VIRGINIA PUBLIC RECREATION IMMUNITY INAPPLICABLE TO TRANSPORTATION

DePRIEST v. PEARSON
387 S.E.2d 480 (Va. 1990)
Supreme Court of Virginia
January 12, 1990

In this case, plaintiffs Mary DePriest and Martha Armstead were injured in a bus driven by defendant Wayne Pearson. The facts of the case were as follows:

> On February 22, 1986, the Henrico County Department of Parks and Recreation sponsored a recreational trip to the Williamsburg Pottery, a retail establishment for senior citizens of the Gravel Hill Community Center. In doing so, it furnished one of its buses and a driver, **Wayne Preston Pearson, a recreational assistant employed by Henrico County.** En route to Williamsburg, Pearson lost control of the bus in New Kent County while attempting to avoid a pothole. The bus overturned and Mary L. DePriest and Martha C. Armstead, two of the several passengers were injured.

DePriest and Armstead brought separate negligence claims against Pearson and Henrico County. However, before either of these cases went to trial, plaintiffs DePriest and Armstead dropped their claims against Henrico County.

The trial court found Pearson was negligent and a jury returned an $85,000 verdict for DePriest. The trial court, however, "set aside the verdict, and entered final judgment for Pearson on the ground that he was entitled to the benefit of Code § 15.1-291, and could only be liable if he was guilty of gross negligence in the operation of the bus." Similarly, a jury returned a verdict for $66,000 in Armstead's favor, but the trial court entered judgment for Pearson based upon Virginia Code § 15.1-2191. This statute provided as follows:

> **No city or town which shall operate any bathing beach, swimming pool, park, playground or other recreational facility shall be liable in any civil action or proceeding for damages resulting from any injury to the person or property of any person caused by any act or omission constituting simple or ordinary negligence on the part of any officer or agent of such city or town in the maintenance or operation of any such recreational facility. Every such city or town shall, however, be liable in damages for the gross or wanton negligence of any of its officers or agents in the maintenance or operation of any such recreational facility.**
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> **The immunity created by this section is hereby conferred upon counties in addition to, and not limiting on, other immunity existing at common law or by statute.**

DePriest and Armstead both appealed to the state supreme court. As described by the state supreme court, the issue to be resolved was **"whether a bus used by a county recreation department to transport passengers on a recreational trip is a 'recreational facility' within the meaning of Code § 15.1-291."** Pearson maintained on appeal that "he is entitled to the benefit of the statute because he was operating a 'recreational facility' at the time the bus overturned." In the opinion of the state supreme court, **"at the time of the accident, the bus was not being used as a 'recreational facility' within the meaning of Code § 15.1-291."**

In *Frazier v. City of Norfolk*, 234 Va. 388, 362 S.E.2d 688 (1987), we said the statutory term **"recreational facility" was unambiguous and meant "a place for citizens' diversion and entertainment. It is a place, like a bathing beach, swimming pool, park, or playground, where members of the public are entertained and diverted, either by their own activities or by the activities of others."** Obviously, the county was not operating a "recreational facility" when it was transporting passengers by bus to an outing in Williamsburg. In these cases, the **bus and Pearson's use of it simply served as a means of transportation.**

The state supreme court, therefore, concluded that the jury verdicts for DePriest and Armstead should not have been set aside based upon Code § 15.1-291. As a result, the state supreme court reversed the judgments of the lower courts in favor of defendant Pearson and entered final judgment for DePriest and Armstead in each case.