

*Anthony Martinez Et. Al. v. City of New Haven Et. Al. (SC 19850)*

This case arises out of a personal injury claim for damages suffered by the plaintiff caused by the alleged negligence of the defendants. The plaintiff, who was eleven at the time, attended a magnet school in New Haven. On the day of the incident, the plaintiff arrived at school and immediately went to the auditorium to wait for classes to start. A teacher, Stewart, was supervising the seventy to seventy-five children in the auditorium at the time. Unbeknownst to Stewart, two children in the auditorium were running while holding scissors. One of the two students dropped their scissors on the ground near the plaintiff. The plaintiff knelt to pick up the scissors at the same time as the other student, and as a result, was cut in the face by the scissors when the other student lifted them from the ground. After the incident occurred, the school notified the plaintiff's parents and arranged for an ambulance to bring the plaintiff to the hospital for treatment.

The plaintiff then commenced this action pursuant to §52-557n. The plaintiff alleged that the defendants had failed to adequately supervise the children in their care, that the defendant failed to properly ascertain and remove potentially dangerous objects on the premises, and that the defendants had thereby acted negligently. The defendants then filed their first answer, denying the plaintiff's negligence claims. The defendants later filed a request for leave to amend their answer in order to invoke the defense of governmental immunity which they failed to claim in their initial response. The trial court did not explicitly rule on the defendants' motion and the matter was tried to the court which subsequently ruled in favor of the plaintiff and awarded him damages in the amount of roughly \$40,000. The trial court determined that the plaintiff had satisfied the imminent harm to identifiable persons exception to governmental immunity based on the ruling in the precedent case *Haynes v. Middletown*.

The defendants appealed the trial court's decision, claiming the court had improperly concluded that the plaintiff satisfied the imminent harm to identifiable persons exception to governmental immunity. The plaintiff, in response, claimed that the defendant failed to invoke the governmental immunity defense in the operative answer.

The issue presented to the Court is whether the trial court properly determined that the plaintiff satisfied his burden in proving the imminent harm to identifiable persons exception to the special defense of governmental immunity. Specifically, the Court sought to determine whether "the trial court properly concluded that the defendants' acts or omissions subjected the plaintiff to imminent harm." The Court determined that the trial court improperly found that the plaintiff satisfied the imminent harm to an identifiable person exception to governmental immunity.

In reaching this conclusion, the Court first looked to the statutory language of §52- 557n (a)(2)(B) which "explicitly shields a municipality from liability for damages to person or property caused by the negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law." The Court further noted that this court has, in the past, recognized an exception to this discretionary act immunity which allows them to be held liable under specific and limited circumstances. In order for the identifiable persons-imminent harm exception to apply, there are three required elements which the plaintiff must prove. The plaintiff must establish that there is "(1) an imminent harm; (2) and identifiable victim; and (3) a public official to whom it is apparent that his or her conduct is likely to subject the victim to that harm." The Court has determined in precedent cases that schoolchildren are an identifiable class to whom the school system owes a duty of care for purposes of the imminent harm-identifiable persons exception. Therefore, the

plaintiff, as a public-school student who was at school during school hours when the incident occurred, was an identifiable person for purposes of this exception to governmental immunity.

In order to prove the imminence of harm under the statute, the standard is “whether 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.” In the present case, the Court found that the plaintiff did not meet the standard for the imminent harm prong because he failed to prove that the dangerous condition which caused his injury was apparent to the defendants and that the condition was so likely to cause harm that the defendants had a clear duty to act to prevent that harm. The facts presented in this case suggest that children possessing scissors in the school auditorium was not against school policy. Additionally, the supervising teacher had never experienced behavioral problems with any of the children involved prior to the incident. The school had never experienced dangerous behavior by students in the auditorium. The Court found that the defendants had no reason to anticipate that such an incident would occur and therefore it cannot be concluded that it was apparent to the defendants that any harm was imminent. The plaintiff thereby failed to establish the imminent harm prong of the governmental immunity exception.

Lastly, the Court addressed the issue of whether the trial court granted the defendants’ request to amend their answer. The Court determined that although the trial court did not expressly grant the defendants’ request in their ruling, they did grant it implicitly. The Court reasoned that the memorandum of decision treated the governmental immunity defense as the main issue in the case. The Court, therefore, rejected the plaintiff’s claim that the defendants never invoked the defense of governmental immunity. The Court ultimately reversed the lower

court's decision and remanded the case with directions to render judgement in favor of the defendants.