

Bond Case Briefs

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LIABILITY - WASHINGTON

Washburn v. City of Federal Way

Supreme Court of Washington, En Banc - October 17, 2013 - P.3d - 2013 WL 5652733

Victim's daughters brought wrongful death action against city arising from an act of domestic violence in which victim's boyfriend stabbed victim to death within hours of service of protection order on him at girlfriend's home. Following \$1.1 million jury verdict solely in the estate's favor, the Superior Court, King County granted daughter's motion for new trial on damages. City appealed.

The Supreme Court of Washington held that:

- City preserved, for appeal, its objection to jury instruction regarding city's duty to exercise ordinary care in service and enforcement of protection orders;
- Court of Appeals erred by holding that city failed to preserve, for purposes of appeal, the denial of its motion for judgment as a matter of law;
- Harassment statutes imposed a legal duty on police department to serve the anti-harassment order; and
- Officer, who served anti-harassment order, owed girlfriend a duty to guard against the criminal conduct of boyfriend.

City owed two different duties to girlfriend, who had obtained anti-harassment order against her boyfriend, and those were a legal duty to serve the order and a duty to act reasonably in doing so, and the latter meant taking reasonable steps to guard against the possibility that boyfriend would harm girlfriend as a result of service of the order. Officer, who served order, knew or should have known that girlfriend and boyfriend were both present and that officer's service of the order might trigger boyfriend to act violently, and officer's duty to act reasonably required him to take steps to guard girlfriend against boyfriend's criminal acts.

Harassment statutes imposed a legal duty on police department to serve the anti-harassment order, and, under the legislative intent exception to public duty doctrine, if the city's discharge of that duty constituted culpable neglect, it would bear liability in tort for death of girlfriend. While statute imposed no duty to guarantee the safety of citizens, like girlfriend who obtained the order, it did impose on police officers a duty to serve anti-harassment orders, and legislature showed an intent to protect specific individuals in passing harassment statute.