



6 June 2019

THE COURT ORDERED that no one shall publish or reveal the name or address of the Appellants who are the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of the Appellants or of any member of their families in connection with these proceedings.

PRESS SUMMARY

Poole Borough Council (Respondent) v GN (through his litigation friend “The Official Solicitor”) and another (Appellants)
[2019] UKSC 25
On appeal from [2017] EWCA Civ 2185

JUSTICES: Lady Hale (President), Lord Reed (Deputy President), Lord Wilson, Lord Hodge, Lady Black

BACKGROUND TO THE APPEAL

The claimants, who have been given anonymity, seek damages for personal injuries suffered while they were children living in the area of the defendant council. They maintain that the injuries were suffered as a result of the council’s negligent failure to exercise its powers under the Children Act 1989 (“the 1989 Act”) so as to protect them from harm at the hands of third parties.

The claimants allege that in May 2006 they and their mother were placed by the council in a house on an estate in Poole next to a family who, to the council’s knowledge, persistently engaged in anti-social behaviour.

The claimants and their mother became the target of harassment and abuse at the hands of this family, which persisted over a period of several years until they were re-housed in December 2011. This included vandalism of the mother’s car, attacks on the family home, threats of violence, verbal abuse, and physical assaults on the mother and one of the claimants. As a result, the claimants suffered physical and psychological harm. During the period in question, both claimants were identified by the council as children in need as defined in the 1989 Act, and had social workers allocated to them.

The claimants initially brought their claim on the basis that the council had been negligent in the exercise of both its housing functions and its functions under the 1989 Act. The claim was struck out by Master Edelman on the basis that no relevant duty of care towards the claimants arose out of the statutory powers and duties relied on. The claimants appealed in relation the council’s functions under the 1989 Act only. The appeal was allowed by Mrs Justice Slade in the High Court. The Court of Appeal then allowed the council’s further appeal. The claimants now appeal to the Supreme Court.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Reed, with whom the rest of the Court agrees, delivers the judgment.

REASONS FOR THE JUDGMENT

The claimants’ particulars of claim do not disclose any recognisable basis for a cause of action. The case should not proceed to trial.

The claimants focus on section 17 and 47 of the 1989 Act, but it is accepted that the Act does not create a statutory cause of action. Therefore, the question is whether local authorities may be liable for breach of a common law duty of care in relation to the performance of their functions under the Act. [25]

Public authorities do not owe a duty of care at common law merely because they have statutory powers or duties, even if, by exercising their statutory functions, they could prevent a person from suffering harm. However, they can come under a common law duty to protect someone from harm in circumstances where the principles applicable to private individuals or bodies would also impose such a duty, as for example where the authority has created the source of danger or assumed a responsibility to protect the claimant from harm, unless the imposition of such a duty would be inconsistent with the relevant legislation. [65]

The present case is not one where the council is alleged to have harmed the claimants, but one in which the council is alleged to have failed to provide a benefit to the claimants by protecting them from harm. [74] The claimants' case is that the council had assumed a responsibility towards them to take reasonable care in investigating and monitoring their position. If such care had been taken, the council would have exercised its powers under the 1989 Act to remove the claimants from their home into at least temporary care. The council's conduct in investigating and monitoring the claimants' position did not, however, involve the provision of a service to them on which they or their mother could be expected to rely. It could not be said that the claimants and their mother had entrusted their safety to the council, or that the council had accepted that responsibility. Nor had the council taken the claimants into its care, and thereby assumed responsibility for their welfare. The council therefore did not assume a responsibility towards them. [80]-[81]

The claimants also advance an alternative claim on the basis that the council is vicariously liable for negligence by the social workers in its employment. There is no doubt that, in carrying out the council's statutory functions, the social workers were under a contractual duty to the council to exercise proper professional skill and care. The question is whether, in addition, they also owed a similar duty to the claimants under the law of tort. That depends on whether the social workers assumed a responsibility towards the claimants to perform their functions with reasonable care. [86] A defendant may assume responsibility to a claimant where he undertakes the performance of some task or the provision of some service for the claimant with an undertaking that reasonable care will be taken. Such an undertaking may be express but is more commonly implied, usually by reason of the foreseeability of reliance by the claimant on the exercise of such care. [88] In the circumstances of this case, however, the particulars of claim do not set out any basis on which such an assumption of responsibility might be established at trial. [89]

Any uncertainty as to whether this case is one which can properly be struck out is eliminated by the further difficulties that arise in relation to the claimant's case that the council breached its duty of care by failing to remove the claimants from their home into, at least, temporary care. In order to obtain a care order under the relevant provisions, it would have been necessary to establish that the claimants were suffering, or were likely to suffer, significant harm which was attributable to a lack, or likely lack, of reasonable parental care. The harm suffered by the claimants was attributable to the conduct of the neighbouring family, rather than a lack of reasonable parental care. There were simply no grounds for removing the children from their mother. [90]

References in square brackets are to paragraphs in the judgment.

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>