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1998 Survey of Rhode Island Law: Cases: Municipal Law

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Municipal Law. *Brandon v. City of Providence*, 708 A.2d 893 (R.I. 1998). So long as a police officer acts with a reasonable strategy to help a person in need obtain emergency assistance, the officer's conduct will generally fall within the tort immunity provided by Rhode Island General Laws section 9-1-27.

In *Brandon v. City of Providence*,¹ the Rhode Island Supreme Court first interpreted Rhode Island General Laws section 9-1-27, which grants police officers immunity from civil suit for any injuries which may arise in the course of rendering assistance to an injured party, except for those injuries which arise from gross, willful or wanton negligence on the part of the officer.² The court broadly interpreted the statute to protect officers from both rendering affirmative aid and securing the scene so that the victim may receive aid.³

FACTS AND TRAVEL

Frank Brandon (Frank) was at the intersection of Hilton and Bogman Streets in Providence on July 21, 1989 when he fell victim to drive-by gunfire from unknown parties.⁴ At approximately 9:30 p.m., shortly after the shooting, Providence police officer Steven Moran (Moran) arrived at the scene and observed Frank sitting in the passenger seat of a Camero, with his brother John Brandon (John) at the wheel.⁵ Frank was bleeding from a gunshot wound to the stomach and waiting for John to drive him to a nearby hospital.⁶

Officer Moran forbade John to drive away, explaining that a rescue squad, which the officer had notified immediately upon his arrival, was on its way.⁷ After John persisted, a struggle took place between Officer Moran and John, during which the officer removed the keys from the car's ignition.⁸ Another of Frank's brothers, Rafael Brandon (Rafael), jumped onto Moran's back

1. 708 A.2d 893 (R.I. 1998).

2. *Id.* at 894.

3. *See id.*

4. *See id.* at 893.

5. *See id.*

6. *See id.*

7. *See id.*

8. *See id.*

while additional officers were arriving on the scene.⁹ The officers soon restrained both brothers, then attempted to aid Frank.¹⁰

Rescue personnel arrived within minutes and took over the administration of medical assistance to Frank.¹¹ Soon thereafter, Frank was taken by ambulance to the hospital where he was pronounced dead at 10:35 p.m.¹² The time of death was approximately one hour after the initial call for "shots fired" was placed to Providence Police Department.¹³

Olga Brandon (Olga), Frank's mother, filed suit alleging that Frank's mortal blood loss was attributable to the length of time during which the officers delayed John from driving Frank to the hospital.¹⁴ Superior Court Justice Williams granted summary judgment to the city and Olga appealed.¹⁵

ANALYSIS AND HOLDING

The issue before the supreme court was whether the officers could be held liable for Frank's death in the face of Rhode Island's statutory immunity for its police officers provided by Rhode Island General Laws section 9-1-27, which states in relevant part:

No member of any police force or fire department of the state or any city or town . . . who while on duty and in the performance of that duty voluntarily and gratuitously renders emergency assistance to a person in need thereof . . . shall be liable for civil damages for any personal injuries which result from acts or omissions by the persons rendering the emergency care, which may constitute ordinary negligence. This immunity does not apply to acts or omissions constituting gross, willful, or wanton negligence.¹⁶

Olga argued that this statute did not apply because the officers were not rendering emergency assistance to Frank but rather were *preventing* Frank from obtaining medical assistance.¹⁷

9. *See id.* at 893-94.

10. *See id.* at 894.

11. *See id.*

12. *See id.*

13. *See id.*

14. *See id.*

15. *See id.*

16. *Id.* (quoting R.I. Gen. Laws § 9-1-27 (1956) (1997 Reenactment)).

17. *See id.* at 894.

The supreme court held, however, that the totality of the circumstances surrounding the conduct of the officers on the evening in question placed the officers within the statutory protection contemplated by the statute. "Although [Officer] Moran did not affirmatively render medical assistance," said the court in its per curiam opinion, "Moran did secure the crime scene and did safeguard Frank's person to ensure he would in fact receive treatment and would not be placed in any greater danger."¹⁸ The court also noted that Moran and the other officers who arrived at the scene did not know the identities of the individuals at the scene and the circumstances of what had happened and that releasing Frank to "those purporting to be friends or relatives" may have been even more harmful to Frank.¹⁹ Therefore, according to the court, "[i]t was not only reasonable but appropriate for Moran to secure both the scene and Frank pending the arrival of rescue personnel."²⁰

The court noted that the immunity provided to police officers by section 9-1-27 may be overcome by a showing of "gross, willful, or wanton" negligence, but determined that Olga had not made out such an allegation in her complaint.²¹ Under such circumstances, the court found no exception to the general immunity for police officers provided by section 9-1-27.²²

CONCLUSION

In its first occasion to interpret the meaning of section 9-1-27 of the Rhode Island General Laws, which grants immunity from civil liability to police and firefighters when rendering "emergency assistance to a person in need thereof," the Rhode Island Supreme Court provided a broad definition of emergency assistance. In *Brandon v. City of Providence*, the court found that the actions of police officers in securing a crime scene and preventing a crime victim from being moved until medical assistance arrived fell within the ambit of the section. Thus, police officers appear to be immune from civil liability under the statute so long as their conduct can be

18. *Id.*

19. *Id.*

20. *Id.*

21. *See id.*

22. *See id.*

reasonably said to chart a course toward the ordered delivery of emergency assistance to a victim.

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Municipal Law. *Pullen v. State*, 707 A.2d 686 (R.I. 1998). Ordinarily, a town or a city has a duty to keep roads in good repair, which includes maintaining sidewalks that are adjacent to the roadway. However, under sections 24-8-6 and 24-8-9 of the Rhode Island General Laws, the state is authorized to enter into contracts with a city or town regarding the construction and maintenance of state owned sidewalks within the town or city borders. When such a contract is entered into, the town or city no longer has a duty to keep the subject sidewalk safe for pedestrian travel; rather, the state expressly assumes the responsibility for and the duty of maintaining sidewalks located within town or city borders.

In *Pullen v. State*,¹ the Rhode Island Supreme Court determined whether a city has a duty to maintain a sidewalk that is located within its borders, but which the state owns, constructed and agreed to maintain.² Ordinarily, the city has the duty of maintaining sidewalks within its borders.³ However, the state may expressly assume this duty, thereby relieving the city of it, by executing a contract with the city regarding the construction and maintenance of sidewalks within a city.⁴

FACTS AND TRAVEL

On or about May 3, 1992, Cynthia Pullen (Pullen) tripped on a raised portion of the sidewalk located along America's Cup Avenue in Newport and fell against a cement planter, sustaining injuries to her face and arm.⁵ The sidewalk upon which she tripped, and the adjacent street, America's Cup Avenue, are owned by the State of Rhode Island.⁶ Prior to constructing the sidewalk, the state signed a construction and maintenance agreement with the city of

1. 707 A.2d 686 (R.I. 1998).

2. *Id.* at 687.

3. *See id.* at 689; *see also* R.I. Gen. Laws § 24-5-1 (1956) (1997 Reenactment) (placing upon municipality the duty to repair and amend its roadways); *Barroso v. Pepin*, 261 A.2d 277, 280 (R.I. 1970) (interpreting this duty so as to include maintaining sidewalks located within city borders).

4. *See Pullen*, 707 A.2d at 692; *see also* R.I. Gen. Laws §§ 24-8-6, -9 (1956) (1997 Reenactment) (granting to the director of transportation the authority to construct and maintain sidewalks).

5. *See Pullen*, 707 A.2d at 687.

6. *See id.* The sidewalk and America's Cup Avenue were both constructed in 1968. *See id.*

Newport, whereby the state assumed full responsibility for maintaining both roadway and the sidewalk.⁷

The plaintiff filed a complaint in superior court on March 22, 1995, against the city of Newport, the State of Rhode Island, the Long Wharf Mall Associates, and CIC-Newport Associates, Ltd.⁸ Her claim was that these parties were negligent in "failing to maintain the sidewalk in a reasonably safe condition for pedestrian travel."⁹

On July 7, 1995, the city filed a motion for summary judgment, arguing that because of the 1968 agreement, the state, not the city, had a duty to maintain the sidewalk.¹⁰ The state also filed a motion for summary judgment, arguing that the city, pursuant to section 24-5-1 of the Rhode Island General Laws, had a statutory obligation to maintain all sidewalks within its borders.¹¹

On May 20, 1996, the trial justice entered summary judgment in favor of the city and denied the state's motion for summary judgment.¹² The plaintiff and the state then filed separate appeals to the Rhode Island Supreme Court.¹³

The only question on appeal was whether a city has a duty to maintain a sidewalk that is located within its borders, but which the state owns, constructed and agreed to maintain.¹⁴ The plaintiff contended that, pursuant to statute, the city has an obligation to maintain all sidewalks within its border, regardless of whether the state owns and controls the sidewalk,¹⁵ and that a municipality could be held liable for injuries sustained if it failed to maintain sidewalks in a reasonably safe condition.¹⁶ Furthermore, she ar-

7. *See id.* The agreement contained no expiration date, and was signed, on behalf of the state, by the state purchasing agent, the chief engineer for the department of transportation, and a then-assistant attorney general. *See id.*

8. *See id.* Long Wharf and CIC were subsequently dismissed, because they had no ownership interest in or control over the sidewalk at issue. *See id.*

9. *Id.*

10. *See id.* at 688.

11. *See id.*; *see also* R.I. Gen. Laws § 24-5-1 (1956) (1997 Reenactment).

12. *See Pullen*, 707 A.2d at 688.

13. *See id.* The state later withdrew its appeal. *See id.*

14. *See id.*

15. *See id.*; *see also* R.I. Gen. Laws § 24-5-1 (1956) (1997 Reenactment) (setting forth the obligation to maintain sidewalks).

16. *See Pullen*, 707 A.2d at 688; *see also* R.I. Gen. Laws § 24-5-13 (1956) (1997 Reenactment) (imposing liability upon municipality for personal injuries caused by city's failure to keep sidewalks in a reasonably safe condition).

gued that the city could not relieve itself of its duty to maintain by assigning it to anyone else.¹⁷

ANALYSIS AND HOLDING

This appeal involved the interpretation of two competing sets of statutes, sections 24-5-1 and 24-5-13 and sections 24-8-6 and 24-8-9 of the Rhode Island General Laws.¹⁸ To resolve the issue in this case, the court had to discern the legislative intent behind these statutes, and had to construe them in the context of the entire statutory scheme, attributing to them a meaning most consistent with the statute's underlying policies.¹⁹

Section 24-5-1 imposes upon a town the obligation to maintain all "highways" within its borders in a reasonably safe manner, and section 24-5-13 imposes upon a town liability for failing to do so.²⁰ The term "highways" has been defined in case law to include "sidewalks."²¹ Were this the only statute in place regarding the maintenance of sidewalks, one could easily conclude that a city *must* maintain *all* sidewalks within its borders, regardless of whether the state or the town owns them. And, indeed, prior to the enactment of chapter 8, title 24, the state had delegated such "control

17. *See id.* The Plaintiff argued that the duty imposed by section 24-5-1 is nondelegable. There is no language in that particular section which supports that argument. *See* R.I. Gen. Laws § 24-5-1 (1956) (1997 Reenactment). However, in arguing this, plaintiff relied upon the case of *Child v. Greene*, 155 A. 664 (R.I. 1931), where the Rhode Island Supreme Court held that a town was not relieved of its duty to maintain a city sidewalk adjacent to a state highway simply because the sidewalk is later adopted as part of the state highway system. *Child*, 155 A.2d at 665. However, the *Child* case was decided before sections 24-8-6 and 24-8-9 were even enacted. *See Pullen*, 707 A.2d at 690. Furthermore, the court clarified the nondelegable aspect of the statute by noting that it prohibits a town from hiring an independent contractor to maintain sidewalks which the town is responsible for maintaining; it does not prohibit the town from agreeing with the state that the state will maintain state owned sidewalks. *Id.* at 691.

18. Sections 24-5-1 and 24-5-13 impose upon a town the obligation to maintain roadways, whereas sections 24-8-6 and 24-8-9 grant the state the authority to maintain roadways. The question in this case is whether the state relieves the town of its duty under section 24-5-1 by expressly taking on that duty itself. *See id.*

19. *See Pullen*, 707 A.2d at 688-89 (citing *In re Kyle S.*, 692 A.2d 329, 331 (R.I. 1998)).

20. *See* R.I. Gen. Laws §§ 24-5-1, -13 (1956) (1997 Reenactment).

21. *See Pullen*, 707 A.2d at 689; *see also* *Barroso v. Pepin*, 261 A.2d 277, 280 (R.I. 1970) (holding that a sidewalk and a roadway make up a highway).

and maintenance of the state's main highways to cities and towns pursuant to § 24-5-1."²²

In 1902, however, the state decided to centralize control of the state highways by giving back to the state supervision and control over roads designated as part of the state highway system.²³ A provision was made for the establishment of a state highway system,²⁴ and a state board was established that would submit, to the Legislature, comprehensive plans regarding highway construction, relocation, and improvement.²⁵ After money was appropriated, the board would then contract for the work to be done.²⁶ State funds were allocated and subsequently distributed to cities and towns which maintained and repaired state roads.²⁷

This new statutory framework raised questions as to who, a town or the state, would be responsible for maintaining roadways. In 1917, the Rhode Island Supreme Court held in *Pooler v. Burton* that state roads are directly under the control of the state, and that the state has the duty to repair them.²⁸ Fourteen years later, however, the Rhode Island Supreme Court decided *Child v. Greene*, where it held that it was the duty of the state board to keep the roads in good repair, as "no statute *specifically relieved* the town of the obligation of maintaining sidewalks adjoining state roads or imposed that duty upon another entity."²⁹ The court came to this conclusion because the statutory scheme at that time authorized towns to construct sidewalks adjacent to state roads; the court felt the only natural statutory interpretation required the town to maintain such sidewalks.³⁰

However, four years after the *Child* decision, the Legislature enacted the predecessor to the statutes at issue in this case, sections 24-8-6 and 24-8-9, which authorized the director of transpor-

22. *Pullen*, 707 A.2d at 689. The state must establish and maintain public highways. "Supervision and control over public highways . . . may be exercised directly by the state or delegated to subordinate governmental agencies, such as municipalities, as the Legislature deems fit." *Id.*

23. *See id.* at 689-90.

24. *See id.* at 690 (citing *Pooler v. Burton*, 100 A. 465, 466 (R.I. 1917)).

25. *See id.*

26. *See id.* (quoting 1902 R.I. Pub. Laws ch. 982, § 5).

27. *See id.*

28. *See id.*; *see also Pooler*, 100 A. at 465 (R.I. 1917) (holding that establishment of state highway system caused the state to have control over state roads).

29. *Pullen*, 707 A.2d at 690 (emphasis added) (citing *Child*, 155 A. at 664).

30. *See id.*

tation to construct sidewalks along state roads, and empowered the director to maintain them.³¹ This statute has not changed much through the years, and is now codified in sections 24-8-6 and 24-8-9.³² In this case, the court concluded that, besides authorizing the director of transportation to construct and maintain sidewalks as part of the state highway system, these new statutes also authorize the state to enter into contracts with a town or a city, thereby relieving the town of its duty to maintain such state owned sidewalks within the town or city borders.³³

The State of Rhode Island entered into its contract with the city of Newport pursuant to these new provisions.³⁴ Pursuant to the contract, the state agreed to "construct and maintain the Memorial Boulevard Extension in the city of Newport as part of the state highway system."³⁵ Furthermore, the state also agreed to "be responsible for the maintenance of the entire highway and appurtenances with the exception of the Agency's facilities . . . [which] facilities includ[e] sewer, water, drainage, and fire alarm systems."³⁶ In the instant case, the court noted that it is "highly unlikely . . . that the Legislature intended to require municipalities to maintain a state-constructed sidewalk after the state has contracted to maintain the sidewalk pursuant to its statutory author-

31. *See id.*

32. *See id.* Rhode Island General Laws section 24-8-6 provides:

Authority for sidewalks and curbs.—The director of transportation shall have the power and authority to make, lay in and upon, and construct sidewalks, including curbs, adjacent to and along either or any one side or both sides of any state road, now constructed, in the process of construction, or to be constructed, which in his or her opinion and judgment require sidewalks and curbs for pedestrian travel.

Id.

Section 24-8-9 provides:

Regulations of sidewalks and curbs.—The director of transportation shall have the power and authority to alter, to maintain, to keep in good condition, to remove ice and snow therefrom, to remove posts, steps and any other obstructions therein, to regulate the placement, structure, and alteration of curbs constructed adjacent to state roads.

R.I. Gen. Laws § 24-8-9 (1956) (1997 Reenactment).

33. *See Pullen*, 707 A.2d at 691.

34. *See id.*

35. *Id.*

36. *Id.* (citing agreement between the city and state).

ity."³⁷ Therefore, the state, not the city of Newport, was responsible for maintaining the sidewalk upon which Pullen fell.³⁸

CONCLUSION

Ordinarily, a municipality has an obligation to maintain all sidewalks within its borders. However, Rhode Island General Laws sections 24-8-6 and 24-8-9 authorize the state to enter into contracts with municipalities regarding the construction and maintenance of state roads and sidewalks, thereby relieving the municipality of its duty to maintain said roads and sidewalks. When such a contract is entered into, the state expressly assumes the responsibility for and duty of maintaining the sidewalks specified.

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37. *Id.*

38. *See id.* at 692. The court also dismissed plaintiff's final claim that the city assumed responsibility for maintaining a sidewalk by doing so in the past. The court held that section 45-15-11 of the Rhode Island General Laws expressly states that "[n]o work done by any city or town, upon any way or street, shall constitute or be any evidence of an acceptance of the way or street by the city or town, nor shall it in any way change the status of the way or street. . . ." *Id.*