

SUPREME COURT OF WASHINGTON

Cummins v. Lewis County, 156 Wash. 2d 844

133 P.3d 458 (2006) · No. No. 76249-0 · Decided May 4, 2006

SUMMARY

The Washington Supreme Court held that no actionable special relationship arose between Lewis County and a 911 caller who identified a medical emergency and an address but hung up before receiving an express assurance that assistance would be dispatched. Applying the public duty doctrine, the court affirmed summary judgment dismissing the wrongful death action because the requirements of privity, express assurance, and justifiable reliance were not established. Justice Chambers concurred in the result but criticized the continued application of the public duty doctrine.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Alexander, C.J.; Madsen, J.; Bridge, J.; Owens, J.; Fairhurst, J.; J.M. Johnson, J.; Chambers, J.; Sanders, J.; C. Johnson, J.
JURISDICTION	Washington
DECIDED	May 4, 2006
DOCKET	No. 76249-0
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for review of an appellate decision affirming summary judgment dismissing a wrongful death negligence action against Lewis County.
STANDARD OF REVIEW	Summary judgment is reviewed de novo under the same inquiry applied by the trial court. Summary judgment is proper when the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Whether an actionable duty of care exists in a negligence action is a question of law reviewed de novo.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Mary A. Cummins, individually and as personal representative of the Estate of Leon V. Cummins v. Lewis County

TOPICS

municipal liability

duty of care

negligence

wrongful death

standard of review

PRACTICE AREAS

Torts

Municipal liability

Wrongful death

Appellate procedure

QUESTIONS PRESENTED

1. Whether the 911 call created an actionable special relationship between Leon Cummins and Lewis County under Washington's public duty doctrine.
2. Whether a caller's placement of a 911 call identifying a medical emergency and an address, without a continuing dialogue or an express assurance of assistance, establishes the privity and express-assurance elements of the special relationship exception.
3. Whether the express-assurance requirement should be eliminated or relaxed for 911 calls seeking emergency medical assistance.
4. Whether summary judgment dismissing the wrongful death negligence action was proper.

HOLDINGS

1. No actionable special relationship was created because the caller did not establish the required communication and did not receive an express assurance of assistance on which he could justifiably rely.
2. The court declined to eliminate or relax the express-assurance requirement for 911 calls involving medical emergencies.
3. The record did not establish an actionable statutory duty to dispatch medical aid under the circumstances.

KEY QUOTATIONS

"We answer "no" to that question, concluding that there is neither a statutory nor a common law duty on the part of a county to dispatch medical aid under such circumstances." (¶ 1)

"Washington case law shows the required communication between the injured party and 911 by which the plaintiff is set apart from the general public requires both a(1) telephone conversation and (2) an affirmative promise or agreement to provide assistance." (¶ 17)

"Under Washington case law, this absence of an express assurance to dispatch assistance by the operator precludes this court from finding as a matter of law that Mrs. Cummins has established an actionable duty against the county." (¶ 20)

FACTUAL BACKGROUND

A caller told a Lewis County 911 dispatcher, "1018 'E' Street, heart attack," and hung up before providing his name, requesting assistance, or receiving an assurance that medical aid would be dispatched. The enhanced 911 system indicated that the call came from a pay telephone approximately five blocks from the stated address, and a prior prank call had come from the same telephone. Dispatchers attempted to call both the pay phone and the

address, then sent a Centralia police officer to investigate; the officer encountered a boy who falsely admitted making the call and later went to the vicinity of the stated address without making contact. Several hours later, Mary Cummins found her husband dead at the address.

PROCEDURAL HISTORY

Mary Cummins sued Lewis County and the City of Centralia, alleging negligent handling of a 911 call contributed to Leon Cummins's death. The Lewis County Superior Court granted summary judgment for both defendants. Division Two of the Court of Appeals affirmed. The Washington Supreme Court granted review as to Lewis County, granted the County's motion to strike an improperly raised supplemental argument, and affirmed.

DISPOSITION

affirmed

CASES CITED

- Douglas v. Freeman, 117 Wash. 2d 242, 258, 814 P.2d 1160 (1991)
- Babcock v. Mason County Fire Dist. No. 6, 144 Wash. 2d 774, 784-93, 30 P.3d 1261 (2001)
- Tincani v. Inland Empire Zoological Soc'y, 124 Wash. 2d 121, 128, 875 P.2d 621 (1994)
- Taylor v. Stevens County, 111 Wash. 2d 159, 163, 166-68, 759 P.2d 447 (1988)
- J & B Dev. Co. v. King County, 100 Wash. 2d 299, 303-08, 669 P.2d 468 (1983)
- Bailey v. Town of Forks, 108 Wash. 2d 262, 265, 268, 737 P.2d 1257, 753 P.2d 523 (1987)
- Bratton v. Welp, 145 Wash. 2d 572, 577, 39 P.3d 959 (2002)
- Meaney v. Dodd, 111 Wash. 2d 174, 180, 759 P.2d 455 (1988)
- Honcoop v. State, 111 Wash. 2d 182, 188, 192-93, 759 P.2d 1188 (1988)
- Beal v. City of Seattle, 134 Wash. 2d 769, 785-86, 954 P.2d 237 (1998)
- Chambers-Castanes v. King County, 100 Wash. 2d 275, 285-86, 669 P.2d 451 (1983)
- Noakes v. City of Seattle, 77 Wash. App. 694, 700, 895 P.2d 842 (1995)
- Hines v. District of Columbia, 580 A.2d 133, 135-38 (D.C. 1990)
- Mains Farm Homeowners Ass'n v. Worthington, 121 Wash. 2d 810, 826, 854 P.2d 1072 (1993)
- Meaney v. Dodd, 111 Wash. 2d 174, 759 P.2d 455 (1988)