

SANTIAGO M. BABAUTA, Plaintiff-Appellee
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, et al.,
Defendants-Appellants
Civil Appeal No. 328
Appellate Division of the High Court
Northern Mariana Islands District
July 27, 1981

Appeal from judgment of the High Court for plaintiff in negligence action against the police. The Appellate Division of the High Court, Gianotti, Associate Justice, held that since the police had suggested that the plaintiff and his family vacate their premises and that the police would look after the property, the police had undertaken the duty to protect the house and were liable in negligence for the subsequent destruction of the house, and therefore the judgment was affirmed.

1. Criminal Law—Police Officers—Duties

Police officers owe a duty to the public to apprehend law violators.

2. Negligence—Public Employees

Where certain individuals had been throwing stones and discharging firearms at plaintiff's house, and police officers suggested to plaintiff that he and his family should vacate the premises and if they did so, the police would look after the property, and after plaintiff and his family vacated the house it was destroyed, since the police had undertaken the duty to protect plaintiff's house, and plaintiff had relied upon their assurances, the police were subject to liability for failure to exercise reasonable care in performing their undertaking.

3. Negligence—Tests and Standards

One who undertakes to warn the public of danger and thereby induces reliance must perform his "good Samaritan" task in a careful manner.

4. Witnesses—Expert Witness—Qualifications

The qualifications of an expert is strictly within the discretion of the trial judge and his discretion will not be questioned unless a clear abuse is obvious.

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Before BURNETT, *Chief Justice*, NAKAMURA, *Associate Justice*, GIANOTTI, *Associate Justice*

GIANOTTI, *Associate Justice*

What duty, if any, do the police owe to an individual property owner when they, the police, volunteer to safeguard the individual's property? This question arose out of an incident occurring on Saipan over a two-day period of time January 14-15, 1976, and the question covers the specific grounds of appeal from a judgment of the High Court finding in favor of the plaintiff.

On January 14, 1976, the Saipan police were called to the residence of one Santiago Babauta, appellee herein, to answer a disturbance call. It seems certain individuals had been throwing stones and discharging firearms at appellee's home and adjoining store. These incidents continued even after the police arrived. At some point the police officers suggested to appellee that he and his family should vacate the premises at least temporarily and that if they did so, the police would look after the property. Considering this idea expedient under the circumstances, the Babauta family removed themselves from the house and spent the night of the 14th elsewhere. On January 15, appellee dispatched third persons to his property to remove the contents of the buildings in order to safeguard them. Although it is of no particular significance to this appeal, we do note that these third persons were Boy Scouts. Police officers were again summoned to assist the Scouts and this resulted in more stone-throwing-gunshot incidents. The initial officers called for assistance and additional police officers were dispatched to aid those at the scene. Upon the arrival of the subsequent officers, the police congregated on adjoining property to confer as to their next order of business. During the period of time the conference was taking place, appellee's buildings were set on fire and destroyed.

Having suggested that appellee move from his property the day previous, after assuring him they would look after his property, was the police department as an agency of the Trust Territory Government liable for the destruction of appellee's property? We think they were.

[1] In tort actions against a governmental body, liability against that body must be established.

Though police officers exercised some discretion in execution of their duties, a municipality is liable under the doctrine of respondeat superior for those acts of its police officers within the scope of their employment. *Patterson v. City of Phoenix*, 103 Ariz. 64, 436 P.2d 613.

Police officers owe a duty to the general public to apprehend law violators. This is the rule enunciated in *Schuster v. City of New York*, 5 N.Y.2d 75, 154 N.E.2d 534. This case pertains to police protection of an informer. This protection was promised by the police and not provided. The case goes on to say,

Although as a general rule the City of New York or any municipality cannot be held liable for damages as a result of a failure to furnish police protection, it can be held liable where it assumes a duty to provide police protection but does so in a negligent manner.

In the case of *DeHoney v. Hernandez*, found in 594 P.2d 1010, 1013, the fact situation is very similar to the case before us. In that case, the officers represented to the owner of certain property that they, the officers, would take specific steps to protect him and his property. In that case the court held such a promise resulted in a special duty owed by the police to that person. The case cites *Massengill v. Yuma County*, 104 Ariz. 518, 456 P.2d 376, and holds as follows:

[T]here are situations where a government, or agency thereof, can by its conduct narrow an obligation owing to the general public into a special duty to an individual, for the breach of which

it is responsive in damages. The apprehension of law violators is a general duty owed to the public and not to individuals. *Massengill v. Yuma County*, supra. The question here is whether the conduct of the police narrowed that duty to a special duty. Instructive on this point is the case of *McGeorge v. City of Phoenix*, 117 Ariz. 272, 572 P.2d 100 (App. 1977). There the court stated:

“In the narrow field of police protection, however, we can discern certain general situations where duty toward specific individuals can be found. One is where there has been a specific promise or representation by police to a person in a situation which creates justifiable reliance.” (Emphasis added.) 117 Ariz. at 277, 572 P.2d at 105.

Following the line of this case, we must determine whether the police, in assuming the duty of caring for appellee’s property, were thereby negligent in their actions towards that property and thus would be liable for the damage as a result of the negligence. In the restatement of this subject,

[N]egligence is conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm. It does not include conduct recklessly disregarding of an interest of others. Restatement of Torts, § 282.

The Restatement goes on to say :

One who undertakes gratuitously or for consideration to render services to another which he should recognize as necessary for the protection of the other’s person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if:

(a) his failure to exercise such care increases the risk of such harm, or,

(b) the harm is suffered because of the owner’s reliance upon the undertaking. Restatement of Torts, § 323.

And, finally,

If the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally

tortious, or criminal does not prevent the actor from being liable for the harm caused thereby. Restatement of Torts, § 449.

In the case before us, the police undertook a duty to protect appellee's property by recommending that appellee remove himself from the property, and by assuming the duty to protect the property when they advised appellee that they, the police, would look after the property. Appellee obviously relied upon the assurance that his property would be looked after because he moved himself and his family away from the property on January 14. The police should have believed that the conduct that was taking place, namely, the stone-throwing and gunshots, would continue, especially in view of the fact that the police were summoned the following day as a result of identical destructive acts when the Boy Scouts arrived. The officers present obviously felt that the incidents would continue, and they requested assistance from other officers.

[2, 3] The police had no statutory or common law duty to protect the appellee's property and they need not have told appellee to move, but once they did and agreed to watch over the property, appellee could rely upon the statement and the police department was obligated to watch over the property in a careful manner. As the police were negligent in their duty and the damage resulted,

It is hornbook tort law that one who undertakes to warn the public of danger and thereby induces reliance must perform his "good Samaritan" task in a careful manner. *Indian Towing Co. v. United States*, 350 U.S. 61, 76 S. Ct. 122, 124.

The only remaining point raised in the briefs and argument of appellant counsel pertains to the qualifications of the expert witness.

[4] The qualification of an expert is strictly within the judicial discretion of the trial judge and his discretion will not be questioned unless a clear abuse is obvious.

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The determination of the competency and qualifications of a witness offered as an expert is addressed to the judicial discretion of the trial judge before whom the testimony is offered, and his ruling or determination in this respect with regard to the proposed expert witness will not be disturbed by a reviewing court unless that discretion has been abused. 31 Am. Jur. 2d Expert and Opinion Evidence § 31, citing 166 A.L.R. 1067 and numerous State and Federal citations.

In the instant case, there is no question of the trial judge abusing his discretion and we will not find such an abuse.
Judgment AFFIRMED.