

NJ DOT Granted Immunity In Fatal Hit-And-Run Accident

September 26, 2018 | by Thomas F. Dorn, Jr

The Appellate Division, on August 22, 2018, in an unpublished opinion, *Mattos v. Pvt. Peter Hotalen-American Legion Post, et als.*, (A-4554-16T3) held that the New Jersey Department of Transportation (DOT) was immune in a lawsuit resulting from the death of a pedestrian killed in a hit-and-run accident crossing Route 206 in Frankford Township.

Daniel Mattos and his wife Cary Mattos attended a St. Patrick's Day party at the Pvt. Hotalen American Legion Post on Route 206 in Frankford Township on March 25, 2014. Prior to the party Mr. and Mrs. Mattos parked across Route 206 in a grassy field used for overflow parking and owned by the DOT. The DOT agreed that the parking area on the opposite side of Route 206 was frequently used by patrons of the American Legion Post. After the party ended Cary was struck and killed by a motor vehicle as she was crossing Route 206 to return to her parked car. The driver of the motor vehicle fled the scene but turned himself in to the State police two days later.

A civil lawsuit was filed against the driver of the motor vehicle that struck Cary, against the American Legion and against the DOT. The theory against the DOT was that the DOT knowingly permitted the American Legion to use the DOT property across the highway for overflow parking, which "created a dangerous, hazardous and unsafe condition" because the DOT did not provide warning signs, crossing guards, safety lighting or patrol officers to assist pedestrians crossing Route 206.

The DOT filed a motion for Summary Judgment claiming immunity under the Tort Claims Act. The plaintiffs argued that the DOT property was in a dangerous condition, that the DOT had actual or presumed knowledge of the dangerous condition and the DOT's failure to act was palpably unreasonable. The trial judge denied DOT's motion, finding several issues of material facts relating to the issue of the property constituting a dangerous condition, the issue of notice of a dangerous condition and the issue of the DOT's failure to remediate the danger.

The Appellate Division reversed, holding that the DOT was immune based upon the Tort Claims Act. Although the trial court found issues of fact related to a dangerous condition, the Appellate Division disagreed by finding that N.J.S.A. 59:2-4 clearly sets forth that “a public entity is not liable for any injury caused by adopting or failing to adopt a law or by failing to enforce a law.” The court noted that Cary, wearing dark clothing, voluntarily decided to cross Route 206 in an area where there was poor overhead lighting. The court noted that if Cary’s death was proximately caused by a dangerous condition located on the DOT property across the highway the claim may have had merit. In this case, however, the death was proximately caused by Cary’s actions and the driver of the motor vehicle.

This decision confirms that lawsuits against public entities, no matter how tragic, are uphill battles based upon immunity granted to public entities in the Tort Claims Act.