

## SIMPLE NEGLIGENCE THEORY DOES NOT APPLY TO POLICE OFFICER'S DISCRETIONARY CONDUCT

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*Spooner v. City of Phoenix*

Arizona Court of Appeals, November 27, 2018

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This case arose from an alleged wrongful arrest. Detective Toni Brown investigated Spooner's financial relationship with a 95-year-old woman. Brown testified about her investigation at grand jury proceedings, and the grand jury indicted Spooner for theft from a vulnerable adult and unlawful use of a power of attorney. The State later dismissed the charges.

Spooner sued the City and Brown arguing, among other things, that the detective failed to properly investigate Spooner's relationship with the elderly woman. In pertinent part, the trial court granted the City and Detective Brown judgment as a matter of law on Spooner's negligent investigation claim. The jury rendered a defense verdict on the other claims. Spooner appealed.

The court upheld the judgment as a matter of law on Spooner's claim for negligent investigation. Because police investigation involves an exercise of professional judgment, this is a discretionary act that is protected by common law qualified immunity. This means a claimant cannot raise a simple negligence claim based on this type of discretionary conduct. The only viable claims based on discretionary conduct are gross negligence or deliberate indifference claims. The court reasoned that while Arizona's Governmental Tort Claims Act sets out some areas of immunity, these statutes do not erase the common law rules of tort immunity for public entities and officials. And under the common law, public officials—including police officers—are entitled to limited protection from liability (qualified immunity) when "performing an act that inherently requires judgment or discretion." Criminal investigations involve the exercise of personal deliberation and individual professional judgment that necessarily reflect the facts of a given situation. By its very nature, investigative police work is discretionary and appropriate for exemption from suit for simple negligence. Public policy therefore mandates that investigative police work, performed in the scope of an officer's public duty, is a discretionary act subject to qualified immunity.

The court set out the test as follows:

If qualified immunity applies, a public official performing a discretionary act within the scope of her public duties may be liable only if she knew or should have known that she was acting in violation of established law or acted in reckless disregard of whether her activities would deprive another person of their rights. . . . A public official's conscious disregard of the law or the rights of others constitutes gross negligence, and she remains liable for such conduct. But a public official performing a discretionary act encompassed within her public duties is shielded from liability for simple negligence.

(internal quotations and citations omitted).

Those actions that allegedly violated clearly established law or reflected a reckless disregard of the plaintiff's rights were not entitled to common law qualified immunity, and were properly submitted to the jury. The jury was correctly instructed that it could find for Spooner if she proved gross negligence. But to the extent the detective's actions reflected the legitimate exercise of professional judgment, they were discretionary and protected by qualified immunity. Thus, the court rightly entered judgment as a matter of law in the City's favor on the claim for simple negligence.

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