GOVERNMENTAL IMMUNITY - NEW YORK

Applewhite v. Accuhealth, Inc.

Court of Appeals of New York - June 25, 2013 - N.E.2d - 2013 N.Y. Slip Op. 04727

Patient who suffered anaphylactic shock caused by allergic reaction to prescribed medication brought action for personal injuries sustained as result of allegedly negligent treatment rendered by city's emergency medical technicians (EMTs).

The Court of Appeals held that:

- Provision of 911 referrals and emergency medical service responses was governmental function, and
- Fact issues regarding existence of special duty precluded summary judgment on patient's negligence claim against city.

For purposes of a negligence claim against a municipality, a government entity performs a purely proprietary role when its activities essentially substitute for or supplement traditionally private enterprises; in contrast, a municipality will be deemed to have been engaged in a governmental function when its acts are undertaken for the protection and safety of the public pursuant to the general police powers. For purposes of a negligence claim against a municipality, the distinction between governmental functions and private, proprietary conduct is that the government will be subject to ordinary tort liability if it negligently provides services that traditionally have been supplied by the private sector.

Provision of 911 referrals and emergency medical service responses were within traditional responsibilities of municipal government, and thus were governmental, rather than proprietary, function. Services existed for protection and safety of public and not as substitute for private enterprises. Purportedly negligent EMTs were employees of city's fire department using city resources in an effort to fulfill city's obligation to answer emergency 911 dispatch and attempt to save patient's life. EMTs employed by city fire department and deployed via 911 system received training in basic life support techniques and their range of approved emergency services was limited by law.

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