
LIABILITY - DELAWARE

McCaffrey v. City of Wilmington

Supreme Court of Delaware - February 4, 2016 - A.3d - 2016 WL 446946

Driver who was involved in collision with off-duty police offer who had run a red light, and subsequently made inappropriate sexual advances towards driver, brought action against city, officer, and police chief, alleging claims for negligence, recklessness, civil rights violations, negligent hiring, retention, and supervision, assault and battery, and intentional infliction of emotional distress. In a series of opinions, the Superior Court dismissed all claims against defendants other than the officer, and entered a final judgment excluding the officer. Driver appealed.

The Supreme Court of Delaware held that:

- Driver failed to allege in her second amended complaint that officer was acting as an agent, servant, or employee of the police department and the city, that officer acted within the scope of his employment, or that officer's negligence and recklessness were imputed to the police department and city, as required to state a claim against the city for any conduct other than car accident;
- Police chief was not wantonly negligent when he approved the hiring of police officer for purposes of exception to Tort Claims Act immunity;
- Police chief was not wantonly negligent in training and retaining police officer for purposes of exception to Tort Claims Act immunity; and
- Police officer's police identification, badge, gun, and magazine, did not fall under the Tort Claims Act's immunity exclusion for "other machinery or equipment," such that city could be found liable for officer's conduct.

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