

WISCONSIN SUPREME COURT
FRIDAY, MARCH 14, 2014
10:45 a.m.

This is a certification from the Wisconsin Court of Appeals, District II (headquartered in Waukesha). The Court of Appeals may certify cases that it believes cannot be resolved by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. This case originated in Racine County Circuit Court, Judge Charles H. Constantine, presiding.

2012AP2499

[Legue v. City of Racine](#)

This certification from the District II Court of Appeals arises from a traffic accident in which an officer driving a police squad collided with another vehicle at an intersection in Racine.

The Supreme Court examines whether governmental immunity applies when someone is injured because an officer proceeds against a traffic signal as authorized by Wis. Stat. § 346.03(2)(b), if the officer slowed the vehicle and activated lights and sirens as required by § 346.03(3) but nonetheless arguably violated the duty to operate the vehicle “with due regard under the circumstances” as required by § 346.03(5)?

The Court of Appeals says the ramifications of this case are significant because if immunity for the manner of entering the intersection is held to be subject to the “due regard” condition, then immunity will become “just an empty shell if an accident results.”

Some background: In July of 2009, Officer Amy Matsen received a dispatch calling her to the scene of a motor vehicle accident. Matsen headed north on Douglas Avenue in Racine at a high rate of speed with lights and sirens engaged, periodically sounding her horn. As she neared the intersection with South Street, she saw the light was red and she slowed down. A restaurant at the southwest corner of the intersection blocked the view between the western portion of South Street and the southern portion of Douglas Avenue. Matsen reduced her speed to 27 miles an hour, below the posted speed limit of 35, and proceeded through the intersection.

Eileen Legue, the plaintiff in this case, was traveling east on South Street at 30 miles an hour and was just about to enter the intersection with Douglas Avenue. Legue had her windows up and music playing and did not hear Matsen's sirens or horn. The front end of Legue's vehicle struck the driver's side of Matsen's vehicle. Both women were injured in the collision.

Legue filed suit, seeking compensation for damages she sustained as a result of Matsen's alleged negligence. Matsen's answer included the defense of governmental immunity and the public officer's privilege to violate traffic laws in an emergency. A jury trial was held on the issues of whether, upon entering the intersection, Matsen drove with due regard under the circumstances for the safety of all persons; if not, whether Matsen's negligence was a cause of the accident; and whether Legue was contributorily negligent. The jury found both parties negligent and found that each was equally at fault.

Matsen filed motions after verdict on the grounds that, as a matter of law, the evidence established she could not have prevented the accident except by deciding not to enter the intersection, a decision for which she claimed she was immune from liability. Legue's response was that although Matsen's decision to enter the intersection was discretionary, the duty to operate her vehicle with due regard under the circumstances for the safety of all persons was ministerial.

Legue argued that because the restaurant blocked the view, Matsen had a ministerial duty to greatly reduce her speed, or even stop, before entering the intersection. The circuit court granted Matsen's motions, finding that Matsen was immune from liability for damages resulting from her discretionary decision to enter the intersection.

Legue appealed, leading to this certification.

District II notes governing case law interprets the statute to mean that public employees are generally immune for damages caused by their acts in the scope of their employment, subject to four exceptions: performance of ministerial duties, known dangers giving rise to ministerial duties, exercise of medical discretion, and intentional, willful, and malicious actions. See Brown v. Acuity, 2013 WI 60, ¶42, 348 Wis. 2d 603, 833 N.W.2d 96.

The parties to this case agree that Matsen's decision to enter the intersection was discretionary and that liability cannot be premised on that decision by itself. It says the pertinent question presented here was left open by Brown: Whether an officer who fulfills the ministerial duties of § 346.03(2)(b) and (3) but arguably violates the duty to operate the vehicle with due regard under the circumstances is entitled to immunity.

A decision by the Supreme Court could clarify the extent of governmental immunity available to officers involved in accidents while responding to an emergency.