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ANDRADE VS. PERRY

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The case originated from an automobile accident which occurred in the Town of South Kingstown on June 11, 1997. My client, Mr. Andrade, was, during the course of his employment, traveling west on Saugatuck Road in the Town of South Kingstown. While Mr. Andrade was proceeding through the intersection, he was struck broadside by the vehicle driven by Mr. David B. Perry who was, at that time, a uniformed police officer of the Town of South Kingstown. Additionally, he was actually patrolling in the area of the accident as part of his official duties when this incident occurred. The initial investigation indicated that Mr. Andrade had extensive damage to the driver's side, middle and rear of his vehicle. Officer Perry had been attempting to make a left hand turn when Mr. Andrade was going through the intersection.

We tried the case for approximately four days before Judge Darigan. It is interesting to note that during the course of the trial the Defendant's counsel brought up the question of capacity. That was the first time that Defendant's counsel had raised the issue of capacity, despite the fact that the case had been filed by Thomas Pearlman approximately three years earlier. In response to counsel raising the issue of capacity, I immediately moved to amend the complaint to conform to the facts as they were coming out at trial. My motion was denied.

As the trial unfolded, there was no question that the defendant police officer was negligent in the operation of his motor vehicle. The jury awarded the plaintiff $75,000.00 against both defendants. At the time of the award, I immediately moved for pre-judgment interest against defendant, David B. Perry, the officer driving the vehicle at the time of the accident. Judge Darigan initially denied pre-judgment interest as well as costs against defendant Perry.

Subsequently, I filed a motion for a new trial and, once again, sought pre-judgment interest as well as costs against defendant Perry only and not the Town of South Kingstown based upon the fact that Mr. Perry was individually negligent for his actions. After reconsideration, Judge Darigan agreed with me and entered Judgment on March 13, 2003 adding interest against defendant Perry only, as well as costs. At that time Officer Perry filed a timely appeal of Judge Darigan's ruling.

The appellant claimed in his appeal the following issue: May pre-judgment interest be added to a Judgment against a police officer acting within the scope of his official duties, particularly where the matter is not specifically designated as an individual capacity suit? The appellant claimed that by awarding interest against the individual municipal employee while engaged in his official duty would be in contravention of the Rhode Island Tort Claims Act. In my responsive brief I framed the issues somewhat differently. I indicated that the issues on appeal were as follows:

1. Does the statutory damage cap of $100,000.00 in General Laws 9-31-3, the Rhode Island Governmental Tort Liability Act apply to a damage award against a public employee while acting within the scope of his duty? and;

2. Is the plaintiff required to specifically allege that the suit is brought against the public employee in his individual capacity?

I stated in my brief that the issues as I presented them must both be answered in the negative. To do otherwise would be to create an entirely new class of litigants covered by the

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which we do it and the rights we fight to protect and preserve.

We need to respond boldly to these attacks. Sadly, when corporate America and especially big insurance interests driven by greed hide behind surrogates to unfairly bash judges and lawyers for their own political/financial advantage, it is difficult to decipher the truth. We need our message to resonate with friends, family, coworkers, clients and the public at large. Most do not realize the insidious intent and destructive effects of "tort reform". They do not realize the increasing insurance company profits are sought by punishing the most severely injured victims and the most vulnerable—children, seniors and stay-at-home moms.

Now, more than ever, we need to garner our collective energy, resources and talent to preserve our basic civil rights to reframe the debate. I look forward to working with all RITLA members in pursuit of our ambitious agenda. ⚓

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Governmental Tort Liability Act who were specifically omitted from that Act and from subsequent Court interpretation of that Act. Regarding the second issue, I argued that to require a designation that the employee was specifically sued in his individual capacity would place an unreasonable burden on a litigant which was not contemplated by the notice rules of pleadings as established by the Superior Court Rules of Civil Procedure.

Summarizing briefly the appellant's arguments, they were represented by the following cases: *Barratt v. Burlingham*, 492 A.2d 1219 (R.I. 1985) and *Houle v. Galloway School Lines*, 643 A.2d 822, 826. However, the above can be distinguished because they all deal with the "Public Duty Doctrine" and in these cases the court found no duty owed to the plaintiff by any of the individual town employees involved.

Another argument urged by the appellant had to do with Rhode Island General Laws 45-15-16 entitled "Indemnity of Public Officials, Employees, or Elected Officials." Appellant's argument was that, pursuant to the above-mentioned statute, the municipality would ultimately be responsible for paying any judgment against an employee.

The appellant's final contention was that in accordance with *Feeney v. Napolitano*, our complaint was defective because it did not specifically use the words "in his individual capacity."

The Supreme Court dealt with those three issues and found none of them persuasive. As I mentioned earlier, the line of cases previously referred to were cases in which there was no duty found to be owed to the respective plaintiff. Regarding General Laws 45-15-16, the Supreme Court found that the language of the statute was precatory and, therefore, not an obligation of the municipality. The statute did not provide a municipal employee with the right to indemnification in cases such as the present one. The appellant, to add additional weight to her argument concerning General Laws 45-15-16, cited the Town of South Kingstown and the International Brotherhood of Police Officers contract in which the Town agreed to indemnify officers sued as a result of actions performed in the course of their duty. Once again, the Supreme Court, not persuaded by this argument, stated that the State Labor Laws did not impose any sort of compulsory indemnification duty on the municipality sufficient to bring the tortfeasor's liability under the umbrella of either the Governmental Tort Liability Act or pre-judgment interest immunity. Consequently, the Court dispensed with those arguments, essentially saying that the decision to indemnify a municipal employee was either: (1) based upon a contractual agreement voluntarily entered into as a result of collective bargaining; or (2) precatory based upon the language of General Laws 45-15-16.

Those two issues being dispensed with, it left the question of the specificity of pleadings to be dealt with by the Court. In my opinion, this was the most significant aspect of the case. The prior arguments were simply disposed of by a recitation of prior cases such as *Pridemore*, etc. However, the appellant's argument attempted to change the law so that individual capacity pleading was required. It is interesting to note how the Supreme Court dealt with this question. First, they distinguished clearly the *Feeney* case and stated that the *Feeney* case was not an individual capacity case and did not pave any new ground in the pre-judgment interest field. The Court emphasized that the reason there was no individual liability in the *Feeney* case for the municipal employee was that the Plaintiff had specifically sued the municipal employee *only* in his official capacity. The Court went on to say that in our case, the evidence was equally clear that the Plaintiff did not sue the individual Defendant in his official capacity. The truly significant finding of the Court was that it was not necessary for the Plaintiffs to specifically state in their complaint that the individual Defendant was being sued in an individual capacity in order to assess pre-judgment interest on the judgment against him.

I can't emphasize enough the contribution made to the outcome of this case by the Rhode Island Trial Lawyers Association. The amicus brief filed by the Rhode Island Trial Lawyers Association and authored by Kelly Fracassa was extremely insightful and invaluable. Attorney Fracassa clearly distinguished the cases cited by Defendant as being those regarding the Public Duty Doctrine and not really pertinent to our case. His discussion of the different aspects of notice pleading as well as the issue of capacity were helpful to me in oral argument since I was asked questions mostly on capacity by the Justices. In any event, Tom Pearlman and I would like to extend our gratitude for the interest and speedy response of the Rhode Island Trial Lawyers to our request for an amicus brief.

In conclusion, I think that the plaintiff's bar is no longer in danger of being trapped by their pleadings when bringing actions against municipalities and their employees. ⚓

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