

Bond Case Briefs

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Williams v. C-U-Out Bail Bonds, LLC

Supreme Court of Kansas - October 11, 2019 - P.3d - 2019 WL 5090403

City resident and occupants of resident's home filed amended petition against city, on theory of respondeat superior, based on police officers' negligent failure to protect plaintiffs in response to resident's 911 call that armed bail bondsmen were attempting to forcibly enter resident's home.

The District Court granted city's motion to dismiss for failure to state claim. Plaintiffs appealed. The Court of Appeals affirmed. Review was allowed.

The Supreme Court held that:

- Allegations that bondsmen intended to forcibly enter resident's house "without legal authority" and that police officers who had responded to plaintiff's call left scene knowing that bondsmen "were attempting to enter the house illegally" were not bare legal conclusions, for purposes of city's motion to dismiss for failure to state claim;
- Plaintiffs adequately alleged that police officers undertook to render services to resident and occupants of resident's home, as would trigger duty of care, under exception to public duty doctrine; and
- Plaintiffs adequately alleged that officers' actions fell outside scope of "discretionary function" exception to waiver of governmental immunity, under Kansas Tort Claims Act (TCA).

Allegations in petition by city resident and occupants of resident's home that armed bail bondsmen intended to forcibly enter resident's house "without legal authority" and that police officers who had responded to resident's call left scene knowing that bondsmen "were attempting to enter the house illegally" were not bare legal conclusions to be disregarded, on city's motion to dismiss for failure to state claim resident's petition on claims for negligent failure to protect; rather, issue whether bondsmen's entry into home was illegal raised questions of fact, subject to later proof regarding source of bondsmen's authority to enter home, whether by common law privilege, by statute, or by contract between bail bond company and principal on whose behalf bond was posted.

City resident and occupants of resident's home adequately alleged that police officers undertook to render services to them when they responded to resident's call concerning attempts by armed bail bondsmen to forcibly enter resident's home to search for principal under bond, as would trigger duty of care owed by officers, and by city under theory of respondeat superior, to resident and occupants in rendering of such services, under exception to public duty doctrine, in action against city for negligent failure to protect; plaintiffs alleged that, after arriving at resident's home, officers remained at scene and observed bail bondsmen's actions, and that officers spoke to one of bondsmen, thereby at least initiating an investigation into resident's complaint.

City resident and occupants of resident's home adequately alleged that police officers' actions in response to resident's 911 call that armed bail bondsmen were attempting to forcibly enter resident's home to search for principal under bail bond fell outside scope of "discretionary function" exception to waiver of governmental immunity, under Kansas Tort Claims Act (KTCA), in action

against city for negligent failure to protect, on theory of respondeat superior; plaintiffs alleged that officers remained on scene and even spoke with one of bondsmen, thus at least initiating investigation, but then left scene without having taken any action to prevent or protect plaintiffs from bondsmen's forcible entry into home and resulting harm.