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RIVER FRONT DEVELOPMENT, LLC, ET AL. *v.* NEW HAVEN POLICE DEPARTMENT ET AL. (AC 44732)

Bright, C. J., and Suarez and Seeley, Js.

Syllabus

The plaintiff property owners sought damages from the defendant city and the defendant police officer, C, resulting from C's negligence in initiating and maintaining a police pursuit. C, operating a police vehicle and acting within the scope of his employment, pursued another vehicle traveling at a high rate of speed, which struck a utility pole and ignited a fire that caused extensive damage to the plaintiffs' property. The trial court granted the motion for summary judgment filed by C and the city, concluding that the plaintiffs' negligence claims were barred by governmental immunity pursuant to statute ((Rev. to 2013) § 52-557n (a) (2) (B)) because C was entitled to qualified immunity for his discretionary actions and the identifiable person, imminent harm exception did not apply when the only harm alleged by the plaintiffs was to property. The trial court rendered judgment for the defendants, and the plaintiffs appealed to this court. While this appeal was pending, the Supreme Court released its decision in *Adesokan* v. *Bloomfield* (347 Conn. 416), which held that the defense of discretionary immunity provided by § 52-557n (a) (2) (B) does not apply as a matter of law to claims arising from the manner in which an emergency vehicle is operated under the privileges provided by statute (§ 14-283). The Supreme Court concluded that the duty to drive with due regard mandated by § 14-283 (d) functioned as an exception provided by law under the savings clause applicable to discretionary act immunity in § 52-557n (a) (2) (B). *Held* that, because the plaintiffs' claims in this case arose from the manner in which an emergency vehicle was operated under § 14-283, on the basis of our Supreme Court's reasoning in *Adesokan*, the trial court's judgment for the defendants must be reversed.

Argued April 10—officially released November 28, 2023

Procedural History

Action to recover damages for the defendants' alleged negligence, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the court, *Wilson*, *J.*, dismissed the action as to the named defendant et al.; thereafter, the court, *Wahla*, *J.*, granted in part the motion for summary judgment filed by the defendant city of New Haven et al. and rendered judgment thereon, from which the plaintiffs appealed to this court. *Reversed in part*; *further proceedings*.

Kyle R. Barrett, for the appellants (plaintiffs).

Proloy K. Das, with whom was *Roderick R. Williams*, deputy corporation counsel, for the appellees (defendant city of New Haven et al.).

Opinion

PER CURIAM. In this negligence action arising out of a police pursuit, the plaintiffs, River Front Development, LLC, and Ferehteh Bekhrad, appeal from the judgment rendered by the trial court in favor of the defendants Officer Michael Criscuolo of the New Haven Police Department and the city of New Haven (city) on the basis of discretionary act immunity.[1] On appeal, the plaintiffs claim that the court improperly concluded that qualified immunity barred the defendants from being held liable for the plaintiffs' alleged damages. We agree and, accordingly, reverse the judgment of the trial court with respect to the defendants.

The record reveals the following relevant facts, viewed in the light most favorable to the plaintiffs, and procedural history. On May 7, 2014, at approximately 12:06 a.m., Criscuolo was operating a police cruiser and acting within the scope of his employment when he attempted to stop a vehicle operated by Gerald Haag, Jr., which was traveling at a high rate of speed near Front Street in the city. When Haag refused to stop the vehicle, Criscuolo followed him. During the pursuit, Haag's vehicle struck a utility pole, and the collision ignited a fire that caused extensive damage to the plaintiffs' property. The plaintiffs subsequently brought the underlying action against the defendants.

In the operative third revised complaint dated October 17, 2018, the plaintiffs asserted two counts sounding in negligence against Criscuolo, alleging, among other things, that he was negligent in initiating and maintaining his pursuit of Haag's vehicle (first and second counts)[2] and that, at the time of the pursuit and collision, the plaintiffs were identifiable victims "in imminent harm as [their] property had been the site of at least one and potentially multiple motor vehicle collisions in the years leading up to May 7, 2014." The plaintiffs also asserted three counts against the city, one pursuant to General Statutes § 7-465 (third count) and two pursuant to General Statutes (Rev. to 2013) § 52-557n[3] (fourth and fifth counts). The defendants moved for summary judgment on the basis of governmental immunity for discretionary acts under § 52-557n (a) (2) (B). The trial court granted the defendants' motion for summary judgment and rendered judgment in their favor, concluding that Criscuolo was entitled to qualified immunity for his discretionary actions and that the identifiable person, imminent harm exception did not apply because the plaintiffs alleged harm only to property. On the basis of that conclusion, the court rendered judgment for the city on all three counts directed against it. This appeal followed.

On appeal, the plaintiffs claim, inter alia, that the court improperly concluded that the defendants were entitled to judgment based on discretionary act immu-

nity pursuant to § 52-557n (a) (2) (B). After the parties appeared for oral argument before this court in April, 2023, we stayed consideration of the appeal until our Supreme Court's final disposition of *Adesokan* v. *Bloomfield*, 347 Conn. 416, 297 A.3d 983 (2023), which was argued in January, 2023. In *Adesokan*, a municipal police officer was operating a police cruiser with the emergency lights activated when the cruiser collided with a vehicle operated by the plaintiff Marlene Adesokan. Id., 421–22. Adesokan brought a negligence action against the defendants, the police officer, the municipality, and its police department, and the defendants subsequently moved for summary judgment. Id., 422. The trial court rendered judgment for the defendants, concluding that they prevailed on their special defense of governmental immunity for discretionary acts under § 52-557n (a) (2) (B). Id. After Adesokan appealed to this court, our Supreme Court transferred the appeal to itself.

On appeal, Adesokan argued "that [General Statutes] § 14-283 (d) imposes a ministerial rather than a discretionary duty on emergency vehicle operators 'to drive with due regard for the safety of all persons and property.' " Id., 422–23. Our Supreme Court, however, held "that the defense of discretionary act immunity provided by § 52-557n (a) (2) (B) does not apply as a matter of law to claims arising from the manner in which an emergency vehicle is operated under the privileges provided by § 14-283." Id., 424. More specifically, the court concluded "that 'the duty to drive with due regard' mandated by § 14-283 (d) functions as an exception 'provided by law' under the savings clause applicable to discretionary act immunity in § 52-557n (a) (2) (B)."[4] Id., 432.

The court explained that, in light of its conclusion, it did "not need to address whether the duty to drive with due regard is ministerial or discretionary in nature, or the related question of whether the imminent harm to identifiable persons exception to discretionary act immunity applie[d] . . . ." (Internal quotation marks omitted.) Id., 428.

After the court issued its decision in *Adesokan*, this court ordered the parties in the present case to file supplemental briefs addressing the effect of that decision on the plaintiffs' appeal. In their supplemental briefs, the parties agreed that the judgment of the trial court as to the defendants must be reversed in light of our Supreme Court's holding in *Adesokan*. This court then ordered the parties to specify whether they agreed as to the disposition of each count of the plaintiffs' complaint. In response, the parties filed a notice in which they agreed that this court should reverse the judgment on counts one through five of the plaintiffs' complaint and requested that we remand the case to allow the parties to raise all relevant claims and defenses.[5]

Because the plaintiffs' claims in the present case arise from the manner in which an emergency vehicle was operated under § 14-283, we agree with the parties that the judgment for the defendants must be reversed. See *Adesokan* v. *Bloomfield*, supra, 347 Conn. 424 ("discretionary act immunity provided by § 52-557n (a) (2) (B) does not apply as a matter of law to claims arising from the manner in which an emergency vehicle is operated").

The judgment is reversed as to counts one through five of the plaintiffs' third revised complaint, and the case is remanded for further proceedings according to law; the judgment is affirmed in all other respects.

[1] The plaintiffs also named "City of New Haven Police Department," "City of New Haven Fire Department," and Police Chief Dean Esserman as defendants. The court, *Wilson*, *J.*, dismissed the action as to both departments for lack of subject matter jurisdiction because they "are entities that cannot be sued . . . ." Thereafter, the court, *Wahla*, *J.*, granted Esserman's motion for summary judgment and rendered judgment for him on the only count brought against him. In their appeal, the plaintiffs have not challenged the judgment as to the police and fire departments, and, during oral argument before this court, counsel for the plaintiffs expressly abandoned their appeal from the judgment as to Esserman. Accordingly, all references to the defendants in this opinion are to Criscuolo and the city only.

[2] In the first count, the plaintiffs alleged that Criscuolo violated (1) General Statutes § 14-283a, which authorizes a uniform, statewide policy for handling police pursuits, (2) General Statutes § 14-240, which prohibits drivers from following another vehicle too closely, and (3) General Statutes § 14-218a, which provides that drivers shall not operate motor vehicles on public highways at a rate of speed greater than that which is reasonable. In the second count, the plaintiffs alleged that Criscuolo was negligent in engaging in a motor vehicle pursuit in violation of the police department's policies and procedures.

[3] "Section 52-557n allows an action to be brought directly against a municipality for the negligent actions of its agents. Section 7-465 allows an action for indemnification against a municipality in conjunction with a common-law action against a municipal employee." *Gaudino* v. *East Hartford*, 87 Conn. App. 353, 356, 865 A.2d 470 (2005). Pursuant to subsection (a) (1) of General Statutes (Rev. to 2013) § 52-557n, "a political subdivision of the state shall be liable for damages to person or property caused by: (A) The negligent acts or omissions of such political subdivision or any employee, officer or agent thereof acting within the scope of his employment or official duties . . . ." The statute provides further, however, that "a political subdivision of the state shall not be liable for damages to person or property caused by . . . (B) negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law." General Statutes (Rev. to 2013) § 52-557n (a) (2) (B).

Although § 52-557n (a) (2) (B) was amended in 2023; see Public Acts 2023, No. 23-83, § 1 (P.A. 23-83); because the legislature did not expressly provide that P.A. 23-83 should apply retroactively, all references to § 52-557n (a) (2) (B) are to the 2013 revision of the statute, which was in effect at the time of the events giving rise to the underlying action. See *Adesokan* v. *Bloomfield*, 347 Conn. 416, 423–24, 297 A.3d 983 (2023).

[4] Our Supreme Court relied on its prior decision in *Tetro* v. *Stratford*, 189 Conn. 601, 458 A.2d 5 (1983), in which "two police officers . . . conducted a high-speed pursuit of another vehicle, which then crashed into the plaintiff's car. . . . [Our Supreme Court in *Tetro*] held that, because the plaintiff's injury may have fallen within the scope of the risk created by the officers' act of conducting a police pursuit at high speeds while traveling in the wrong direction on a busy one-way street, the defendant municipality was vicariously liable for the negligence of its officers pursuant to § 7-465. . . . In the course of [the court's] analysis [in *Tetro*] . . . [it] rejected the defendants' argument that § 14-283 limited the scope of the duty to drive with due regard to incidents involving collisions with the emergency vehicle itself. . . . [The court explained] that, because [t]he effect of [§ 14-283 was]

merely to displace the conclusive presumption of negligence that ordinarily [arose] from the violation of traffic rules, the statute did not relieve operators of emergency vehicles from their general duty to exercise due care for the safety of others." (Citations omitted; internal quotation marks omitted.) *Adesokan* v. *Bloomfield*, supra, 347 Conn. 436.

[5] The parties also agreed that we should affirm the judgment as to count six of the plaintiffs' complaint directed against Police Chief Dean Esserman. See footnote 1 of this opinion.