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Paulos v. FCH1, LLC

Supreme Court of Nevada - January 30, 2020 - P.3d - 2020 WL 497362 - 136 Nev. Adv. Op. 2

Arrestee brought action against police department, officer, casino owner, and casino security guard, asserting claims negligence, false imprisonment, and negligent hiring, training, and supervision. Defendants moved to dismiss, or in the alternative, for summary judgment.

The District Court granted summary judgment to defendants. Arrestee appealed.

The Supreme Court held that:

- As a matter of first impression, federal court decision, addressing only one of the qualified immunity prongs, did not have preclusive effect;
- Police department was entitled to discretionary-act immunity; and
- Casino owner and security guard were not entitled to summary judgment simply based on their joinder to officer's and police department's motion for summary judgment.

Federal court's decision in arrestee's removed action asserting claims for excessive force under § 1983 and negligence against police officer, concluding that police officer was entitled to qualified immunity because he did not violate a clearly established constitutional right by leaving arrestee on hot asphalt for over two minutes while attempting to arrest her, did not have issue preclusive effect for arrestee's state negligence claim alleging that officer acted unreasonably, since federal court only resolved the clearly established prong of qualified immunity and did not resolve whether officer's conduct was unreasonable, such that it amounted to excessive force, for first prong of qualified immunity test.

City police department was entitled to discretionary-act immunity from arrestee's negligent hiring, training, and supervision claims arising from officer's alleged actions in leaving her on hot asphalt for over two minutes while attempting to arrest her, which resulted in her suffering second- and third-degree burns, as police department's decision to hire and train the officer involved an element of choice, and decision on whether to train officers to suspects off hot asphalt during summer months when reasonably safe to do was subject to policy analysis.

Casino owner and casino security guard were not entitled to summary judgment on arrestee's claims of negligence and false imprisonment, arising from security guard's assistance in her arrest, which resulted in arrestee suffering from second- and third-degree burns from being left on hot asphalt for over two minutes during the summer, simply based on their joinder to officer's and police department's motion for summary judgment on § 1983 and negligence claims, since summary judgment for officer and police department was grounded in qualified immunity and governmental immunity, and casino owner and security guard were non-state actors, and further, grant of summary judgment was silent as to any findings of fact or conclusions of law on negligence and false imprisonment issues

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