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Civetti v. Turner

Supreme Court of Vermont - December 30, 2022 - A.3d - 2022 WL 17998536 - 2022 VT 64

Propane truck driver brought action against town and town road commissioner, seeking to recover damages for injuries allegedly sustained in rollover accident allegedly caused by noncompliant town street.

The Superior Court granted motion to dismiss for failure to state cause of action, and driver appealed. The Supreme Court reversed and remanded. On remand, the Superior Court entered summary judgment for town and commissioner on basis of qualified immunity. Driver appealed.

The Supreme Court held that:

- Commissioner's decision whether to widen the road surface of the street was discretionary, and
- Commissioner's decision was kind of town planning decision contemplated by discretionary-function exception to waiver of sovereign immunity under the Vermont Tort Claims Act (VTCA).

Town road commissioner's decision whether to widen road surface for street on which propane truck driver got into an accident after he lost control of his vehicle, causing it to roll over and come to rest on its roof, was discretionary, rather than type of ministerial act commanded by town's road and bridge standards, as required for town and commissioner to have qualified immunity from driver's negligence claims under discretionary-function exception to waiver of sovereign immunity in the Vermont Tort Claims Act (VTCA); widening roadways was an exercise of alteration and reconstruction of preexisting infrastructure, involving weighing of considerations such as cost, safety, environmental, and aesthetic factors.

Town commissioner's decision whether to alter street to increase its width was kind of town planning decision contemplated by discretionary-function exception to waiver of sovereign immunity under the Vermont Tort Claims Act (VTCA), as required for town and commissioner to have qualified immunity from driver's negligence claims, because decision necessarily implicated considerations steeped in public policy, such as safety, cost, necessity, traffic conditions, aesthetics, and environmental impact.

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