State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711 or gspencer@nycourts.gov.

To be argued Thursday, October 20, 2022

No. 90 Maldovan v County of Erie

Laura Cummings, a 23-year-old mentally disabled woman, was killed by her mother in the Erie County Village of North Collins in January 2010. William D. Maldovan, as administrator of her estate, brought this action against Erie County and the County Sheriff to recover damages for her pain and suffering and her wrongful death, alleging they had been negligent in responding to complaints of possible abuse in the months leading up to her death. Her brother Richard Cummings raised concerns about physical abuse with a town justice, who relayed his report to Child Protective Services (CPS) in June 2009. A CPS caseworker went to the Cummings home and asked Laura about a cut on her arm. Laura told her she sustained the cut in a fall on the porch steps. The town justice contacted Adult Protective Services (APS) in September 2009 after Richard Cummings asked him to report bruising on Laura's face. Two APS caseworkers went to the home, where Laura told them she sustained the bruises in a fall on the porch steps. Both agencies marked the reports "unfounded" and closed the cases. In November 2009, two Erie County sheriff's deputies encountered Laura, who had run away from home. She did not answer their questions and they returned her to the custody of her mother. She died two months later. Laura's mother, Eva Cummings, was subsequently convicted of murder and Laura's half-brother, Luke Wright, was convicted of rape and sexual assault committed in the months before her death.

Supreme Court denied, without opinion, motions by the County and Sheriff for summary judgment dismissing the estate's complaints.

The Appellate Division, Fourth Department reversed and dismissed the suit, saying the County was entitled to summary judgment "on the ground that no special duty exists as a matter of law" because "the fourth element, justifiable reliance, cannot be met in this case." It said Richard Cummings could not have justifiably relied on the County to protect his sister because, "inasmuch as he was aware that the agencies had closed their investigations, he could not have relied upon any 'affirmative undertaking' by them." Alternatively, the court found the County was entitled to governmental function immunity because "the actions of the CPS and APS caseworkers 'resulted from discretionary decision-making'.... While the caseworkers may have been negligent, they were exercising their discretion throughout the investigations." As a third ground for dismissal, it said "a cause of action for negligent investigation is not recognized in New York." It said the Sheriff was entitled to governmental function immunity because claims he was negligent in hiring and training the deputies "all involved conduct requiring the exercise of the Sheriff's discretion and judgment." It also said such claims are "akin to a claim for negligent investigation."

Maldovan argues, in part, that the County and Sheriff are not entitled to government function immunity because – through the actions of CPS, APS and the deputies – they violated their own policies in investigating reports of Laura's abuse. He says a special relationship between the County and Laura existed based on Social Services Law Article 9-B, which created APS and imposed a duty on counties to protect adults who are unable to protect themselves, satisfying the justifiable reliance element. And he says "New York recognizes a cause of action for negligence, regardless of whether the negligent acts involved investigative activity."

For appellant Maldovan (Cummings estate): John T. Loss, Buffalo (716) 852-5533
For respondents Erie County and Sheriff: Robert P. Goodwin, Buffalo (716) 856-1636

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To be argued Thursday, October 20, 2022

No. 91 Howell v City of New York

Dora Howell brought this personal injury action against New York City and two of its police officers to recover damages for injuries she sustained when Andre Gaskin threw her out of the third-story window of his Brooklyn apartment in November 2008. She had an order of protection against Gaskin, who was her former boyfriend and the father of her child. They no longer had a romantic relationship, but continued to live in the same building with Howell's apartment on the second floor, directly beneath Gaskin's. In the days leading up to the incident, Howell called the police three times in a week to report that Gaskin was violating the stay-away order, and the same two officers responded each time. After her first call, the officers assured her that Gaskin would be "removed from the premises" and "won't be returning," and that he would stay with his uncle. Howell saw the officers wait outside with Gaskin until his uncle picked him up. She called a second time when she returned home and heard Gaskin inside her apartment. The officers again told her they would "remove him from the premises" and "he would not be coming back." She saw them escort him outside the building and watched him walk away. She made her third call when Gaskin began banging on her apartment door with a pipe. This time, the officers asked Howell why she did not move or stay somewhere else and they said they would arrest her if she called them again. They ordered Gaskin to return to his own apartment and they assured Howell that she would "be okay." On the day of the incident, Howell answered one of Gaskin's repeated phone calls and told him she was at a friend's house nearby. Gaskin showed up, grabbed her arm, and walked her back to their building. Once inside, he dragged her up to his apartment and pushed her out of his living room window. In her lawsuit, Howell alleged that the officers negligently failed to protect her and that the City was liable for negligent hiring, training and supervision of the officers. The defendants argued they were not liable because they owed no special duty to Howell.

Supreme Court denied, as premature, the defendants' motion for summary judgment dismissing the lawsuit.

The Appellate Division, Second Department reversed and dismissed the suit, saying the defendants established that no special relationship existed between them and Howell. It said, "Specifically, the defendants established, prima facie, that the officers made no promise to arrest Gaskin, and [Howell] could not justifiably rely on vague assurances by the officers that she would 'be okay' and that Gaskin would not be returning to the building where both he and [she] lived.... [Howell's] alternate contention that the defendants violated a statutory duty owed to her is without merit...."

Howell contends the evidence raised questions of fact about the officers' assurances and her justifiable reliance on those assurances. "In particular, Defendants instructed Plaintiff not to call the police again or she would be arrested. Plaintiff relied on, and acted in light of, those instructions when she met and engaged with Gaskin on the day that he assaulted her for the final time. This was the first time that she did not telephone the police for protection and the first time that she engaged with Gaskin directly. Why? Because she reasonably believed that the police would not only fail to protect her, but would arrest her rather than Gaskin." She also argues the defendants violated a statutory duty under the Family Protection and Domestic Violence Intervention Act of 1994, when they failed to arrest Gaskin after her first three calls to the police. The statute mandates that the police arrest a person who violates an order of protection (CPL 140.10[4][b]), and Howell argues the statute "implies a private right of action" where no arrest is made.

For appellant Howell: Gary N. Rawlins, White Plains (212) 926-0050
For respondent City: Assistant Corporation Counsel Devin Slack (212) 356-0851

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To be argued Thursday, October 20, 2022

No. 74 People v Ronald K. Johnson

Emergency medical personnel were called to assistant a heavily intoxicated 14-year-old girl who was found nearly unconscious and sitting in a pool of vomit at a Rochester bus stop in October 2006. At a hospital, she said she had virtually no memory of events after she began drinking with an acquaintance. A sexual assault examination recovered semen from her underwear and swabs of her body, but due to backlogs at the Monroe County Crime Lab, the DNA evidence was not analyzed until January 2010. The following month, the DNA profile was entered into the CODIS database and matched to Ronald K. Johnson, who had not been a suspect in the case. Due in part to difficulties investigators encountered in locating the victim through her mother and through school and motor vehicle records, Johnson was not indicted until June 2014. He was charged with first-degree rape, for allegedly having sexual intercourse with a person who was "incapable of consent by reason of of being physically helpless," and with second-degree rape, for intercourse with a person under the age of 15.

Johnson moved to dismiss the charges, saying the nearly eight-year delay between the crime and the indictment violated his due process right to prompt prosecution. County Court denied the motion based on the five-factor test in People v Taranovich (37 NY2d 442) for assessing preindictment delay: (1) extent of the delay; (2) reason for the delay; (3) nature of the underlying charge; (4) whether there was an extended period of pretrial incarceration; (5) whether there is any indication the defense was impaired by the delay. After his motion was denied, Johnson pled guilty to second-degree rape and was sentenced to 2½ to 5 years in prison.

The Appellate Division, Fourth Department affirmed. After assuming, without deciding, that the prosecution failed to establish good cause for the delay, it found the first three Taranovich factors favored Johnson. However, the court ruled his rights were not violated "because his defense to the charge of which he was convicted was not prejudiced in any conceivable respect by the preindictment delay.... Specifically, although defendant correctly notes that the extensive preindictment delay undoubtedly compromised his ability to contemporaneously investigate the facts and circumstances of the underlying incident, he concedes that no amount of contemporaneous investigation could have revealed a defense to the strict-liability crime of which he was ultimately convicted, namely, rape in the second degree" based on the victim's age. It said, "Whether and to what extent the preindictment delay impaired defendant's ability to defend himself on the separate count of rape in the first degree is irrelevant to our analysis because defendant was not convicted of that count."

Johnson argues the Appellate Division erred by limiting its prejudice analysis to the second-degree rape count because he was also facing the more serious first-degree rape charge when he made his motion to dismiss, the "Appellate Division acknowledged that he was prejudiced, by the delay at least as to the highest offense charged," and he accepted the plea bargain only after the trial court denied his motion. He says that had County Court dismissed the first-degree charge, he "would not have had remotely the same incentive – avoiding the risk of conviction after trial of a more serious offense – to accept the People's offer to plead guilty to rape in the second degree. Thus, the impairment of [his] defense on one count was inextricably intertwined with the other...."

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For respondent: Monroe County Assistant District Attorney Kaylan C. Porter (585) 753-4674