

IN THE SUPREME COURT OF BELIZE A.D. 2019.

CLAIM NO. 785 OF 2019

BETWEEN

(MYRNA FERGUSON
(MARION HUESNER Administratrixes
(Estate of Ruth Christina Elizabeth (Ferguson

(
(AND

(ATTORNEY GENERAL OF BELIZE
(COMMISSIONER OF POLICE

CLAIMANTS

1st DEFENDANT
2nd DEFENDANT

Before: Hon Mr Westmin R.A. James (Ag)

Date of Judgment: 20th May 2021

Appearances: Mr Anthony Sylvestre for the Claimants

Ms Kimberly Wallace and Ms Lavina Cuello for the Defendants

JUDGMENT

1. The Claimants, Myrna Ferguson and Marion Heusner by an Amended Claim dated 19th day of May 2020 against the Defendants sought, damages for the wrongful death of Ruth Elizabeth Ferguson caused by the assault and negligence of PC Wilson Woodeye and WPC Jane Wade on November 20th, 2018 whilst executing a Commitment Warrant. In addition, the Claimants are also claiming special damages in the sum of \$10,000.00 with interest, cost and further or other relief.

Factual Background

2. Facts that were agreed between the parties are that on the 20th November, 2019, the deceased Ruth Ferguson was at her place of work at the Stella Maris School, in

Princess Margaret Drive when PC Wilson Woodeye and WPC Jane Wade went to execute a warrant of commitment on her.

3. The police officers executed the warrant and WPC Jane Wade and the deceased boarded a city bus, which route encompasses the Central America Boulevard, then onto Caser Ridge Road down Yaborough into Regent Street.
4. While on the bus the deceased started to display inability to breathe.
5. WPC Jane Wade rendered assistance and instructed the bus driver to stop at the Belize Medical Associates (South Clinic) where the deceased was attended to by medical personnel from the Belize Medical Associates (Southside Clinic) and was then taken to the Karl Huesner Memorial Hospital.
6. The deceased died a few hours later at the Karl Huesner Memorial Hospital.

LAW & ANALYSIS

7. There is no difference between the parties as to the facts to be established to prove negligence. There are three elements (a) a duty of care owed by the defendant to the claimant; (b) breach of that duty by the defendant; and (c) damage to the claimant resulting from the breach.
8. It is unarguable that the Defendants owe a duty of care to persons being detained. The Defendants have conceded, in submissions, that the Defendants owed a duty of care to the deceased and will be vicariously liable for the acts of the officers that were done in the course of their duty.
9. The basic test for a duty of care is whether the damage was reasonably foreseeable, whether there was a relationship of proximity between claimant and defendant, and whether it is just and reasonable to impose a duty.¹
10. There is a duty on police officers to take all reasonable steps to avoid acts or omissions which he could reasonably foresee would be likely to harm the person

¹ Caparo Industries plc v Dickman (1990)

for whom he is responsible. *“There must be reasonable foreseeability of a risk which a reasonable person would not ignore. The risk must be “real” in the sense that a reasonable person would not brush [it] aside as far-fetched.”*² In a situation of detention, it must be foreseeable that the carelessness of the authority will harm those detained.³

11. The case for the Claimants were that when PC Woodeye and WPC Wade went to execute the Warrant of Commitment on the deceased, that they assaulted the deceased and breached the duty of care in three regards as set out in the Particulars of Negligence:

- (i) *The deceased had expressed to PC Wilson Woodeye and WPC Jane Wade from at a very early stage that she required medical attention.*
- (ii) *The said police officer failed in their duty of care owed to the deceased to render assistance to deceased in obtaining medical attention in a reasonable and timely manner as was requested. The police officers were to take the victim as she was in executing their duties and given the deceased pre-existing medical condition, there was a foreseeable risk that harm would be caused to the deceased if medical attention was not received within a reasonable time.*
- (iii) *The 1st and 2nd Defendants are therefore vicariously liable for the failure of the members of the Belize Police Department, servants and or agents of the 2nd Defendant, in execution of their duties, to take reasonable care to prevent the deceased’s medical condition from being exacerbated.*

Assault of the Claimant

12. In the Claimants pleadings the Claimant initially indicated that the death was caused by the assault and negligence of the PC Woodeye and WPC Wade. The pleading alleged that during the arrest the officers hurled insults at the deceased and assaulted her and said she was going to jail. The insults and the assault were denied by the officers. The evidence submitted by the Claimants had no evidence of any assault on the deceased. The Claimants’ witness Rhona Tillett under cross

² *The Attorney General v Craig Hartwell (British Virgin Islands)* [2004] UKPC 12 at para. 21

³ *The Negligence Liability of Public Authorities*, 2nd ed Oxford 2019 at para 11.01

examination admitted she did not see any assault. The deceased was not even handcuffed. Insulting someone even if it did occur while unprofessional is nor a breach of a duty of care in negligence. On the evidence this allegation of assault is unproven.

The deceased was feeling ill and required medication attention

13. The Claimants in their Amended Claim pleaded that having been informed of her arrest, in the presence of members of staff, the deceased expressed to the said police officers that she was not feeling well and instead of assisting the deceased by taking her to the Cleopatra White Clinic which is adjacent to the said school or the Karl Heusner Memorial Hospital, which is a few minutes away, the said police officers hurled insults at the deceased, assaulted her, told her that she was going to jail. They pleaded that the deceased then became agitated and frightened and expressed to the police officers that she “could not breathe.” They later pleaded that the deceased was taken on the bus and a few hours later she died.
14. The evidence of the Claimants’ witnesses bears none of this out. There was no evidence that the deceased told the two police officers when she was being arrested that she was feeling unwell or was having a panic attack or that she needed medical assistance. The Claimants’ only witness who present at the time of the arrest admitted in cross examination that the deceased did not say she was having a panic attack or needed medical attention.
15. In the Claimants submissions it was argued that the Ms Staine’s evidence was that the deceased seemed to be having an anxiety attack and she looked frightened; her skin pigmentation started to get red and she was trembling in her voice. Besides the fact that this was not a part of the pleaded case for the Claimants, Ms Staine was not a medical doctor nor is someone being frightened when being arrested meant that the deceased needed medical attention without more.
16. The evidence also shows that the deceased walked out with the officers, saw another witness, spoke to that witness and even called her boyfriend and informed him to meet her at the Court because she was being taken in on a warrant. There was no evidence that anyone at that point believed that the deceased needed

medical attention not even the Claimants' own witnesses. On a totality of the evidence this allegation of negligence is not proven.

Failure to render assistance to deceased in obtaining medical attention in a reasonable and timely manner as was requested

17. The Claimants' pleaded case was that the police officer failed in their duty of care owed to the deceased to render assistance to the deceased in obtaining medical attention in a reasonable and timely manner as was requested.
18. **Chapter 56 of the Police Standing Order, Order 38** sets out the responsibility of an officer when a detainee falls ill. It states that:

“ Where a prisoner is ill or injured or becomes so while in custody the Station Officer will after rendering such first aid as is possible arrange for the prisoner to be medically examined by a local medical officer as soon as practicable. Where the prisoner requires treatment in a hospital he is to be taken there as soon as possible and arrangements made for him to be guarded while there unless he is so ill that it is not necessary. In suitable case's he may be bailed to return to the station at a date to be notified. Where the offence is serious and it is desired that he be released from hospital only into police custody a Notice will be served on the person in charge of the Hospital advising him that the patient is a prisoner and requiring that police must be notified when he is fit to leave the hospital in order that he may be escorted to the station.”

19. As indicated previously, the evidence never showed that the deceased ever requested medical attention when the arrest was being effected at the school. No evidence was produced to show that WPC Jade while on the bus did not provide assistance to the deceased when the deceased fell into difficulty. In fact, the agreed facts indicate that when the deceased started to display inability to breathe on the bus, WPC Wade rendered assistance and instructed the bus driver to stop at the Belize Medical Associates (South Clinic.) The only evidence about what occurred on the bus came from WPC Jane Wade whose evidence was largely unchallenged. She gave evidence that because the police officers came on a motorcycle, she took the deceased on bus to transport her to police station.

20. She testified that after they entered the bus the deceased was seated two or three seats behind her to reduce embarrassment to the deceased. Whilst on the bus she testified that the deceased walked to her seat on the bus and asked her to speak to the deceased's boyfriend. WPC Jade spoke to the male person and after the call, WPC Jade moved to a seat across from the deceased.
21. She testified that while approaching the Port Loyola Library on Central America Boulevard, the deceased began to cough, she proceeded to get up and ask her if she was ok and the deceased said yes. She asked her if she wanted water and the deceased said no. The deceased attempted to call her boyfriend again but was unsuccessful in reaching him.
22. When the bus was approaching the Port of Belize it was at this point that the deceased said that she was not feeling well and asked if WPC Jade could take her to the hospital. They were able to reach the deceased's boyfriend and inform him that she was not feeling well and WPC Jade told him that she was taking her to the nearest hospital which was Medical Associates Clinic on Regent Street. He informed WPC Jade that he will meet them there and the WPC gave the phone to the deceased and she hung up.
23. WPC Jade then called the other police officer PC Woodeye and informed him that he needed to meet her at the Clinic. The WPC recalls that the deceased cough had subsided but she started to take deep breaths. The WPC said she took action by informing the bus driver that he needed to speed up because she was not feeling well.
24. She further testified upon reaching the Clinic on Regent Street, she instructed the bus driver to stop the bus and the deceased walked off the bus and into the clinic building. She said that the front desk personnel took the deceased to the back part of the clinic and she, the WPC waited outside.
25. The deceased was later taken to the Karl Heusner Memorial hospital by ambulance where she subsequently died.

26. The evidence of WPC Jade was largely unchallenged and her evidence was not shaken in cross examination. Based on her evidence there was no delay in rendering assistance to the deceased in obtaining medical attention or not in a reasonable and timely manner. The evidence is that to the contrary the WPC when the deceased indicated that she wanted medical attention, she proceeded straight to the nearest medical facility for treatment. The deceased walked into the clinic on her own and received treatment.

27. Therefore, based on the pleaded case and the evidence before the Court, there was no breach of the police officer's duty of care by failing to render assistance to deceased in obtaining medical attention in a reasonable and timely manner.

the failure of the Defendants to take reasonable care to prevent the deceased's medical condition from being exacerbated

28. The evidence on the death of the deceased was given by the expert Dr Hugh Sanchez. Dr Sanchez is a medical partitioner in Belize with specialization in Anatomical Pathology.

29. The deceased who had hypertension with hypertensive cardiomyopathy (disease of the heart muscle) died from heart failure which was precipitated by her hyperthyroidism. The autopsy report noted an acute cardiopulmonary thromboembolism and acute pulmonary oedema (a dislodged blood cloth that has entered the lungs) which may have caused the heart failure.

30. He testified that the deceased was non-compliant which means she was not taking her prescribed medication for her illnesses. Medication reduces complication of the hyperbolism and hypertension which would be exacerbated without treatment. The long-term effect of this was a "big heart." A big heart with time will not function properly resulting in sluggish blood flow which can predispose a person to thrombosis (blot clots) forming.

31. A dislodged blood clot which entered the lungs through the heart would manifest itself in the difficulty in breathing which the WPC witnessed. The blood cloth would have prevented some blood from getting past it and because of the heart muscle disease she was unable to withstand the sudden increase in blood entering the heart and the heart gave up (acute heart failure).

32. Her heart failure was the last step in a long chain of processes that led to her death. The officers were not told nor had any knowledge of or could have known the deceased's medical condition. Some of the Claimants' own witnesses did not know of her medical condition. The arrest itself did not cause the death. The situation may have resulted in the deceased having an elevated blood pressure but the deceased's blood pressure was already too high from her hyperthyroidism and hypertension. There was no way that the officers could have prevented that or took any reasonable steps to prevent that. The officers could only ensure there was medical intervention once it was needed and as I held previously WPC Jade got the deceased to medical facility as soon as possible when requested on the bus when the deceased started to display signs of difficulty breathing.
33. The evidence of the expert was that it could take hours for it to be fatal without medical intervention and as the evidence has shown there was medical intervention not long after the deceased displayed symptoms. The deceased herself walked into the medical facility and did not die right away. Therefore, it was not the arrest situation that caused her death but rather other longstanding chronic illness/factors that caused her unfortunate death that day.
34. The actions of the police officers did not cause her medical condition nor exacerbated it. The deceased as indicated by the expert was a ticking time bomb especially since she was not taking her medication.
35. If I am wrong on the fact there was no breach of duty. I also hold that the death of the deceased was not caused as a result of the breach. A Defendant who is in breach of a duty in a tort cannot be held responsible for the loss suffered by the Claimant unless the Defendant's conduct was a cause of that loss.⁴ The Court must be satisfied that the deceased's injuries were caused by the Defendant's negligence, or that for want of care, the Defendant's negligence substantially accounted for the injury. Liability will only be affixed where the Defendant's act is the sole effective cause of the deceased's death or it is so connected to it to be a cause materially contributing to it.
36. The evidence given by the expert Dr. Hugh Sanchez indicated that the deceased's longstanding hypertension due to uncontrolled hyperthyroidism contributed to the disease complications of acute left ventricular failure (heart failure) presenting

⁴ Charlesworth & Percy on Negligence 13th Ed. at para. 6-01

as severe respiratory distress (air hunger/shortness of breath) as well as the haemoptysis (pink frothy, sputum). He said marked elevated blood pressure can be due the complications of hyperthyroidism which can be aggravated by sudden stressful situation (Fight/Flight Response). He said all of the above situation results in hypertensive crises (Accelerated Hypertension).

37. The arrest of the deceased clearly did not cause the death of the deceased, the cause of death of the deceased was also not foreseeable. As previously stated, the elevated blood pressure could not have been prevented by the officers as an arrest for anyone could be a stressful situation. The severity of the deceased's situation resulted due to her chronic issues which were not being treated as recommended. In considering the evidence I have found that the Claimants have not established that the the officers in the execution of their duty caused this death or did not properly provide for her treatment.
38. While this court is not of the belief that two officers who knew that they were going to arrest someone would not make adequate arrangements for transportation other than public transport that did not cause the death of the deceased.
39. In the circumstances above I would dismiss the claim. Having regard to the nature of the claim and the very unfortunate circumstances and hearing the parties I would award \$7,500.00 in costs. I hope the conclusion of this matter can bring the family some peace and finality and put their loved one to rest.

/s/WJames

Westmin R.A. James

Justice of the Supreme Court (Ag)