

Bond Case Briefs

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Crum v. City of Corinth

Supreme Court of Mississippi - January 14, 2016 - So.3d - 2016 WL 159399

City resident filed suit against city for negligence, based on its alleged breach of duty to maintain and repair sewer system, arising out of overflow sewage backing up into her home and garage on two occasions.

The Circuit Court granted city's motion to dismiss for failure to state claim, based on determination that city was entitled to governmental immunity, and resident appealed.

The Supreme Court of Mississippi held that:

- Resident stated adequate claim against city for negligence sufficient to survive dismissal on grounds of immunity, and
- Allowing resident to amend complaint, rather than dismissal for failure to state claim, was appropriate remedy for any failure by resident to adequately allege that maintenance and repairs of sewer systems was ministerial, rather than discretionary function of city.

City resident stated adequate claim against city for negligence based on its alleged breach of duty to maintain and repair sewer systems, arising out of sewage overflow that backed up into her home and garage, as required to overcome city's defense of sovereign immunity that was based on assertion that its duty to maintain repair sewer systems was discretionary, and not ministerial. Resident alleged that backflow of sewage into home was due to fault of city in not properly maintaining sewer system and/or its manholes and/or city caused sewer system and/or manholes to flood, and state regulation imposed ministerial duty on city to maintain such systems, and thus, city could not show that there were no set of facts under which resident could survive dismissal on grounds of governmental immunity. (Per Kitchens, J., with one justice concurring in result only, one justice concurring in part and in result, and two justices concurring).

Allowing city resident to amend complaint for negligence against city, rather than dismissal for failure to state claim, was appropriate remedy for any failure by resident to allege that city's duty to maintain and repair sewer systems was ministerial, rather than discretionary, as required to defeat city's governmental immunity from suit, and that her injuries were caused by act done in course of performing such duty made ministerial by statute, ordinance, or regulation.