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Thompson v. City of Albuquerque

Supreme Court of New Mexico - June 19, 2017 - P.3d - 2017 WL 2628216

Minor children brought loss of consortium action against city, police chief, and police officer who shot and killed children's father.

The District Court dismissed the action for failure to state a claim based on sovereign immunity. Children appealed. The Court of Appeals reversed. City, chief, and officer petitioned for certiorari.

The Supreme Court of New Mexico held that:

- Immunity is waived for claims of loss of consortium damages deriving from enumerated tort under the Tort Claims Act (TCA);
- Children sufficiently pled underlying battery claim, as required to state claim for loss of consortium damages; and
- Children's claim for loss of consortium damages was independent of battery claim.

Sovereign immunity is waived for claims of loss of consortium damages deriving from an enumerated tort under the law enforcement officers provision of the Tort Claims Act (TCA).

Children sufficiently pled underlying battery claim, as required to state claim for loss of consortium damages against city, police chief, and police officer based on shooting death of father, even though children did not assert battery cause of action, where children alleged that city, chief, and officer caused deadly shooting of father, which resulted in children losing their relationship with their father.

Children's claim for loss of consortium damages, arising out of shooting death of father allegedly caused by city, police chief, and police officer, was an independent claim, rather than a bystander claim, and thus qualified for waiver of sovereign immunity under Tort Claims Act (TCA), despite contention that father was only individual who suffered direct injury. Children alleged direct injury to their relational interest with their father as result of battery, and children were not merely indirect or incidental victims.