

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Stephen G. Endicott, Administrator of the Estate of P.E., Deceased v.
City of Oak Hill, City of Oak Hill Police Department, and Patrolman
Joshua Jones

Endicott v. City of Oak Hill · No. 17-0765 · Decided November 2, 2018

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed summary judgment for the City of Oak Hill, its police department, and Officer Joshua Jones in a wrongful-death action arising from a police pursuit. The court held that the record did not support a finding of reckless or grossly negligent conduct by Officer Jones or establish that his conduct was a substantial factor in causing the crash. The court also declined to address discovery-sanctions and special-relationship arguments that had not been ruled upon by the circuit court.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice Evan H. Jenkins; Chief Justice Margaret L. Workman; Justice Paul T. Farrell, sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	November 2, 2018
DOCKET	17-0765
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed from the Circuit Court of Fayette County's order granting respondents summary judgment in a wrongful-death and negligence action arising from a police pursuit.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. A circuit court's decision to grant or deny a continuance is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	nonprecedential

PARTIES

Stephen G. Endicott, as Administrator of the Estate of P.E., Deceased
v. City of Oak Hill, City of Oak Hill Police Department, Patrolman
Joshua Jones, individually and in his capacity as an employee of the
City of Oak Hill Police Department

TOPICS

summary judgment

municipal liability

appellate procedure

standard of review

proximate cause

PRACTICE AREAS

torts

municipal law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court properly granted summary judgment where petitioner alleged that Officer Jones's conduct during a vehicular pursuit was reckless or grossly negligent and caused P.E.'s death.
2. Whether J.B.'s conduct was a substantial intervening cause that broke the chain of causation.
3. Whether the circuit court abused its discretion by denying petitioner additional time to conduct discovery and a continuance before ruling on summary judgment.
4. Whether the circuit court erred by failing to impose discovery sanctions.
5. Whether the special-relationship exception to the public-duty doctrine applied to impose liability on the respondents.

HOLDINGS

1. Summary judgment was proper because petitioner presented no evidence creating a triable issue that Officer Jones acted recklessly or with gross negligence during the pursuit, or that his conduct was a substantial factor in causing the collision.
2. The circuit court did not err in concluding that J.B.'s conduct caused the wreck and that petitioner failed to produce evidence that Officer Jones's conduct was a substantial cause of P.E.'s death.
3. The circuit court did not abuse its discretion by denying petitioner a continuance and additional discovery.
4. The court declined to address those arguments because the circuit court had not acted on them.

KEY QUOTATIONS

“On this record, we cannot discern any triable issue of fact regarding whether Officer Jones engaged in conduct under Peak and West Virginia Code § 17C-2-5 that would support a finding of liability.” (4)

“Because these questions were not acted upon by the trial court, we decline to address petitioner’s final two arguments.” (7)

“For the foregoing reasons, we affirm the circuit court’s July 10, 2017, summary judgment order.” (7)

FACTUAL BACKGROUND

Fourteen-year-old P.E. was riding in a vehicle driven by fifteen-year-old J.B., who had taken his grandmother's car and possessed only a learner's permit. Officer Jones stopped the vehicle for a defective headlight and a learner's-permit violation, cited J.B., followed the boys to a friend's house, and told them not to go back out. J.B. later left with P.E. to return the car, and Officer Jones attempted another stop after seeing the vehicle with the defective headlight. J.B. accelerated away, lost control approximately three-fourths of a mile from the attempted stop, struck a guardrail, and went over an embankment; part of the guardrail struck P.E. and caused his death.

PROCEDURAL HISTORY

P.E. died in a single-vehicle wreck after Oak Hill police officer Joshua Jones attempted to stop the vehicle in which P.E. was riding. Endicott filed suit on February 1, 2016, and amended the complaint twice. The circuit court entered a scheduling order, respondents moved for summary judgment, and after a hearing the court granted the motion on July 10, 2017. The Supreme Court of Appeals affirmed, concluding that the record showed no triable issue concerning reckless or grossly negligent conduct by Officer Jones or whether his conduct was a substantial factor in causing the wreck. The court declined to address the discovery-sanctions and special-relationship arguments because the circuit court had not ruled on them.

DISPOSITION

affirmed

CASES CITED

- In re K.H., 235 W. Va. 254, 773 S.E.2d 20 (2015)
- Melinda H. v. William R. II, 230 W. Va. 731, 742 S.E.2d 419 (2013)
- State v. Brandon B., 218 W. Va. 324, 624 S.E.2d 761 (2005)
- State v. Edward Charles L., 183 W. Va. 641, 398 S.E.2d 123 (1990)
- Peak v. Ratliff, 185 W. Va. 548, 408 S.E.2d 300 (1991)
- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Wilkinson v. Searls, 155 W. Va. 475, 184 S.E.2d 735 (1971)
- Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York, 148 W. Va. 160, 133 S.E.2d 770 (1963)
- Evans v. Farmer, 148 W. Va. 142, 133 S.E.2d 710 (1963)
- Hatten v. Mason Realty Co., 148 W. Va. 380, 135 S.E.2d 236 (1964)
- Anderson v. Moulder, 183 W. Va. 77, 394 S.E.2d 61 (1990)
- Levy v. Scottish Union & National Insurance Co., 58 W. Va. 546, 52 S.E. 449 (1905)
- State v. Bush, 163 W. Va. 168, 255 S.E.2d 539 (1979)
- McDougal v. McCammon, 193 W. Va. 229, 455 S.E.2d 788 (1995)
- 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)
- Highland v. Davis, 119 W. Va. 501, 195 S.E. 604 (1937)

- In re Nicholas' Estate, 142 W. Va. 80, 94 S.E.2d 452 (1956)
- Weese v. Muir, 188 W. Va. 542, 425 S.E.2d 218 (1992)
- McCoy v. Cohen, 149 W. Va. 197, 140 S.E.2d 427 (1965)
- Beckley v. Crabtree, 189 W. Va. 94, 428 S.E.2d 317 (1993)
- Smith v. Burdette, 211 W. Va. 477, 566 S.E.2d 614 (2002)
- Albert v. City of Wheeling, 238 W. Va. 129, 792 S.E.2d 628 (2016)
- Mallamo v. Town of Rivesville, 197 W. Va. 616, 477 S.E.2d 525 (1996)
- Kelley v. City of Williamson, 221 W. Va. 506, 655 S.E.2d 528 (2007)
- Baker v. Chaplin, 517 N.W.2d 911 (Minn. 1994), cert. denied, 513 U.S. 1077 (1995)
- Brescher v. Pirez, 696 So. 2d 370 (Fla. Dist. Ct. App. 1997)
- Sergeant v. City of Charleston, 209 W. Va. 437, 549 S.E.2d 311 (2001)

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