

[Cite as *DeSanto v. Youngstown State Univ.*, 2002-Ohio-4144.]

IN THE COURT OF CLAIMS OF OHIO

JOSEPH D. DESANTO, Admr. :  
Plaintiff : CASE NO. 99-08777  
v. : DECISION  
YOUNGSTOWN STATE UNIVERSITY : Judge J. Warren Bettis  
Defendant :  
: : : : : : : : : : : : : : : :

{¶1} Plaintiff brings this action against defendant alleging negligence and wrongful death. The case was tried to the court on the issue of liability.

{¶2} On the night of January 27, 1996, plaintiff's decedent, Jermaine Hopkins, was enrolled at defendant university and attended a dance on campus at the Kilkawley Center. The dance began at 10:00 p.m. and was scheduled to last until approximately 2:00 a.m. the next morning. Members of defendant's police department were assigned to provide security at the event. In addition to crowd control, campus police checked identification cards and required all non-university guests to sign a log before they entered the pub where the dance was being held.

{¶3} Some time after midnight, a fight occurred that caused a disturbance on the dance floor. Defendant's police officers did not observe the fight that began the disturbance but responded when they noticed a commotion in the pub. When the officers arrived, they discovered property damage and "clusters of arguments." The officers estimated that there were between 150 and 250 guests in

the pub at the time of the disturbance. In order to establish control, the officers ended the dance and began to disperse the crowd.

{¶4} As guests began to exit the building, Sergeant John Spencer intervened in a verbal altercation between Hopkins and Timothy Slocum that took place in the lobby. After Spencer heard Slocum threaten to kill Hopkins and another individual, Sgt. Spencer had to restrain Hopkins in order to prevent a physical altercation. Spencer advised Hopkins and Slocum that they would both be arrested if they did not calm down and Slocum was ordered to leave the area. Hopkins was subsequently released. The investigating officers were unable to determine who instigated the fight and no arrests were made.

{¶5} Approximately 30 minutes after the disturbance at the Kilkawley Center, defendant's police officers were dispatched to Hopkins' residence in response to a shooting. After arriving at the scene, the officers were informed that Hopkins had been shot and that he had been transported to a nearby hospital for treatment. Hopkins eventually died as a result of his gunshot wounds. At trial, the parties stipulated that Hopkins was killed by Eric Moore.

{¶6} Plaintiff alleges that defendant's police officers negligently failed to arrest and detain Timothy Slocum and that their negligence proximately caused Hopkins' death. In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendant owed plaintiff's decedent a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285.

{¶7} Plaintiff alleges that defendant's police officers had a mandatory duty pursuant to R.C. 2935.03 to arrest Slocum after he

threatened to kill Hopkins. R.C. 2935.03 grants authority to police officers to arrest and detain without a warrant any "person found violating \*\*\* a law of this state." In this case, defendant's police officers responded to a disturbance at an event that was sponsored by defendant, and in the process of dispersing the crowd, verbal threats were made in the presence of Sgt. Spencer. Sgt. Spencer testified that Slocum and Hopkins were involved in a verbal altercation and that he did not observe any physical contact between them. Spencer further testified that he believed his primary objective was to clear the area. According to Spencer, making an arrest for disorderly conduct based on threatening language would have detracted from his primary objective.

{¶8} When they arrived on the scene, the officers encountered significant property damage and an unruly crowd. Although plaintiff contends that Spencer had a duty to arrest Slocum for "at least" disorderly conduct, the court finds that defendant's officers were confronted with a situation that had the potential to endanger defendant's guests unless the crowd was controlled. Even plaintiff's expert, Gary Phillips, conceded that making an arrest during a confrontation can heighten the tension in an already volatile situation. Phillips also testified that police officers have a duty to consider the safety of all who are present and that the officers have the discretion to resolve a tense situation without making an arrest. Considering the totality of the circumstances surrounding the incident, the court finds that the decision not to arrest Slocum for his verbal threats against Hopkins was reasonable.

{¶9} Furthermore, plaintiff could not maintain his cause of action unless defendant owed plaintiff's decedent a special duty that was distinct and separate from the duty it owed to the general

public, thereby avoiding the public duty doctrine. *Wallace v. Department of Commerce*, (Oct. 19, 2000) Franklin App. No. 99AP-1303; *Sawicki v. Ottawa Hills* (1988), 37 Ohio St.3d 222. The public duty rule provides that a state cannot be held liable to an individual for breach of a duty owed to the general public; the inadequate or negligent performance of that duty gives rise to only a public, as opposed to private, injury. *Sawicki*, supra, 37 Ohio St.3d 222, paragraph two of the syllabus. Breach of a public duty will not support an individual cause of action for damages in the absence of a special relationship. *Id.* at 230.

{¶10} In order to establish such a special duty or relationship, the following elements must be demonstrated: 1) an assumption by the governmental entity of a duty to act on behalf of the injured party either through promises or actions; 2) knowledge on the part of the governmental agents that inaction could lead to harm; 3) some form of direct contact between the governmental agents and the injured party; and, 4) the injured party's justifiable reliance on the governmental entity's affirmative undertaking. *Id.* at paragraph four of the syllabus. In *Sawicki*, the Supreme Court of Ohio held that "a telephone conversation between a member of the general public and a police department, wherein the caller requests help and the police operator says he will send help, is insufficient as a matter of law to establish a special relationship between the caller and the police." *Id.* at 232-233. In the present case, there was no assumption of an affirmative duty to act on behalf of plaintiff's decedent, nor do the facts establish that Hopkins relied upon any affirmative undertaking. Unlike the caller in *Sawicki*, Hopkins did not ask for any help from defendant's officers or request protection from Slocum. Indeed, Sgt. Spencer helped to restrain Hopkins to prevent the verbal confrontation from escalating into a physical

altercation. Furthermore, Hopkins was not injured on campus and defendant's officers did not have the authority or duty to protect him off campus.<sup>1</sup> The court concludes that a special relationship was not created between defendant and plaintiff's decedent.

{¶11} With regard to the proximate cause of Hopkins' death, plaintiff's expert, Phillips, testified that in his opinion, the shooting would not have occurred if Slocum had been arrested and jailed for making threats against Hopkins. However, as noted above, the parties stipulated that Eric Moore, and not Slocum, killed Hopkins at the off-campus residence. The evidence shows that Moore was not a student at defendant's university, that he was not on campus the night of the shooting, and that defendant's police officers were not aware of any threats by Moore to kill Hopkins. Plaintiff failed to demonstrate how arresting Slocum would have prevented Moore from shooting Hopkins. Furthermore, during cross-examination, Phillips conceded that detention can further anger a suspect and that a suspect's anger can be manifested by violence that occurs days or weeks after the suspect is released from custody.<sup>2</sup> Although Phillips assumed that Slocum would have had time to reconsider his threats to kill Hopkins if he had been arrested, the court finds that such reasoning is speculative and does not establish that defendant's actions or inactions proximately caused Hopkins' death.

---

1

Trial testimony established that defendant's police officers did not have jurisdiction off campus unless they observed a violation or assistance was requested by the City of Youngstown pursuant to a mutual aid agreement. Defendant's officers were dispatched to the crime scene after Hopkins was shot.

2

Trial testimony established that at the time in question, individuals in Mahoning County who had been charged with misdemeanor offenses were typically either issued a citation without detention or booked and released within thirty minutes.

{¶12} For the foregoing reasons, judgment shall be rendered in favor of defendant.

---

J. WARREN BETTIS  
Judge

Entry cc:

Debra J. DeSanto  
David J. McNichols  
887 South High Street  
Columbus, Ohio 43206

Attorneys for Plaintiff

Peter E. DeMarco  
Michael J. Valentine  
65 East State St., 16th Fl.  
Columbus, Ohio 43215

Assistant Attorneys General

AMR/cmd  
Filed 7-31-2002  
Jr. Vol. 713, Pg. 190  
To S.C. reporter 8-12-2002