

Ojinnaka v. City of Newark

Ojinnaka v. City of Newark, L-1473-07; Law Division, Essex County; opinion by Kennedy, J.S.C.; decided January 22, 2010; approved for publication May 16, 2011. DDS No. 36-3-2180 [18 pp.]

Defendant, the city of Newark, moves for summary judgment seeking to dismiss claims brought against it by the estate of Arinzechukwu (Arinze) Ojinnaka, deceased, and by the decedent's parents, Clement and Lawritha Ojinnaka. Plaintiffs assert that Newark police officers were not adequately trained and were otherwise negligent in responding to the report of a motor vehicle accident, leading to the death of Arinze. Plaintiffs bring wrongful death and survivor claims, as well as a claim under *Portee v. Jaffe* .

Newark contends that it is immune from liability under the New Jersey Tort Claims Act (TCA), and that it otherwise breached no duty to plaintiffs. Newark also contends that the *Portee* claim must be dismissed.

Arinze was a 19-year-old college student who worked a late-night shift at United Parcel Service near the Newark Airport. Arinze lived with his parents, and used his father's van to drive to and from work. At 5:27 a.m. on Dec. 21, 2005, a limousine driver saw a van that appeared to have hit the barrier on a ramp leading to Route 78 and called 911. Newark police officers responded to the accident site coded as "auto accident with injuries."

The vehicle was heavily damaged on the right side; the keys were in the van; the vehicle lights were illuminated and the right front passenger window and door panel were missing. There is some evidence that the vehicle was still running. There was an approximate eight-foot drop from the opposite side of the concrete crash barrier to a lightly wooded area. There was evidence along the inside wall of the barrier that the van had struck the wall approximately 300 feet east of the point where it stopped. Fire, search and rescue, and EMS teams were called. Officers knew the van had not been reported stolen. Although the officers did peer over the side of the barrier with flashlights at the point where the van came to rest, no one walked back to check the underbrush on the other side and no one, apparently, ever attempted to ascertain the initial point of impact. Also, no one called the registered owner of the vehicle to ascertain who had been driving the van. The Newark officers left the site after sunrise, and the van was towed.

Arinze's parents spent days looking for their son and trying to obtain information. They went to the Newark Police Department but were given no information about the accident. On Dec. 26, 2005, Clement Ojinnaka returned to Newark and was given the police report. He and others drove to the spot where the van had been located and, peering over the barrier wall, they saw Arinze's body lying face up in a lightly wooded area 20 feet from the barrier wall.

Plaintiffs retained a pathologist who performed an autopsy on Arinze and opined that he would have survived "for a few to several hours after the accident." Plaintiffs also retained an expert on law

enforcement procedures and practices who concluded that the Newark police failed to conduct an investigation to locate the driver, failed to conduct a crash investigation, and "abandoned the crash site" because the officers assumed the driver had simply "fled the crash scene."

Held: Newark is not immune from liability under the Tort Claims Act for the actions of its police officers in responding to a car accident.

Because the claim in this case is that Newark police officers failed to undertake an adequate investigation of a reported motor vehicle accident "with injuries," the court's first task is to determine if any explicit, statutory immunities in the TCA apply to such police activity.

N.J.S.A. 59:5-4 does not immunize police officers from the consequences of their negligence in performing nondiscretionary tasks. Here, Newark responded to an emergency call coded as "auto accident with injuries." Newark, through its police department, was under a duty to render emergency assistance to victims of automobile accidents. Newark failed to undertake anything more than a cursory examination of the van and the immediate area before it concluded, wrongly, that "the driver fled the scene." Negligence in so responding is not immunized by N.J.S.A. 59:5-4.

The facts in this case could easily support the conclusion that the public entity, through its police officers, unreasonably jumped to an erroneous conclusion that the driver fled the scene — that one exercising reasonable prudence under the circumstances would not have reached. This raises a claim of negligence in an operational decision. Operational judgments such as those made here — when, where and how to search for parties potentially injured in a highway crash — do not entail the type of discretionary planning or high-level policy decisions insulated by either N.J.S.A. 59:2-3(a) or N.J.S.A. 59:3-2(a). Hence, those immunities do not apply.

Finally, police have a duty to respond to accident scenes and render assistance; this duty would be meaningless if officers were not obligated to act reasonably to try to locate victims at the crash site and render emergency aid. A jury will have to determine if the officers acted reasonably in fulfilling their obligations at the crash scene.

The Portee claim must be dismissed where, however tragic and traumatic the circumstances under which Clement and Lawritha Ojinnaka discovered the death of their son, they did not witness the incident that resulted in his death.

— By Debra McLoughlin

For plaintiffs — Alan Roth (Bendit Weinstock). For defendants — Gary S. Lipshutz and Julien X. Neals (Newark Corporation Counsel).

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