VIRGINIA RECREATIONAL USE IMMUNITY FOR CITY CONVENTION CENTER

FRAZIER v. CITY OF NORFOLK
362 S.E.2d 688 (Va. 1987)
Supreme Court of Virgini
November 25, 1987

In this case, plaintiff David G. Frazier fell while attending a religious convention in a convention hall owned by defendant City of Norfolk. The facts of the case were as follows:

Frazier, age 13, was attending the convention at Chrysler Hall and was asked to perform with a church choir by playing the drums. He took his place on a stool at a drum set which previously had been placed at the rear of the orchestra pit.

The pit was in front of the main stage and was a platform that could be positioned level with or below the stage. At the time, the pit had been lowered so that a gap existed between the rear of the pit and the front of the stage. No barriers or railings were in place on the rear perimeter of the platform.

During the performance, Frazier dropped a drumstick. The stick fell behind him and, when the performance ended, he reached to the rear "blindly" groping for the stick. In the process, Frazier leaned backward on the stool and lost his balance. The stool "went over" and **Frazier was injured when he fell from the pit platform through the gap approximately 18 feet into the basement of the building.**

Frazier provided expert testimony that "the **city was in violation of its own building code because the railings were not in place on the pit platform.**" Further, Frazier produced evidence that "the **city possessed barriers specifically designed to provide protection against falls through the gap created on the stage side of the pit when the pit was in a lowered position.**" Frazier also introduced evidence that **"two years prior to this incident, a child six years of age fell from the orchestra pit into the basement when pit barriers were in place."**

The trial court found that Chrysler Hall was a **"recreational facility"** within the meaning of the following state statute:

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.

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. (Virginia Code §15.1-291.)

As a result, Frazier had to show that "the city was guilty of gross negligence" under the circumstances of this case. In the opinion of the trial court, Frazier "had failed to prove that city was grossly negligent." The trial court, therefore, dismissed Frazier's case against Norfolk. Frazier appealed to the state supreme court.

On appeal, Frazier argued that the trial court had erred in finding that Chrysler Hall was a recreational facility within the meaning of the above cited statute. Specifically, Frazier contended that "the statute should apply only to such things as parks, playgrounds and pools and not an auditorium rented for profit." According to Frazier, "Chrysler Hall should have been treated merely as a building owned by Norfolk and used as a part of Norfolk's proprietary function [i.e. acting like a private business]." As a result, Frazier maintained that "simple or ordinary negligence should have been the standard of proof" applied by the trial court, rather than the gross negligence standard under the recreational immunity statute. The state supreme court described Frazier's argument as follows:

Frazier says that the statute should be limited to those facilities maintained for the public's free use which involve "highly participatory" activities such as swimming pools or parks, where horseback riding and biking occur, and should not apply to buildings operated by a municipality for profit, such as auditoriums, theatres, or music halls, where more sedentary activities occur. Frazier contends that the activities conducted in the latter facilities "are normally highly supervised and are not generally associated with the dangers involved in participatory activities." Because the city is engaged in a profit-making function, Frazier argues, it is in a position similar to a privately owned business, should bear the responsibilities of a business, and "should not be afforded the luxury of a limitation of liability under § 15.1-291 [the recreational immunity statute] ."

The state supreme court rejected Frazier's arguments. In the opinion of the state supreme court, the legislative history of this statute indicated that "the **General Assembly intended to limit the civil liability of municipalities in the maintenance and operation of any recreational facilities to cases of gross or wanton negligence."**

The statute under consideration was **enacted in 1940** and since has undergone only a few minor changes not relevant here. The legislative title was, **"An Act to amend the Code of Virginia by adding thereto a new section... limiting the civil liability on the part of cities and towns in the maintenance or operation of recreational facilities to cases of gross or wanton negligence."..** That is what the legislature said in plain terms. Contrary to Frazier's argument... the statute's application is not conditioned on profit, free public use, or "highly participatory" activity.

This **statute is clear and unambiguous..** The adjective "recreational" and the noun "recreation" have settled meanings which are too plain to be misunderstood... **"Recreation" is commonly understood as "a means of getting diversion or entertainment."**

The record plainly shows that **Chrysler Hall is used as 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, stage shows, forums, the symphony, beauty contests, travelogues, the ballet, and many meetings and speeches are forms of recreation.

The state supreme court, therefore, concluded that "the use of **Chrysler Hall for these functions qualifies the building as a 'recreational facility' within the meaning of the statute,** and the trial court correctly held so."

The state supreme court also considered **whether evidence submitted by Frazier would support allegations of gross negligence against Norfolk.** The state supreme court defined gross negligence as follows:

Gross negligence is that degree of negligence which shows an utter disregard of prudence amounting to complete neglect of the safety of another. It is a heedless and palpable violation of legal duty respecting the rights of others.

Applying this definition to the facts of the case, the state supreme court concluded that "the trial court correctly ruled that Frazier failed to establish a prima facie case [i.e. sufficient evidence to support a claim] of gross negligence."

The **city's failure to install protective devices or to post warnings for children at a platform edge which was open and obvious amounts, at the most, to ordinary negligence and a failure to exercise reasonable care.** Such acts of omission **do not rise to that degree of egregious conduct which can be classified as a heedless, palpable violation of rights showing an utter disregard of prudence.**

The state supreme court, therefore, affirmed the judgment of the trial court dismissing Frazier's case against the City of Norfolk.