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LEE v. CLINE:

The Maryland Tort Claims Act Broadens the Scope of Qualified Immunity Afforded to State Personnel to Encompass Both Intentional Torts and Constitutional Torts

By: Stephanie Freer

The Court of Appeals of Maryland held that qualified immunity afforded to state personnel under the Maryland Tort Claims Act (MTCA) encompasses both intentional torts and constitutional torts. *Lee v. Cline*, 384 Md. 245, 863 A.2d 297 (2004). In a case of first impression, the court concluded the MTCA insulates state personnel from all types of tort claims absent a sufficient showing of actual malice. *Id.* at 253, 863 A.2d at 302.

On the morning of March 12, 1994, Keith Lee (“Lee”), an African-American, left his home in Maryland to run various errands in his BMW automobile. Lee made several stops, one of which was at a car wash. Sometime later, Lee noticed his car’s front license plate was missing and correctly surmised the plate had come off at the car wash. When he returned to retrieve it, the plate was so mangled he was unable to re-attach it. Lee placed the plate on the rear floor of the car behind the driver’s seat and continued his errands.

At 3:00 p.m., while Lee was still running errands, Frederick County Deputy Sheriff Gary Cline (“Cline”) pulled him over. Cline told Lee he stopped Lee because his front license plate was missing. Lee explained the plate had fallen off at the car wash and showed Cline the mangled plate. Cline then asked Lee to consent to a vehicle search for illegal narcotics and weapons but Lee refused. Cline subsequently ran a check on Lee’s plate. Cline was informed that Lee’s plate was valid and that Lee had no points on his license or a criminal record. Despite this information, Cline requested a canine unit, and upon arrival, the canine circled Lee’s car indicating there was no sign of drugs.

Lee filed a complaint in the Circuit Court for Frederick County against Cline alleging he was detained and searched because the Frederick County Sheriff’s Department targets African-American males who drive expensive cars. Lee’s complaint further stated that at no time did Cline have probable cause and that Cline’s acts amounted

to an unreasonable search and seizure in violation of his state constitutional rights.

The trial court granted summary judgment in favor of Cline, finding no violation of Lee's state constitutional rights. The lower court determined that Cline had qualified immunity under the MTCA with regard to non-constitutional tort claims and that Lee presented no evidence of malice to overcome that privilege. Lee appealed to the Court of Special Appeals of Maryland, which affirmed the trial court's findings. The Court of Appeals granted Lee's writ of certiorari to determine whether the MTCA grants qualified immunity to state personnel for tort actions based upon both violations of the state constitution and common law intentional torts.

The court initially looked to the ordinary and natural meaning of the language of the statute. *Id.* at 253, 863 A.2d at 302. Specifically, the MTCA provides, "state personnel shall have immunity from liability described under § 5-522(b) of the Courts and Judicial Proceedings Article." *Id.* That section provides immunity from liability in tort to state personnel so long as the acts or omissions are within the scope of public duty and made without malice or gross negligence. *Id.*

The court determined that it had not directly decided whether the MTCA actually covers intentional torts and constitutional torts. From an initial plain reading of the statute, the MTCA appeared to cover intentional torts and constitutional torts so long as committed within the scope of state employment and without malice or gross negligence. *Id.* at 256, 863 A.2d at 304.

Despite the statutory language, Lee argued immunity granted by the MTCA should have no application to state constitutional or intentional torts. *Id.* at 258, 863 A.2d at 305. Lee based his argument on grounds that Maryland has consistently held common law qualified immunity has no application in tort actions based upon alleged violations of state constitutional rights or upon intentional torts. *Id.* Nonetheless, the court distinguished Maryland's common law qualified immunity doctrine for public officials from that of the MTCA. *Id.* at 259, 863 A.2d at 306.

The purpose of the Maryland public official immunity principle, the court reasoned, is to ensure that public officials, in the performance of "important public dut[ies] ha[ve] the freedom and authority to make decisions and choices." *Id.* at 260-61, 863 A.2d at 306. Thus, the court found, the defense of public official immunity is very narrow and generally applies only to negligent acts. *Id.*

In contrast, the court established that the MTCA generally insulates state employees from tort liability if their actions are within the scope of employment and without malice or gross negligence. *Id.* at 261, 863 A.2d at 307. This broader purpose wholly applies to non-malicious intentional torts and constitutional torts. *Id.*

Another distinction between public official immunity and the MTCA is significant with regard to constitutional torts. *Id.* at 262, 863 A.2d at 307. The court found that a substantial difference exists between public official immunity and the immunity granted by the MTCA. *Id.* This distinction is based squarely on Article 19 of the Maryland Declaration of Rights (“Article 19”), which provides the right to every person, for any injury done to their person or property, to seek available remedies from the court. *Id.* In support of this principle in *Weyler v. Gibson*, 110 Md. 636, 73 A. 261 (1909), the court staunchly declined to extend state governmental immunity to public officials breaching citizens’ constitutional rights. *Id.* at 263, 863 A.2d at 308.

As to non-constitutional tort actions, the court concluded that the effect of Article 19 is somewhat more elastic. The test is one of reasonableness. *Id.* at 264, 863 A.2d at 308. Article 19 provides a degree of constitutional protection even for causes of action not based on constitutional rights if there is an unreasonable restriction upon one’s ability to seek redress for their injuries. *Id.* at 265, 863 A.2d at 309. For this reason, the court has consistently held that the legislature has the authority to substitute state liability for individual employee liability. *Id.* Since MTCA substitution process is identical to that authorized by the legislature, the court found that the requirements of Article 19 were satisfied. *Id.* at 266, 863 A.2d at 310.

Nevertheless, a sufficient showing of malice will overcome qualified immunity afforded to state personnel under the MTCA. *Id.* at 268, 863 A.2d at 311. In *Shoemaker v. Smith*, 353 Md. 143, 725 A.2d 549 (1999), the court defined “actual malice” as “conduct characterized by evil or wrongful motive, intent to injure, knowing and deliberate wrongdoing, ill-will or fraud.” *Id.* The court applied this definition in *Okwa v. Harper*, 360 Md. 161, 757 A.2d 118 (2000), finding that intent and motive are vital elements in the determination of whether malice is shown. *Id.* at 269s, 863 A.2d at 311. In the instant case, the court concluded the facts, like those in *Okwa*, supported an inference of Cline’s ill-will; as such, the issue of malice generated a jury question. *Id.* at 270, 863 A.2d at 312.

The holding in this case broadens the scope of the MTCA by affording qualified immunity to state personnel in all types of tort claims unless there is an ample showing of malice. Where the MTCA previously only provided immunity with regard to non-constitutional tort claims, it is likely that this decision will further insulate state-employed tortfeasors from responsibility while drastically reducing the ability of aggrieved parties to seek redress for a violation of their fundamental rights.