

TORT LIABILITY & GOVERNMENTAL IMMUNITY

Tort Liability & Governmental Immunity

Wallace v. Dean,
3 So. 3d 1035 (Fla. 2009)

A deputy who undertakes to render assistance to a citizen must do so with reasonable care, ensuring that he neither increases the risk of harm to the citizen nor induces others to rely upon his undertaking to the detriment of the citizen. Sovereign immunity does not shield the government from tort liability where the government action is operational in nature.

FACTS AND PROCEDURAL HISTORY

Plaintiff, Kelly Wallace, lived outside the state of Florida. Plaintiff's mother lived in Florida. When Plaintiff was unable to contact her mother via telephone, she phoned her mother's neighbor, Marjorie Ginder, and asked Ginder to check on her mother. After no one answered the door at the mother's residence, Ginder called 911. Two Marion County sheriff's deputies responded. Upon entering the home, deputies and Ginder discovered Plaintiff's mother unconscious on a bed. Although Plaintiff's mother was breathing, she was completely unresponsive when deputies screamed and shook her in an attempt to wake her up. Ginder suggested that an ambulance be called because the mother was a diabetic, but deputies told Ginder that Plaintiff's mother was merely sleeping and an ambulance was unnecessary. Ginder then relayed to Plaintiff that the deputies had performed a "safety check" on her mother and determined that an ambulance was unnecessary. Relying on that assurance, Plaintiff took no further action to protect her mother. The next day, Ginder returned to the home and found that Plaintiff's mother had not moved. Ginder then called for an ambulance. Several days later Plaintiff's mother passed away.

Plaintiff argued that negligence on the part of the deputies for failing to summon an ambulance and for inducing Plaintiff to rely on their assurance that an ambulance was unnecessary

proximately caused her mother's death. The trial court dismissed Plaintiff's complaint for failure to state a cause of action, reasoning that the deputies owed no duty to Plaintiff and even if there were a duty, the deputies' actions were protected by sovereign immunity. The trial court's decision was upheld by the Fifth District Court of Appeal. Plaintiff appealed.

ANALYSIS

The Florida Supreme Court addressed two issues on appeal: whether the deputies owed Plaintiff's mother a duty of care, and whether the sheriff's department was protected by sovereign immunity.

In finding that the deputies owed a duty of care to Plaintiff's mother, the Court relied on the common law "undertaker's doctrine." Under this doctrine, anyone who undertakes to act for the aid of another is under a legal obligation to do so with reasonable care. A breach of duty occurs when the undertaker's failure to exercise reasonable care results in either increasing the risk of harm to another or inducing others to rely upon the undertaking to the detriment of another.

The deputies undertook action to aid Plaintiff's mother by arriving at the mother's house and performing a safety check. After Ginder mentioned that an ambulance should be summoned, the deputies responded that an ambulance was unnecessary. This assurance that no ambulance was necessary was relayed to Plaintiff who, in turn, relied upon the assurance in concluding that no further measures to protect her mother were necessary. It is Plaintiff's contention that the safety check was performed negligently and amounted to a breach of duty. The Supreme Court remanded this issue to the trial court.

To guide its analysis of the sovereign immunity issue, the Court invoked the "discretionary-versus-operational-function test." Under this test, discretionary functions of government actors are shielded from tort liability; operational functions, on the other hand, are not shielded from tort liability. The difference between the two types of activity is that discretionary functions involve making policy, whereas operational functions involve implementation of policy.

In finding that sovereign immunity did not shield the sheriff's department from liability, the Court recognized the need to bal-

ance between “avoid[ing] crushing tort liability for governmental entities” and the reality that government employees cannot be allowed to act in total disregard of the safety of citizens. *Wallace*, 3 So. 3d at 1041 n. 9. The actions taken by the deputies were operational in nature and, therefore, not protected by sovereign immunity. That is, at issue here was not the soundness of the sheriff’s department’s policy of performing safety checks, but rather the particular way in which two deputies performed a safety check.

Justice Wells, in a dissenting opinion, disagreed with the majority’s view that the deputies owed a duty to Plaintiff’s mother. Justice Wells reasoned that, because there was no evidence that the deputies actually had or held themselves out as having medical training beyond that of an ordinary person, finding a duty on the part of the deputies, while at the same time finding no duty on the part of the neighbor, yields an untenable result because both have the same level of medical training. Pursuant to Florida Statutes Section 768.28(5), the State is under a duty of care only where case law or statute would impose a duty upon an individual under similar circumstances. Therefore, if the neighbor was not under a duty, neither were the deputies. Moreover, any reliance on the assurance of the deputies by the plaintiff or neighbor was unreasonable, as there was no justifiable basis for believing that the deputies possessed special medical training.

SIGNIFICANCE

This case subjects government actors to the prospect of liability when carrying out safety checks. Such an expansion of liability could result in either a decreased willingness on the part of government actors to engage in safety checks or an increased concern for liability that forces government actors to act overcautiously, for example by ordering emergency services when not reasonably necessary to do so.

RESEARCH REFERENCES

- 10 Fla. Jur. 2d *Constitutional Law* § 163 (2009).
- 48A Fla. Jur. 2d *State of Florida* § 313 (2007 & Supp. 2009).

Charles E. Simpson

**Tort Liability & Governmental Immunity:
Claims against Government Entities**

***Palm Beach County Health Care District. v.
Professional Medical Education, Inc.,***
13 So. 3d 1090 (Fla. 4th Dist. App. 2009)

In order for a plaintiff to successfully bring suit against a government employer for the actions of its director for tortious interference based on acts undertaken by the director, the plaintiff must show that the agency and the director are strangers to the business relationship in which interference is claimed, notwithstanding that the director's actions may have been motivated by ill-will for the plaintiff.

FACTS AND PROCEDURAL HISTORY

Plaintiff, Professional Medical Education, Inc. (PME), provided continuing education training for emergency medical services (EMS) personnel. Ted Young (Young) owned and operated PME. The Palm Beach County Health Care District (District), pursuant to the Palm Beach County Health Care Act, implemented a program whereby providers of continuing education training were required to receive advance approval from the District before their courses would be eligible for funding from the District. Basic Trauma Life Support of Florida (Basic) was the accrediting organization for EMS training courses. Basic suspended PME's accreditation as an approved training provider after Basic received a letter from Dr. Jeff Davis (Davis), director of the Trauma Agency for the District. Davis also notified two of PME's clients that the District would not pay for courses procured from PME based on PME's lack of accreditation. As a result, both clients suspended their relationships with PME.

Based on the foregoing events, PME brought suit against Davis and the District. PME alleged three causes of action: defamation, tortious interference with a business relationship, and conspiracy to commit each alleged offense. PME argued that Davis' actions were motivated by ill-will for Young stemming from a prior dispute between Young and Davis regarding reimbursement documentation. The circuit court held that Davis was not liable, as Davis was acting within the scope of his employment

and therefore was entitled to absolute immunity. But absolute immunity did not extend to the District and, as a result, the District was liable for defamation, tortious interference, and conspiracy. Both the District and PME appealed to the Fourth District Court of Appeal.

ANALYSIS

The Fourth District affirmed the circuit court as to the claims against Davis. As for the claims against the District, the Fourth District reversed the circuit court, finding that the District was an interested party in the relationships between PME and PME's clients, and the privilege of absolute immunity extended from Davis to the District.

The court first discussed the tortious interference claim. A claim of tortious interference requires four elements: (1) the existence of a business relationship under which the plaintiff has legal rights, (2) the defendant's knowledge of the relationship, (3) an intentional and unjustified interference with the relationship by the defendant, and (4) damage to the plaintiff as a result of the interference. In order to constitute unjustified interference, the interfering defendant must be a "stranger" to the business relationship, which requires that the defendant have no beneficial or economic interest in, or control over, the relationship.

Here, the District was an interested party, rather than a stranger, to the relationship between PME and PME's clients for two reasons. First, the District was the ultimate source of funds for the education programs. Second, the District had a right, under the Palm Beach County Health Care Act, to decide which programs it would fund. Therefore, the District had both an economic interest in and control over the relationship between PME and its clients. Because the District was not a stranger to the relationship between PME and PME's clients, the District's interference was justified.

The court then addressed PME's defamation claim noting that "executive officials of government are absolutely privileged as to defamatory publications made in connection with the performance of the duties and responsibilities of their office." *Palm Bch. Co. Health Care Dist.*, 13 So. 3d at 1095 (quoting *McNayr v. Kelly*, 184 So. 2d 428, 433 (Fla. 1966)). The clause "in connection with" is liberally construed. In light of Davis' position as director

of the Trauma Agency for the District and the District's interest in funding EMS services, Davis' communications to Basic and PME's clients were actions undertaken in connection with the duties and responsibilities of Davis' office and, therefore, Davis is immune from suit. Moreover, because the District's liability in the defamation suit was predicated on Davis' actions undertaken in connection with the duties of his office, "the absolute immunity of Davis 'necessarily requires the exoneration' of the District." *Id.* (citing *Saxon v. Knowles*, 185 So. 2d 194, 196 (Fla. 4th Dist. App. 1966)). Therefore, the District was immune from PME's defamation claim.

The Fourth District further concluded that, because the tortious interference and defamation claims failed, so too must the conspiracy claim related to those claims.

SIGNIFICANCE

This case clarifies that in a tortious interference claim against a government office or official, the court will not consider the motives or intent of the office or official unless the office or official is a stranger to the business relationship with which interference is claimed. This case also demonstrates that immunity from a defamation suit applies both to executive officials acting in fulfillment of the duties of their office, as well as to the office in whose behalf the official is acting.

RESEARCH REFERENCES

- 19A Fla. Jur. 2d *Defamation and Privacy* § 76 (2005).
- 32 Fla. Jur. 2d *Interference* § 9 (2003 & Supp. 2010).

Charles E. Simpson

Tort Liability & Governmental Immunity: Sovereign Immunity

Miami-Dade County v. Miller,
19 So. 3d 1037 (Fla. 3d Dist. App. 2009)

The waiver of sovereign immunity for tort liability is subject to the broad exceptions of public duty and discretionary duty. Both such exceptions apply to holding a county liable for the tor-

tious action of a third party against an individual on a public sidewalk.

FACTS AND PROCEDURAL HISTORY

Timothy Miller was waiting for the bus near the Dadeland South Metrorail Station when he became involved in a verbal altercation with an individual. He was subsequently hit with a glass bottle wielded by that individual. Miller sought to hold Miami-Dade County (County) liable in tort for the alleged attack by the third party. The County had a contract to provide security at the Metrorail station, but no guards were assigned to the bus stop area. Miller claimed that the County breached its duty of care by failing to providing security or police near the bus stop in order to prevent the attack.

The County filed a motion for summary judgment on sovereign-immunity grounds. The circuit court denied the County's motion and the County petitioned for certiorari.

ANALYSIS

The court first stated that generally the State and all of its subdivisions are sovereignly immune from tort liability unless it is waived by statute. Florida Statutes Section 768.28 (2006) waives immunity and authorizes tort actions when harm is caused by either a negligent act or an omission of government employees acting within their scope of employment under circumstances where a private person would be liable. But Florida courts have created two exceptions to this waiver of immunity: the discretionary function exception and the public duty doctrine exception. Applicability of either exception results in the government retaining immunity.

First, the court addressed the public duty doctrine exception. To succeed under this doctrine, a plaintiff must prove the defendant owed a duty to the plaintiff individually and not merely a duty to the public generally. The Florida Supreme Court has specifically found that there is no common law duty to prevent the misconduct of third parties. The Third District found that "[m]aking arrests, investigating criminal activity, and preventing the commission of crimes are duties that law enforcement (or a governmental entity) owes to the public as a whole, not to indi-

viduals.” *Miller*, 19 So. 3d at 1040. Therefore, the County had no duty to provide security for Miller’s benefit as an individual.

Miller contended that even though the County may have sovereign immunity with respect to general enforcement of the law, when it opened and operated the Metrorail facility it owed invitees a common law duty to operate the facility safely, just as a private individual would. The court addressed multiple cases that relied on this contention, limiting the holding of each case to the very specific location of the incident, such as a public swimming area or public park. Because Miller was attacked on a public sidewalk the court held that these precedents did not apply.

Additionally, the court stated that under Florida law, a criminal offense that may have been prevented by reasonable action on the part of law enforcement creates a common law duty of care only when there is a special relationship to the victim. But a special relationship is created only when a governmental entity puts the individual in the zone of risk. The court found this not to be the case because Miller was on a street open to the public.

Second, the court addressed the discretionary duty exception. This exception is rooted in the separation of powers. The judicial branch must not interfere with the discretionary functions of the legislative or executive branches. The court discussed a number of cases in which a governmental agency’s decisions concerning how to enforce the law were held to be discretionary and therefore immune from suit. Here, the County’s decision not to assign law enforcement or security to the bus station was a discretionary one and therefore immune from tort liability.

The court quashed the circuit court’s denial of the County’s motion to dismiss.

SIGNIFICANCE

Miller demonstrates the breadth of the exceptions to Florida’s waiver of sovereign immunity for tort actions. These two exceptions cover a broad range of situations in which the government’s duty to protect is broad rather than specific to the individual, or reliant on discretionary decisions.

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Recent Developments

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RESEARCH REFERENCE

- 57 Am. Jur. 2d *Municipal, etc., Tort Liability* § 88 (2009).

Justin P. Miller