

SUPREME COURT OF APPEALS OF WEST VIRGINIA

J.H. v. West Virginia Division of Rehabilitation Services, 224 W. Va.

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680 S.E.2d 392 (2009) · No. No. 33918 · Decided July 27, 2009

SUMMARY

The Supreme Court of Appeals of West Virginia held that sufficient allegations supported a special relationship and special duty between J.H. and the West Virginia Division of Rehabilitation Services to survive a motion to dismiss. The court concluded that the public duty doctrine did not bar the negligence action at the pleading stage and that the existence of a special duty was a question of fact. The court reversed and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam
JURISDICTION	West Virginia
DECIDED	July 27, 2009
DOCKET	No. 33918
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order of the Circuit Court of Kanawha County granting the West Virginia Division of Rehabilitation Services' motion to dismiss a negligence action under West Virginia Rule of Civil Procedure 12(b), based on the public duty doctrine, qualified immunity, and sovereign-immunity-related arguments.
STANDARD OF REVIEW	De novo review applies to an order granting a motion to dismiss. The standard for reviewing a Rule 59(e) motion to alter or amend is the same standard applicable to the underlying judgment.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Appeals of West Virginia
PARTIES	J.H. v. West Virginia Division of Rehabilitation Services

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the public duty doctrine barred J.H.'s negligence action against the state agency because the alleged duty was owed only to the public generally.
2. Whether J.H. sufficiently pleaded facts supporting the special-relationship or special-duty exception to the public duty doctrine.
3. Whether sovereign immunity or qualified immunity required dismissal of the negligence action.
4. Whether the circuit court erred in dismissing the action under Rule 12(b).

HOLDINGS

1. J.H. pleaded sufficient facts to permit his negligence claims to proceed under the special-relationship exception to the public duty doctrine. Whether a special duty existed was ordinarily a factual question for the trier of fact.
2. The public duty doctrine and its special-relationship exception apply to actions against the State and its instrumentalities under West Virginia Code section 29-12-5 unless expressly waived or altered by the applicable insurance contract.
3. Sovereign immunity did not preclude the action because J.H. alleged that he sought recovery only up to the limits of the State's liability insurance coverage, and the alleged negligence constituted an occurrence from the standpoint of the insured Division.
4. Qualified immunity did not require dismissal because the complaint did not allege that the Division was performing legislative, judicial, or administrative functions involving the determination of fundamental governmental policy.

KEY QUOTATIONS

"First, it is important to note that the public duty doctrine is not an immunity; but, "rests on the principle that recovery may be had for negligence only if a duty has been breached which was owed to the particular person seeking recovery."" (680 S.E.2d at 403)

"It is for a jury to determine, under appropriate instruction of law, whether a special duty arises to protect the Appellant from the Division's alleged negligence." (680 S.E.2d at 404)

FACTUAL BACKGROUND

In October 2004, J.H., whose mobility was compromised, resided in the Attendant Care Unit of the West Virginia Rehabilitation Center operated by the Division. He alleged that another resident, Jeff Bell, sexually molested him after being allowed private access to his bedroom, despite the Division's alleged knowledge of Bell's prior similar conduct. J.H. alleged that the Division promised residents a safe environment and negligently failed to supervise Bell, provide adequate security, enforce safety rules, remove Bell from the facility, and coordinate staff responsibilities.

PROCEDURAL HISTORY

J.H., a resident of the Division's rehabilitation center, filed a negligence action alleging that the Division failed to supervise and protect him from sexual molestation by another resident. After the Division moved to dismiss, J.H. amended his complaint to allege that recovery was limited to available liability-insurance coverage. The circuit court dismissed the action on June 4, 2007, denied reconsideration on June 19, 2007, and the Supreme Court of Appeals reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the circuit court's dismissal and remand for reinstatement of J.H.'s claims and further proceedings, including a factual determination by the trier of fact, under appropriate legal instructions, whether a special relationship and special duty existed.

CASES CITED

- Parkulo v. West Virginia Board of Probation and Parole, 199 W. Va. 161, 483 S.E.2d 507 (1996)
- Wickland v. American Travellers Life Insurance Co., 204 W. Va. 430, 513 S.E.2d 657 (1998)
- State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc., 194 W. Va. 770, 461 S.E.2d 516 (1995)
- Richardson v. Kennedy, 197 W. Va. 326, 475 S.E.2d 418 (1996)
- Pittsburgh Elevator Co. v. West Virginia Board of Regents, 172 W. Va. 743, 310 S.E.2d 675 (1983)
- Eggleston v. West Virginia Department of Highways, 189 W. Va. 230, 429 S.E.2d 636 (1993)
- Smith v. Animal Urgent Care, Inc., 208 W. Va. 664, 542 S.E.2d 827 (2000)
- Columbia Casualty Co. v. Westfield Insurance Co., 217 W. Va. 250, 617 S.E.2d 797 (2005)
- Erie Insurance Property & Casualty Co. v. Pioneer Home Improvement, 206 W. Va. 506, 526 S.E.2d 28 (1999)
- State v. Chase Securities, Inc., 188 W. Va. 356, 424 S.E.2d 591 (1992)
- Clark v. Dunn, 195 W. Va. 272, 465 S.E.2d 374 (1995)
- Jeffrey v. West Virginia Department of Public Safety, Division of Corrections, 198 W. Va. 609, 482 S.E.2d 226 (1996)
- Benson v. Kutsch, 181 W. Va. 1, 380 S.E.2d 36 (1989)
- Wolfe v. City of Wheeling, 182 W. Va. 253, 387 S.E.2d 307 (1989)
- McCormick v. West Virginia Department of Public Safety, 202 W. Va. 189, 503 S.E.2d 502 (1998)
- Randall v. Fairmont City Police Department, 186 W. Va. 336, 412 S.E.2d 737 (1991)
- Cloaninger v. McDevitt, 555 F.3d 324 (4th Cir. 2009)
- Brandon v. Holt, 469 U.S. 464 (1985)
- Owen v. City of Independence, 445 U.S. 622 (1980)

- Mitchell v. Forsyth, 472 U.S. 511 (1985)
- Pearson v. Callahan, 555 U.S. 223 (2009)
- Hunter v. Bryant, 502 U.S. 224 (1991)
- Robinson v. Pack, 223 W. Va. 828, 679 S.E.2d 660 (2009)
- Blessing v. National Engineering & Contracting Co., 222 W. Va. 267, 664 S.E.2d 152 (2008)
- State ex rel. West Virginia Department of Human Services v. Cheryl M., 177 W. Va. 688, 356 S.E.2d 181 (1987)
- Long v. City of Weirton, 158 W. Va. 741, 214 S.E.2d 832 (1975)
- Ohio Valley Contractors v. Board of Education of Wetzel County, 170 W. Va. 240, 293 S.E.2d 437 (1982)
- Gooden v. County Commission of Webster County, 171 W. Va. 130, 298 S.E.2d 103 (1982)

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