

Ventura v. Town of East Haven (SC 19898)

Brief Summary: Plaintiff was injured after being struck by a vehicle. Prior to the accident the driver of the vehicle was detained by a police officer who could not verify that the driver and his girlfriend were licensed, however, the officer did not tow and impound the car. Plaintiff sought to recover damages from East Haven alleging the officer violated a ministerial duty to impound the vehicle. Court held that pursuant to General Statute §52-557n(a)(1)(A) the municipality was immune because the officer's conduct was an exercise of discretion.

On November 4, 2006 officer Strand was dispatched to investigate a possible domestic incident occurring inside a large white work van in a McDonald's drive-through. Strand pulled over a 1997 white Chevrolet box truck, driven by Trnka. Strand instructed him to pull into the parking lot. After determining there was no probable cause for an arrest as there was no physical violence between Trnka and his girlfriend, Strand asked both for their licenses which they did not provide. Due to a malfunction in the Department of Motor Vehicles database Strand was unable to determine whether either were licensed. Consequently, Strand drove both home and directed Trnka to leave his truck in the McDonald's parking lot. Fifty-six minutes later Trnka retrieved his truck and shortly after struck the plaintiff, Thomas Ventura; Trnka was later arrested. Further investigation determined that the plate affixed to the truck did not match the description of the vehicle to which that plate had been assigned and that Trnka was driving without valid insurance or registration. These determinations were not made by Strand at the time he investigated. Trnka was charged with evasion of responsibility, failure to drive in the proper lane, misuse of plates and operating an unregistered vehicle.

The plaintiff sought to recover damages against the defendant municipality alleging that Strand negligently violated a ministerial duty imposed on him by the East Haven Police

Department Tow Board Rules & Regulations (tow rules) by failing to have Trnka's truck towed from the McDonald's parking lot. He alleged that paragraph 7 of the tow rules required that all motor vehicle violations are to be towed to include unregistered and misuse of plates and operators of these vehicles are not allowed to park or leave the vehicle in private parking areas. He argued that this requirement applied to police officers, thus, Strand did not have the discretion to decline to tow the truck. The defendant asserted the special defense of governmental immunity arguing that Strand was performing a discretionary act—which absolves the municipality of any liability. The jury returned a verdict in favor of the plaintiff for \$12,200,000 finding Strand negligently violated a ministerial duty to tow Trnka's truck. After the trial, the court denied the defendant's motion for a directed verdict and its motion to set aside the verdict but granted the motion for remittitur in the amount of \$6,000,000, thereby reducing the verdict to \$6,200,000. The defendant then appealed and the Appellate court reversed the trial court's judgment holding that the tow rules and regulations do not impose a ministerial duty on East Haven police officers to tow the vehicles of all drivers who have violated motor vehicle laws. Thus, the defendant was immune because Strand was exercising discretion and did not omit to perform a ministerial duty. The case was then brought to the Supreme Court of Connecticut to decide (1) whether the issue of whether the tow rules imposed a ministerial duty on Strand to tow Trnka's vehicle was a question of fact for the jury or a question of law for the court? And (2) whether the defendant is immune because Strand's duty was discretionary rather than ministerial. The court held that determining if the rules imposed a ministerial duty was a question of law for the court and that the defendant was immune because Strand was exercising discretion rather than omitting to perform a ministerial duty.

The relevant statute for this case is General Statute 52-557n (a) stating that a municipality is liable for damages to a person caused by the negligent acts or omissions of any employee of the municipality acting within the scope of his employment or official duties, unless those negligent acts or omissions require the exercise of judgment or discretion. In other words, the municipality is immune from liability for negligent acts or omissions by a city official (like a police officer) when they are required to exercise judgment or discretion. However, they are not immune from an official's negligent performance of or omission of an official duty. Thus, if the tow rules required Strand to tow the vehicle, the municipality would be liable.

To resolve the first issue the court cited *Strycharz v. Cady*, which held that the issue of governmental immunity is a question of law that is appropriately resolved by the court. The plaintiff argued that on other occasions the court held that immunity presents a question of fact. However, the court concluded that this statement from *Lombard v. Edward J. Peters, Jr.* is a misreading of *Gordan v. Bridgeport Housing*. It was a misreading because the passage in *Gordan* that *Lombard* cited was just setting forth the plaintiff's claim in *Gordan* (that immunity was a question of fact) which was rejected. Thus, the court held that the issue of whether an act is ministerial or discretionary in the context of governmental immunity is a question of law appropriately resolved by the court.

Regarding whether the tow rules imposed a ministerial duty on Strand the court agreed with several conclusions made by the Appellate court. First, that the plaintiff's interpretation of paragraph 7 (imposing a duty on officers to tow any vehicle found to be violating a state motor vehicle law) is incompatible with paragraph 6. The plaintiff's interpretation was contrary to paragraph 6 because paragraph 6 indicates that the tow rules do not apply to East Haven police officers but were designed to regulate tow truck operators. Second, the plaintiff's interpretation

would lead to the bizarre and unworkable result of requiring a police officer to tow every vehicle violating the law such as speeding or failing to stop for a sign. It would lead to this result because paragraph 7 states all motor vehicle violations are to be towed, not just violations involving the failure to register a vehicle or the misuse of plates. Third, the plaintiff's expert conceded during cross-examination that the tow rules were directed at towing companies, not police officers. Fourth, the tow drafter of the tow rules, Liquori, testified that the rules were intended to inform tow companies on what was expected of them if they wanted to work for the town or police department. Finally, the plaintiff argued that the testimony of a police officer, Emerman, who stated that officers ordinarily tow and impound unregistered vehicles, indicates that Strand had a ministerial duty to tow the vehicle. However, the court rejected this argument as Emerman also testified that there was no rule dictating how an East Haven police officer is to handle an unregistered vehicle and that the decision to tow is always within the officer's discretion. Lastly, the court stated that the mere fact that an officer ordinarily responds to a situation in a certain way does not demonstrate that it is a ministerial duty. Thus, the court concluded that Strand was exercising discretion, not omitting to perform a ministerial duty, consequently, affirming the Appellate court's holding that the municipality was immune.

The key takeaway from this case is that an officer's decision to tow and impound a vehicle is discretionary. This is salient because potential plaintiff's in a situation like the plaintiff here should avoid the significant costs of litigating against the government as the court will likely determine that the immunity statute applies. Thus, they would be better off focusing on recovering damages from the driver, rather than the government.

