

*David L. St. Pierre v. Town of Plainfield Et. Al. (SC 19871)*

The plaintiff brought this complaint forward seeking damages for injuries he sustained after slipping on wet steps located at the defendant's municipal pool. The plaintiff was attending a water therapy session which was run by the defendant Eastern, who paid the town to reserve the municipal pool multiple times every week. The town provided a lifeguard and conducted cleaning and regular maintenance on the pool. The town and Eastern did not have a formal contract for their agreement, but rather had a form letter articulating the basic information for the reservation.

In response to the plaintiff's complaint, the defendant filed a motion for summary judgement on the grounds that municipal immunity precluded the plaintiff's claim. The plaintiff claimed that municipal immunity does not apply in this case based on the statutory exception set forth in §52-577n (a)(1)(B) which stipulates that a municipality may be held liable for negligence claims which arise during the performance of a proprietary function. Additionally, the plaintiff contended that municipal immunity does not apply in this case based on the identifiable person, imminent harm exception. The trial court granted the defendant's motion for summary judgement, finding the town was immune from liability as the operation of the pool was a government function and the identifiable person, imminent harm exception does not apply because the plaintiff was voluntarily present at the pool. The plaintiff appealed the decision of the trial court.

The issue presented to the Court in this appeal is "whether municipal immunity is abrogated by either the proprietary function exception of General Statutes § 52- 557n or the identifiable person, imminent harm exception." The Court found that the defendant did not derive a corporate profit through its operation of the pool, specifically by renting it out to

Eastern. Additionally, the plaintiff did not constitute an identifiable person under the identifiable person, imminent harm exception to municipal immunity. The Court therefore upheld the decision of the trial court.

In reaching this conclusion, the Court first looked to the proprietary function exception as stipulated in §52-577n (a)(1)(B). This statute states “Except as otherwise provided by law, a political subdivision of the state shall be liable for damages to person or property caused by . . . negligence in the performance of functions from which the political subdivision derives a special corporate profit or pecuniary benefit.” In order for this exception to apply, the defendant’s operation of the pool must serve a proprietary function. Here, operating a municipal pool constitutes a government function as it is a recreational activity intended to improve the “general health, welfare, or education of the municipality’s inhabitants.”

Additionally, the Court reasoned that the pool did not lose its governmental nature merely because the municipality charged a nominal fee for Eastern to reserve the pool. This is especially true when the fee is insufficient to cover the costs of the activity. The pool was being operated at a financial loss for the municipality. The Court found that the fee charged by the municipality did not constitute a profit. The Court determined that “the charge was a mere incident of the public service rendered in the performance of a governmental duty.” Because the municipality is not acting like a private enterprise, renting the pool to Eastern for a fee cannot be considered a proprietary function. The Court ruled that the defendant’s operation of the pool did not constitute a proprietary function and therefore does not fall within the exception to municipal immunity as stipulated in §52-577n (a)(1)(B).

The Court next considered the identifiable person, imminent harm exception to discretionary act immunity. Under this exception, municipal immunity does not preclude claims

when “the circumstances make it apparent to the public officer that his or her failure to act would be likely to subject an identifiable person to imminent harm.” This exception has three requisite elements, all of which must be met in order for a claim to succeed: (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. The Court found that because the plaintiff does not constitute an identifiable person, this exception does not apply in the present case. The Court has ruled in the past that a party is deemed to be an identifiable person under this exception if they are compelled or mandated to be somewhere. Schoolchildren, attending public school, during school hours is the only identifiable class the Court has recognized for purposes of this exception as they are legally required to be there, and they are the intended beneficiaries of duties of care imposed on school officials by law. In contrast, the plaintiff in the present case was in no way required or compelled to attend the water therapy session held at the pool. The plaintiff’s voluntary presence at the pool when the incident occurred precludes the Court from finding him to be an identifiable person. The plaintiff therefore failed to meet the requirements of the exception.

The Court ultimately held that the trial court had acted properly in granting the defendant’s motion for summary judgement as the plaintiff could not prove that either of the exceptions applied to the present case and therefore he is precluded from bringing his claim against the defendant due to municipal immunity protections.