

Bond Case Briefs

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Massenburg v. City of Petersburg

Supreme Court of Virginia - December 12, 2019 - S.E.2d - 2019 WL 6765891

Estate of homeowner, who died from smoke inhalation and thermal injuries before firefighters could establish a sufficient water supply and remove him from the burning residence, brought wrongful death action against city, alleging that the closest fire hydrant was effectively inoperable because it was not receiving an adequate or sufficient sustained flow of water.

The Petersburg Circuit Court granted city's demurrer and plea in bar and dismissed the complaint with prejudice, and homeowner's estate appealed.

The Supreme Court held that:

- Trial court did not err in deciding case on the pleadings, despite jury demand by estate of homeowner; and
- City's provision and maintenance of fire hydrants was governmental function, so as to be protected by sovereign immunity.

In wrongful death action brought against city by homeowner's estate, city's decision not to contest allegations in complaint, for purposes of city's plea in bar, meant that the facts were not disputed, and thus, trial court did not err in deciding case on the pleadings, despite jury demand by estate of homeowner, who died from smoke inhalation and thermal injuries before firefighters could establish sufficient water supply and remove him from the burning residence.

City's provision and maintenance of fire hydrants was governmental function, so as to be protected by sovereign immunity, and to extent that this governmental function coincided with city's proprietary functions, the governmental function was the overriding factor, and thus, sovereign immunity barred wrongful death action brought against city by estate of homeowner, who died from smoke inhalation and thermal injuries before firefighters could establish sufficient water supply and remove him from the burning residence; fire hydrant existed to facilitate the firefighting function of municipality that installed it, and city installed fire hydrants to provide for general safety and welfare of the citizenry.