Circuit Court for Baltimore City
Case Nos.: 24-C-15-007060 and 24-C-16-002853

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 261 & 1310

September Term, 2016

LESTER MOODY

v.

DONALD TOBIN, ET AL.

Meredith,
Reed,
*Davis, Arrie W.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith

Filed: August 21, 2018

*Davis, Arrie W., J., did not participate in the adoption of this opinion. See, Md. Code, Courts and Judicial Proceedings Article, § 1-403(b).

These consolidated appeals arise from judgments entered by the Circuit Court for Baltimore City in two related cases in which Lester Moody, appellant, sued the State of Maryland, the University of Maryland, Baltimore,[1] and Donald Tobin, Dean of the University of Maryland's Francis King Carey School of Law ("the law school"),[2] appellees, seeking tort damages arising out of an incident that occurred on October 24, 2014. Although the sovereign immunity of the State of Maryland was applicable to Mr. Moody's claims, except to the extent immunity was waived by the Maryland Tort Claims Act ("MTCA"),[3] Mr. Moody failed to comply with the condition precedent requiring a claimant to provide notice of his claim within 1 year. At the time of the incident that is the subject of Mr. Moody's complaint (October 24, 2014), SG § 12-106(b) stated, in pertinent part: "A claimant may not institute an action under this subtitle [*i.e.*, the MTCA] unless: (1) the claimant submits a written claim to the Treasurer or a designee of the Treasurer within 1 year after the injury to person or property that is the basis of the claim." It is undisputed that Mr. Moody did not submit a written claim to the Treasurer or a designee of the Treasurer within 1 year after October 24, 2014. Nevertheless, he filed two separate suits against the appellants in the Circuit Court for Baltimore City: Case No.

[1] The University of Maryland, Baltimore is a constituent institution of the University System of Maryland. *See* Maryland Code (2014 Repl. Vol., 2016 Supp.), §12-101 of the Education Article ("ED"). The University System of Maryland is an independent unit of State government. *See* ED § 12-102(a)(3).

[2] At all times relevant to this case, Donald Tobin was the Dean of the Francis King Carey School of Law.

[3] *See* Maryland Code (1984, 2014 Repl. Vol.), State Government Article ("SG"), §§ 12-101 *et seq*.

24-C-15-007060 filed on December 22, 2015; and, after the court entered summary judgment against Mr. Moody in the first case for failure to comply with SG 12-106(b), Case No. 24-C-16-002853, filed May 11, 2016, dismissed with prejudice. Mr. Moody filed notices of appeal in each case, and we granted appellees' motion to consolidate both appeals. [4]

QUESTIONS PRESENTED

In appeal No. 261, Mr. Moody presents the following four questions for our consideration:

> I. Did the Appellant fail to file a claim under the Maryland Tort Claims Act ("MTCA") prior to initiating a lawsuit?
>
> II. Did the Appellant perform proper service to support a state [sic]?
>
> III. Is the complaint, on the face of it, frivolous and lacks [sic] standing, vel non, in this violation of my "civil rights."
>
> IV. Did the Appellant fail to state a negligence claim? According to Jacques v. First National Bank of Maryland, 307 Md. 527, 531 (1986) Appellant must establish four elements: 1. A duty owed to him, 2. A breach of that duty, 3. A legally cognizable causal relationship between the breach of duty and 4. The harm suffered, and damages. I believe the Appellant has stated a claim, and met the burden of proof.

In appeal No. 1310, Mr. Moody presents the following three questions for our consideration:

[4] Mr. Moody filed a petition for writ of certiorari requesting the Court of Appeals to review our order to consolidate the cases. That petition was denied on February 21, 2017. *See*, http://mdcourts.gov/coappeals/petitions/201702petitions.html, denial of Petition Docket No. 542.

V. Did the Appellant fail to file a claim under the Maryland Tort Claims Act ("MTCA") prior to initiating a lawsuit?

VI. Did the Appellant perform proper service to support a state [sic]?

VII. Is the complaint, on the face of it, frivolous and lacks standing, vel non, in this violation of my "civil rights."

For the reasons set forth below, we shall affirm the circuit court's judgment in each case.

FACTUAL BACKGROUND

In both of his underlying complaints, Mr. Moody alleged that, on October 24, 2014, he attended an event that was open to the public at the law school, and a security guard harassed him, verbally abused him, and then reported him to the university police. He further alleged that a university police officer "took possession" of Mr. Moody's driver's license and State of Maryland identification card, and "held" him for 25 minutes before allowing him to leave in a taxi cab.

On December 22, 2015, Mr. Moody filed a complaint in the Circuit Court for Baltimore City, seeking damages for the incident that occurred at the law school on October 24, 2014. Although the complaint asserts multiple legal theories, the facts common to all counts are set forth as follows in the introductory sections of the complaint:

INTRODUCTION

On October 24, 2014, I was at an event that I was attending called: "International Investment Disputes: Arbitration, Litigation, and Investor-State Relations." I am filing this complaint after having exhausted all my administrative proceedings with the University of Maryland officials. The security guard in questioned [sic] continues to harass me about attending

events at the law school that are open to the general public. On the day in questioned, [sic] Thursday, November 20, 2014, [sic] in my complaint, the security guard called the police on me at this event that was opened [sic] to the general public at the University. I had to wait twenty-five (25) minutes before I could leave the premises that afternoon in questioned [sic], October 24, 2014. Now, I know that it is her job to request that visitors provide identification to enter the law school building. It is the responsibilities [sic] of the University of Maryland officials to address concerns that are raised by the general public regarding issues and complaints dealing with harassment, and continuous verbal abuse raised by a rude, impolite, and ignorant security guard at the University of Maryland law school. The issue, after further review of this incident with the security guard, and the Chief of Police should be fired, and severely reprimanded for conduct unbecoming of an official in her capacity. Mr. Moody requested the badge number of the officer who held him up at the University of Maryland law school for twenty-five (25) minutes, but he refused. A request was made, but there was no response. The officers took procession [sic] of my State of Maryland identification and Maryland driver's license. Now, I know my rights and I only had to surrender my driver's license, upon request. I did give him my license out of respect for the officer, not because I had to in this situation. I am sure that you understand the law and common courtesy that is "supposed" to be given to a tax-paying, upstanding private citizen of the great State of Maryland. I would just like to go on record and say that I am not a threat to the students, faculty, staff, or the general public at the University of Maryland Law School. I do have the upmost [sic] respect for the security team at the University, but I am going on record to say that there has been enough harassment going on at the University by this security guard, in particular, when it comes to me attending events at the law school that are open to the general public. I would like to let it be known that the general public is welcomed at events at the law school. I think that we can proceed to trial and come up with a settlement. The stop and holding me up violated my civil rights. Mr. Moody files this lawsuit to recover compensation for his emotional injuries, and for the punitive damages against the University of Maryland officials. From the security guard, Dean, Vice President, and the Chief of Police, all of whom failed to do their duties, and responsibilities, according to the code of the University and the State of Maryland.

PARTIES

> Plaintiff Lester Moody is a resident of Baltimore City, Maryland. The University of Maryland is an arm of "state government." The University of Maryland is responsible for the actions of the Chief of Police, its officers, and the security guard, as described herein.
>
> Because the University of Maryland is also an agency of the Defendant State of Maryland, the State is responsible for the actions of all University officers described herein.

FACTS

> On October 24, 2014, I was attending an event at the University of Maryland Law School that was open to the general public. The event was: "International Investment Disputes: Arbitration Litigation, and Investor-State Relations." On that day, the same security guard that was on duty on Thursday, November 20, 2014 [sic] in my complaint called the university police on me at this event. I had to wait for twenty-five minutes (25) before I could leave in my taxi cab. I personally think that the security guard, the officers who held me up and the Chief of Police should be suspended or fired for failure to do their duties, and responsibilities as described herein.
>
> Mr. Moody was detained for the hell of it by the University police without just cause for twenty-five (25) minutes. Apparently, the University officials, after repeated attempts to mediate this situation, consider this continuous harassment by this security guard to be no big deal. Nobody is really concerned about my complaint. In addition, Defendants lacked probable cause to detain Mr. Moody in this continuous harassment by a security guard at the University of Maryland Law School. Because of the actions of the Defendants, Mr. Moody has suffered emotional distress. On or about December 22, 2015 pursuant to the Maryland Tort Claims Act, Mr. Moody provided timely notice of his claim to the state of Maryland.

The date mentioned in the last sentence quoted from the complaint (December 22, 2015) was also the date on which the complaint was filed in the Circuit Court for Baltimore City.

Appellees filed a motion to dismiss, or in the alternative, motion for summary judgment, and a supporting affidavit. The memorandum supporting the motion asserted:

"The complaint does not sufficiently allege compliance with the Maryland Tort Claims Act and Plaintiff's claims are barred by sovereign immunity." The appellees' memorandum further stated: "The Defendants are entitled to dismissal of the complaint because it is indisputable that Plaintiff failed to satisfy the MTCA's notice requirement, a condition precedent to filing suit." (Citing, *inter alia*, SG § 12-106(b).) The memorandum further argued that the State employees were immune from liability for negligence, and "the allegations in the complaint . . . are not even close to establishing malice or gross negligence, either of which is necessary to defeat individuals' immunity from suit." Finally, the appellees' memorandum pointed out that, even though Mr. Moody "identifies Dean Tobin as a defendant in the caption of the complaint," the complaint "makes no allegations that Dean Tobin was involved in [the] alleged wrongful detainment." The appellees' memorandum states: "Even when liberally construed in favor of a *pro se* plaintiff, it is clear that the complaint does not allege *any* actions or omissions by Dean Tobin that would establish a cause of action under any theory of liability." An affidavit filed in support of the motion for summary judgment confirmed that Mr. Moody had filed no notice of his claim with the State Treasurer's Office before filing his complaint in the Circuit Court for Baltimore City.

In a response to the appellees' motion, Mr. Moody contended that it had taken him more than a year "to exhaust my administrative rights." On February 24, 2016, Mr. Moody filed a notice of his claim about the October 2014 incident with the State Treasurer's Office.

In an order dated March 2, 2016, entered on the docket on March 8, 2016, the court indicated it was treating the appellees' motion as a motion for summary judgment, which the court granted in favor of appellees. Mr. Moody filed a timely notice of appeal on April 7, 2016. That appeal was docketed in this Court as No. 261, September Term 2016.

On May 11, 2016, Mr. Moody filed a second, very similar complaint in the Circuit Court for Baltimore City, asserting the same claims against the same defendants he had sued in his prior complaint. The May 2016 complaint added this information:

> The claim has been denied by the Maryland State Treasurer as of a letter dated March 30, 2016 but received on May 9, 2016. Therefore, Plaintiff will proceed to sue the State of Maryland in Baltimore City Circuit Court. Plaintiff has complied with the Maryland Tort Claims Act ("MTCA") by delivering his lawsuit to the State of Maryland to review, and administer this complaint.

Appellees filed a motion to dismiss, or in the alternative, motion for summary judgment raising several defenses, including *res judicata*. By order docketed July 28, 2016, the circuit court granted the appellees' motion to dismiss, dismissed Mr. Moody's complaint with prejudice, and entered judgment in favor of appellees. Mr. Moody filed a timely notice of appeal, which was docketed in this Court as No. 1310, September Term 2016.

We granted appellees' motion to consolidate both of Mr. Moody's appeals.

DISCUSSION

I.

In appeal No. 261, Mr. Moody contends that the circuit court erred in granting summary judgment in favor of appellees on the ground that his claims were not timely filed with the State Treasurer as required by the MTCA. We conclude that the circuit court did not err.

Maryland Rule 2-322(c) provides, in pertinent part, that, when the court is considering a motion to dismiss, if "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment[.]" In this case, the circuit court considered the affidavit of Joyce Miller, the Director of the Insurance Division of the Maryland State Treasurer's Office, which was attached to appellees' motion to dismiss, or in the alternative, motion for summary judgment. Accordingly, the circuit court's ruling on appellees' motion to dismiss is treated as a grant of summary judgment.

Summary judgment may be granted when "there is no genuine dispute of material fact" and the moving party "is entitled to judgment as a matter of law." Md. Rule 2-501(f). "A circuit court's decision to grant summary judgment is reviewed *de novo*." *Reiner v. Ehrlich*, 212 Md. App. 142, 151 (2013) (citing *Iglesias v. Pentagon Title & Escrow, LLC*, 206 Md. App. 624, 657 (2012)). The standard of appellate review is as follows:

> When reviewing a grant of summary judgment, we determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. This Court

> considers the record in the light most favorable to the nonmoving party and construe[s] any reasonable inferences that may be drawn from the facts against the moving party. A plaintiff's claim must be supported by more than a scintilla of evidence[,] as there must be evidence upon which [a] jury could reasonably find for the plaintiff.

Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 107-08 (2014) (citations and quotation marks omitted).

There was no genuine dispute regarding the material facts and procedural history set forth in the appellees' motion. The only remaining question, therefore, is whether appellees were entitled to judgment as a matter of law. The record establishes that they were.

On December 22, 2015, Mr. Moody filed his first complaint in the circuit court. That complaint included eight counts alleging claims of wrongful detainment, unreasonable use of force, gross negligence, and negligence. Mr. Moody's notice-of-claim form was not filed with the Maryland State Treasurer until February 25, 2016. (As quoted above, Mr. Moody's initial complaint alleged that he provided notice of his claim "or about December 22, 2015," which was indisputably more than one year after the date of the alleged incident that was the subject of his complaint.)

The doctrine of sovereign immunity "prohibits suits against the State or its entities absent its consent." *Magnetti v. University of Maryland*, 402 Md. 548, 557 (2007). "'[N]o contract or tort suit can be maintained . . . unless the General Assembly has specifically waived the doctrine.'" *Id.* (quoting *Stern v. Bd. of Regents*, 380 Md. 691, 701 (2004)). The doctrine applies to the State, its officers, and its agencies, including personnel sued in their official capacity. *Stern*, 380 Md. at 701; SG § 12-105.

Except as partially waived pursuant to the MTCA, the doctrine of sovereign immunity applies to "intentional torts and constitutional torts as long as they were committed within the scope of state employment and without malice or gross negligence. There are no exceptions in the statute for intentional torts or torts based upon violations of the Maryland Constitution." *Lee v. Cline*, 384 Md. 245, 256 (2004). But, even when the State's sovereign immunity from tort actions has been partially waived pursuant to the MTCA, SG § 12-106(b) — though it has been subsequently amended — provided at the time of the incident that is the basis of Mr. Moody's complaint that a plaintiff could not proceed with a suit against the State or its personnel, unless "the claimant submits a written claim to the Treasurer or a designee of the Treasurer within 1 year after the injury to person or property that is the basis of the claim" and "the Treasurer or designee denies the claim finally[.]" SG § 12-106(b)(1) and (2). This provision is a mandatory precondition to filing suit against the State and, in this case, the university and its employees.[5] *See Ferguson v. Loder*, 186 Md. App. 707, 713-14 (2009) (citing *Johnson v.*

[5] On May 12, 2015, the General Assembly amended the MTCA to permit courts, upon motion by a plaintiff, to hear an action in which the plaintiff failed to submit a written claim to the Treasurer, barring any prejudice to the State. *See* SG § 12-106(c). That amendment, which became effective on October 1, 2015, is applied only prospectively to causes of action arising after that date. *See* 2015 Md. Laws, Ch. 132 (H.B. 114), effective October 1, 2015 and SG § 12-106. Because Mr. Moody's claims were alleged to have occurred on October 24, 2014, that amendment does not apply. A more recent amendment, 2016 Md. Laws, Ch. 623 (H.B. 636), which provided an exception to the requirement that a claimant submit a claim to the Treasurer within one year of the alleged injury, also does not apply to Mr. Moody's cases because it applies only to injuries arising after October 1, 2016. *See* State Government Article (1984, 2014 Repl. Vol., 2017 supp.), § 12-106, as amended subsequent to October 24, 2014.

Md. State Police, 331 Md. 285, 290 (1993) (MTCA's administrative claim requirement is a condition precedent to the initiation of an action under the Act)).

Mr. Moody asserts that he did not file his claim with the Treasurer sooner because he "had to go through the administrative process" before filing suit. But the MTCA does not contain any requirement that a claimant exhaust an administrative process before filing his or her claim with the Treasurer, and, as of October 24, 2014, the MTCA made no provision for extending the notice deadline. Because Mr. Moody did not file his claim with the Treasurer within one year after the alleged incident, the circuit court properly granted summary judgment in favor of appellees.

Maryland law also "provides statutory immunity to insulate State employees generally from tort liability if their actions are within the scope of employment and without malice or gross negligence." *Bd. of Educ. v. Marks-Sloan*, 428 Md. 1, 30 (2012) (internal quotations omitted). *See also* Maryland Code (2013 Repl. Vol., 2016 Supp.), Courts and Judicial Proceedings Article ("CJP") § 5-522. The only individual named as a defendant in Mr. Moody's complaint was Mr. Tobin. To the extent that Mr. Moody also made allegations against other, unnamed "officers, employees, and agents of the University of Maryland," or other State employees, we note that he did not allege that any State employee acted outside the scope of his or her employment. Mr. Moody also failed to set forth facts sufficient to permit an inference that any State employees acted with malice. Notwithstanding Mr. Moody's bald assertion that his detention was an act committed with actual malice, there are no *facts* alleged in his complaint that would support a finding that the alleged actions were taken "without provocation or cause" and

with the requisite "evil or wrongful motive, intent to injure, knowing and deliberate wrongdoing, ill-will or fraud" required to establish malice. *See Barbre v. Pope*, 402 Md. 157, 185-87 (2007) (discussing sufficiency of allegations of malice and gross negligence).

In addition, Mr. Moody failed to allege facts that would support a finding of gross negligence. The detention alleged in the complaint is consistent with standard procedures of law enforcement officers, when appropriately warranted. There is nothing in Mr. Moody's complaint to support an inference that his allegedly unlawful detention constituted an "intentional failure to perform a manifest duty" by officers in a way that demonstrated a "reckless disregard of the consequences as affecting the life or property of" Mr. Moody. *Id.* at 187. Mr. Moody's bald assertions of malice and gross negligence were insufficient to pierce the employees' statutory immunity.

Finally, we note that, even though Mr. Moody named Mr. Tobin as a defendant, the complaint included no allegations that Mr. Tobin was involved in the alleged detention, or that he acted outside the scope of his employment, or that he acted with malice or gross negligence. Because the complaint contained no allegation of any act or omission by Mr. Tobin, the circuit court did not err in granting summary judgment in his favor and dismissing the claims against him.

In light of our holding that the entry of summary judgment in favor of appellees was proper, we need not address the other questions presented for our consideration in appeal No. 261.

II.

In appeal No. 1310, Mr. Moody challenges the circuit court's ruling granting summary judgment in favor of appellees with regard to the claims raised in the complaint he filed on May 11, 2016. This challenge is without merit.

First, we note that the 2016 complaint is substantively identical to the complaint filed in December 2015. There are no material differences in the facts alleged or the legal theories asserted. Consequently, just as the December 2015 complaint was barred by the failure to provide timely notice required by SG § 12-106(b), the May 2016 complaint suffered from the same fatal flaw.

Moreover, the Circuit Court for Baltimore City had already entered a final judgment in favor of the appellees by the time Mr. Moody filed the May 2016 complaint. As a consequence, appellees added the defense of *res judicata* to the reasons asserted in support of their motion to dismiss the May 2016 complaint, or, in the alternative, grant their motion for summary judgment.

The doctrine of *res judicata* "bars the relitigation of a claim if there is a final judgment in a previous litigation where the parties, the subject matter and causes of action are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation." *Spangler v. McQuitty*, 499 Md. 33, 65 (2016) (internal quotations and citation omitted). The purpose of the doctrine of *res judicata* is "'to avoid the expense and vexation of multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing possibilities of inconsistent decisions.'" *Colandrea v. Wilde Lake Community Ass'n, Inc.*,

361 Md. 371, 387 (2000) (quoting *Janes v. State*, 350 Md. 284, 295 (1998)). In order to invoke the doctrine of *res judicata*, the moving party must establish that "(1) the parties in the present litigation are the same or in privity with the parties to the earlier litigation; (2) the claim presented in the current action is identical to that determined or that which could have been raised and determined in the prior litigation; and (3) there was a final judgment on the merits in the prior litigation." *Spangler*, 499 Md. at 65 (quoting *Cochran v. Griffith Energy Servs., Inc.*, 426 Md. 134, 140 (2012) (citations omitted)).

Mr. Moody acknowledges in his brief in this Court that the complaint he filed against appellees on December 22, 2015, and his subsequent complaint filed on May 11, 2016, were nearly identical; he states: "Both of my complains [sic] are the same word for word, I am still seeking the same relief as sought before in the previous complaint." Indeed, a review of the two complaints reveals that the parties, the causes of action, and the requested relief are the same in both cases. As for the third required element in establishing applicability of *res judicata*, the circuit court's grant of summary judgment in favor of the appellees in the first action constituted a final judgment on the merits. As we have held previously, "the dismissal of a claim on the grounds of sovereign immunity 'is indeed a final judgment on the merits for the purposes of *res judicata*.'" *North American Specialty Ins. Co. v. Boston Medical Group*, 170 Md. App. 128, 138 (2006) (quoting *Annapolis Urban Renewal Auth. v. Interlink, Inc.*, 43 Md. App. 286, 291 (1979)). Accordingly the doctrine of *res judicata* provided an additional reason for the circuit court to rule that Mr. Moody was precluded from proceeding with his second complaint.

The circuit court did not err in granting summary judgment in favor of the appellees and dismissing Mr. Moody's second complaint with prejudice.

In light of our holding that the circuit court did not err in granting summary judgment in favor of appellees, we need not address the other questions presented in appeal No. 1310.

IN APPEALS NO. 261 AND NO. 1310, JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS IN BOTH CASES TO BE PAID BY APPELLANT.