



23 October 2013

PRESS SUMMARY

Woodland (Appellant) v Essex County Council (Respondent) [2013] UKSC 66
On appeal from [2012] EWCA Civ 239

JUSTICES: Lady Hale (Deputy President), Lord Clarke, Lord Wilson, Lord Sumption, Lord Toulson

BACKGROUND TO THE APPEAL

On 5 July 2000 the appellant suffered a serious hypoxic brain injury during a school swimming lesson at Gloucester Park swimming pool in Basildon, Essex. At the time she was aged ten and a pupil at Whitmore Junior School, for which the respondent education authority was responsible. The swimming lesson took place in normal school hours as required by the national curriculum.

The appellant was assigned to a group being taught by a swimming teacher, Ms Burlinson, and a lifeguard, Ms Maxwell, was also in attendance. It is alleged on the appellant's behalf that both negligently failed to notice that she had got into difficulties in the water, causing her to suffer the injury. Neither was employed by the respondent. Their services had been provided to the respondent pursuant to a contract with Beryl Stopford (trading as Direct Swimming Services) to provide the lessons.

The appellant issued proceedings for negligence against a number of parties, including the respondent. Her case against the respondent included an allegation that it owed her a 'non-delegable duty of care', with the result that it was liable for any negligence on the part of Ms Burlinson or Ms Maxwell. The respondent denied that it owed such a duty and applied to strike out this allegation against it.

The allegation was struck out in the High Court and this decision was upheld in the Court of Appeal.

JUDGMENT

The Supreme Court unanimously allows the appeal against the order striking out the allegation of a non-delegable duty. The case will now return to the High Court to determine whether the appellant was in fact a victim of negligence. Lord Sumption gives the main judgment. Lady Hale gives a supporting judgment. Lord Clarke, Lord Wilson and Lord Toulson agree with both judgments.

REASONS FOR THE JUDGMENT

The question before the court was the scope of the respondent's duty to pupils in its care: was it a duty to take reasonable care in the performance of the functions entrusted to it only if it performed those functions itself, through its own employees; or was it to procure that reasonable care was taken in their performance by whomever it might get to perform them – a non-delegable duty [4]?

Non-delegable duties of care are inconsistent with the fault-based principles on which the law of negligence is based and are therefore exceptional [22]. English law has recognised that non-delegable duties can arise in cases with the following characteristics:

- (1) the claimant is a patient or child or for some other reason is especially vulnerable or dependant on the protection of the defendant against the risk of injury;
- (2) there is an antecedent relationship between the claimant and the defendant independent of the negligent act or omission itself (i) which puts the claimant in the actual custody, charge or care of the defendant, and (ii) from which it is possible to impute to the defendant the assumption of a positive duty to protect the claimant from harm in the performance of those obligations and not just a duty to refrain from conduct which will foreseeably damage the claimant;
- (3) the claimant has no control over how the defendant chooses to perform those obligations;
- (4) the defendant has delegated some function which is an integral part of the positive duty which he has assumed towards the claimant and the third party is exercising the defendant's custody or care of the claimant and the element of the control that goes with it; and
- (5) the third party has been negligent in the performance of the very function assumed by the defendant and delegated by the defendant to him [23].

It is fair, just and reasonable to impose such duties. It is consistent with the long-standing policy of the law to protect those who are inherently vulnerable and subject to a significant degree of control. It is wholly reasonable that a school should be answerable for the performance of part of its own educational function. Parents are required by law to entrust their child to a school and have no knowledge or influence over the arrangements that the school may make to delegate specialised functions, or the competence of the delegates. It is not an open ended liability and will only cover functions which the school has assumed for itself a duty to perform rather than to arrange for its performance, and only where control over the child has been delegated. The recognition of this duty has become more significant as a result of increased outsourcing of educational and supervisory functions but only replaces duties which the school formerly owed when the functions were performed by its staff [25].

On the facts of this case, as pleaded by the appellant, the respondent had delegated the control of the appellant to third parties to carry out an integral part of its teaching function during school hours, in a place where the school chose to carry out this part of its functions. If it is found that the third parties were negligent then the respondent will be in breach of duty [26].

Lady Hale, agreeing with Lord Sumption, suggests that this development of the law avoids the unsatisfactory possibility that one pupil could sue her school for injuries sustained during a negligently conducted swimming lesson where another could not, depending on the precise arrangements made by the school to provide them with swimming lessons. The boundaries of what a school may have undertaken to provide might not always be as clear cut as in this case but would have to be worked out on a future case by case basis [38].

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:

www.supremecourt.gov.uk/decided-cases/index.html