Kusy v. City of Norwich (AC 41721)

Brief Summary: Plaintiff was injured when he slipped and fell on ice on the delivery ramp of the defendant school. Court held that summary judgment was proper because snow and ice removal are discretionary in absence of a directive prescribing the time and manner in which it is to be done, thus, the plaintiffs claim is barred General Statutes § 52-557n (a) (2) (B). Second, that the identifiable victim doctrine does not apply to one on municipal property because his or her employer is required by contract to perform a service in that location.

The plaintiff, Andrzej Kusy, was delivering milk for his employer, Guida's Dairy, at Norwich school. When he arrived, he noticed ice on the delivery ramp and notified the school's kitchen supervisor, who contacted the maintenance person for the school. However, his boss ordered him to complete the delivery. Shortly after the plaintiff slipped and fell, suffering injuries—no one removed the snow and ice. The plaintiff filed negligence actions against the city of Norwich, its board of education and certain employees alleging that the school's custodial staff had a ministerial duty to clear snow and ice from the ramp and failed to do so. Alternatively, if it was not a ministerial duty the plaintiff alleged that he was a member of a foreseeable class of identifiable victims. The trial court granted summary judgment in favor of the defendant concluding that the defendants were immune from liability because General Statutes § 52-557n (a) (2) (B) prevents a municipality from being held liable for the discretionary acts of its employees, even if the acts are performed negligently. Secondly, that the plaintiff was not an identifiable victim because he was not a child attending a public school during school hours. The issues on appeal were (1) whether the custodians had a ministerial duty to remove ice and snow from the delivery ramp; and (2) whether the identifiable victim exception to discretionary governmental immunity applies to delivery driver's making a delivery at a public

school. The court held that snow and ice removal was a discretionary act and the exception does not apply to delivery drivers making a delivery at a public school, thus, affirming the judgment of the trial court.

General Statutes § 52-557n (a) (2) (B) shields a municipality from liability for damages to persons or property caused by negligent acts or omissions that require the exercise of judgment or discretion. However, a municipality may be liable for acts that are ministerial. Ordinarily to demonstrate the existence of a ministerial duty, a plaintiff must point to a statute, city charter provision, ordinance, regulation, rule, policy, or other directive that, by its clear language, compels a municipal employee to act in a prescribed manner. Furthermore, evidence of a policy stating general responsibilities without provisions that mandate the time or way the responsibilities are to be done is insufficient to show a ministerial duty.

First, the court cited *Beach v. Regional School District Number 13* where it held that in the absence of a directive prescribing the manner in which an official is to remove snow and ice, such an act is discretionary in nature. Second, the court distinguished *Koloniak v. Board of Education* because in this case the plaintiff nor defendants produced a statute, ordinance, policy or other directive setting forth a clear snow and ice removal policy. The plaintiff relied on Judge Ecker's reasoning in a trial court decision stating that ice removal is ministerial because when it snows common sense and routine experience tell us that every landowner must remove snow and ice from any sidewalk likely to be used by a pedestrian. The court rejected this argument for two reasons. First, in *Ventura v. East Haven*, the Supreme Court of Connecticut stated that there must be evidence of a directive that compels a municipal employee to act in a prescribed manner, without the exercise of judgment or discretion. Thus, the standard for a ministerial duty is more demanding than a "common sense, routine experience" standard stated by Judge Ecker. Second,

snow and ice removal is inherently discretionary as it requires one to exercise in judgment in deciding how much they will allow to accumulate before it must be removed, whether to use salt, sand or both, how much of either etc. Thus, in absence of a directive strictly imposing the time and manner removal is to be done, snow and ice removal is discretionary. Additionally, the plaintiff conceded that the defendants do not have a written snow and ice removal policy. Consequently, the court held that the defendants were immune from liability because there was no ministerial duty to remove the snow and ice from the delivery ramp.

If the conduct is discretionary a municipality can still be liable under the identifiable person-imminent harm exception, which has three requirements: (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. However, the only identifiable class of foreseeable victims that the courts in Connecticut have recognized are school children attending public schools during school hours. The Supreme Court of Connecticut stated in *St. Pierre v. Plainfield* that a party is an identifiable victim when they are compelled to be somewhere. The primary reason school children are designated as identifiable victims is because they were intended to be beneficiaries of particular duties of care imposed on school officials and they are legally compelled to attend school. Thus, they require special consideration in the face of dangerous conditions as their parents are legally required to relinquish their custody to school officials during school hours.

The court declined to extend the identifiable victim classification to a plaintiff who is present on municipal property because his or her employer is required by contract to perform a service in that location for four reasons. First, unlike school children the plaintiff was not required by law to be on school grounds. Second, Guida's Dairy could still meet its contractual

obligation by waiting or returning later to deliver the milk after the school has an opportunity to clear the delivery ramps. Third, Connecticut courts have not treated any other classes of individuals present on school grounds during school hours as identifiable victims when there is an aspect of voluntariness to their presence. The court cited *Durrant v. Board of* Education which held that a mother who slipped on a puddle and sustained injuries while picking up her daughter from after school daycare at the city's elementary school is not identifiable victim and *Prescott v. Meriden* which held that a parent injured on the bleachers during their son's high school football game is not identifiable victim. Fourth, even school children that are on school property as part of a voluntary activity are not classified as identifiable victims. This was demonstrated in *Coe v. Board of Education* which held that a student injured at a school dance after school hours that she voluntarily attended, was not an identifiable victim and *Costa v. Board of Education* which held that a student injured during a voluntary senior class picnic was not an identifiable victim. Therefore, the court concluded that the trial court properly determined that the defendants were entitled to judgment as a matter of law.

The key takeaway from this case is that it is extremely difficult to recover personal injury damages from the government in absence of a policy that compels a municipal employee to act in a prescribed manner. Furthermore, this case demonstrated that unless one is forced to be on municipal property it will not expand the identifiable victim exception to them. Consequently, people who are injured on municipal property should be aware of how difficult it is to overcome discretional immunity before undergoing the extensive costs and efforts of litigating against the government.