

No. 28479 -- *John D. Sergent, as Administrator of the Estate of David Sergent, Deceased v. The City of Charleston, West Virginia, a Municipal Corporation; William H. Hart and Greg White, Police Officers of the City of Charleston; The City of St. Albans; J. H. Crawford, Police Officer of the City of St. Albans; Terryonto McGrier, a Convict; and Jerome Thomas, a Convict*

FILED

July 6, 2001

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

July 9, 2001

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

McGraw, Chief Justice, dissenting:

I have two principal concerns with the majority's holding in this case. The first is that I feel a jury should have had the opportunity to hear this case. The majority holding affirms the trial judge's decision that the police were not negligent as a matter of law. The case cited by the majority to support this position notes that it is not a forgone conclusion that the police are free from negligence just because the fleeing criminals struck the victim:

Nor does the fact that a law violator's actions were the immediate cause of the third party's injuries necessarily absolve the pursuing officer of liability if the officer's reckless conduct was a substantial factor in bringing about the ultimate collision. We spoke to this general concept in Syllabus Point 13 of *Anderson v. Moulder*, 183 W. Va. 77, 394 S.E.2d 61 (1990):

"A tortfeasor whose negligence is a substantial factor in bringing about injuries is not relieved from liability by the intervening acts of third persons if those acts were reasonably foreseeable by the original tortfeasor at the time of his negligent conduct."

The fact that the applicable standard of care is "reckless disregard" rather than "due care" does not affect these principles.

Peak v. Ratliff, 185 W. Va. 548, 555, 408 S.E.2d 300, 307 (1991) (quoting, *Anderson v. Moulder*, 183 W. Va. 77, 394 S.E.2d 61 (1990)).

I believe that the question of whether the intervening actions of the fleeing criminals were reasonably foreseeable remains unanswered. I am not suggesting that we know that the officers in this case were negligent, either in their actual pursuit of the criminals, or in their decision to confront them in the parking lot of the motel. I agree that law enforcement officers face a difficult and demanding job, and that the public has a substantial interest in seeing fugitives brought to justice.

However, this is something that jurors understand as well. There is no reason to believe that jurors could not weigh the competing interests of the victim in this case, and society at large. I think that we should have trusted the judgment of a group of citizen jurors to decide if the decedent's estate should recover. Therefore, I must respectfully dissent.