

# Chicago Daily

Volume 145, No. 221

Thursday, November 12, 1998

## Appellate Report

### Were police responding to emergency call at time of accident?



#### Illinois Opinions

By Theodore Postel  
Illinois court opinion editor

In an action for fatal injuries suffered by a pedestrian when she was struck by a police officer who was proceeding to a crime scene by driving in the wrong traffic lane, the trial court's order granting summary judgment for the defendant officer and the defendant city on the ground they were immune from liability was reversed.

**Sanders v. City of Chicago, Illinois Appellate Court, First District, 306 Ill.App.3d 356, 714 N.E.2d 547, 239 Ill.Dec. 628 (1999).**

Today's column concerns the issue of whether police were responding to an emergency call at the time of an accident. Tomorrow's column will consider plaintiff's contention that ordinary negligence (as opposed to willful and wanton misconduct) can subject a police officer to liability for damages. The 5th District Appellate Court has ruled that proof of ordinary negligence is sufficient. However, the 2d District has held it is insufficient. Tomorrow's column will present the opinion of the 1st District Appellate Court.

Plaintiff, Eulastine Sanders, brought an action on behalf of the estate of her deceased daughter to recover damages allegedly caused by the negligence and willful and wanton conduct of defendants, police officer Charles Copps and the City of Chicago. Plaintiff's case was tried before a jury. At the close of all the

evidence, the trial court directed a verdict for defendants on the negligence counts, and the jury returned a verdict for defendants on the willful and wanton counts.

This case arose out of a traffic accident on May 1, 1991. At 8 a.m. on that date, Copps reported to work and received his beat assignment. Soon thereafter, he heard an emergency call over his radio from police officers Kenny Watt and Patricia Black, who had been attacked at 223 W. 72d St. That address is in another beat area.

Without requesting permission from his supervisors, Copps left his beat and proceeded toward 223 W. 72d St. Along the way, Copps heard over his radio that the subject had been chased into a hallway at 7227 S. Stewart Ave. and that the subject was cornered but not yet searched. The radio dispatcher then asked officers Watt and Black if they were getting enough help. Black responded, "Yes, we do." Copps claims not to have heard Black's response.

Copps proceeded east on 71st Street toward Stewart Avenue. As he approached the intersection of 71st and Stewart, he observed that the traffic was stopped in the eastbound lane. Copps then entered the westbound lane of 71st Street and proceeded to drive eastbound in that lane.

Meanwhile, plaintiff was walking her three children, Patricia, April and Jerry, to school. Plaintiff and her children walked eastward on 71st Street halfway down the block toward Stewart, then turned and Copps' vehicle struck Patricia. Patricia suffered serious injuries and died on Feb. 13, 1997.

Plaintiff contended that the trial court erred in granting defendants' motion for summary judgment on plaintiff's negligence counts.

The Illinois Appellate Court, in an

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## Senate con

By TOM RAUM  
Associated Press writer

WASHINGTON — Dozens of Clinton administration diplomatic, executive and judicial nominees are heading for their posts after the Senate broke a logjam over nominations.

But battles still loom on others, and a group of Senate conservatives is warning Clinton not to bypass the Senate confirmation process during an upcoming congressional recess.

On a 96-2 vote Wednesday, the Senate confirmed former Sen. Carol Moseley-Braun, an Illinois Democrat, as ambassador to New Zealand and Samoa. Then, in one swoop, it gave voice vote approval to 80 other nominations, many of which had been stalled for months.

In all, 13 ambassadors, including Moseley-Braun were confirmed, as were six



## Case Summaries

U of C law student

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opinion written by Justice Sheila M. O'Brien, without dissent, ruled as follows:

"Plaintiff presented evidence that about one minute prior to the accident, the police dispatcher asked Officer Watt and Officer Black whether they were getting enough assistance. Officer Black responded affirmatively. Plaintiff also presented evidence that Officer Black's words constituted a 'slow down,' meaning that the emergency was over and that a responding officer no longer had the right to disregard traffic rules.

"Under these set of facts, a jury could find that, with the emergency over, Officer Copps was merely cruising around in his car at the time of the accident. Such conduct does not fall within section 2-202 of the Tort Immunity Act....

"Officer Copps argues that he never heard the dispatcher ask Officer Black whether she was receiving enough help and he also points to testimony indicating that the 'slow down' was broadcast after his traffic accident. However, contrary evidence was presented (i.e., that the words constituting a 'slow down' were broadcast over Officer Copps' radio before the accident), thereby raising questions of fact inappropriate for resolution by summary judgment.

"Our holding is not meant to establish a rule that an officer necessarily must be engaged in an emergency response in order for section 2-202 immunity to apply. Case law is clear that certain types of non-emergency conduct are immunized. For example, activities such as investigating a traffic accident (*Fitzpatrick v. City of Chicago*, 112 Ill.2d 211 (1986)) and executing and enforcing traffic laws (*Trepachko v. Village of Westhaven*, 184 Ill.App.3d 241 (1989)) are immunized.

"However, in the present case, the trier of fact could find that Officer Copps was engaged in routine patrol at the time of the accident, which is a type of conduct that has been held not

to involve the execution of enforcement of any law and, thus, not to fall within section 2-202 immunity. See *Leaks*, 238 Ill.App.3d 12; *Bruecks*, 276 Ill.App.3d 567.

"Accordingly, we reverse the trial court's order granting summary judgment for defendants on plaintiff's negligence counts and remand for further proceedings...."

[Kostow & Passen Ltd. of Chicago (Gary Kostow and Stephen M. Passen of counsel) for appellant.

[Brian L. Crowe, corporation counsel of Chicago (Lawrence Rosenthal, Berna Ruth Solomon and Joshua D. Davidson, assistant corporation counsel, of counsel), for appellee.]

fulfill that mission are clearly religious the appeals court said. "The primary of the property is religious and charitable in nature and therefore is exclusively for religious purposes."

In addition, the court said, the property fulfilled the second prong of statute because it was "not leased otherwise used with a view to profit. The church clearly did not use property with a view to profit, the court said.

*First Presbyterian Church of Dixon* Kenneth Zehnder, et al., No. 2-98-08; Justice Robert D. McLaren wrote the court's opinion with Justices Michael Colwell and Michael R. Galasso concurring. Released Aug. 17, 1999. (5 pages)

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