

CASE NO. 19-002
MINNESOTA COURT OF APPEALS

PAVER v. SMITH

Parties: Appellant –Connie Paver
Respondent – Don Smith

Issues:

- (1) Whether the “firefighter’s rule” applies, prohibiting Officer Connie Paver from collecting damages against landlord Don Smith for injuries she sustained while executing a search warrant at one of his properties.
- (2) Assuming the “firefighter’s rule” does not apply, and Officer Paver can sue Mr. Smith, whether Mr. Smith had a legal duty to ensure that his property was not being used for criminal activity.

Background:

Connie Paver, a resident of St. Paul, Minnesota, has been on the St. Paul Police force for over 15 years. She is currently an undercover officer in the narcotics unit. Her typical day-to-day professional activities include being on the streets, investigating known drug operations as an undercover agent. When she is not performing undercover investigations, she is typically at the precinct office doing paperwork. She rarely executes search warrants or investigates actual properties.

Officer Paver received a tip on August 24, 2015 from Jessica Norwalk that the house next door to hers contained a meth lab. Ms. Norwalk regularly provides Officer Paver with tips about her neighborhood, which is a low-income and high crime area of St. Paul. Ms. Norwalk observed numerous individuals come to the home, entry briefly, then leave. She also reported a strong odor emitting from the home each night, and described the residents as looking “like they were addicted to crystal meth.”

In addition to reporting this information to Officer Paver, Ms. Norwalk mentioned her suspicions to the owner of the home, Don Smith. Mr. Smith rented the home to several men with prior criminal convictions and, according to Ms. Norwalk, he dismissed her complaints and did not seem to care about the potential meth lab on his property. Mr. Smith owns ten other buildings in the area, and most of them are apartment buildings with eight or more apartments.

Based on Ms. Norwalk’s tip and after some observation of the property, Officer Paver obtained a search warrant for the house. She and a team of narcotics officers executed the search warrant on August 24th at approximately 5:30 pm. Officer Paver and her team entered the home after discussing entry points, locations of lookouts, and the appearance of the seller. The team knocked on the door, then broke into the home when there was no answer. Upon entering the kitchen, Officer Paver identified what appeared to be a meth lab with one burner still burning on the stove. Within minutes, an explosion occurred.

Officer Paver sustained significant injuries. She broke three ribs as well as one of her ankles, and she suffered a collapsed lung and a concussion. Three other officers on the team sustained similar injuries.

Officer Paver sued Don Smith for damages, arguing that Don Smith was responsible for the criminal activity on his property and that the meth lab explosion caused her injuries.

At trial, Jessica Norwalk testified about what she reported to Officer Paver and Mr. Smith’s reactions when she told him about her suspicions. When Mr. Smith’s lawyer cross-examined her, Ms. Norwalk

stated that she could not recall the circumstances when she reported her suspicions to Mr. Smith. A forensic specialist who investigated the site after the explosion testified that the house had, in fact, been a meth lab and that overheated cooking methamphetamines caused the explosion. Mr. Smith testified that he was unaware of any criminal activity on his property, and that he rents his apartments at below-market rates because he knows that many of his tenants have low-incomes and need good homes. He stated that he promptly responds to maintenance requests, and when responding to those calls, he checks a property generally to make sure that it is in good condition. He could not recall ever receiving a maintenance request from the house containing the meth lab. Mr. Smith's lawyer argued that Mr. Smith did not have a legal duty to protect Officer Paver from injuries resulting from criminal activity on his property. "That is the job of the police," the lawyer stated.

The trial court judge dismissed Officer Paver's complaint for two reasons: 1) Officer Paver cannot legally sue Mr. Smith because she is an emergency professional and the "firefighter's rule" says that emergency professionals cannot sue for injuries sustained in the line of duty, and 2) Even if the firefighter's rule does not apply, Mr. Smith did not have a legal duty to ensure that his property was free of dangerous crime, therefore he cannot be at fault for Officer Paver's injuries.

Officer Paver appealed the judge's ruling to the Minnesota Court of Appeals.

Summary of the Issues and Legal Background:

Issue #1—The "Firefighter's Rule"

Usually, homeowners owe a "duty of care" to people that they invite to their homes. This means that, if an ordinary person becomes injured as a result of conditions on another person's property, they can sue the landowner for damages for their injuries. The "firefighter's rule" is a legal rule which, in its simplest form, states that firefighters cannot sue homeowners if they sustain injuries while in the line of duty. For example, if a firefighter falls through a floor while fighting a fire at a house and becomes injured, he cannot sue the homeowner for damages later.

The reasons behind this rule are fairly simple. If firefighters could sue people who call them for help, people might be reluctant to actually call for help. Furthermore, fires are necessarily high-risk situations where injuries are fairly likely. Firefighters "assume the risk" because of the nature of their jobs.

Courts have previously expanded the rule to cover other "professional rescuers" in certain circumstances. The current rule can be generally stated as:

If a person is a **professional rescuer** (someone who assumes risk due to the nature of his or her job) and that person sustains injuries **in the line of duty** (while they are doing the job for which they assume the risk), that person cannot sue a landowner for injuries sustained on the premises.

Therefore, in order for the firefighter's rule to apply here, Officer Paver must be a **professional rescuer** who was **in the line of duty** and **assumes the risk** of the kind of harm that caused her injuries while in the line of duty.

Here are some questions to think about:

- Are police officers professional rescuers? If so, are they always professional rescuers, or only in certain situations?
- Does Officer Paver “assume the risk” of becoming injured in the line of duty or in the course of her job as an undercover narcotics officer? Did she or should she have assumed the risk in this instance? Does it matter if the answers to those two questions are different?
- Was Officer Paver “in the line of duty” when she executed the search warrant on Mr. Smith’s property? What is the difference between becoming injured at work and becoming injured “in the line of duty?”

Issue #2—Mr. Smith’s Legal Duties

Landlords do not typically have a legal duty to prevent injuries as a result of crime. The reason for this is that private citizens should not be responsible for enforcing the law or catching criminals. However, if a landowner is in a particularly good position to prevent crime and crime-related injuries, a court might recognize a legal duty for the landowner, and hold him responsible for the injuries of another sustained as a result of crime on his property. Courts consider factors such as whether injury as a result of criminal activity on the premises was “foreseeable” and how much of a burden it would place on the landowner to expect him to know that criminal activity is occurring on his property. Courts also consider what a landlord can reasonably do if he knows or suspects criminal activity on his property.

Here are some questions to think about:

- Why shouldn’t private citizens take steps to prevent crime and/or enforce the law? What would some consequences of expecting private citizens to enforce the law be?
- Are there times when landowners are in a better position to deal with crime than law enforcement?
- If we accept that it is responsible to encourage landowners to take small steps to prevent crime, how much is too much? How expensive or difficult is too expensive or difficult?
- Does it matter if Mr. Smith knew about or suspected that there was a meth lab inside one of his properties and didn’t do anything about it? Does he have a responsibility to know or can he claim that it’s not his job to monitor that kind of activity inside his properties?
- If we hold landlords responsible for criminal activities inside homes, does that mean that landlords will feel like they need to enter apartments more often, potentially invading tenants’ privacy?
- Are ordinary citizens required to report crime every time they see it? Should they be?

Prior Case Law (Legal Precedent) for Issue 1:

Prior Case 1 – <i>Armstrong v. Mailand</i>, Supreme Court of Minnesota (1979)	
Facts	The defendant, Wallace Mailand, owned an apartment complex that was heated by natural gas. The complex had a large “standby” tank for gas in case of high demand for heat caused by cold weather. One morning, Mailand’s gas supplier was refilling the standby tank when a fire started near the gas supply truck. Firefighter’s arrived and tried to get the fire under control. The fire spread to the standby tank, causing it to explode, killing three firemen. The families of the firemen sued Mailand, arguing that he was responsible for their deaths. Evidence later showed that the design of the storage tank made it susceptible to combustion if exposed to an open flame. Evidence also showed that the fire department was familiar with this type of tank and had even practiced fighting this kind of fire at Mailand’s apartment complex.
Issue	Whether the families of the three firefighters can sue the owner of the apartment complex because they died while fighting a fire at his property.
Holding	NO. Firefighters assume the risk of injury or death when they fight fires.
Reasoning	It would be unreasonable to hold landowners responsible for death or injuries to firefighters caused by fires because that is the reason the landowner needed the firefighters in the first place. Furthermore, firefighters are skilled at fighting fires, so they are in the best position to know how to avoid injury. In this case, specifically, the firemen had practiced fighting a fire near this type of gas tank and should have known how to get the fire under control without causing the explosion.

Prior Case 2 – <i>Hannah v. Jensen</i>, Supreme Court of Minnesota (1980)	
Facts	The plaintiff, Delbert Hannah, was a St. Cloud city police officer who sustained injuries after being attacked by an intoxicated man outside of a bar. The man had been drinking at the bar for over eight hours and had started attempting to fight the bartender and other patrons. The bartender called the police and Officer Hannah arrived. Officer Hannah attempted to escort the man outside, but the man started hitting, punching, and kicking Officer Hannah. Officer Hannah sued the owner of the bar for his injuries.
Issue	Whether the firefighter’s rule applies to Officer Hannah, a police officer who the bartender called for assistance with an aggressive patron.
Holding	YES. The bartender called Officer Hannah for help and Officer Hannah could have reasonably anticipated the risk of dealing with the aggressive patron.
Reasoning	The bartender called Officer Hannah specifically to help with an intoxicated patron. Police officers who are called to subdue intoxicated people can certainly anticipate that those people might become aggressive or violent. The risk of injury resulting from that behavior is an inherent part of police work, just as the risk of injury from fire is an inherent part of firefighting. Officer Hannah was performing his official duties when he became injured and he knew what the situation was when he was called.

Prior Case 3 – <i>Lang v. Glusica</i>, Supreme Court of Minnesota (1986)	
Facts	The plaintiff, Officer Ronald Lang, sued a homeowner for injuries resulting from the homeowner resisting arrest. The defendant, Robert Glusica had gotten into a fight with his daughter’s boyfriend at Glusica’s home. Glusica’s daughter called the police. Several officers arrived on the scene and attempted to subdue Glusica. Glusica, swearing and threatening to get a gun, resisted arrest and caused injury to several of the officers. Glusica knocked Officer Lang over and he sustained a serious knee injury.
Issue	Whether the firefighter’s rule prevents Officer Lang from suing Glusica for his injuries.
Holding	NO. The firefighter’s rule only applies to professional rescuers and landowners and does not prevent officers from suing people who actively and directly cause them injury.
Reasoning	The court distinguished this case from <i>Hannah v. Jensen</i> because, in that case, the firefighter’s rule prevented the officer from suing the owner of the bar where he was injured. It did not prevent him from suing the person who injured him. In this case, even though Glusica owned his home, he actively and directly caused Officer Lang’s injuries.

Prior Case Law (Legal Precedent) for Issue 2:

Prior Case 1 – <i>Erikson v. Curtis Inv. Co.</i>, Supreme Court of Minnesota (1989)	
Facts	The plaintiff, Ms. Garnet Erikson, was the victim of an assault in a commercial parking ramp in a known high-crime area. The ramp was a self-serve, multi-level parking facility with approximately 330 parking spaces. Ms. Garnet was a monthly contract parker at the facility. She was assaulted one evening while she was walking back to her car from work. The ramp was dimly lit, contained no security cameras, and although the company employed one security guard, Ms. Garnet saw no sign of him until after the assault was over. Prior to Ms. Garnet’s assault, there had been no reports of assaults or crimes against people, although occasional car-jackings and thefts had taken place.
Issue	Whether the company that owned the ramp had a legal duty to take steps to prevent the criminal activity which resulted in Ms. Garnet’s attack.
Holding	YES. Because there was a high likelihood and record of criminal activity in the area surrounding the ramp and it would have been relatively cheap and easy for the company to make the ramp safer (i.e. more lighting and security cameras), the company is liable for Ms. Garnet’s assault.
Reasoning	The duty of a landowner depends on the relationship of the parties and the foreseeable risk involved. Prevention of crime is a government function, and we should not expect private citizens to enforce the law. Furthermore, it would be a generally impossible standard to hold private citizens liable for the devious, sociopathic, and unpredictable conduct of criminals. However, if certain security measures or safeguards could have prevented the crime, especially if crime is particularly likely, it is not unreasonable to expect landowners to take those small steps to prevent crime.

Prior Case 2 – <i>J.W. v. Anderson</i>, Minnesota Court of Appeals (1991)	
Facts	The plaintiff, J.W., sued her neighbor on behalf of her five-year-old daughter. J.W. and her children lived next to a farm owned by Buford and Debra Anderson. The Andersons rented a trailer on their property to Everett Bearbower, who had previously been convicted of assault of a child. The Andersons were aware of this. Bearbower kept rabbits near his trailer and J.W.'s children liked to play with the rabbits. J.W. was suspicious of Bearbower and asked Mrs. Anderson if he was on probation. Mrs. Anderson said that he was, but declined to share what his crime was, stating that she did not think it was her place to say, but she believed that he would tell J.W. if she asked. One day, Bearbower assaulted J.W.'s daughter. J.W. sued the Andersons, arguing that the Andersons had a duty to protect her and her children from Bearbower.
Issue	Whether the Andersons had a legal duty to warn J.W. about Bearbower's previous criminal convictions.
Holding	NO. Because Bearbower had never made a specific threat towards J.W.'s children, the Andersons had no duty to inform J.W. about his criminal history.
Reasoning	The court of appeals cited a previous Minnesota Supreme Court case which stated that landlords did not have a duty to warn others about potentially dangerous tenants unless the tenant had made a specific threat to harm others. The court of appeals stated that it regretted following this rule, because the danger to J.W.'s children was real and foreseeable. However, it stated, until the Supreme Court changes this rule, it is required to follow it.

Prior Case 3 – <i>Spitzak v. Hylands, Ltd.</i>, Minnesota Court of Appeals (1993)	
Facts	The plaintiff, Ms. Patricia Spitzak, sued her landlord on behalf of her ten-year old son, Anthony. On an evening when Ms. Spitzak was not home, Anthony's friend Chad, also ten years old, had been biking around his neighborhood when he encountered four teenage boys who began to harass him. Frightened, Chad fled to the Spitzak's ground-floor apartment. The boys followed Chad and began banging on the apartment door and yelling for Chad to come back out. Anthony, afraid for his and Chad's safety, began going around the apartment, shutting all windows and blinds. One of the teenage boys went around to one of the windows Anthony was closing and he struck it with his fist. The window instantly shattered and a shard of glass flew in Anthony's eye. Anthony's eye later had to be surgically removed. The Spitzak's apartment building is a known high-crime complex.
Issue	Whether the Spitzak's landlord had a legal duty to prevent Anthony's injury.
Holding	NO. The teenager's actions which caused Anthony's injury were not foreseeable to the landlord.
Reasoning	Even though a landlord has a general duty to keep a building safe for tenants, the type of criminal activity which caused Anthony's injury is not the type of act that landlords can reasonably be expected to prevent. Despite the presence of some known criminal activity in the apartment building, the Spitzak's landlord could not have foreseen the specific actions of the teenagers which caused Anthony's injury.