

347 Conn. 416  
Supreme Court of Connecticut.  
Marline ADESOKAN et al.  
v.  
TOWN OF BLOOMFIELD et al.  
Argued January 13, 2023  
Officially Released August 1, 2023

### **Attorneys and Law Firms**

[John A. Sodipo](#), Hartford, for the appellants (plaintiffs).

[Dennis M. Durao](#) & [Andrew J. Glass](#), Rocky Hill, for the appellees (defendants).

[Thomas R. Gerarde](#), Hartford, filed a brief for the Connecticut Conference of Municipalities as amicus curiae.

[Aaron S. Bayer](#), Hartford, and [Nathan Guevremont](#), New Haven, filed a brief for the Connecticut Defense Lawyers Association as amicus curiae.

[James J. Healy](#), Hartford, filed a brief for the Connecticut Trial Lawyers Association as amicus curiae.

[ROBINSON, C. J.](#)

whether the special defense of governmental immunity under 52-557n bars claims of negligence against drivers operating an “emergency vehicle” pursuant to the emergency vehicle statute 14-283?

## **FACTS**

August 10, 2017, Officer Sykes responded to call for possible abduction

Heading southbound on Tunxis Avenue in Bloomfield

Cruiser's emergency lights and siren activated

Plaintiff also was traveling southbound on Tunxis Avenue

Was several cars ahead of Sykes as he approached from behind

As Sykes approached, 3 cars behind the plaintiff's vehicle yielded to the right

At the intersection of Tunxis Avenue and Mills Lane, Sykes attempted to pass plaintiff's vehicle on the left side in the northbound lane.

Traveling at 71.8 miles per hour

Sykes' cruiser collided with driver's side of plaintiff's vehicle when plaintiff made left turn at the same time Sykes attempted to pass her

Plaintiff and her children sustained personal injuries as a result of collision.

## **SUIT**

Suit claimed negligence, negligent supervision, and respondeat superior.

Defendants moved for summary judgment, claiming that discretionary act immunity under [§ 52-557n \(a\) \(2\) \(B\)](#) barred the plaintiff's claims

Relying on the phrase "due regard," as contained in [§ 14-283 \(d\)](#) the trial court concluded that, "because no ordinance, regulation, rule, policy, or any other directive compelled Sykes in a prescribed manner, the operation of his police cruiser ... constituted a governmentally immune discretionary act."

The court granted the defendants' motion for summary judgment

This appeal followed.

## ANALYSIS

FIRST Set out longstanding GI jurisprudence....

municipal employee is liable for the misperformance of ministerial acts

has a qualified immunity in the performance of governmental acts

the operation of a police department is a governmental function

Police officers are protected by discretionary act immunity when they perform the typical functions of a police officer.

THEN Discussed *Borelli v. Renaldi*, and *Daley v. Kashmanian*...

Plaintiff in *Borelli* alleged that the defendant police officer was negligent in choosing to pursue the vehicle of a suspect law violator, which caused the law violator's vehicle to strike an embankment, killing one of the passengers.

Court concluded that, because the "due regard" requirement of § 14-283 (d) imposed a "general duty" that required officers to exercise judgment in determining whether to pursue a fleeing motorist, the duty *to act* was discretionary

In *Daley*, after surveilling a "group of motorcycles and quads," the officer, who was operating a soft car, initiated pursuit of the plaintiff, who was driving a motorcycle.

During the pursuit, the officer struck the back tire of the plaintiff's motorcycle with the soft car and caused the plaintiff to be ejected from his bike.

Because the officer was not engaged in emergency driving pursuant to § 14-283, Court concluded that motor vehicle statutes imposed numerous ministerial duties

## NEXT DISCUSSED STATUTES

### § 52-557n (a) (1)

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 ....”

### Section 52-557n (a) (2)

“[e]xcept as otherwise provided by law, 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.”

### Subsection (b) of § 52-557n

then enumerates ten circumstances in which governmental immunity applies irrespective of the liability rule set forth in subsection (a).

Section 14-283 does not speak in terms of immunity or expressly designate any particular conduct as discretionary

“operator of any emergency vehicle may ... proceed past any red light, stop signal or stop sign, but only after slowing down or stopping to the extent necessary for the safe operation of such vehicle ... and may exceed the posted speed limits or other speed limits imposed . . . as long as such operator does not endanger life or property by so doing..”

§ 14-283 (d) provides that “[t]he provisions of this section shall not relieve the operator of an emergency vehicle from the duty to drive with due regard for the safety of all persons and property,”

COURT NOTED typically is not seen in statutes conferring immunity.

§ 52-557n contains no express or implied reference to § 14-283, which reasonably calls into question whether § 52-557n, as the later enacted statute, was intended by the legislature to confer immunity

BASED UPON THIS COURT CONCLUDED that the provisions at issue are ambiguous and turned to other sources for their proper construction.

When first enacted, § 14-283 simply granted ambulances, fire trucks and, later, police officers the right of way over all other traffic.

In 1971, the legislature enacted subsection (d) of § 14-283; to govern the operation of emergency vehicles, namely, fire apparatus, in response to emergencies

Section 52-557n was enacted as § 13 of the Tort Reform Act of 1986

DECISION IN *Daley* - “the legislature contemplated negligence in the operation of motor vehicles not to be subject to governmental immunity, both before and after the passage of § 52-557n.”

Indemnification statutes, such as General Statutes § 7-465, reflect the fact that municipal employees faced personal liability for negligence in the operation of their emergency vehicles

Court’s decision in *Tetro v. Stratford*, 189 Conn. 601, 458 A.2d 5 (1983)

3 years prior to § 52-557n & decade after 1971 amendment § 14-283

*Tetro* demonstrates that prior to § 52-557n, municipalities were not immune from suits arising from collisions of their vehicles engaged in emergency operation.

Operation of an emergency vehicle is not one of the enumerated exceptions to liability provided in § 52-557n (b);

Had the legislature intended to include emergency operation within the category of specific conduct subject to immunity, it could have done so.

ALSO LOOKED AT Recent legislative activity.....

DUE TO

split among Superior Court decisions with respect to whether discretionary act immunity under § 52-557n (a) (2) (B) applies to emergency operation

broad reading of *Borelli*'s holding

LED TO legislature's nearly unanimous passage of Senate Bill No. 204, 2022

Would have amended § 52-557n (a) (1) (B) but for Governor's veto

Would have added - "Notwithstanding the provisions of subparagraph (B) of this subdivision, governmental immunity shall not be a defense in a civil action for damages to person or property caused by the negligent operation of a motor vehicle owned by a political subdivision of the state."

Governor Lamont explained that it "could entail, for example, that a police officer's *decision to pursue* a fleeing law violator is not a discretionary act and therefore governmental immunity does not apply. In that regard, I am concerned that the bill may inadvertently have gone too far."

Although the legislature did not attempt to override Governor Lamont's veto of the bill, a nearly identical bill unanimously was passed into law in June, 2023.

Thus, our conclusion that § 14-283 (d) precludes discretionary act immunity only for *the operation* of an emergency vehicle appears to be consistent with both Governor Lamont's concerns and the legislature's repeated attempts to ensure that governmental immunity does not apply in this context.

## **COURT CONCLUSION**

discretionary act immunity under § 52-557n (a) (2) (B) does not apply to the manner in which an emergency vehicle is operated by virtue of the “due regard” phrase of § 14-283 (d).

The trial court should not have granted the defendants’ motion for summary judgment.