

Bond Case Briefs

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Gonzalez v. City of New York

Supreme Court, Appellate Division, First Department, New York - September 22, 2015 - N.Y.S.3d - 2015 WL 5552724 - 2015 N.Y. Slip Op. 06869

After city police officer fatally shot his girlfriend while off duty and then killed himself, girlfriend's estate brought wrongful death action against city, alleging that city was negligent in supervising and retaining officer. The Supreme Court, Bronx County, granted summary judgment to city. Estate appealed.

The Supreme Court, Appellate Division, held that:

- Estate sufficiently alleged a connection or nexus between girlfriend's injuries and officer's malfeasance;
- Person on whom injury was inflicted was foreseeable; but
- Fact issues existed as to breach of duty and proximate cause.

Estate of girlfriend of city police officer sufficiently alleged a connection or nexus between girlfriend's injuries and officer's malfeasance, in action against city for negligent retention and supervision, brought after officer fatally shot girlfriend while off duty and then killed himself. City was alleged to have played a part in both creating the danger, by training and arming the officer, and in rendering the public more vulnerable to the danger, by allowing the officer to retain his weapon and ammunition after it allegedly learned of his dangerous propensities, so that officer's alleged tort was made possible through use of his pistol, which he carried by authority of city.

The person on whom the injury was inflicted was foreseeable, as required for duty element of claim against city for negligent retention and supervision, brought by estate of girlfriend of city police officer after officer fatally shot girlfriend while off duty and then killed himself. City could reasonably have anticipated that its alleged negligence in failing to discipline an officer who had violent propensities would result in the officer using his gun to injure a member of his own family, including his girlfriend.

Genuine issues of material fact regarding breach of duty and proximate cause, i.e., whether city had received complaints about city police officer's alleged abusive conduct toward his girlfriend and her infant daughter, and whether the intervening intentional tort of the off-duty officer was itself a foreseeable harm that shaped the duty imposed upon city when it failed to guard against a police officer with violent propensities, precluded summary judgment for city, in action for negligent retention and supervision, brought by girlfriend's estate after officer fatally shot girlfriend while off duty and then killed himself.