

Bond Case Briefs

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GOVERNMENTAL IMMUNITY - CONNECTICUT

Haynes v. City of Middletown

Appellate Court of Connecticut - May 21, 2013 - A.3d - 142 Conn.App. 720

Student's mother, on her own behalf and as student's parent and next friend, brought action against city, seeking damages for injuries student had allegedly sustained when classmate at high school pushed him into broken locker. After jury returned verdict in favor of plaintiffs, the superior court, granted city's motion to set aside verdict and rendered judgment in favor of city on governmental immunity grounds. Plaintiffs appealed.

On remand from the Supreme Court of Connecticut, the Appellate Court held that:

- City did not waive special defense of governmental immunity by failing to request a jury instruction on the special defense;
- Student was a member of a class of foreseeable victims for purposes of the "identifiable person, imminent harm" exception to governmental immunity; and
- Evidence of imminent harm was insufficient for student and mother to prevail on the exception to governmental immunity for discretionary acts.

There are three exceptions to discretionary act governmental immunity: 1) liability may be imposed for a discretionary act when the alleged conduct involves malice, wantonness or intent to injure; 2) liability may be imposed for a discretionary act when a statute provides for a cause of action against a municipality or municipal official for failure to enforce certain laws; and 3) liability may be imposed when the circumstances make it apparent to the public officer that his or her failure to act would be likely to subject an identifiable person to imminent harm.

The "identifiable person, imminent harm" exception to governmental immunity is three-pronged, and requires: 1) an imminent harm; 2) an identifiable victim; and 3) a public official to whom it is apparent that his or her conduct is likely to subject that victim to that harm. If the plaintiffs fail to establish any one of the three prongs, this failure will be fatal to their claim that they come within the imminent harm exception.