

BENJAMIN WASHBURNE et al. v. TOWN OF MADISON et al., AC 38721
Judicial District of New Haven

Negligence; Governmental Immunity for Discretionary Acts; Whether Identifiable Person, Imminent Harm Exception to Discretionary Act Immunity Applies. Benjamin Washburne received an injury to his shin/ankle while playing soccer during his third grade gym class at Ryerson Elementary School in Madison. He was not wearing shin guards when he was injured. Washburne brought this lawsuit against the town of Madison, its school board and school officials, claiming that his injury was the result of the defendants' negligence and that the defendants were negligent in, among other things, failing to require that students wear shin guards while playing soccer. The defendants moved to dismiss the action, claiming that they enjoyed governmental immunity from the negligence suit under General Statutes § 52-557n (a) (2) (B), which provides that a town shall not be liable for damages caused by "negligent acts or omissions which require the exercise of judgment or discretion." The trial court granted the defendants' motion and dismissed the case, ruling that the defendants were immune under § 52-557n (a) (2) (b) because the acts and omissions that the plaintiff complained of were discretionary in nature. The court rejected the plaintiff's claim that a statement in a curriculum guide for the Madison public school's physical education program suggesting that students should "wear shin guards for extra protection" while playing soccer gave rise to a ministerial duty on the defendants' part to require that students wear shin guards. The court found that that statement was not the sort of rule, policy, regulation or directive that gave rise to a ministerial duty and that it did not limit the defendants' discretion to decide that shin guards were not required. Finally, the trial court rejected the plaintiff's claim that the "identifiable person, imminent harm" exception to governmental immunity for discretionary acts applied here. Under that exception, a municipality and its employees can be liable for discretionary acts "when the circumstances make it apparent to a public officer that his or her failure to act would be likely to subject an identifiable person to imminent harm." The trial court ruled that the plaintiff failed to show that the harm he suffered was "imminent." The plaintiff appeals and claims that the trial court wrongly determined that the statement in the curriculum guide did not give rise to a ministerial duty to require students to wear shin guards and wrongly determined that, as a matter of law, the identifiable person, imminent harm exception to discretionary act immunity did not apply here.