
IMMUNITY - MISSISSIPPI

Bailey v. City of Pearl

Court of Appeals of Mississippi - July 30, 2019 - So.3d - 2019 WL 3423383

Spouse and heirs of passenger who was killed when vehicle collided with open city park gate brought wrongful death action against city.

The Circuit Court granted city's motion to dismiss on the ground of governmental immunity. Passenger's spouse appealed.

The Court of Appeals held that:

- City's decisions related to design and construction of park were discretionary functions to which immunity applied;
- City's adoption of safety protocols for public's use of park was discretionary function to which immunity applied; but
- City's allegedly negligent maintenance of park was not a discretionary function to which immunity applied.

City's decisions relating to design and construction of park, including provision of safe ingress and egress to park, selection of design and installation of park gate, acquisition of proper equipment to secure gate, and provision of adequate lighting involved public policy considerations, and, thus, city was immune from claims that city's alleged negligence in construction and design of park caused death of passenger when vehicle collided with gate.

City's adoption of safety protocols for public's use of park was discretionary function, and, thus, city was immune from claim that allegedly inadequate safety protocols caused death of passenger whose vehicle collided with open gate; adoption of safety protocols was an exercise of city's rule-making authority.

City was not immune from claims that its alleged failure to secure park gate, have an apparatus that would secure the gate, or mark and warn of dangerous condition presented by unsecured gate caused death of passenger whose vehicle collided with open gate; city's performance of park maintenance was not a discretionary function related to or flowing from a social, economic, or political policy.

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