Ready for the Defense

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New Precedent-Setting Supreme Court Case: The Public Duty Rule Now Abolished

This month's column discusses the new Supreme Court landmark precedent-setting case which abolishes the public duty rule and its special duty exception. The Supreme Court, in a closely divided decision, four Justices in favor and three Justices opposed, abolished one of four frequently relied upon defenses to legal liability for local government. The four frequently relied upon defenses are these: (1) the public duty rule; (2) the Emergency Medical Services (EMS) Systems Act (210 ILCS 50/3.150); (3) the Emergency Telephone System Act (50 ILCS 750/15.1); and (4) the Tort Immunity Act (745 ILCS 10/1-101 *et seq.*).

Now the public duty rule and its special duty exception no longer protects local government and services as a defense to legal liability for injuries to plaintiffs.

The Public Duty Rule & Its Special Duty Exception

The Supreme Court explained the public duty rule and its special duty exception as follows:

> The common-law 'public duty rule' provides that local governmental entities owe no duty to individual members of the general public to provide adequate government services, such as police and fire protection.
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> > 'The courts of this State have held as a matter of common law that municipalities are generally not liable for failure to supply police or fire protection [citation], nor are they liable for injuries negligently caused by police officers or fire fighters while performing their official duties. An exception to these rules has been recognized where the municipality owes the injured party a special duty that is different from its duty to the general public.'

For example, under the public duty rule, local government cannot be liable for failure to provide fire protection or police protection to the public generally, but it can be liable for failure to provide police protection to an individual under the direct and immediate control of local government. For example, local government owes a special duty to protect a prisoner in its jail from injury because that prisoner is under the direct and immediate control of local government and cannot protect himself.

The Case Abolishing The Public Duty Rule

The new Supreme Court case abolishing the public duty rule is *Coleman v. East Joliet Fire Protection District*, 2016 IL 117952, 46 N.E.3d 741 (2016) (Supreme Court, in a 4-to-3 decision, abolishes the public duty rule and its special duty exception, exposing local government to liability for willful and wanton conduct).

In *Coleman*, the Estate of Coretta Coleman sued Defendants East Joliet Fire Protection District and Orland Fire Protection District (emergency medical service providers) and Will County and its 911 operator (providers of 911 emergency services) for negligence and willful and wanton conduct. Coretta Coleman called 911 saying she could not breathe. Thereafter, communications were lost. Defendants arrived at her residence to find no response. Subsequently, her husband arrived home and let emergency responders in and they found her dead.

The trial court granted summary judgment for all Defendants based on the public duty rule and its special duty exception, holding that Mrs. Coleman was never under the direct and immediate control of the Defendants, so they owed her no special duty.

The Appellate Court affirmed. The Supreme Court reversed, abolishing the public duty rule and remanding the case back to the trial court to determine whether the Defendants were guilty of willful and wanton conduct under the three immunity statutes mentioned earlier herein.

The Supreme Court's Decision: The Public Duty Rule Is Obsolete & Abolished

Justice Kilbride wrote the majority opinion and stated the public duty rule, as explained by the Supreme Court in *Huey v. Town of Cicero*, 41 Ill.2d 361, 243 N.E.2d 214 (1968):

> The public duty rule is not the equivalent of any type of sovereign immunity. While the

> public duty rule and sovereign immunity are both common-law concepts, the 'public duty rule' developed separately and exists independently of any constitutional, statutory or common-law concepts of 'sovereign immunity.'

Observing that the public duty rule is well-established precedent followed under the rule of *stare decisis* (established precedents will not be highly disturbed or not followed) applied in *Harinek v. 161 N. Clark Street Ltd. Partnership*, 181 Ill.2d 335, 692 N.E.2d 1177 (1998), and *Zimmerman v. Village of Skokie*, 183 Ill.2d 30, 697 N.E.2d 699 (1998), Justice Kilbride explained that the time had come to abolish the public duty rule, stating:

> We have consistently held that the public duty rule survived the abolition of sovereign immunity and passage of the Tort Immunity Act. Nevertheless, after much reflection, we have determined that the time has come to abandon the public duty rule and its special duty exception.

Explaining that the public duty rule was well-established precedent and would not lightly be overturned under the rule of *stare decisis*, the Court stated:

> In sum, 'when a rule of law has once been settled, contravening no statute or constitutional principle, such rule ought to be followed unless it can be shown that serious detriment is thereby likely to arise prejudicial to public interests.'

However, finding *stare decisis* should be abandoned and the public duty rule abolished, Justice Kilbride offered three reasons for abandonment of the rules: (1) it had become "muddled and inconsistent"; (2) it is incompatible with the legislature's grant of limited immunity in cases of "willful and wanton" conduct; and (3) the determination of public policy is a legislative function and the legislature's enactment of statutory immunities has rendered the public duty rule obsolete.

Justice Kilbride concluded the majority opinion stating:

> Here, the public policy behind the judicially created public duty rule and its special duty exception have largely been supplanted by the legislature's enactment of statutory immunities, rendering the public duty rule and its special duty exception obsolete.
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> For these reasons, we conclude that the underlying purposes of the public duty rule are better served by application of conventional tort principles and the immunity protection afforded by statutes than by a rule that precludes a finding of a duty on the basis of the defendant's status as a public entity. Accordingly, we hereby abolish the public duty rule and its special duty exception.

The Dissent Written By Justice Thomas

As mentioned, this was a 4-to-3 decision by the Supreme Court. Justice Thomas wrote the dissent, reasoning that the public duty rule was well-established precedent, binding under the rule of *stare decisis*, and could not be lightly overturned and the majority's three reasons for abolishing the public duty rule were insufficient and invalid grounds to set aside and refuse to follow *stare decisis*.

Justice Thomas summarized the dissent's argument for not abolishing the public duty rule, explaining as follows:

> To summarize, then, the compelling new reasons that Justice Kilbride gives for departing from *stare decisis* and abandoning the long-standing public duty rule are that (1) the rule lends itself to the use of a common analytical tool, and (2) the rule is incompatible with statutory provisions that have been on the books for decades and that this court has repeatedly held have nothing to do with the public duty rule. Neither of these reasons is credible, let alone convincing. And this matters, because the importance of *stare decisis* is that it 'permits society to presume that fundamental principles are established in the law rather than in the proclivities of individuals.' That being the case, if the reasons proffered by Justice Kilbride are sufficient to justify a departure from *stare decisis* in this case, then we may as well abandon the *stare decisis* doctrine altogether. Because if *they* are good enough, then *anything* is good enough and we need not waste our time going through the motions of what will essentially have become a hollow exercise.

Comment

The *Coleman* decision, a new landmark decision in Illinois, runs some 21 pages with concurrence and dissenting opinions and is very worthwhile reading to fully comprehend its significance.