Hull v. Town of Newtown (SC 19656)

Brief Summary: Plaintiff, an assistant nurse manager, was shot by a patient admitted to the hospital by a police officer pursuant to § 17a-503 (a). The court held that the defendant has discretional immunity to liability because searching the patient was not a ministerial duty imposed by the arrest policy, which the court interpreted as applying only in the criminal context.

The plaintiff, Andrew Hull, an assistant nurse manager at Danbury Hospital was shot by a patient, Lupienski. Officer Steven Borges took Lupienski into involuntary custody and arranged for him to be transported to the hospital by Newtown Emergency Management Services, as provided by § 17a-503 (a) after Lupienski complained of hallucinations and shortness of breath. The plaintiff sought to recover damages for the injuries he suffered alleging that Officer Borges had a ministerial, nondiscretionary duty to search Lupienski pursuant to the police department's arrest police. Following an unsuccessful motion for summary judgment, the defendant town filed a second motion contending that the officer had no duty to search Lupienski because he had not been arrested under the arrest policy or under § 17a-503 (a). The plaintiff then moved to amend the complaint to include the alternative theory that the police had a duty to search Lupienski pursuant to the police department's prisoner transportation policy, which provided that, prior to transport, all prisoners were required to be searched for any weapons or contraband. The trial court denied the motion to amend and granted summary judgment in favor of the defendant. The appeal to the Supreme Court of Connecticut followed. The issues on appeal were: (1) whether the police arrest policy applies to civil confinement for mental illness pursuant to § 17a-503 (a); and (2) whether the prison transportation policy imposed a ministerial duty to search Lupienski. The court held that the arrest policy applies solely to custody in the criminal context and the

policy did not impose a duty to search Lupienski. Consequently, the trial court's decision was affirmed.

The significance of whether the arrest policy applies to civil confinement is that if the officer had a ministerial duty to search Lupienski (via the arrest policy) then discretional immunity does not apply. Section 52-557n (a) (2) (B) 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. If the arrest policy mandating a search is inapplicable for civil confinement then the decision not the search Lupienski would be discretional, thus, shielding the defendant from liability.

To resolve this issue the court looked at the language of the police policy. The policy defines an arrest as taking a person into custody. Thus, the court had to determine whether civil confinement constituted custody as per the policy. The court concluded that it did not. First, it stated that unlike civil confinement an arrest requires a warrant or probable cause. Furthermore, probable cause is defined in the policy as the existence of facts and circumstances that would lead a reasonably prudent officer to believe that a person had committed a criminal offence. Thus, as per the policy there is no arrest without a warrant or probable cause for a criminal offense. The civil confinement of Lupienski was done without an arrest warrant nor probable cause that he had committed a criminal offense. Second, the court stated that the procedural requirements of the arrest policy illustrate that the policy applies solely to the criminal context. For example, arresting officer's must identify themselves, inform the suspect of their arrest, specify the charge, and read them their Miranda rights. The court stated that these requirements are irrational and impossible outside of the criminal context as one put into civil confinement for

mental health purposes (being a danger to themselves or others) is not being charged with any offense, thus, the above procedural requirements are inapplicable. Thus, the court concluded that custody under the arrest policy refers solely to custody in the criminal context.

Next, the court looked at whether custody had the same meaning under § 17a-503 (a) and the arrest policy. When tasked with statutory interpretation the court is required to look at the plain meaning of the text and to ascertain the intent of the legislature. Section 17a-503 (a) provides that any police officer who has reasonable cause to believe that a person has psychiatric disabilities and is dangerous to himself or herself or others or gravely disabled, and in need of immediate care and treatment, may take such person into custody and take or cause such person to be taken to a general hospital for emergency examination. Additionally, the person shall not be held for more than seventy-two hours.

The court looked at the language of Section 17a-503 (a) and concluded that custody in the statute is inconsistent with criminal custody or arrest. It is inconsistent as it does not require a warrant nor probable cause. Furthermore, the scope of custody is much narrower under the statute as it is for the purpose of examination only. Also, section (b) of the statute permits probate courts to issue warrants to bring a person in need in; section (c) permits psychologists and clinical social workers to obtain immediate care or treatment for a patient. Thus, the court stated that the focus of § 17a-503 is on providing emergency medical care to the psychiatrically or gravely disabled and custody is just one tool in doing so. Therefore, due to the different requirements, procedures and purposes the court concluded that police are not required to follow the same arrest procedures contained in the arrest policy (to search the arrested) when confining one pursuant to § 17a-503 (a). Consequently, the officer in the case did not have a ministerial duty to search Lupienski, thus, discretional immunity applies.

The plaintiff argued that custody in the statute and arrest policy are similar because mental health related seizures under New York's civil commitment statute have been described as arrests by the United States Court of Appeals for the Second Circuit. However, the court rejected this argument stating that the Second Circuit made clear that arrests under the statute are not criminal arrests.

Lastly, the court concluded that the transportation policy did not impose a duty to search Lupienski because the policy requires searching all prisoners prior to transportation; however, Lupienski was not a prisoner, thus, the policy is inapplicable. Consequently, the court concluded that the trial court properly granted the defendant's motion for summary judgment.

Justice Eveleigh dissented stating that arrest which is defined in the policy as taking a person into custody, creates a ministerial duty requiring the police to search anyone who has been taken into custody for whatever reason. The dissent reasoned that the policy defines an arrest as taking a person into custody—it does not define an arrest as someone taken into custody for a criminal offense. Consequently, Justice Eveleigh accused the majority as improperly adding words to the definition of arrest that are simply not there. Furthermore, Justice Eveleigh reasoned that like an arrest, civil confinement authorizes the police to take a person into custody by legal authority. Thus, civil confinement is an example of an arrest not restricted to criminal law. Additionally, the dissent cited numerous Connecticut statues that provide for arrest in civil context, such as General Statutes § 52-143 (e) (applicable to witnesses who fail to respond to subpoenas); General Statutes § 17b-745 (a) (8) (allowing a judge or magistrate to order an official to arrest a defendant who fails to appear for a contempt hearing and bring them in front of the court); General Statutes § 53a-32 (a) (authorizing a probation officer to arrest a defendant

on probation without a warrant for violating a parole condition). Thus, the dissent concluded that the term arrest clearly extends to civil and criminal confinement.

The key takeaway from this case is that the arrest policy of Connecticut police officers applies solely to criminal charges. Thus, municipalities are immune to liability for damages caused by the decision not to search a civilly confined person who uses a weapon to harm somebody.