
NO. 25524

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

GUY HASHIMOTO, Plaintiff-Appellant,

vs.

STATE OF HAWAI'I, Defendant-Appellee,

and

CAROLINE K. LIFTEE, CITY AND COUNTY OF HONOLULU,
JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS
1-10, DOE PARTNERSHIPS 1-10, DOE TRUSTS 1-10,
ROE GOVERNMENTAL AGENCIES 2-10, Defendants.

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 99-2462)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

Plaintiff-appellant Guy Hashimoto appeals from the November 22, 2002 final judgment of the Circuit Court of the First Circuit.¹ The circuit court granted the Defendant-appellee State of Hawaii's (State's) motion for summary judgment on two bases: (1) there is a general rule that a governmental entity is immune from suits based on the failure to install a traffic control device, such as the left-turn phase at issue in this case; and (2) the decision regarding the installation of a left-turn phase was not an operational level decision but rather was within the discretionary function exception to the State's waiver

¹ The Honorable Virginia L. Crandall presided.

of immunity under the State Tort Liability Act. Hashimoto argues, among other points, that the circuit court erred in granting the State's motion for summary judgment because:

(1) there is no general rule in Hawai'i that the State is immune from suits based on the failure to install a traffic control device such as the left-turn phase at issue in this case; and (2) a genuine issue of material fact exists as to whether the State's failure to install a left-turn phase for traffic turning left from an existing left-turn lane in an intersection controlled by traffic signal lights was an operational level decision or required evaluation of broad public policies which would entitle the State to have discretionary function immunity.

Upon carefully reviewing the record and briefs submitted, we hold as follows: (1) Hawai'i has not adopted a general rule that the State is immune from suits based on the failure to install traffic control devices. See Taylor-Rice v. State, 91 Hawai'i 60, 77, 979 P.2d 1086, 1103 (1999) (holding that the determination of whether a decision comes within the discretionary function exception or is an operational activity must ordinarily be made by considering the factual context in which the issue has arisen); Breed v. Shaner, 57 Haw. 656, 667, 562 P.2d 436, 442-43 (1977) ("it would be inconsistent with the liberal construction of the [State Tort Liability] act to effectuate its purpose to limit the scope of the act with

refinements. The ultimate objective in interpreting the act is to maximize each interest in its application to individual cases.") (internal citation omitted); and Rogers v. State, 51 Haw. 293, 298, 459 P.2d 378, 381-82 (1969), (the circuit court did not err in holding that the State's negligence in the placement of road signs and restriping of the roadway did not come within the discretionary function exception); and (2) the discretionary function exception, the applicability of which is ultimately a mixed question of fact and law for the court to resolve, is limited to situations in which the State is engaged in the effectuation of "broad public policy." See Tseu ex rel. Hobbs v. Jeyte, 88 Hawai'i 85, 90, 962 P.2d 344, 349 (1998). The record presented to us is devoid of any evidence regarding the State's decision prior to the accident in question not to install a left-turn phase for traffic turning left when the State installed and maintained a left-turn lane in the intersection which was controlled by traffic signal lights. Rather, as acknowledged by the circuit court, the evidence presented by the parties focused on the State's post-accident considerations and eventual installation of the left-turn phase. This record does not support the circuit court's ruling that, as a matter of law, the State's decision not to install a left-turn phase at the time in question was based upon consideration of "broad public policy," and thus the circuit court's finding that the

discretionary function exception applied to the State's decision was in error.

IT IS HEREBY ORDERED that the circuit court's final judgment filed November 22, 2002 is vacated and this case is remanded to the first circuit court for further proceedings consistent with this order.

DATED: Honolulu, Hawai'i, January 21, 2005.

On the briefs:

Christopher S. Bouslog
for plaintiff-appellant
Guy Hashimoto

Dorothy Sellers
and Adina K. Cunningham,
Deputy Attorneys General,
for defendant-appellee
State of Hawai'i