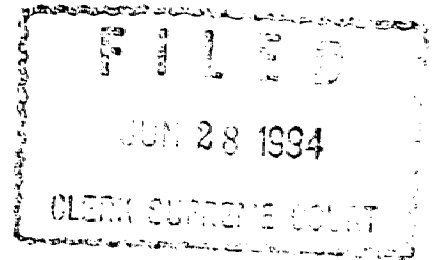


IN THE COURT OF APPEALS OF IOWA

No. 4-155 / 93-958



INDEXED

SUSAN E. GRIGLIONE, As Administrator
of the Estate of RODNEY JOHN GRIGLIONE,

Appellant,

vs.

STEVEN MARTIN and CITY OF MT. PLEASANT,
IOWA,

Appellees.

Appeal from the Iowa District Court for Henry County,
R. David Fahey and D. B. Hendrickson, Judges.

Plaintiff appeals a judgment dismissing her claims for
assault and battery, negligence, and violation of her
deceased husband's civil rights. **AFFIRMED.**

David S. Wiggins of Wiggins & Anderson, P.C., West
Des Moines, for appellant.

David A. Elderkin of Elderkin & Pirnie, P.C., Cedar
Rapids, for appellee.

Heard by Sackett, P.J., and Cady and Huitink, JJ.

HUITINK, J.

Plaintiff appeals a judgment of the district court dismissing her claims for assault and battery, negligence, and violation of her deceased husband's civil rights. We affirm.

This case arises out of the fatal shooting of Rodney Griglione by Mt. Pleasant Police Officer Steven Martin. The district court granted partial summary judgment in Griglione's 42 U.S.C. section 1983 claim against the City of Mt. Pleasant. The jury found for the defendants on Griglione's remaining claims.

Griglione contends the district court erred in granting partial summary judgment on the 42 U.S.C. section 1983 claim against the City. Griglione also contends the district court's instructions on negligence were erroneous. The scope of our review is limited to errors of law on both issues raised. Iowa R. App. P. 4.

Griglione alleges the City of Mt. Pleasant violated her deceased husband's constitutional rights by not providing its police officers with proper training in the use of deadly force. Municipal liability under this theory requires a showing the failure to train amounted to a city policy or a deliberate indifference to the rights of persons with whom the police come into contact. Allen v. Anderson, 490 N.W.2d 848, 854-55 (Iowa App. 1992).

Griglione's reliance upon this theory is based upon the fact Officer Martin was shown a training video tape,

"Surviving Edged Weapons," prior to the shooting incident. The plaintiff's expert witness testified in his deposition that training by the showing of this film in a vacuum was grossly inadequate. Griglione argues these facts were sufficient to generate genuine issues of material fact. We disagree.

The district court in considering this expert's testimony stated:

In the present case, plaintiff hypothesizes a deficiency in training--a failure to explore other options or to carry over the film's subject matter into firearms training and other defensive tactic programs--but plaintiff's expert admits he has no other evidence in that regard.

We agree with the district court's conclusion that under the undisputed material facts presented, plaintiff cannot show the requisite policy or deliberate indifference necessary to establish liability. We therefore affirm the district court on this issue.

The jury was instructed that a violation of the police department's standard operating procedure regarding the use of deadly force is evidence of negligence. Griglione argues this instruction misstates the law and the jury should have been instructed that a violation of the standard operating procedure causing injury is negligence per se. Such an instruction would have permitted the jury to presume the defendants were negligent if a violation causing injury was established. We disagree.

It is well established that if a statute or regulation provides a rule of conduct specifically designed for the safety and protection of a certain class of persons, and if a person within that class receives injuries as a proximate result of a violation of the statute or regulation, the injuries are actionable as negligence per se. Wiersgalla v. Garrett, 486 N.W.2d 290, 292 (Iowa 1992). Neither of these requirements have been met in this case. We are unable to determine, on the basis of this record, if the standard of conduct included in the standard operating procedure was adopted by legislative enactment or administrative rule. Moreover, the standard operating procedure is an expression of the police officer's duty to protect the public. See Allen, 490 N.W.2d at 856 (citation omitted). There is no evidence indicating the standard operating procedure was specifically designed for the safety of a certain class of people as opposed to the general public.

We conclude the district court's instruction correctly stated the law of negligence. The judgment of the district court is therefore affirmed.

AFFIRMED.