

*Barry Graham v. Commissioner of Transportation*

The plaintiff in this case sought damages from the Commissioner of Transportation for personal injuries the plaintiff sustained in a motor vehicle accident. The plaintiff alleged that the accident occurred as a result of untreated black ice on an interstate bridge. The plaintiff contends that in the morning on the date the accident occurred, employees of the commissioner's department became aware of dangerous conditions caused by black ice on the surface of the Interstate 95 bridge. Later that morning, the dangerous conditions of the bridge caused the plaintiff to get into a car accident and cause his subsequent injuries. The plaintiff based his claims on statute §13a-144 which stipulates that "[a]ny person injured . . . through the neglect or default of the state or any of its employees by means of any defective highway, bridge or sidewalk which it is the duty of the Commissioner of Transportation to keep in repair . . . may bring a civil action to recover damages sustained thereby against the commissioner in the Superior Court." The plaintiff claimed the defendant had failed to treat the ice, warn motorists, or close the bridge and therefore had acted negligently pursuant to §13a-144.

The defendants filed for summary judgement which the trial court granted, concluding that the defendant's response time was reasonable as a matter of law. The plaintiff appealed their case to the Appellate Court claiming there were genuine issues of material fact. The Appellate Court found in favor of the plaintiff, concluding there were genuine issues of material fact in this case, and therefore, summary judgement was improper. The Appellate Court based their finding on the decision in the precedent case *Lamb v. Burns*. In *Lamb* the court held §13a-144 "unambiguously waives sovereign immunity." The Appellate Court determined that the exception to sovereign immunity established in §13a-144 could potentially extend to the police officers' failure to close the bridge. The Appellate Court found that this potential exception to

sovereign immunity constituted a genuine issue of material fact sufficient to require a determination by a fact finder.

The issue presented to the Supreme Court in this case is, “whether the waiver of sovereign immunity under General Statutes §13a-144, the state’s highway defect statute, extends to a claim that the state police failed to close a bridge before a crew from the Department of Transportation could arrive to address an icy surface on that bridge.” The Court determine that the waiver of sovereign immunity found in §13a-144 applies only to those employed by the commissioner or to other state employees “but only to the extent that they are performing duties related to highway maintenance and . . . a relationship exists between the commissioner and the state employee such that the commissioner can be found to have breached his statutory duty to keep the highways, bridges, or sidewalks in repair.” In the present case, the Court found that no such relationship existed between the commissioner and the state police and therefore sovereign immunity cannot be waived.

The Court found that the defendant’s main argument to be addressed by the Court is that the commissioner did not breach his statutory duty to remedy the ice patch because “although his employees responded promptly . . . they could not have reached the bridge with the necessary equipment and materials to treat its icy surface and make it reasonably safe for travel before the plaintiff’s accident occurred.” The evidence shows that upon being notified of the condition of the bridge by state police, the commissioner’s department implemented its standard protocol which involved sending out a crew to salt the bridge. In order to salt the bridge, the crew had to first travel to their equipment garage, start and load their trucks, then drive to the given location.

The department was notified of the dangerous conditions of the bridge at 5:40 a.m., the crew leader in charge of salting the bridge was notified at 5:51 a.m., by the time they arrived at

the bridge after retrieving and preparing their equipment, the plaintiff's accident had already occurred. In addition to sending a crew to salt the bridge, the commissioner also attempted to warn motorists of the dangerous conditions of the bridge through electronic signboards which read "Slippery Conditions. Use Caution." The defendant argued that the plaintiff had to drive past the signs in order to enter the bridge.

The Court applied *Lamb* to the present case and concluded that there was insufficient evidence to "establish the requisite relationship between the commissioner and the state police." The Court found that, although sovereign immunity is an important principle to prevent private litigation from interfering with the performance of the government's duties, a plaintiff "may surmount this bar against suit if . . . he can demonstrate that the legislature, either expressly or by force of a necessary implication, statutorily waived the state's sovereign immunity . . ."

In order to determine if the state statutorily waived their sovereign immunity, the Court considered the application of §13a-144 in *Lamb* wherein the Court concluded that "the waiver of sovereign immunity set forth in §13a-144 extended not only to the actions of department employees, but also to the actions of any state employees while engaged in highway maintenance" so long as the employees were engaged in highway maintenance and there was a sufficient relationship between the state employee and the commissioner.

The Court ultimately held that *Lamb* should be upheld, and the plaintiff's claim should be dismissed. The Court reasoned that it had been over thirty years since *Lamb* was decided and in those years the legislature had made no indication of the Court's misinterpretation of §13a-144, thus suggesting that §13a-144 was intended to extend to state employees who perform highway maintenance duties and who fulfill the relationship requirements set forth in *Lamb*. The Court found that in the present case there was no evidence of the relationship between the state police

and the commissioner sufficient to “establish a connection between the negligent actions of the state employee in remedying the highway defect and the commissioner’s statutory duty.”

Additionally, the plaintiff provided no evidence that it was that state officers’ duty or usual procedure to report road defects to the commissioner, as required by the ruling in *Lamb*. The facts of the present case establish, at most, that occasionally state police officers call the commissioner’s department but there is no evidence to suggest that it was their duty or protocol to do so. The Court determined lastly that because there is no *Lamb* type relationship between the commissioner and the state police, the commissioner cannot be held liable for the state polices’ failure to close the bridge. The Court therefore reversed the decision of the Appellate Court.