

SUPREME JUDICIAL COURT OF MAINE

Hilderbrand v. Washington County Commissioners

33 A.3d 425 (Me. 2011) · Decided December 20, 2011

SUMMARY

The Maine Supreme Judicial Court affirmed summary judgment for the Washington County Commissioners and Sheriff Donald Smith in an action alleging slander per se, invasion of privacy, and negligent infliction of emotional distress. The court held that Smith’s decision to discontinue cooperation with the Maine Drug Enforcement Agency and his public explanation of that decision were discretionary functions protected by the Maine Tort Claims Act. The court also affirmed judgment for the Commissioners because Smith was not their employee and they could not be vicariously liable for his conduct.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Gorman, J.; Alexander, J.; Jabar, J.; Levy, J.; Mead, J.; Saufley, C.J.; Silver, J.
JURISDICTION	Maine
DECIDED	December 20, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Superior Court summary judgment dismissing claims for slander per se, invasion of privacy, and negligent infliction of emotional distress on the ground that Sheriff Smith was entitled to discretionary function immunity under the Maine Tort Claims Act.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, viewing the facts in the light most favorable to the nonmoving party, to determine whether the parties' statements of material facts reveal a genuine issue of material fact. The scope of discretionary function immunity may be determined on a summary judgment record, and the party asserting immunity bears the burden of proof.
PRECEDENTIAL VALUE	Published majority opinion of the Supreme Judicial Court of Maine; precedential.
PARTIES	Larry W. Hilderbrand II v. Washington County Commissioners, Sheriff Donald Smith

TOPICS

municipal liability

summary judgment

standard of review

defamation

invasion of privacy

PRACTICE AREAS

torts

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appellate procedure

governmental immunity

QUESTIONS PRESENTED

1. Whether Sheriff Smith's decision to terminate the Washington County Sheriff's Office's relationship with the MDEA and his public explanation of that decision were discretionary functions protected by immunity under 14 M.R.S. § 8111(1)(C).
2. Whether Smith's alleged political motivation or bad faith defeated discretionary function immunity.
3. Whether the Washington County Commissioners could be vicariously liable for Smith's conduct when Smith was not their employee.

HOLDINGS

1. Sheriff Smith was entitled to discretionary function immunity under the Maine Tort Claims Act because both his decision to terminate the Washington County Sheriff's Office's relationship with the MDEA and his public explanation of that decision were within the scope of his official discretionary duties.
2. Political considerations or alleged bad faith do not, by themselves, eliminate discretionary-function immunity when the challenged conduct remains within the scope of the official's discretionary authority.
3. The Washington County Commissioners were entitled to summary judgment because Smith was not their employee and therefore they could not be vicariously liable for his conduct.

KEY QUOTATIONS

“The purpose of discretionary function immunity is to protect “the ‘independence of action’ necessary for the effective management of state government.”” (at 429)

“Because Smith’s decision and explanatory statements were within the scope of his discretion, Smith is immune from liability for his discretionary acts, even if those acts constituted an abuse of that discretion.” (at 432)

FACTUAL BACKGROUND

Larry W. Hilderbrand II was a law enforcement officer assigned to the Maine Drug Enforcement Agency, although he was not an employee of the Washington County Sheriff's Office. Sheriff Donald Smith viewed a home video depicting Hilderbrand engaging in crude conduct involving alcohol, repeatedly identifying himself as a police officer, displaying his badge and service pistol, and engaging in other conduct Smith considered inappropriate or potentially criminal. Smith publicly announced that the Washington County Sheriff's Office would discontinue working with the MDEA because Hilderbrand was assigned to it and explained his decision by criticizing Hilderbrand's conduct and raising concerns about child endangerment.

PROCEDURAL HISTORY

Hilderbrand filed a three-count complaint in the Superior Court against the Washington County Commissioners and Sheriff Smith. The defendants moved for summary judgment based on immunity and argued that the defamation and invasion-of-privacy claims failed as a matter of law. The Superior Court granted summary judgment, concluding that Smith had discretionary function immunity and that the Commissioners could not be vicariously liable because Smith was not their employee. The Supreme Judicial Court of Maine affirmed.

DISPOSITION

affirmed

CASES CITED

- HSBC Bank USA, N.A. v. Gabay, 2011 ME 101, ¶ 8, 28 A.3d 1158
- Flaherty v. Muther, 2011 ME 32, ¶ 31, 17 A.3d 640
- Lewis v. Keegan, 2006 ME 93, ¶ 14, 903 A.2d 342
- Quintal v. City of Hallowell, 2008 ME 155, ¶ 33, 956 A.2d 88
- Moore v. City of Lewiston, 596 A.2d 612, 614-15 (Me. 1991)
- Darling v. Augusta Mental Health Institute, 535 A.2d 421, 425-26 (Me. 1987)
- Selby v. Cumberland County, 2002 ME 80, ¶ 6 n.5, 796 A.2d 678
- Gove v. Carter, 2001 ME 126, ¶¶ 9, 14, 775 A.2d 368
- Tolliver v. Department of Transportation, 2008 ME 83, ¶¶ 17, 19-20, 49, 948 A.2d 1223
- Jorgensen v. Department of Transportation, 2009 ME 42, ¶ 17, 969 A.2d 912
- Roberts v. State, 1999 ME 89, ¶ 10, 731 A.2d 855
- Rippett v. Bemis, 672 A.2d 82, 88 (Me. 1996)
- Grossman v. Richards, 1999 ME 9, ¶¶ 5, 8, 722 A.2d 371
- Morgan v. Kooistra, 2008 ME 26, ¶¶ 23-24, 941 A.2d 447
- Norton v. Hall, 2003 ME 118, ¶ 9, 834 A.2d 928
- Adriance v. Town of Standish, 687 A.2d 238, 240 (Me. 1996)