

SUPREME COURT OF ALABAMA

Hollis v. City of Brighton

885 So. 2d 135 (Ala. 2004) · No. 1012381 · Decided January 9, 2004

SUMMARY

The Alabama Supreme Court reviews a summary judgment involving claims against the City of Brighton arising from the destruction of the plaintiffs’ home by fire. The court holds that creation of a volunteer fire department did not create an enforceable duty to provide skillful fire protection, and that volunteer firefighters’ statutory immunity precluded vicarious negligence liability against the City. The court reverses and remands as to the City’s potential vicarious liability for a police officer who ordered the plaintiffs not to reenter the burning house, concluding that the record did not establish immunity as a matter of law.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Johnstone, Justice; Houston, Justice; Harwood, Justice; Woodall, Justice; Lyons, Justice; See, Justice; Brown, Justice; Stuart, Justice
JURISDICTION	Alabama
DECIDED	January 9, 2004
DOCKET	1012381
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed a summary judgment entered for the City in a tort action arising from the City's response to a house fire.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Summary judgment is proper only when no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law; evidence is viewed in the light most favorable to the nonmovant, with reasonable factual doubts resolved in the nonmovant's favor.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Alabama; precedential.
PARTIES	Benjamin Hollis, Diana Hollis v. City of Brighton

TOPICS

- municipal liability
- vicarious liability
- negligence
- summary judgment
- standard of review

PRACTICE AREAS

municipal liability

torts

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the City's creation of a volunteer fire department imposed a legally enforceable duty to provide skillful fire protection.
2. Whether the Volunteer Service Act immunized the City from vicarious liability for the alleged negligence or wantonness of its volunteer firefighters.
3. Whether Alabama Code § 6-5-338(a), State-agent immunity, or substantive municipal immunity required summary judgment on the City's vicarious-liability claim arising from the policeman's order.

HOLDINGS

1. A city does not undertake a legally enforceable duty to provide skillful fire protection merely by creating a volunteer fire department.
2. The City was entitled to summary judgment on the vicarious-liability claims arising from the volunteer firefighters' conduct because the firefighters were immune from negligence liability under the Volunteer Service Act, and a city cannot be vicariously liable for wanton conduct.
3. Summary judgment was improper on the claim that the City was vicariously liable for the policeman's order because the record did not establish, as a matter of law, that the order fell within the immunity provided by § 6-5-338(a) or any category of State-agent immunity.
4. Substantive immunity in the police-services context protects municipal decisions about whether to deploy officers or how many officers to deploy, but it does not immunize a municipality from vicarious liability for the tortious conduct of a particular officer who was on the scene.

KEY QUOTATIONS

"We hold that in creating a volunteer fire department, a city does not thereby undertake a legally enforceable duty to provide skillful fire protection." (at 141)

"Thus, we cannot rely on the § 6-5-338(a) immunity, as described by either the statute itself or the Cranman restatement, to affirm the summary judgment on the plaintiffs' claim for vicarious liability for the act of the policeman." (at 144)

"Substantive immunity does not immunize a municipality from vicarious liability for the tortious act of a particular police officer." (at 145)

FACTUAL BACKGROUND

A fire destroyed Benjamin and Diana Hollis's house. Brighton operated a volunteer fire department whose firefighters were not required to respond and received a small payment characterized as reimbursement for expenses. The plaintiffs alleged that the City negligently failed to extinguish the fire and that a City policeman negligently ordered them not to reenter the house to fight it.

PROCEDURAL HISTORY

After a fire destroyed the plaintiffs' house, they sued the City alleging direct negligence in undertaking to provide fire protection and vicarious liability for the conduct of volunteer firefighters and a City policeman. The trial court entered summary judgment for the City based on substantive and discretionary immunity. The Supreme Court of Alabama affirmed the judgment on the direct-liability and volunteer-firefighter claims, reversed it on the policeman-related vicarious-liability claim, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must conduct further proceedings consistent with the opinion on the plaintiffs' claim for vicarious liability arising from the policeman's order; the summary judgment remains in effect on the direct-liability and volunteer-firefighter vicarious-liability claims.

CASES CITED

- Potter v. First Real Estate Co., 844 So. 2d 540, 545 (Ala. 2002)
- Ex parte Rizk, 791 So. 2d 911, 912 (Ala. 2000)
- West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989)
- Callens v. Jefferson County Nursing Home, 769 So. 2d 273, 278-79 (Ala. 2000)
- Bruce v. Cole, 854 So. 2d 47 (Ala. 2003)
- Pitney Bowes, Inc. v. Berney Office Solutions, 823 So. 2d 659 (Ala. 2001)
- Ex parte Helms, 873 So. 2d 1139 (Ala. 2003)
- Willis v. Parker, 814 So. 2d 857 (Ala. 2001)
- Ex parte General Motors Corp., 769 So. 2d 903, 909 (Ala. 1999)
- Berner v. Caldwell, 543 So. 2d 686, 691 (Ala. 1989)
- Kennedy v. Western Sizzlin Corp., 857 So. 2d 71, 78 (Ala. 2003)
- Tanner v. State Farm Fire & Cas. Co., 874 So. 2d 1058, 1068 n. 3 (Ala. 2003)
- Ex parte Ryals, 773 So. 2d 1011, 1013 (Ala. 2000)
- Smith v. Equifax Servs., Inc., 537 So. 2d 463, 465 (Ala. 1988)
- Williams v. City of Tuscumbia, 426 So. 2d 824 (Ala. 1983)
- Ziegler v. City of Millbrook, 514 So. 2d 1275 (Ala. 1987)
- Larry Terry Contractors, Inc. v. Bogle, 404 So. 2d 613, 614 (Ala. 1981)
- Louisville & N.R.R. v. Maddox, 236 Ala. 594, 600, 183 So. 849, 853 (1938)
- Gore v. City of Hoover, 559 So. 2d 163, 165 (Ala. 1990)
- Franklin v. City of Huntsville, 670 So. 2d 848 (Ala. 1995)
- Town of Loxley v. Coleman, 720 So. 2d 907, 909 (Ala. 1998)

- Hilliard v. City of Huntsville, 585 So. 2d 889, 892 (Ala. 1991)
- Howard v. City of Atmore, [Ms. 1021312, Dec. 12, 2003] ____ So. 2d ____ (Ala. 2003)
- Ex parte Hudson, 866 So. 2d 1115, 1117 (Ala. 2003)
- Giambrone v. Douglas, 874 So. 2d 1046, 1051 (Ala. 2003)
- Ex parte Turner, 840 So. 2d 132, 134 n. 1 (Ala. 2002)
- Ex parte Cranman, 792 So. 2d 392, 405 (Ala. 2000)
- Ex parte Butts, 775 So. 2d 173 (Ala. 2000)
- Borders v. City of Huntsville, 875 So. 2d 1168, 1183 (Ala. 2003)
- City of Birmingham v. Benson, 631 So. 2d 902, 905 (Ala. 1993)
- Luker v. City of Brantley, 520 So. 2d 517 (Ala. 1987)
- Tyler v. City of Enterprise, 577 So. 2d 876 (Ala. 1991)
- Seals v. City of Columbia, 575 So. 2d 1061 (Ala. 1991)
- Williams v. Crook, 741 So. 2d 1074 (Ala. 1999)
- Jackson v. City of Florence, 294 Ala. 592, 320 So. 2d 68 (1975)

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