

Sepega v. Lawrence Delaura (SC 19683)

Brief Summary: Plaintiff police officer sought to recover damages for injuries suffered when attempting to force entry into the defendant's home in response to the defendant entering the home in violation of a protective order, locking himself inside, and threatening to cause harm to himself. Court held the firefighter's rule should not be extended beyond claims alleging premises liability, thus, the rule did not bar the plaintiff's claim. Consequently, the court reversed the trial court's decision to grant summary judgment in favor of the defendant.

The plaintiff, Officer Robert Sepega, responded to a call at the premise of the defendant. The defendant locked himself inside his home and was threatened to harm himself. After numerous requests of the defendant to open the door Sepega attempted to kick the door in, consequently, suffering serious injuries. The plaintiff sought to recover damages from the defendant alleging that the defendant negligently created conditions which mandated he forcibly enter the premise as a police officer entering to prevent harm to the defendant or to others. The trial court granted the defendant's motion to strike holding that the firefighter's rule barred the plaintiff's complaint. The appeal to the Supreme Court of Connecticut followed, the issue was whether the firefighter's rule should be extended beyond the scope of premise liability as to bar a police officer from recovering, under a theory of ordinary negligence, from a homeowner who is also an alleged active tortfeasor. The court refused to expand the rule and reversed the trial court's decision.

The common-law firefighter's rule states that a firefighter or police officer who enters private property in the exercise of their duties generally cannot bring a civil action against the property owner for injuries sustained as the result of a defect in the premises. The plaintiff did not allege that the injuries were due to an unsafe condition on the premises (premise liability),

rather, ordinary negligence. Thus, the court had to decide whether to expand the rule to ordinary negligence claims.

The plaintiff argued that his claim was controlled by *Levandoski v. Cone*, which held that the firefighter's rule was limited to premise liability claims. In *Levandoski*, a police officer brought a claim against a suspect for injuries sustained during a chase. The court refused to extend the rule to non-premise liability claims because the firefighter's rule is an exception to the general rule of tort liability that between an innocent party and a negligent party, any loss should be borne by the negligent party.

The defendant argued that the case was distinguishable from *Levandoski*, and that *Kaminski v. Fairfield*, is controlling, which held that parents cannot be held liable for injuries to a police officer, acting as a trained escort for a mental health team on a visit to a disturbed patient known to be agitated and to have access to axes. The court held that *Levandoski*, was controlling not *Kaminski*, as *Kaminski* was a claim of vicarious liability, was fourteen years prior to *Levandoski*, and was discussed *Levandoski* prior to the holding.

The court analyzed five policy considerations in favor of the firefighter's rule to determine whether the same considerations supported expanding the scope of the rule beyond premise liability. The first consideration was to avoid placing too heavy of a burden on premises owners to keep their premises safe from the unpredictable entrance of firefighters. The court stated that this consideration was essentially an assumption of risk analysis because it focuses on firefighters and police officers as a class assuming the risk of entry, whom a premise owner needs immunity from liability. However, the court noted that the Connecticut legislature abolished the assumption of risk doctrine, thus, the first policy consideration cannot support extending the rule.

The next policy consideration was that the rule spreads the risk of firefighter's injuries to the public through workers' compensation, salary, and fringe benefits. The court agreed with the Supreme Court of Oregon which argued the problem with this rationale is that by denying an officer recovery from a tortfeasor, the officer is not directed to gather damages from the general public; rather the officer is precluded to recover from anyone. Furthermore, the court held that expanding the rule would improperly discriminate against public safety officers because they cannot recover, whereas, other public employees can. For example, a municipal building inspector, injured due to a homeowner's negligence while examining structures. Additionally, refuse and recyclable collectors were ranked as having a more dangerous job than both police officers and firefighters. Thus, the court reasoned it would be illogical to allow the former to recover against third-party tortfeasors if they are injured on one's property and not the latter due to the inherent danger of the job.

The next policy consideration is that the rule encourages the public to call for professional help and not to rely on self-help in emergency situations. The court rejected this argument, noting that there was no evidence that the absence of this rule in eighteen states deterred its citizens from seeking help in an emergency.

The fourth policy consideration is to avoid increased litigation. The court was not persuaded by this consideration because in *Ruiz v. Victory Properties*, it stated that rather than unnecessarily and unwisely increasing litigation, imposing a duty will likely prompt people to act more responsibly. Furthermore, the court stated that the *Ruiz* holding was consistent with the general tort policy of deterring tortfeasors from wrongful conduct due to the risk of liability.

Lastly, the court considered double taxation as another policy consideration in favor of the firefighter's rule. The argument is that the public compensates safety officers in pay and

worker's compensation through taxes, thus, paying damages for injuries is compensating their safety twice. The court rejected this argument because it is contrary General Statutes § 31-293, stating that the third-party tortfeasor, and not the employer, shall be primarily responsible for bearing the economic loss resulting from the tortfeasor's negligence. It is contrary to the statute because the public would be paying the damages through the municipality (the employer), rather than the actual tortfeasor. Furthermore, the court noted that most homeowners are insured against the risk of people being injured on their property due to the owner's fault. This is significant because an insurance company paying money to an injured officer is not the owner paying "double taxes."

Therefore, because the court was not persuaded by any of the above policy considerations it held that the firefighter's rule applied only to premise liability cases. Because the plaintiff did not make any claim that his injuries were caused by a defect in the premises the court concluded that the trial court improperly granted the defendant's motion to strike.

The concurrence agreed with the majority that the rule is inapplicable here because like the fleeing defendant in *Levandoski*, the defendant engaged in conduct that endangered the plaintiff—barricading the door. However, the concurring justices took issue with the court's holding that the rule applied only in premise liability cases. The concurrence was concerned that this rule would discourage the people of Connecticut to seek assistance in emergencies. Also, it would allow for "ill-deserved" cases their day in court such as an action against a domestic violence victim, claiming that, although she had told an emergency dispatcher that her husband was occasionally violent and had guns in the home, she had negligently failed to warn police of certain specific threats, after which two police officers were shot while escorting her home. Due to these considerations, the concurrence argued that *Levandoski* should be read to hold that the

rule does not preclude an imposition of duty of care on persons fleeing or resisting police officers. Furthermore, stating that this ruling would encourage citizens to seek emergency assistance and protect police officers.

The key takeaway of this case is that firefighters and police officers are not barred by the firefighter's rule from recovering damages for negligence from a third-party tortfeasor. This is significant because it protects them from harm caused directly by individuals when entering property during the course of their work.