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Mosey v. County of Erie

Supreme Court, Appellate Division, Fourth Department, New York - May 2, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 03041

Following the death of plaintiff's decedent, who was tortured and killed at the hands of her mother and half-brother, plaintiff filed two notices of claim with county, for wrongful death and tort, respectively, and thereafter commenced actions against county and sheriff. In action against county, plaintiff moved to strike county's answer for its discovery-related conduct. County and sheriff moved to dismiss the respective complaints against them. The Supreme Court, Erie County, entered orders denying plaintiff's motion to strike and granting county's motion to dismiss, and granting sheriff's motion to dismiss. Plaintiff appealed.

The Supreme Court, Appellate Division, held that:

- The court did not abuse its discretion in denying plaintiff's motion to strike county's answer;
- The court erred in granting defendants' dismissal motions based on governmental immunity;
- The court properly granted defendants' respective motions insofar as defendants asserted that they were not vicariously liable for conduct of deputy sheriff;
- Plaintiff's notices of claim were sufficient to notify county that the qualifications, knowledge, training, experience, abilities, and supervision of its employees involved with decedent were at issue; and
- Plaintiff was not required to file a notice of claim naming sheriff in his official capacity.

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