



The Second Department decided two very significant cases recently, both of which could head next to the Court of Appeals. First, the Court departed from the holdings of the First and Fourth Departments to conclude that a county owes a special duty to a child placed in foster care, and thus “a plaintiff alleging that a municipal foster care agency negligently selected or supervised the foster parents charged with caring for that plaintiff as a child need not plead or prove additional facts supporting a special relationship in order to satisfy the special duty rule.” And second, the Court held that a memorandum of understanding between a developer and a municipality that committed the municipality and its successor boards to undertake a zoning amendment review, but did not require any particular determination at the review’s conclusion, violated the term limits rule. Let’s take a look at those opinions and what else has been happening in New York’s appellate courts over the past week.

Special thanks this week go out to my outstanding colleagues Justine Case-Fitzgerald and Viktoria Yudchits, who were instrumental in preparing the case summaries.

SECOND DEPARTMENT

TORTS, NEGLIGENCE, SPECIAL DUTY OF A MUNICIPALITY

[*Adams v Suffolk County*, 2024 NY Slip Op 05428 \(2d Dept Nov. 6, 2024\)](#)

Issue: Can a county be held liable for negligence for the negligent placement and supervision of a child in foster care?

Facts: “The plaintiff commenced this action pursuant to the Child Victims Act against the defendant Suffolk County, among others, to recover damages for alleged sexual abuse that she suffered as a foster child in the County’s custody in the 1970s. The plaintiff alleged that the County’s Department of Social Services assumed legal custody of her when she was a toddler and placed her in foster care. The plaintiff also asserted that, over the years, DSS placed her in different foster homes on Long Island. In the complaint, the plaintiff alleged that, between the ages of 10 and 11, she was sexually abused by the foster father the County selected to care for her while she was residing at his home in Huntington Station. According to the plaintiff, DSS then placed her in the care of foster parents who resided in Greenlawn. However, she allegedly also suffered sexual abuse while residing at that home, perpetrated on multiple occasions by an adult neighbor. The plaintiff asserted that, at 11 or 12 years old, she became pregnant as a result of the neighbor’s abuse.”

The County moved for summary judgment to dismiss the first cause of action for negligence, claiming that the plaintiff failed to establish that the County owed her a special duty. Supreme Court denied the County’s motion.

Holding: The Second Department affirmed. At the outset, the Second Department explained, “[i]n circumstances where . . . a [special] relationship exists, a municipality may be held liable for damages flowing from any breach of its voluntarily assumed duty, among other reasons, because it has determined, by its conduct[,] . . . how its resources are to be allocated [with] respect to that circumstance.” The Court noted that, here, it was not disputed that the County “was engaged in a governmental function when it selected the plaintiff’s foster parents and thereafter, through its caseworkers, supervised her care in the foster homes.” In next analyzing whether the County owed a special duty to the plaintiff, the Court held that “a municipality that has assumed legal custody of a foster child, and which selects and supervises the foster parents of that child, necessarily owes a duty to the child more than that owed [to] the public generally.” As such, “a plaintiff alleging that a municipal foster care agency negligently selected or supervised the foster parents charged with caring for that plaintiff as a child need not plead or prove additional facts supporting a special relationship in order to satisfy the special duty rule.” In so holding, the Court noted that federal court precedent supports its finding that “legal custody is sufficient to establish a special duty,” but that it was also departing from recent holdings of the Appellate Division, First and Fourth Departments.

The Court further held that the County failed to demonstrate that the governmental function immunity defense warranted dismissal of the complaint. The Court noted that “the governmental function immunity defense cannot attach unless the municipal defendant establishes that the discretion possessed by its employees was in fact exercised in relation to the conduct on which liability is predicated.” The Court concluded that here, the County “failed to show, prima facie, that the relevant acts of DSS caseworkers relating to the alleged negligent placement and supervision of the plaintiff were discretionary and thus entitled to immunity.”

MUNICIPAL LAW, TERM LIMITS RULE, CONTRACT ZONING

Hudson View Park Co. v Town of Fishkill, 2024 NY Slip Op 05332 (2d Dept Oct. 30, 2024)

Issue: Is the term limits rule violated by a memorandum of understanding entered into by a private developer and a municipality and its boards, which is binding on their successors, where the municipality agreed not to “terminate its review of the [developer’s] Zoning Petition, and the Project in general, until it reaches a final determination on the merits in its legislative judgment regarding the best interests of the [municipality based upon empirical data and other objective factual bases]”?

Facts: The plaintiff, a developer, owns approximately “50 acres of unimproved real property in the Town of Fishkill upon which it proposed to construct a mixed-use residential and commercial project. Approximately 16 acres of the property are located within the planned business zoning district while the remaining acres are located within a multi-family residential zoning district. In furtherance of the project, the plaintiff required a zoning map change to rezone the approximately 16-acre portion of the property to multi-family residential. The plaintiff also required a minor zoning text amendment as well as site development plan approval.” In December 2017, the development, the Town Board, and the Planning Board entered into a memorandum of understanding, in which the Town agreed to review the zoning change application diligently and in good faith, and would not terminate its review until it reached a final determination on the merits of the application. The MOU specifically provided that the Town could not commit to any particular outcome, and the Boards would undertake their review in accordance with governing law. Notably, the MOU also provided that it was binding on the parties’ successors.

The developer then submitted its zoning petition, and the Town’s review proceeded for more than a year and a half before a new Town Board was elected. The new Town Board in April 2020 terminated its review of the zoning petition, concluding that it was “in the best interest of the Town to cease further review of the [plaintiff’s] Petition.” The developer sued for breach of the MOU, and for breach of the covenant of good faith and fair dealing. The Town moved to dismiss, and Supreme Court dismissed the case, holding that “the MOU is not a valid or enforceable contract as the Town Board could not contract away its legislative discretion concerning the proposed zoning amendment, and the term limits rule prohibits a prior town board from binding future town boards with respect to governmental functions” and that the MOU was illegal contract zoning.

Holding: The Second Department affirmed. The Court explained that “[t]he term limits rule prohibits one municipal body from contractually binding its successors in areas relating to governance unless specifically authorized by statute or charter provisions to do so. Elected officials must be free to exercise legislative and governmental powers in accordance with their own discretion and ordinarily may not do so in a manner that limits the same discretionary right of their successors to exercise those powers.” As the rule has evolved, the Court held, it “has been invoked in the context of service contracts and employment contracts entered into by municipal bodies, as well as in the context of zoning, when the contracts are binding on the municipal bodies’ successors, in areas in which the municipalities are exercising their governmental powers in accordance with their own discretion. Classification as to whether a municipal activity is governmental as opposed to proprietary depends on considerations including whether the activity was historically performed by government, whether it is best executed by government and whether it is undertaken for profit or revenue.” Thus, “courts have determined that even when a municipality enters into a contract that binds its successors, the term limits rule is not violated if the municipality is acting in a proprietary capacity, rather than a governmental one.”

Here, the Court held that the MOU bound successive Town Boards’ exercise of their legislative functions as to zoning, which was unquestionably one of their governmental powers. The Court rejected the developer’s argument that the term limits rule had not been violated because the MOU merely required the Town to follow the process to reach a decision on the zoning petition, but did not commit the Town to any particular decision. The Court reasoned, “[w]e do not find this argument to be persuasive as the plaintiff is conflating concepts. The plaintiff is equating not contractually binding successor boards to a particular outcome with not binding them in the exercise of their legislative power. Here, the plain language of the MOU unambiguously purports to bind successor boards to continue the review process of the plaintiff’s zoning petition until a final determination on the merits is reached, thus eradicating the successor board’s discretion to terminate review at any point in time prior to reaching a final determination. Moreover, the MOU also impinges on the legislative discretion of future boards in that it not only requires a review until a final determination is reached, but also, requires that it be based on ‘empirical data and other objective factual bases.’” Finally, the Court held, no statutory authority exists for one Town Board to bind its successor. “[W]hile a contract entered into by a town board that binds successor boards in areas relating to governance would not violate the term limits rule, if such a contract were ‘specifically authorized by statute or charter’, contrary to the plaintiff’s contention, Town Law §§ 29(16) and 64(6) do not specifically authorize the Town Board to enter into such a MOU that binds successor boards.”

Thus, the Court concluded, “where as here, there is no specific statutory authorization to bind successor boards, a board may not contractually bind successor boards with regard to the process of reaching a determination regarding a zoning change, which is clearly a governmental function; such a contract violates the term limits rule and is void as against public policy. Protecting the ability of a successor board to freely exercise its legislative power in accordance with its own discretion with regard to the process of reaching a determination regarding a zoning change is of no less import than it is with regard to reaching the final determination itself. Each board must maintain its autonomy and must be imbued with full discretion when exercising its legislative functions with regard to making a decision concerning a zoning change, including its right not to continue the review process until a final determination on the merits is reached.”

THIRD DEPARTMENT

CRIMINAL LAW, WEIGHT OF THE EVIDENCE, SENTENCING

People v Hussain, 2024 NY Slip Op 05513 (Nov. 7, 2024)

Issue: Was a jury verdict convicting defendant of 20 counts of manslaughter in the second degree against the weight of evidence in that both the requisite mens rea and causation elements were not met?

Facts: In October 2018, a stretch limousine for hire, experienced catastrophic brake failure, crashing at the bottom of a hill, killing all 17 passengers, 2 pedestrians, and the driver. The brake failure was “attributable to protracted neglect of proper inspection, maintenance and repairs.” The limousine rental business was owned by defendant’s father and defendant oversaw the business, “handling the day-to-day affairs of the business that rented out the limousine, including putting the vehicle into service on the day of the accident.”

After being indicted, defendant pled guilty to 20 counts of criminally negligent homicide and pursuant to a plea agreement, he was sentenced to probation and community service. Due to a defect in the original sentence, defendant was scheduled for resentencing in August 2022. At the resentencing, Supreme Court advised defendant that it would not abide by the plea agreement and intended to sentence defendant to prison that day. After defendant briefly conferred with counsel, he withdrew his plea and the matter proceeded to trial. “A jury found defendant guilty of the manslaughter counts, and Supreme court sentenced him to 20 concurrent prison terms of 5 to 15 years.”

Holding: The Third Department affirmed, holding that “the People proffered legally sufficient evidence to establish the required mental state for second degree manslaughter.” Here, the Court noted that by defendant “avoiding proper inspection, neglecting appropriate maintenance and affirmatively rejecting necessary repairs” a jury could “conclude beyond a reasonable doubt that defendant was aware of and consciously disregarded the state of disrepair of the limousine’s braking system.” The Court held that “[t]he People’s uncontroverted expert testimony established that the cause of the accident was catastrophic brake failure” and that “the condition of the rear brakes was directly attributable to defendant’s conduct,” thus a rational jury could infer from the “valid line of reasoning and permissible inferences” that causation was proven beyond a reasonable doubt.

In addressing defendant’s additional arguments, the Court held that defendant was not deprived of his right to a fair trial. The Court noted that there was no evidence at trial to support a finding that the victims’ death was solely attributable to a secondary agency and, therefore, defendant was not entitled to an intervening cause jury instruction. The Court also held that although the haste demonstrated by the Supreme Court at resentencing was not appropriate, defendant’s right to counsel was not infringed upon, and would not necessitate a reversal.

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