

EMERGENCY RESPONDER LIABILITY

COURT LIMITS LIABILITY OF EMERGENCY RESPONDERS

In a case with far reaching consequences for municipal emergency responders, the Vermont Supreme Court recently raised the bar of culpability for drivers of emergency vehicles. In *Rochon v. State of Vermont*, the Court decided that plaintiffs must demonstrate that their injuries were sustained while an operator of the emergency vehicle acted *recklessly*, rather than just negligently, while responding to an emergency call. The Court held that “23 V.S.A. § 1015(c) acts as a bar to a suit of negligence, and imposes liability only upon a showing of recklessness...” *Rochon v. State of Vermont*, 2004 VT 77 at 16 (August 27, 2004).

The facts that led to this decision are as follows: At around nine o'clock on the night of August 10, 1998, State Trooper Thomas Hodsden was at home when he was dispatched to a domestic assault complaint two miles away. The dispatcher relayed to the trooper that the alleged assailant was trying to break into the bathroom where the victim had secured herself. Trooper Hodsden responded to the call while adhering to the posted speed limit of 50 miles per hour. His emergency lights were on, but he left his siren off so as not to give the assailant advanced warning of his arrival. As Trooper Hodsden drove down Route 22A, he came upon the vehicle driven by the plaintiffs, Marcel Rochon and his wife Raymonde, about 200 yards in front of him. Noticing that the car's brake lights were on and that it was moving towards the right of the road, Trooper Hodsden assumed that the vehicle was pulling over to let him pass, as required by law. As he moved into the left lane to pass, the vehicle simultaneously turned left into the Rochon's driveway resulting in a collision of the two vehicles.

Following the accident, the Rochons brought a civil suit in Addison Superior Court against the State of Vermont claiming that it should be held liable for the injuries they suffered as a result of the trooper's negligence. The State moved for, and was granted, summary judgment arguing that it was immune from suit under the doctrine of sovereign immunity. The doctrine of sovereign immunity, which developed under the common law, held that the king could do no wrong and thus could not be sued and held liable for his acts. In modern law, sovereign immunity insulates governments from liability when undertaking governmental, as opposed to proprietary functions. The trial court agreed with the State, holding that emergency responders are only liable for those injuries resulting from reckless, not negligent, conduct.

On appeal, three of the five Vermont Supreme Court Justices held that although the State is generally immune from suit it can, and did, waive this sovereign immunity through passage of the Vermont Tort Claims Act (VTCA). The VTCA states that the “state of Vermont shall be liable for injury to persons or property or loss of life caused by the negligent or wrongful act or omission of an employee of the state while acting within the scope of employment, under the same circumstances, in the same manner and to the same extent as a private person would be liable to the claimant...” 12 V.S.A. § 5601.

Although the VTCA did permit the Rochons to bring a cause of action in negligence against the State, the issue before the Court was whether they could bring such an action for injuries stemming from an accident with an emergency responder.

Twenty-three V.S.A. § 1015 allows emergency responders to violate certain rules of the road when responding to an emergency - for example, running stop signs or red

lights and driving in excess of the maximum speed limit. Even though an emergency responder is granted this limited privilege, he or she must exercise it with due regard for the public's safety. Furthermore, this privilege doesn't relieve him or her of "the consequences of his reckless disregard for the safety of others." 23 V.S.A. § 1015(c). The trial court interpreted the incorporation of the word "reckless" to mean that emergency responders are to be held to a higher level of culpability than mere negligence. The Vermont Supreme Court agreed.

Justice Amestoy, writing for the majority, stated that the "due regard" language in 23 V.S.A. § 1015(c) doesn't create a legal duty of care, but rather "is a general admonition to emergency responders that, while other cars have an obligation to pull to the side of the road, emergency responders must still drive with 'due regard for the safety of others.'" *Rochon v. State of Vermont*, 2004 VT 77 at 12. To construe the "due regard" language as creating a negligence standard, as argued by the Rochons, would "make the reckless disregard language surplusage" and run counter to the Legislature's intent to balance "the competing interests of allowing emergency personnel to respond to an emergency situation without unduly compromising public safety." *Id at 13*. For the Court to hold otherwise, proffered Amestoy, would lead to second-guessing of the very splitsecond decision that Trooper Hodsdon had to make in responding to an emergency call. Since the Rochons failed to plead recklessness in their complaint, the Court upheld the trial court's grant of summary judgment for the State.

Vermont municipalities should be pleased with the outcome of this case, especially when taking into account that a factually similar case, *Tuller v. Armitage*, settled before the Vermont Supreme Court had a chance to rule on it, resulted in a jury verdict for plaintiffs of nearly \$500,000. As a result of *Rochon v. State of Vermont*, emergency vehicle operators will now be held to a higher standard of culpability - recklessness. For a refresher on recklessness, we look to the Restatement (Second) of Torts § 500 (1965) which defines recklessness as "conduct taken, or not taken when otherwise necessary, despite the actor's knowledge that conduct presents an unreasonable risk of harm to others." It is the elimination of the negligence "threat" that the Vermont Supreme Court believes will allow emergency vehicle operators to act "decisively using the judgment required to balance protecting the public with responding to emergencies." *Id at 13*.

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