

Bond Case Briefs

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Kellogg v. City of Albia

Supreme Court of Iowa - March 9, 2018 - N.W.2d - 2018 WL 1224514

Homeowner brought action against city, alleging that reoccurring flooding in the basement of her home due to the discharge of rainwater from storm sewer constituted a nuisance and that city was negligent in installing storm sewer pipe.

The District Court granted city's motion for summary judgment. Homeowner appealed. The Court of Appeals reversed. City applied for and was granted further review.

The Supreme Court of Iowa held that:

- City had to offer evidence that conduct immunized under statute was the conduct supporting nuisance claim, and
- City offered evidence that conduct immunized under statute was the conduct supporting nuisance claim.

When a claim against a municipality rests upon negligence in the maintenance of a utility, rather than negligence in the failure to upgrade a utility, neither the literal terms nor the purposes of the statutory immunity for municipalities for tort claims based on claims of negligent design and construction of public improvements and facilities or failure to upgrade public improvements and facilities are applicable.

If a plaintiff can only establish a nuisance claim against a municipality by evidence of immune conduct, the municipality need only raise statute granting immunity to municipalities for tort claims based on claims of negligent design and construction of public improvements and facilities or failure to upgrade public improvements and facilities as a defense; yet, when a plaintiff is not required to prove a claim by evidence of immune conduct, the municipality can still support an immunity defense by offering evidence that the conduct responsible for the condition supporting the nuisance claim is in fact conduct immunized under the statute.

City had to offer evidence that conduct immunized under statute granting immunity to municipalities for tort claims based on claims of negligent design and construction of public improvements and facilities or failure to upgrade public improvements and facilities was the conduct supporting homeowner's nuisance claim against city based on flooding of her basement due to the discharge of rainwater from storm sewer, where homeowner made no claim that city engaged in conduct outside statutory framework, such as a failure to properly maintain and repair the sewer pipe.

City offered evidence that conduct immunized under statute granting immunity to municipalities for tort claims based on claims of negligent design and construction of public improvements and facilities or failure to upgrade public improvements and facilities was the conduct supporting homeowner's nuisance claim against it based on flooding in the basement of her home due to the discharge of rainwater from storm sewer, as required to support city's immunity defense.

