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Recent Developments: Southland Corp. v. Griffith: Fireman's Rule Inapplicable When a Police Officer Is a Business Invitee on the Premises

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Southland Corp. v. Griffith:

**FIREMAN'S RULE
INAPPLICABLE
WHEN A
POLICE OFFICER
IS A
BUSINESS INVITEE
ON
THE PREMISES.**

In *Southland Corp. v. Griffith*, 332 Md. 704, 633 A.2d 84 (1993), the Court of Appeals of Maryland held that the "fireman's rule" does not prohibit an off-duty police officer from recovering as a business invitee for tortious conduct when he is on the business property for purposes other than to perform a service. Accordingly, the court recognized a store clerk's duty, under the "shopkeeper-business visitor relationship", to assist an off-duty police officer by calling the police at the officer's request.

On May 15, 1988, Officer David Griffith, his son, and several friends purchased food at a 7-11 Store owned by the defendant corporation. Officer Griffith was off-duty, in plain clothes, and driving his own vehicle. In the 7-11 parking lot, Officer Griffith and his companions were approached by a group of teenagers who began yelling obscenities and throwing beer cans at them. Officer Griffith identified himself and attempted to place one teenager under arrest when another teen struck him in the face and collar bone with a tire iron. He ran to a nearby gas station and was further accosted and injured by the teens. During this time, Officer Griffith's son repeatedly asked the 7-11 store clerk to call the police. Each time, the clerk refused to take action.

Officer Griffith filed a suit for damages against the defendant corporation in the Circuit Court for Anne Arundel County. That court granted the defendant's motion for summary judgment on the grounds that the "fireman's rule" barred the officer's recovery. The Court of Special Appeals of Maryland reversed and remanded the case. However, at the defendant's request, the Court of Appeals of Maryland granted certiorari to

evaluate the lower courts' judgments.

The court of appeals recognized that the appropriate standard of review required the court to "resolve all inferences against the party making the motion" in order to determine if the trial court was correct in finding that "no genuine dispute as to any material fact existed." *Southland Corp.*, 332 Md. at 712, 633 A.2d at 87 (citing Md. Rule 2-501(e)). In addition, the court noted that in order to avoid summary judgment, the plaintiff must prove a "duty owed to him, a breach of that duty, a causal connection between the breach and injury, and damages." *Southland Corp.*, at 712, 633 A.2d at 88. The court isolated the threshold requirement of "duty" as the critical issue in this case. *Id.* at 713, 633 A.2d at 88.

Next, the court addressed the "fireman's rule," an exception to the duty requirement, which prevents certain public officials, including police officers, from recovering for landowner's negligence while the official is on the landowner's property performing a service. *Id.* The court noted that the "fireman's rule" is inapplicable when the official is injured by a pre-existing hidden danger or a negligent act which is "something other than what necessitated the presence of the safety officer." *Id.* at 715, 633 A.2d at 89. This court, however, disagreed with the court of special appeals and found that the clerk's failure to call 911 was not a hidden danger. *Id.* Instead, the court determined that the "fireman's rule" did not apply to this case because Officer Griffith was a business invitee. *Id.* The court reached this conclusion because Officer Griffith entered the store as a customer, not a police

officer. *Id.* Therefore, the store owner owed him a duty of "reasonable and ordinary care." *Id.*

Turning to the clerk's refusal to act, the court recognized that under the common law, a person generally has no duty to aid another who is in distress. *Id.* at 716, 633 A.2d 84, 90. It noted, however, that some courts have drawn a limited exception to this rule for certain landowners, such as common carriers, innkeepers, and shopkeepers. *Id.* at 716-17, 633 A.2d at 90. The court adopted the commonly accepted "shopkeeper-business visitor relationship" exception which places a duty on shopkeepers to take reasonable measures to rescue a customer, even if the peril was not created by the shopkeeper's negligence. *Id.* (citing Restatement (Second) of Torts § 314A (1965)). In applying the exception to the present case, the court noted that its application was in accord with other jurisdictions. *Id.*, see *Drew v. LeJay's Sportsmen's Cafe, Inc.*, 806 P.2d

301 (Wyo. 1991) (restaurant has a duty to summons emergency help for a choking victim); *Jones v. Kwik Karol and Ginalco, Inc.*, 490 So.2d 664 (La. Ct. App. 1986) (convenience store attendant breached his duty of care to customer by refusing to call the police while the customer was being battered).

The court recognized that a store owner's duty to aid a business invitee extends to injuries caused naturally or by accidents, third persons, or the plaintiff himself. *Southland Corp.*, 332 Md. at 719, n.8, 633 A.2d at 91. Therefore, the court held that even though it was not negligent, the defendant corporation owed Officer Griffith a duty to render aid by calling the police when requested to do so. *Id.* at 720, 633 A.2d at 91. Because a factual dispute existed over whether the clerk called the police in a timely manner, the court held that summary judgment was improper relief. *Id.* at 704, 633 A.2d at 92. Accordingly, the court affirmed the

judgment of the Court of Special Appeals of Maryland on different grounds with instructions to remand to the Circuit Court for Anne Arundel County. *Id.*

In *Southland Corp. v. Griffith*, the Court of Appeals of Maryland held that a storekeeper had a legal duty to summons emergency help when requested to do so by a business visitor. Furthermore, the "fireman's rule" did not prohibit an off-duty police officer from being a "business invitee" if he was not on the premises to perform a service. In so holding, the court took an aggressive step toward protecting consumers and requiring increased awareness by business owners not only for their own negligence, but for that of third persons and the customer himself. As a result of this increased responsibility on the business owner, businesses may be burdened with increased employee training and broader insurance coverage.

- Kelly A. Casper

