

*Justin Lund v. Milford Hospital, Inc. (SC 19834)*

The plaintiff brought the present negligence action seeking damages for injuries sustained while subduing an “emotionally disturbed person” (P) who was in the custody of the defendant hospital (hospital). The plaintiff alleged that following an automobile accident, P injured two responding officers and was subsequently detained and transferred to the hospital for an emergency psych evaluation due to the irrational behavior he was exhibiting. The plaintiff then went to the hospital to check on the officers injured by P and observed that P had been detained by the hospital’s employees. The hospital staff later allowed P to use the bathroom, unrestrained and unaccompanied by hospital staff. Upon leaving the bathroom, P struck the plaintiff and fled, instigating a pursuit by the plaintiff, during the course of which the plaintiff sustained his injuries. The plaintiff alleged negligence on the part of the hospital, claiming the hospital “(1) fail[ed] to supervise or restrain [P] properly, (2) fail[ed] to provide for adequate security in the area where foreseeably dangerous patients are held, (3) allow[ed] [P], who was known to be dangerous, to go to the bathroom unrestrained and unaccompanied, and (4) fail[ed] to train its staff properly.”

In response, the defendant moved to strike the plaintiff’s complaint, arguing that the claims were barred by the underlying rationale of the firefighter’s rule. The trial court granted the defendant’s motion. The plaintiff then filed a substitute complaint pursuant to Black Book §10-44. The defendant objected to the substitute complaint and the trial court sustained the objection on the grounds that the plaintiff failed to state a claim for which relief can be granted. The plaintiff appealed claiming the court erred in sustaining the defendant’s objection to the substitute complaint because the claims in the original complaint were materially different from those in the secondary complaint. Additionally, the plaintiff claimed that the firefighter’s rule

does not apply to negligence claims which do not involve premises liability and therefore the plaintiff should have been able to bring his complaint forward.

The first issue presented to the Court in this appeal is whether “the court properly determined that the plaintiffs had failed to remedy the pleading deficiencies that gave rise to the granting of the motions to strike or, in the alternative, set forth an entirely new cause of action.” In order for the plaintiff’s substitute complaint not to be stricken, the complaint must be materially different from the original complaint and cannot merely repeat the allegations of the original complaint. The Court determined that the allegations brought forth in the plaintiff’s substitute complaint were materially different from those of his original complaint. The Court reasoned that revised allegations were sufficient to constitute a good faith effort to counter the trial court’s determination that the plaintiff’s original complaints were barred based on the firefighter’s rule. The Court found that the substitute complaint “disconnect[ed] the plaintiff’s presence from the emergency committal of [P] in an apparent attempt to address the trial court’s observation in granting the motion to strike that the defendant’s ‘alleged acts of negligence were intimately connected with the very occasion for which the plaintiff was on the property.’” The substitute complaint was materially different from the original complaint and was thereby a good faith effort to remedy the defects in the plaintiff’s original complaint. Therefore, the trial court improperly sustained the defendant’s objection to the substitute complaint.

The second issue presented to the Court in this appeal is whether the trial court improperly sustained the defendant’s objection to the substitute complaint. The trial court granted the defendant’s motion to strike on the grounds that “the alleged acts of negligence were ‘intimately connected with the very occasion for which the plaintiff was on the property’ because ‘[s]pecifically, according to the complaint, the plaintiff knew about [P]’s violent and

unstable emotional condition because the plaintiff had arrested him and brought him to the hospital.”” However, the plaintiff’s substitute complaint stated that the plaintiff was present at the hospital to attend to his duties relating to a different accident. He further alleged that he went to the hospital in order to check on the officers who were injured by P and that the plaintiff had not himself brought P to the hospital. Additionally, the complaint alleged that the defendant had “accepted custody of [P], in its institutional capacity, as a professional custodian with a degree of special competence.”

The trial court held that “the defendant’s negligent act was ‘intimately connected’ with the very reason . . . the plaintiff . . . acted to apprehend [P] when he attempted to escape and that ‘the plain- tiff was injured while acting in the performance of his duty as a police officer.’” However, the Court found that, in light of the plaintiff’s substitute complaint, the firefighter’s rule did not extend to his complaint as it alleged that the defendant acted negligently in failing to supervise P but did not make any claims of premises liability. The Court held that the trial court improperly sustained the defendant’s objection to the substitute complaint as the plaintiff had brought forth a valid cause of action. The Court reasoned that pursuant to the decision in *Sepega v. DeLaura*, the firefighter rule cannot be interpreted to bar cases which allege ordinary negligence rather than premises liability. Here, because the plaintiff alleged ordinary negligence rather than premises liability, his claim cannot be barred by the firefighter’s rule.