

*Angela Borelli, Administratrix (Estate of Brandon Giordano) v. Anthony Renaldi Et Al. (SC 20232)*

The plaintiff brought this case forward on behalf of the decedent. The plaintiff sought to recover damages and other relief for negligence on the part of the defendant. The plaintiff claimed that the defendant, a police officer, acted negligently in initiating a police pursuit of a vehicle in which the decedent was a passenger. The decedent was a backseat passenger in Eric Ramirez's car at the time of the accident. Ramirez was driving his car on Route 67 when he chose to activate a set of lights which were attached to the bottom of his car. The use of such lights is illegal in Connecticut. Officer Renaldi was patrolling the area when he noticed Ramirez's car. Renaldi then began pursuing the vehicle. Ramirez accelerated to a high rate of speed and illegally passed other vehicles on the road. Renaldi activated his lights and siren in an attempt to stop Ramirez's reckless driving and notified dispatch of his engagement in the pursuit. Shortly thereafter, Ramirez pulled off Route 67 onto Old State Road causing Renaldi to lose sight of the vehicle. While driving on Old State Road, Ramirez struck an embankment on the side of the road which caused his vehicle to flip and land on its roof. The decedent, who was fifteen years old at the time, was killed in the crash while Ramirez and his additional passenger both survived. The pursuit lasted less than two minutes.

The plaintiff brought this action, claiming that Renaldi and a fellow officer in the car with him at the time were negligent in pursuing the vehicle. The plaintiff further claimed that Renaldi's supervisor was negligent in failing to follow department protocol regarding initiating and continuing vehicle pursuits. In response, the defendants moved for summary judgement on the ground that the plaintiff was barred from bringing this case forward under the doctrine of governmental immunity. The trial court granted the defendant's motion. The trial court reasoned

that the defendants' actions were inherently discretionary and therefore governmental immunity applies. The trial court additionally reasoned that no exceptions to governmental immunity apply in this case as the plaintiff could not be considered an identifiable person and thus the identifiable person imminent harm exception was inapplicable. The plaintiff appealed.

The issue presented to the Court in this case is whether the trial court properly found that the plaintiff's claims failed as a matter of law. The Court affirmed the decision of the trial court and found that they properly granted the defendants' motion for summary judgement. In reaching this conclusion, the Court first considered the plaintiff's claim that §14-283(d) and other applicable regulations imposed a ministerial rather than discretionary duty on police officers in vehicle pursuits. The Court found this argument unpersuasive and determined that the provision required officers to exercise discretionary judgement while deciding whether or not to pursue a fleeing vehicle. In their reasoning, the Court first noted the well-established rule that a municipal employee may be held liable for negligence in carrying out a ministerial act when they do so contrary to the prescribed manner in which they are meant to carry out the act. However, a municipal employee may not be held liable for governmental acts which are discretionary in nature. The Court further noted that "[t]here is a difference between laws that impose general duties on officials and those that mandate a particular response to specific conditions." If a municipal employee has a general duty with no policy prescribing the way in which the duty is to be carried out, then the duty must be considered discretionary.

The plaintiff argues that the defendants had a ministerial duty under General Statute §14-283(d), which states: "The provisions of this section shall not relieve the operator of an emergency vehicle from the duty to drive with due regard for the safety of all persons and property." The plaintiff argues that this statute creates a ministerial duty to drive with due regard.

The Court rejected this argument, finding that both the technical meaning and common usage of the phrase “due regard” imposes a general duty to drive with reasonable consideration. It does not, however, mandate a prescribed response to a specific situation. The Court noted that the “core distinction between the two types of duty lies not in whether the duty is mandatory, but in whether the performance of that duty will inherently require the municipal actor to exercise judgment.” An officer is mandated to drive with due care, but what constitutes due care in a given situation is based on the officer’s discretionary judgment. The Court therefore found that the trial court properly determined this duty to be discretionary rather than ministerial based on the statutory language.

The Court further noted that the Regulations of Connecticut State Agencies §§14-283a-1 through 14-283a-4 states that “[t]he decision to initiate a pursuit shall be based on the pursuing police officer’s conclusion that the immediate danger to the police officer and the public created by the pursuit is less than the immediate or potential danger to the public should the occupants of such vehicle remain at large.” In making this determination, the officer must consider several factors including weather conditions, the amount of traffic, the density of the population, the necessity of apprehension, the seriousness of the offense, as well as other additional factors. The Court found that an officer tasked with considering these factors and weighing the related risks in order to determine whether to initiate a pursuit is an inherently discretionary act, as such a decision is based entirely on the officer’s judgment. Similarly, the town pursuit policy “directs officers to weigh ‘many factors’ in determining whether to initiate a pursuit.” Again, highlighting the officer’s discretionary role in determining whether to initiate a pursuit.

The Court concluded that “§ 14-283, read together with the Uniform Statewide Pursuit Policy, set forth in §§14-283a-1 through 14-283a-4 of the Regulations of Connecticut

State Agencies, and the town's pursuit policy, imposes a discretionary rather than a ministerial duty upon police officers "to drive with due regard for the safety of all persons and property" when deciding whether to initiate the pursuit of a fleeing motorist." The Court therefore affirmed the decision of the lower court in regard to the issue of whether the defendants were acting in a discretionary capacity at the time the incident occurred.

The Court next considered the plaintiff's claim that the decedent was an identifiable person subjected to a risk of imminent harm and thus an exception to governmental immunity existed for the present case. The plaintiff argued that any person in a vehicle involved in a police pursuit is an identifiable person. The plaintiff further claimed that Renaldi had specific knowledge that the decedent was in the vehicle during the pursuit, again making him an identifiable person. The Court found this argument unpersuasive. In their reasoning, the Court first noted that the identifiable person-imminent harm exception has three well-established requirements, including: "(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 determined that the plaintiff failed to establish the second requirement.

The Court noted that in the past, they have only found one group of people which constitute identifiable persons. That group is school children attending public school during school hours. The Court has consistently found that in order for a person to be an identifiable person, they must be legally compelled to be in the place where the injury occurred. Here, the decedent was not legally compelled to be in the back of Ramirez' car and therefore cannot be considered an identifiable person.

The Court next considered the plaintiff's alternative theory that "because §14-283 (d) requires officers to 'drive with due regard for the safety of all persons and property, the decedent belonged to a foreseeable class of identifiable persons.'" The Court again found

this argument unpersuasive. The Court again reasoned that the paramount issue in determining whether a party is an identifiable person is whether that person was legally compelled to be there. The Court reasoned that it is undisputed that the officer owed a duty to drive with due regard for the safety of all persons and property. However, the decedent cannot be considered a member of a foreseeable class of victims merely because they belong to a group to whom the officer owed a duty. The Court noted that “if we were to agree with the plaintiff, the identifiable victim-imminent harm exception would apply to every police pursuit, and the exception would swallow the rule.” Similarly, the Court determined that because during a vehicle pursuit, there will necessarily always be at least one person whose presence the officer is aware of, namely the driver of the vehicle, allowing the identifiable victim rule to apply to parties in the vehicle would again lead to the exception swallowing the rule.

The Supreme Court ultimately determined that the trial court acted properly in reaching their determination and affirmed their judgement.