

Brooks v. Robert Powers et. al. (SC 19727)

Brief Summary: Defendant constables failed to respond to a report that a woman was under-dressed and standing in the middle of a field during a severe rainstorm. The next morning the woman drowned half a mile from the field. The court held that the danger created by her presence in the field was too far attenuated from her drowning to satisfy the identifiable person, imminent harm exception to discretionary government immunity.

The plaintiff administratrix of the Elsie White's estate sought to recover damages from Robert Powers and Rhea Milardo, constables in Westbrook, for their alleged negligence in responding to a report that a woman (White) was standing in a field during a severe thunderstorm. Alleging that the negligent response was a proximate cause of White's accidental drowning the next morning in Long Island Sound. On June 18, 2008, the defendants were scheduled for a boat patrol during a severe storm. While outside of a store, the town tax collector told Powers that there was a woman wearing no coat or rain gear, standing in the middle of a field with her hands raised to the sky that needed medical attention. At this time, it was raining heavily and there was thunder and lightning. Powers stated he would take care of the situation and called the 9-1-1 dispatcher. He joked about what occurred with the dispatcher and asked her to send someone as he could not leave the boat (the boat they were supposed to be using to patrol but did not due to the weather). However, the dispatcher forgot to send anybody. When responding to a call later the defendants passed by the field the tax collector referred to and neither got out to check if White was still in the field (the grass was knee high, affecting their visibility). The next morning White's body was found floating face down in Long Island Sound—less than a mile from the field.

The trial court granted the defendant's motion for summary judgment based on Section 52-557n(a)(2)(B) which provides immunity to municipalities for negligent actions that require judgment or discretion. Furthermore, the trial court concluded that the identifiable victim, imminent harm exception was inapplicable. The Appellate court reversed the trial court's decision and concluded that there was a genuine issue of material fact as to whether, on the night of the storm, White was an identifiable victim subject to imminent harm. The issue before the Supreme Court of Connecticut was whether there was a genuine issue of fact regarding whether White was an identifiable victim, subject to imminent harm, apparent to the defendants. The court concluded that as a matter of law the defendants' conduct did not fall within the identifiable person, imminent harm exception.

The identifiable person, imminent harm doctrine is an exception to discretionary act immunity. It applies when the circumstances make it apparent to the officer that their failure to act would likely subject an identifiable person to imminent harm. It requires (1) an imminent harm; (2) an identifiable victim; and (3) a public official to whom it is apparent that his or her conduct is likely to subject that victim to that harm. Harm is imminent when it is apparent to the defendant that the dangerous condition was so likely to cause harm that the defendant had a clear duty to act immediately to prevent the harm. To meet the apparentness requirement, the plaintiff must show that the circumstances would have made the government agent aware that his or her acts or omissions would likely have subjected the victim to imminent harm.

In reaching its verdict the court largely relied on Judge (now Justice) Mullins' dissent. The court agreed with Judge Mullins' dissent which stated, first, that there were no facts in the present case that linked the drowning to the storm and White's presence in the field. Second, that there was nothing on the record suggesting that the defendants knew that White would accidentally

drown after she ventured off approximately half a mile away from the field. Third, that the general harm presented by standing in the middle of a field during a severe storm was too far attenuated from the harm that occurred (drowning half a mile away). Thus, the court concluded that the Appellate Court incorrectly determined that White's drowning fell within the scope of the risk created by the defendants' failure to immediately investigate the report that a woman was standing in a field during the storm. Furthermore, the court stated that the drowning was too far attenuated from the risk of harm created by the storm for a jury to reasonably conclude that the drowning was storm related. Also, that it is too far attenuated for the plaintiff to be able to demonstrate that the risk of harm (drowning) was imminent in the sense that it was so likely to occur that the defendants had a clear duty to act to prevent. Essentially, the drowning was not related enough to the decedent's presence in the field for the exception to apply. Furthermore, the court stated that even if the drowning was storm related, it would be unable to conclude that the defendants, in failing to respond to the report—and instead, relaying that report to a 911 dispatcher, in a lighthearted manner—ignored a risk that the decedent would drown in waters one-half mile away from the field, most likely the next day, after the storm presumably had passed. Consequently, the court concluded that the trial court correctly determined, as a matter of law, that the plaintiff cannot establish that the defendants' conduct falls within the identifiable person, imminent harm exception to governmental immunity.

The dissent argued that imminent harm was apparent because based on the report that White was standing in the field with no coat on, it was obvious that White was suffering from mental illness, and thus, injuries—like drowning—could result from that illness if left untreated. Furthermore, the dissent critiqued the majority's imminence standard (that it was apparent to the municipal defendant that the dangerous condition was so likely to cause harm that the defendant

had a clear and unequivocal duty to act immediately to prevent the harm) stating that it collapses the apparentness and imminence standard into one prong. Justice Eveleigh suggested instead that the standard ought to be whether it was, or should have been, apparent to the municipal defendant that the dangerous condition was so likely to cause harm in the near future that the defendant had a clear and unequivocal duty to act to prevent the harm. Furthermore, the dissent stated that the danger was apparent as they knew a woman was acting strange, improperly dressed in the middle of a field during a storm. And that the risk was not being hurt by the storm but, rather, that she was a danger to herself—a danger the defendants were aware of and chose to ignore.

The key takeaway from this case is the difficulty involved with suing the government for discretionary acts. This case demonstrates the difficulty because as the dissent pointed out there was somewhat of an argument for applying the identifiable person, imminent harm exception, however, the court ruled that as matter of law it was inapplicable. This is significant because the court ruled that the facts in this case were not enough to even have a trial.