

Lewis v. Town of Newtown (AC 41697)

Brief Summary: Plaintiffs sought to recover damages from the town of Newtown and its board of education for the alleged negligence of its staff during the Sandy Hook mass shooting; in which their children were killed. The court held that the trial court properly granted summary in favor of the defendants because: (1) the identifiable-imminent harm exception is inapplicable because the plaintiffs failed to allege the defendants acted discretionary in their complaint; and (2) the duties of the defendants were discretionary, thus, the plaintiffs' claims were barred by governmental immunity.

BACKGROUND

The plaintiffs, Scarlett Louis and Leonard Pozner, are the administrators of the estates of two victims of the mass shooting at Sandy Hook Elementary School in 2012. They sought to recover damages from the defendants, the town of Newtown and its board of education, pursuant to General Statutes § 52-557n (a) (1) for alleged acts of negligence that the plaintiffs claimed were substantial factors in contributing to the deaths of their decedents. In response, the defendants asserted (1) that the claims were barred by the doctrine of governmental immunity pursuant to § 52-557n (a) (2); (2) their acts or failures were not the proximate cause of the children's death; and (3) they could not be held liable for the criminal acts of an individual who was not an agent or employee of either defendant. After discovery, the defendants filed a motion for summary judgment. The motion included the above three claims and also argued that (1) there was no genuine issue of material fact regarding the defendants negligence; and (2) that the plaintiffs failed to produce any expert testimony in support of their claims. In response, the plaintiffs filed a memorandum opposing the motion arguing that (1) the defendants failed to present evidence adequate to satisfy their burden on a motion for summary judgment; (2) the

actions of the school faculty and staff present in the school were not discretionary in nature but, rather, were ministerial duties prescribed by the school security guidelines, in place at that time; (3) if the duties of the faculty and staff present in the school were not ministerial but were, instead, discretionary, the conduct of Lanza in blasting his way into the school presented an imminent danger to all present in the school, and the failure of the faculty and staff in the school to follow the prescriptions set forth in the school security guidelines constituted negligence; (4) Lanza's conduct was not an intervening criminal action because the purpose of the school security guidelines was to respond to outside threats such as those posed by Lanza; and (5) the plaintiffs would address their failure to produce expert testimony by demonstrating that the expert disclosed by the defendants had no knowledge in regard to the issues presented by this case. The court granted summary judgment, concluding that the security guidelines imposed discretionary responsibilities on the defendants' staff, thus, governmental immunity applies. Further, that no reasonable juror could find that the plaintiffs' children were subject to imminent harm at the time of the named defendants' allegedly negligent conduct in formulating, promulgating, and implementing the school security guidelines.

ISSUES

The issues on appeal were (1) whether the identifiable person-imminent harm exception to governmental immunity was properly asserted by the plaintiffs; and (2) whether the duties of the defendants' faculty and staff implicated by the allegations in the complaint were ministerial or discretionary.

HOLDING

The court held (1) that the identifiable person-imminent harm exception is not applicable to the plaintiffs argument because it applies only to discretionary act immunity which the plaintiffs failed to raise in their complaint; and (2) the duties of the defendants were discretionary, thus, the plaintiffs' claims were barred by governmental immunity.

THE LAW

Section 52-557n bars municipalities from liability for claims that involve the exercise of judgment or discretion. In contrast, they are not immune from liability for negligence arising out of their ministerial acts. Ministerial acts are acts to be performed in a prescribed manner without the exercise of judgment or discretion. The identifiable person-imminent harm doctrine is an exception to discretionary immunity. 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.

Pleadings determine which facts are relevant and frame the issues for summary judgment or for trial. The plaintiff may rely only on what he or she has alleged. The right of a plaintiff to recover is limited to the allegations in the complaint. Consequently, a plaintiff cannot bring up a new claim, issue or alternative theory of liability in their response to a motion for summary judgment by the defendant.

DISCUSSION

To resolve the first issue the court looked to the pleading submitted by the plaintiffs. The significance of the complaint is that if it did not allege that the staffs' conduct was discretionary then the plaintiff cannot argue that the identifiable person-imminent harm exception applies as it requires discretionary conduct. Throughout the complaint the plaintiffs alleged that the

defendants were under a “legal and ministerial” duty to create, enforce and abide by the school security guidelines. Further, paragraphs 30 and 31 alleged that the defendants were negligent because they left the staff in a position where they either could not adhere or failed to adhere to the mandatory school security guidelines. Additionally, the complaint alleged that § 10-220 instituted school safety policies and procedures which left no area for discretion by its staff and/or agents. The complaint contained several other paragraphs alleging that the defendants were under a ministerial duty. However, the complaint contained no allegations that the implementation of the guidelines was discretionary. Instead, the plaintiff asserted for the first time in their opposition to summary judgment that the identifiable person-imminent harm exception applies if the acts or omissions were discretionary. Thus, the court concluded that because the plaintiff’s complaint only set forth negligence claims based on the breach of a ministerial duty the identifiable person-imminent harm exception is inapplicable as it requires discretionary conduct. Next, the court determined whether the duties of the defendants were ministerial or discretionary.

The Supreme Court of Connecticut concluded in *Strycharz v. Cady*, that an administrator’s duty to ensure school staff members adequately discharge their assignments is discretionary because it is encompassed with their general responsibility to manage and supervise school employees. Further, in *Martinez v. New Haven* the court held that supervising public school children is generally considered a discretionary act. The plaintiffs argued that the staff was under a ministerial duty to abide by school security guidelines and ensure student safety and well-being pursuant to §§ 10-220, 10-220f and 10-221. However, the court rejected this argument because the language in the statutes indicate that the school board is fulfilling a discretionary duty in developing and implementing policies. Section 10-220 (a) states, generally,

that boards of education “shall provide a safe school setting,”; § 10-220f states that boards of education may, but are not required to, establish a school safety committee. Further, § 10-221 does not specifically address safety. Instead, it states that boards of education shall implement policies to regulate several other unrelated areas as part of their general duty to manage and supervise school activity. Thus, the court concluded that the trial court correctly held that the plaintiffs failed to identify any statutory authority or rule that imposed a ministerial duty on the defendants.

Finally, the court rejected the plaintiffs argument that the security guidelines of the school created a ministerial duty because: (1) the security guidelines contained language such as may or should which indicated that the faculty had discretion to exercise judgment in following them; (2) they contained no language placing a duty to act in a specified manner in the event of an emergency; and (3) having consequences for failing to following guidelines does not automatically impose a ministerial duty—as held in *Coley v. Hartford*.

CONCLUSION

The court affirmed summary judgment in favor the defendant. A key takeaway from this case is that a court cannot address an issue that was brought up for the first time in response to a defendant’s motion for summary judgment. This error was salient in the case because the only recognized class of people for the identifiable person exception is public school children. Thus, the plaintiffs had a high chance of success based on the exception but were never able to argue it because of its omission in the pleading. This case demonstrates that the success of one’s case can be thwarted by a procedural error even when the facts and law may be on their side.

