

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ROBERT FULTON, SR.,)
)
 PLAINTIFF)
)
 v.)
)
 TOWN OF RUMFORD, ET AL.,)
)
 DEFENDANTS)

Civil No. 95-173-P-H

**ORDER ON DEFENDANTS CHAPMAN’S AND
TOWN OF RUMFORD’S MOTION FOR
RECONSIDERATION**

In my original order on the defendants’ motion for summary judgment, I stated that there was “no discretionary immunity for the ministerial act of arresting the wrong person under a warrant” and cited Kane v. Anderson, 509 A.2d 656 (Me. 1986). See Order dated January 24, 1996, pp. 5-6 n.1. The defendants have now pointed out to me that the discretionary immunity provision of the Maine Tort Claims Act was amended after the decision in Kane, and the legislative history reveals that the legislature was concerned with the implications of Kane. Neither party has cited, and I have not been able to find, any Law Court decision after the amendment took effect that has discussed the relationship between the new language and Kane.

The new language in the statute provides:

The absolute immunity provided by paragraph C shall be applicable whenever a discretionary act is reasonably encompassed by the duties of the governmental employee in question, regardless of whether the exercise of discretion is specifically authorized by statute, charter,

ordinance, order, resolution, rule or resolve and shall be available to all governmental employees, including police officers . . . , who are required to exercise judgment or discretion in performing their official duties.

14 M.R.S.A. § 8111(1). On its face the language makes clear that police officers can have the benefit of discretionary immunity. Specifically, it is applicable “whenever a discretionary act is reasonably encompassed by the [police officer’s] duties.” Id. Determination of whether a particular human being is the person specified in an arrest warrant certainly seems to be a “discretionary act . . . reasonably encompassed by the [police officer’s] duties.” After all, an arresting officer will often have to determine whether changes in appearance (facial hair, glasses, weight, etc.) or a change in address or the presence or absence of a middle initial make this human being the one specified in the arrest warrant. On the facts in this case, the issues have to do with address and age.

The question for me, then, is whether Kane has continuing vitality for this case in its statement that “the execution of an arrest warrant is a ministerial rather than a discretionary function,” 509 A.2d at 656. After the statutory amendment, I conclude that it does not. The statement of fact accompanying the bill that resulted in the amendment to the Maine Tort Claims Act stated:

Although police officers . . . do not exercise policy-making functions, their jobs necessarily entail making judgment calls in difficult circumstances. Frequently, such officials have to act quickly in emergency situations. If discretionary immunity were not available, such officials might refrain from taking necessary action because of the fear of being subjected to civil liability. Accordingly, these officials should be entitled to discretionary immunity for those exercises of judgment which would be inhibited by the threat of civil liability.

L.D. No. 2443, 113th Leg., 2d Sess. 17 (1988). That rationale encompasses the decision made by the officer here.

The plaintiff maintains, however, that this is a question of state law that is properly resolved by the Law Court. I am uncertain whether the record is sufficiently fixed at this point, prior to trial on the federal count, to justify certification to the Law Court. Arguably, the record is fixed because I am now granting summary judgment on the state claim. Alternatively, it may be preferable to delay any question of certification until after the trial in this matter to determine whether it is an issue that has ongoing importance and to determine what factual resolution the jury ultimately reaches. The lawyers should consider those issues. If certification is requested now, prior to trial, a formal motion should be filed addressing these questions.

The Clerk shall enter judgment on the state claim in Count II in favor of the defendants Chapman and the Town of Rumford.

SO ORDERED.

DATED AT PORTLAND, MAINE THIS 16TH DAY OF FEBRUARY, 1996.

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE