

SUPREME COURT OF CONNECTICUT

Bonington v. Town of Westport, 297 Conn. 297

999 A.2d 700 (2010) · No. No. 18514 · Decided July 6, 2010

SUMMARY

The Supreme Court of Connecticut affirmed summary judgment for the Town of Westport, its planning and zoning department, and individual employees in a negligence action arising from alleged failures to inspect property and enforce zoning regulations. The court held that the challenged inspections and zoning-enforcement decisions were discretionary acts protected by governmental immunity and that the identifiable person–imminent harm exception did not apply. The court also concluded that the plaintiffs’ indemnification claim against the town under General Statutes § 7-465 depended on establishing liability against a municipal employee.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Katz, J.; Rogers, C.J.; Norcott, J.; Palmer, J.; Vertefeuille, J.; Zarella, J.; McLachlan, J.
JURISDICTION	Connecticut
DECIDED	July 6, 2010
DOCKET	No. 18514
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from summary judgment for the defendants in a negligence action; the appeal was transferred from the Appellate Court to the Supreme Court of Connecticut.
STANDARD OF REVIEW	Review of summary judgment is plenary. Summary judgment is proper when the pleadings and evidence show no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Whether qualified governmental immunity applies is ordinarily a question of law unless unresolved material factual issues require jury resolution.
PRECEDENTIAL VALUE	Published Connecticut Supreme Court opinion; binding precedent.

PARTIES

Paul Bonington, Julie Bonington v. Town of Westport, Town of Westport Planning and Zoning Department, Larry Bradley, Susan Reynolds, Mary Papadakos

TOPICS

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QUESTIONS PRESENTED

1. Whether the alleged failures to inspect property, determine whether zoning violations existed, and enforce zoning regulations were discretionary acts protected by governmental immunity.
2. Whether the identifiable person-imminent harm exception to discretionary-act immunity applied to the plaintiffs' alleged flooding, erosion, septic-system threat, and litigation expenses.
3. Whether the individual defendants' immunity necessarily defeated the plaintiffs' indemnification claim against the town under General Statutes § 7-465.

HOLDINGS

1. Inspections to determine whether property conforms to zoning regulations and the predicate determination whether a zoning violation exists generally require the exercise of judgment and are discretionary acts protected by governmental immunity, absent a specifically prescribed ministerial duty.
2. The identifiable person-imminent harm exception did not apply because the alleged harm from future rainfall and the plaintiffs' possible decision to incur litigation expenses would occur, if at all, at an indefinite time rather than at a discrete time and place.
3. Because the plaintiffs' claim against the town was based solely on indemnification under General Statutes § 7-465 and depended on liability of the municipal employees, the employees' immunity necessarily disposed of the claim against the town.

KEY QUOTATIONS

“The hallmark of a discretionary act is that it requires the exercise of judgment.” (708)

“Imminent does not simply mean a foreseeable event at some unspecified point in the not too distant future. Rather, we have required plaintiffs to identify a discrete place and time period at which the harm will occur.” (712)

“We, conclude, therefore, that the trial court properly determined that the individual defendants are entitled to governmental immunity.” (713)

FACTUAL BACKGROUND

The plaintiffs' abutting property owners raised the grade of their property, allegedly increasing water runoff onto the plaintiffs' land and causing flooding, erosion, and a threat to a septic system. Town zoning officials inspected the property and concluded that no zoning violations existed, although the plaintiffs claimed the inspections and enforcement efforts were inadequate. The plaintiffs sued the abutting owners, who agreed to correct the drainage problem, and then sued the town and its officials for the litigation expenses incurred in that action.

PROCEDURAL HISTORY

The plaintiffs sued the town, its planning and zoning department, and three department employees, seeking litigation expenses incurred in a prior action against owners of abutting property. The trial court granted summary judgment on both counts, concluding that the individual defendants were protected by governmental immunity and that the plaintiffs could not recover their litigation expenses under General Statutes § 7-465. The plaintiffs appealed, and the Supreme Court transferred the appeal from the Appellate Court and affirmed.

DISPOSITION

affirmed

CASES CITED

- Doe v. Petersen, 279 Conn. 607, 613, 903 A.2d 191 (2006)
- Martel v. Metropolitan District Commission, 275 Conn. 38, 46-49, 881 A.2d 194 (2005)
- Mulligan v. Rioux, 229 Conn. 716, 736, 643 A.2d 1226 (1994)
- Sanzone v. Board of Police Commissioners, 219 Conn. 179, 193, 592 A.2d 912 (1991)
- Violano v. Fernandez, 280 Conn. 310, 318-20, 907 A.2d 1188 (2006)
- Swanson v. Groton, 116 Conn. App. 849, 854, 977 A.2d 738 (2009)
- Blake v. Mason, 82 Conn. 324, 327, 73 A. 782 (1909)
- Grignano v. Milford, 106 Conn. App. 648, 654, 656-60, 943 A.2d 507 (2008)
- Pluhowsky v. New Haven, 151 Conn. 337, 347-48, 197 A.2d 645 (1964)
- Wright v. Brown, 167 Conn. 464, 468, 472, 356 A.2d 176 (1975)
- Evon v. Andrews, 211 Conn. 501, 504-08, 559 A.2d 1131 (1989)
- Fleming v. Bridgeport, 284 Conn. 502, 505, 532-35, 935 A.2d 126 (2007)
- Cotto v. Board of Education, 294 Conn. 265, 273, 984 A.2d 58 (2009)
- Grady v. Somers, 294 Conn. 324, 354 n.30, 984 A.2d 684 (2009)
- Bailey v. West Hartford, 100 Conn. App. 805, 813-14, 921 A.2d 611 (2007)
- Burns v. Board of Education, 228 Conn. 640, 650, 638 A.2d 1 (1994)
- Williams v. New Haven, 243 Conn. 763, 766, 707 A.2d 1251 (1998)
- Spears v. Garcia, 66 Conn. App. 669, 675-76, 785 A.2d 1181 (2001), *aff'd*, 263 Conn. 22, 818 A.2d 37 (2003)
- Smith v. Andrews, 289 Conn. 61, 80, 959 A.2d 597 (2008)
- Myers v. Hartford, 84 Conn. App. 395, 401, 853 A.2d 621 (2004), *cert. denied*, 271 Conn. 927, 859 A.2d 582 (2004)

- Wu v. Fairfield, 204 Conn. 435, 438, 528 A.2d 364 (1987)
- Kostyal v. Cass, 163 Conn. 92, 97, 302 A.2d 121 (1972)

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