dismissal on sovereign-immunity grounds even though the district court dismissed on the ground that the County owed Edwards no legal duty.

HOLDINGS

1. A negligence claim against a political subdivision that seeks damages for personal injury stemming from an assault necessarily arises out of assault under Neb. Rev. Stat. § 13-910(7), regardless of how the claim is pleaded or whether the assailant was a governmental employee or a nongovernmental actor.
2. The assault exemption is not limited to assaults committed by governmental employees; its plain text contains no such qualification.
3. Neb. Rev. Stat. § 86-441 does not waive Douglas County's sovereign immunity.
4. When a statutory exemption under the Political Subdivisions Tort Claims Act applies, the political subdivision is immune from suit and the claim must be dismissed for lack of subject-matter jurisdiction.

KEY QUOTATIONS

"No matter how a tort claim against the government is framed, when it seeks to recover damages for personal injury or death stemming from an assault, the claim necessarily "arises out of assault" and is barred by the intentional tort exemption under the Political Subdivisions Tort Claims Act." (277-278)

"No matter how it is framed, Edwards' claim of governmental negligence arises out of assault and is barred by sovereign immunity under § 13-910(7) of the PSTCA." (279-280)

"Although the district court entered a judgment of dismissal on different grounds, we affirm that dismissal on grounds of sovereign immunity." (283-284)

FACTUAL BACKGROUND

Julie Edwards went to her former boyfriend Kenneth Clark's home to retrieve belongings when Clark shot and killed her brothers, restrained Edwards, held her hostage, and sexually assaulted her. During the hostage situation, Edwards's brother made several 911 calls reporting the shooting, Clark's possession of a gun, and Edwards's detention, but law enforcement was not dispatched until approximately 10:54 a.m. Edwards alleged

that Douglas County negligently mishandled the calls, delaying the response and causing her to remain hostage and be sexually assaulted.

PROCEDURAL HISTORY

Edwards sued Douglas County under the Political Subdivisions Tort Claims Act, alleging negligent handling of 911 calls delayed law-enforcement response and resulted in her continued hostage-taking and sexual assault. The district court granted the County summary judgment, concluding that it owed Edwards no legal duty. On appeal, the County raised the Political Subdivisions Tort Claims Act assault exemption for the first time, and the Supreme Court held that exemption jurisdictional, applied it, and affirmed the dismissal.

DISPOSITION

affirmed

CASES CITED

- Moser v. State, 307 Neb. 18, 948 N.W.2d 194 (2020)
- Rutledge v. City of Kimball, 304 Neb. 593, 935 N.W.2d 746 (2019)
- Britton v. City of Crawford, 282 Neb. 374, 803 N.W.2d 508 (2011)
- Johnson v. State, 270 Neb. 316, 700 N.W.2d 620 (2005)
- McKenna v. Julian, 277 Neb. 522, 763 N.W.2d 384 (2009)
- Doe v. Omaha Pub. Sch. Dist., 273 Neb. 79, 727 N.W.2d 447 (2007)
- Sheridan v. United States, 487 U.S. 392, 108 S. Ct. 2449, 101 L. Ed. 2d 352 (1988)
- United States v. Shearer, 473 U.S. 52, 105 S. Ct. 3039, 87 L. Ed. 2d 38 (1985)
- Lambert v. Lincoln Pub. Schs., 306 Neb. 192, 945 N.W.2d 84 (2020)
- Davis v. State, 297 Neb. 955, 902 N.W.2d 165 (2017)
- Amend v. Nebraska Pub. Serv. Comm., 298 Neb. 617, 905 N.W.2d 551 (2018)
- Connelly v. City of Omaha, 284 Neb. 131, 816 N.W.2d 742 (2012)
- State v. Mortensen, 69 Neb. 376, 95 N.W. 831 (1903)
- Brown v. State, 305 Neb. 111, 939 N.W.2d 354 (2020)
- Jill B. & Travis B. v. State, 297 Neb. 57, 899 N.W.2d 241 (2017)
- Geddes v. York County, 273 Neb. 271, 729 N.W.2d 661 (2007)
- Reiber v. County of Gage, 303 Neb. 325, 928 N.W.2d 916 (2019)
- Stick v. City of Omaha, 289 Neb. 752, 857 N.W.2d 561 (2015)
- Glasson v. Board of Equal. of City of Omaha, 302 Neb. 869, 925 N.W.2d 672 (2019)
- State ex rel. BH Media Group v. Frakes, 305 Neb. 780, 943 N.W.2d 231 (2020)