

NO. 89738-7

SUPREME COURT OF THE STATE OF WASHINGTON

TANYA AND TOMMY RIDER, wife and husband and the marital
community composed thereof,
Appellants,

v.

KING COUNTY, in its capacity as the KING COUNTY SHERIFF'S
DEPARTMENT,
Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

ENDEL R. KOLDE
JESSICA H. KOZMA
Senior Deputy Prosecuting Attorneys
Attorneys for Respondent
King County Prosecuting Attorney's Office
500 Fourth Avenue, Suite 900
Seattle, Washington 98104
206-296-8820

by
b/h
JUN 11 2003
KING COUNTY PROSECUTOR
JESSICA H. KOZMA
500 4TH AVENUE SUITE 900
SEATTLE WA 98104

ORIGINAL

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Introduction

This is a personal injury case involving the public duty doctrine. Appellants Tom and Tanya Rider allege that the King County Sheriff's Office should have found Ms. Rider sooner after she drove her car off the road and crashed into a hidden area, where she remained trapped. King County successfully moved for summary judgment under the public duty doctrine. The Court of Appeals affirmed the dismissal, and the Riders have filed a petition for review.

This Court should deny the petition because the Court of Appeals properly determined that the special relationship exception to the public duty doctrine did not apply since King County made no express assurances of specific action to the Riders, and there was no evidence of detrimental reliance. The court also held that the rescue exception was inapplicable due to the lack of detrimental reliance. As a result, the decision of the Court of Appeals was consistent with this Court's jurisprudence.

Identity of the Respondent

Respondent King County opposes Appellants Tom and Tanya Rider's Petition for Review.

Issues Presented for Review

1. Under the public duty doctrine, a government duty to the public in general does not create a legal duty toward any particular individual except where narrow exceptions apply. The special relationship exception requires the government's express promise of specific future action. Should this Court grant a petition for review where the Court of Appeals held that the special relationship exception did not apply because, at best, the King County representative made only a general statement that Ms. Rider would be found if something bad had happened?

2. Both the rescue exception and the special relationship exception require a showing of detrimental reliance. Should this Court grant a petition for review where the Court of Appeals found neither exception applied because Mr. Rider did not stop looking for his wife and could not show that he would have taken any different action but for the general statement attributed to King County's employee?

Statement of the Case

The facts set forth below are copied verbatim from the Court of Appeals opinion.¹ *Rider v. King County*, No. 43363-0-II at 1-4. Further necessary facts are discussed in the body of the answer.

¹ Respondent, however, made one minor date correction. The opinion referred to Monday, September 27, as the date Ms. Rhodes became involved, but it was actually Monday, September 24. See *Rider v. King County*, No. 43363-0-II at 2.

On the morning of September 20, 2007, Tanya Rider left her overnight job and began driving home. Tanya's² vehicle left State Route 169 and landed in a ravine, where it was not visible from the roadway.

Tommy learned that his wife was missing on Saturday, September 22, when Tanya's employer called to tell him that Tanya had not reported for her scheduled shift. Tommy had last spoken with Tanya by phone on Wednesday evening, September 19.

After receiving the call from her employer, Tommy called 911 to report that Tanya was missing. After his call was transferred several times to the proper operator, Aaron Siegrist asked Tommy a series of questions to determine whether Tanya met the criteria for a missing persons report. Tommy said that he had checked local hospitals, but Siegrist told Tommy that he would also need to contact area jails before a missing person report could be taken, and Siegrist advised Tommy to continue to check area hospitals and look for activity on Tanya's bank accounts.

Tommy called 911 again on Sunday, September 23, and spoke with operator Thomas Lowe. At the same time, Tommy was on the phone with the Honda dealer to determine whether Tanya's car contained a vehicle locator. Lowe told Tommy to finish that call and call him back.

² We will refer to the Riders by their first names for clarity.

When Tommy called Lowe again, he reported that the car did not have a vehicle locator, and Lowe obtained the information needed to file a missing person report. Lowe gave Tommy a case number and told him that Tanya's information would be entered into a nationwide computer system so that, if she were found and a check was done on her name, she would be identified as a missing person and Tommy would be contacted. Lowe called Tommy later that day to obtain additional vehicle information and to tell him that an officer would be sent to his home.

King County Deputy Sheriff Christopher Cross came to the Rider home on Sunday evening. He searched the residence at Tommy's invitation and gave Tommy a business card with instructions to call the Major Crimes Unit the next morning.

On Monday, September 24, Janet Rhodes, who investigates missing persons for the King County Sheriff's Office, called Tommy after reviewing the report about Tanya. According to Rhodes, Tommy told her that Tanya was the only person with access to a USAA bank account and a Nordstrom VISA. According to Tommy, he told Rhodes that he lacked only online access to the USAA account. He also claimed that Rhodes told him that if something had gone wrong with Tanya, King County would find her.

Tommy went back to work after speaking with Rhodes, but he continued to drive Tanya's route to and from work and to their other property, and he posted flyers about her disappearance.

Rhodes contacted USAA and Nordstrom, and each confirmed that Tanya was the only person with access to the accounts.³ She spoke with Tanya's supervisor, tried unsuccessfully to reach Tanya by calling her cell phone, and contacted Tanya's cellular provider, Verizon. Verizon's automated message reported that information would not be released absent a subpoena or court order. On both Monday and Tuesday, Rhodes learned of activity on the USAA account, and she came to believe that Tanya was not actually missing, though she continued her investigation.

A further conversation with Tommy on Wednesday clarified that he also had access to the USAA account. Tommy told Rhodes that he had misunderstood her earlier question about account access because he was so exhausted. He explained that he was responsible for the recent USAA account activity.

In light of this information, Rhodes asked her supervisor if Tanya's cell phone records could be obtained, and a detective requested Tanya's records from Verizon on Thursday, September 27. The records were requested due to exigent circumstances with a warrant to follow. A few hours after obtaining the cell phone information, which showed the cell tower location of her last cell

³ A USAA representative later told Tommy that there had been no such communication.

phone activity, King County deputies found Tanya's car. Tanya was inside and had survived.

In September 2010, the Riders sued King County for negligence, asserting that the County had breached its duty to take reasonable measures to locate Tanya and had thereby caused both her and Tommy to sustain damages. The trial court granted King County's motion for summary judgment and dismissed the complaint with prejudice.

Argument

The Riders anchor their petition on the mistaken assertion that the Court of Appeals' decision conflicts with this Court's holdings in *Munich v. Skagit Emergency Center*, 175 Wn.2d 871, 288 P.3d 328 (2012) and *Beal v. Martinez*, 134 Wn.2d 769, 954 P.2d 237 (1998). App. Petition at 10-12. But the Court of Appeals appropriately distinguished those cases and followed this Court's jurisprudence. *Rider v. King County*, No. 43363-0-II at 8.

Moreover, the Riders have been consistently unable to bring forward any evidence of detrimental reliance, a necessary element of both the special relationship and rescue exceptions to the public duty doctrine. *Rider v. King County*, No. 43363-0-II at 9. As a result, this Court should deny the Riders' petition.

As noted by the Court of Appeals, *Munich* and *Beal* both involved an express promise of future action, not a general

statement that Ms. Rider would be found if something bad happened. *Rider v. King County*, No. 43363-0-II at 8.

Both *Munich* and *Beal* were 911 cases. In *Munich*, a 911 operator twice assured the caller that police had been dispatched to respond to his report that his neighbor was threatening him with a firearm. 175 Wn.2d at 875. The operator's statements were true, but unfortunately the call was incorrectly coded, leading the responding officer to arrive shortly after the caller had been killed. *Id.* at 876. This Court held: "On the *narrow issue* before us, we hold express assurances promising action need not be false or inaccurate as a matter of law to satisfy the special relationship exception to the public duty doctrine." *Id.* at 877 (emphasis added).

But this case does not turn on the truth or falsity of Ms. Rhodes' general statement that they would find Ms. Rider. It is undisputed that Ms. Rhodes did not promise any specific actions by King County, such as using cell tower information to locate Ms. Rider. *Rider v. King County*, No. 43363-0-II at 8 (citing CP 58-59). While Tom Rider "assumed they would use all reasonable methods" to locate Tanya, he neither sought nor received express assurances of specific conduct. *Id.* (citing CP at 301). "No one guaranteed me that they would find Tanya ... No, they did not give me expressed guarantees. They did give me the impression they were looking." CP at 58-59.

This Court has been clear that implied assurances do not give rise to a legal duty. *Cummins v. Lewis County*, 156 Wn.2d 844, 856, 133 P.3d 458 (2006); *Babcock v. Mason County Fire Dist. No. 6*, 144 Wn.2d 774, 791, 30 P.3d 1261 (2001). This case might be different if Ms. Rhodes had promised specific conduct such as dispatching police to a time-sensitive, emergent call or specifying that cell tower information was being collected to locate Tanya. But those are not the facts of this case.

Beal is similarly distinguishable because the facts there showed that the caller relied on the operator's assurance that police had been dispatched to meet a domestic violence victim who waited for the police and was murdered by her estranged husband. *Beal v. City of Seattle*, 134 Wn.2d 769, 785, 954 P.2d 237 (1998).

The fact that Ms. Fernandez told the operator she would wait in front of the apartment after being told the police would be sent gives rise to the inference she relied upon the assurance that the police protection would be forthcoming. She neither left the apartment nor attempted to proceed without police assistance.

Id. at 788.

In contrast, there is no evidence that Mr. Rider relied on Ms. Rhodes' statement and changed his position for the worse. On the contrary, it is undisputed that he kept looking for Ms. Rider. *Rider v. King County*, No. 43363-0-II at 9 (citing CP 61). Nor is there any evidence that, but for Ms. Rhodes' statement, he would have

obtained the cell phone records by himself or used any other method to locate Ms. Rider sooner.

It is telling that the Riders baldly state "the undisputed evidence before the Trial Court clearly indicated that Mr. Rider did in fact rely upon Ms. Rhodes and several other of Respondents' representatives to investigate and locate his wife...," but then provide no citation to the record. App. Petition at 13. Even the Riders admit that Mr. Rider continued to look for his wife. App. Petition at 16 ("...the undisputed and overwhelming evidence before the Court showed that Tom Rider was looking for Tanya Rider.").

Without some credible evidence of detrimental reliance, neither the special-relationship nor the rescue exception could apply here. As a result, the Court of Appeals correctly affirmed the dismissal, and this Court should deny the Riders' petition.

Conclusion

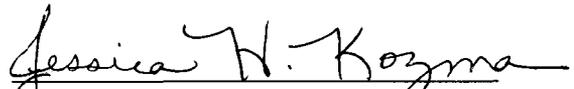
Respondent King County respectfully requests that this Court deny the Riders' petition because the Court of Appeals correctly determined that King County owed no legal duty to the Riders. The special relationship exception did not apply because King County made no express assurances of specific conduct. The Court of Appeals properly distinguished *Munich* and *Beal* as cases where the government representative had promised specific future action.

Moreover, the Riders have not brought forward any evidence of detrimental reliance, which is a required element for both the special relationship and rescue exceptions.

DATED this 31st day of January, 2014.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG
Prosecuting Attorney

By: 
ENDEL R. KOLDE, WSBA 25155
JESSICA H. KOZMA, WSBA 30416
Senior Deputy Prosecuting Attorneys
Attorneys for the Respondent
Endel.kolde@kingcounty.gov
Jessica.kozma@kingcounty.gov
WSBA Office #91002
paoappellateunitmail@kingcounty.gov

CERTIFICATE OF SERVICE

On the 31st day of January, 2014, I sent, by ABC Messenger Service, with instructions to be delivered no later than 4:30 p.m. on the afternoon of January 31, 2014, the original RESPONDENT'S ANSWER TO PETITION FOR REVIEW to the following:

WASHINGTON STATE SUPREME COURT
415 12th Ave S.W.
P. O. Box 40929
Olympia, WA 98504

and served the same via email to the following attorneys:

Paul A. Spencer, WSBA #19511
Oseran, Hahn, Spring, Straight & Watts, P.S.
Email: pspencer@ohswlaw.com

Boyd S. Wiley, WSBA #18817
Attorney at Law
E-Mail: bwiley@puyallup-law.com

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Liah Travis, Paralegal
Done in Seattle, Washington

1.31.14

Date