Circuit Court for Baltimore County
Case No. C-03-CV-22-000533

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0689

September Term, 2024

GLORIA MERRITT

v.

OFFICER DON MARLOW

Friedman,
Tang,
Wright, Alexander Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: February 3, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to MD. RULE 1-104(a)(2)(B).

Public official immunity shields police officers from liability for discretionary, non-malicious, negligent acts. When a trial court determines that immunity applies, evidence of that conduct and the damages flowing from that conduct is inadmissible.

FACTS

J.L. is a middle school student in the Baltimore County Public Schools. J.L. has been diagnosed with autism spectrum disorder. After an argument with a classmate, J.L.'s teacher took him to the main office. J.L. left the main office without permission. Desiree Peterkin, a behavioral interventionist at the school, was dispatched to find J.L. and return him to the main office. Peterkin found J.L. and began to walk him back to the main office. J.L. pulled away from Peterkin's grasp. Peterkin restrained J.L. with her arms and radioed for help. Officer Don Marlow, a Baltimore County police officer assigned to the school, responded to Peterkin's call. Together, they dragged J.L. by his hands and feet to a "focus room," a special room designed to calm agitated and stressed students. Once in the focus room, Marlow released J.L. and instructed him to calm down. J.L. then kicked at Peterkin. As a result, Marlow handcuffed J.L. J.L. was enraged: he cried, screamed, beat his head against a wall, and struggled with the handcuffs. In his struggle with the handcuffs, J.L. broke his wrist. After about 20 minutes, J.L. calmed down and Marlow removed the handcuffs. A video camera in the focus room recorded these events.[1]

J.L.'s mother, Gloria Merritt, brought an action sounding in negligence in the Circuit Court for Baltimore County against Peterkin, Marlow, the Board of Education, and

[1] The admissibility of this video recording is the crux of this appeal.

the Police Department.[2] The claims against Peterkin, the Board of Education, and the Police Department were resolved prior to trial, so the case proceeded only against Marlow. There were three pretrial motions of note:

- *First*, Marlow moved for summary judgment on the basis of his public official immunity. The circuit court granted this motion in part and denied in part. The circuit court found that J.L.'s kick at Peterkin was an assault, conduct which authorized Marlow to detain J.L. As a result, the court found that Marlow was entitled to public official immunity as a matter of law for all events after that kick, but whether Marlow was entitled to this immunity as to the events before the kick presented a question of fact to be determined by the jury. As a result, the circuit court granted summary judgment as to all events after the kick and denied summary judgment for events before the kick;

- *Second*, consistent with the first ruling, Marlow moved in *limine* to preclude admission of the videotape. The circuit court denied that motion; and

- *Third*, Marlow moved to bifurcate the trial, so that liability would be tried separate from damages. It is clear that Marlow intended this motion to keep the videotape away from the jury as it decided his liability. The circuit court denied this motion as well.

The case then proceeded to trial. The centerpiece of Merritt's case against Marlow was the videotape taken inside the focus room: a 20-minute-long video of J.L., a child with autism spectrum disorder, crying, screaming, beating his head against the wall, and

[2] Merritt also asserted claims for false imprisonment and violations of J.L.'s rights under the Maryland Declaration of Rights. The jury found in favor of Marlow and against Merritt on both claims. Merritt has not appealed from those claims. They are therefore final judgments, and we discuss them no further.

ultimately breaking his own wrist.[3] The jury found Marlow did not have immunity, found him liable, and awarded damages in the amount of $619,000.

Post-trial, Marlow filed a motion to modify the jury's award in accordance with the Local Government Tort Claims Act. MD. CODE, CTS. & JUD. PROC. ("CJ") § 5-301. The circuit court granted the motion. The parties have cross appealed.

ANALYSIS

In this appeal, we address the issue of whether the circuit court erred in denying Marlow's motion to bifurcate his trial. We hold that it did. This case, however, arrives in our court in a difficult posture. To untangle the threads, we must begin by explaining several issues that are not before us on appeal.

As described above, Marlow moved for summary judgment on the basis of public official immunity. In Maryland, public official immunity is codified at CJ § 5-507, and as our highest court has explained, it has three requirements: "(1) [they] must be a public official; … (2) [their] tortious conduct must have occurred while performing discretionary acts in furtherance of official duties; and (3) the acts must be done without malice." *Williams v. Mayor & City Council of Balt.*, 359 Md. 101, 140-41 (2000).[4] The circuit court ruled that Marlow is entitled to public official immunity for the actions that Marlow took *after* J.L. kicked at Peterkin. The circuit court reasoned that J.L. kicking at Peterkin

[3] Consistent with our review of this case, we reviewed the videotape. It is distressing to watch and nothing in this opinion is intended to diminish J.L.'s feelings as he experienced them.

[4] We modified this quotation to use the singular "they."

constituted the crime of assault and, as a result, he is entitled to immunity for any discretionary acts thereafter unless done with malice. The circuit court found that there were no genuine disputes of material facts and that Marlow was entitled to a finding of immunity as a matter of law. No party has appealed from that decision and it is, therefore, final.[5]

The circuit court also found that the question of whether Marlow is entitled to immunity for his acts *before* J.L. kicked at Peterkin was a question of fact for the jury to decide. We understand the trial court to have determined that there was a genuine dispute of material fact about whether restraining and transporting students to the focus room qualifies as a discretionary act in furtherance of Marlow's official duties. No party has appealed from this judgment either and we take it as final.

[5] Even if someone had appealed from this decision, we would surely have affirmed. A trial court may grant partial summary judgment where there is no genuine dispute of material fact and where one of the parties is entitled to judgment on one or more of the claims as a matter of law. MD. R. 2-501(f). We review the grant of partial summary judgment without deference to the circuit court. *Columbia Ass'n, Inc. v. Poteet*, 199 Md. App. 537, 546 (2011). The summary judgment record established, *first*, that Marlow is a county police officer, and is therefore a public official. *Livesay v. Baltimore County*, 384 Md. 1, 12 (2004) (county officials are public officials). *Second*, Marlow's decision to arrest J.L. after seeing him kick at Peterkin was a discretionary act pursuant to Marlow's official duties. *Houghton v. Forrest*, 412 Md. 578, 585 (2010) (police officer's decision to make an arrest after witnessing a crime is a discretionary, official act). *Third*, Marlow's conduct was not malicious because he had legal grounds to arrest J.L. *Williams*, 359 Md. at 131 n.16, 141 (conduct must lack legal justification to be malicious). Because all three factors are established as a matter of law, Marlow is entitled to immunity and the circuit court correctly granted partial summary judgment in favor of Marlow for the events after the kick.

Marlow then moved in *limine* to bar the admission of the videotape. Marlow reasoned that the videotape was relevant only to the events after J.L. kicked at Peterkin—events for which he was immune. The trial judge denied the motion, finding that the videotape was admissible for the determination of damages. That ruling was wrong and, worse still for our purposes, was not appealed. Nonetheless, we think it is important to explain what the correct ruling should have been. A determination that a party is immune means both "immunity from a civil judgment" *and* "immunity from a judgment for damages." *Ireton v. Chambers*, 229 Md. App. 149, 150, 155 (2016).[6] We think the case law is clear that immunity precludes the admissibility of evidence of both the act and the damages that flow from that act. *See Md. Bd. of Physicians v. Geier*, 241 Md. App. 429, 544 (2019) (explaining that immunity shields conduct from "the appraisal of a factfinder"). As a result, we are confident that, as a matter of law, the correct ruling should have been to grant the motion in *limine*. But, as noted before, that question was not appealed and is not before us.

This brings us to the question that has been appealed and is properly before us: Did the trial court err in denying Marlow's motion to bifurcate the trial proceedings? Our answer to this question is influenced by the preceding discussion and can only be

[6] The trial court relied on our decision in *Yonce v. SmithKline Beecham Clinical Lab'ys, Inc.*, 111 Md. App. 124 (1996) for its contrary holding. There, we held that it was for the jury to decide whether a subsequent non-negligent occurrence was the superseding cause of an earlier, negligent occurrence. *Id.* at 153. The difference here is that the defendant's immunity renders the occurrence non-negligent.

understood in this context. As we understand it, Marlow moved to bifurcate the trial with one objective: to make sure that the jury did not see the videotape until after it had determined that he was liable. In effect, the motion to bifurcate had the same purpose as the motion in *limine*. It is with this context firmly in mind that we evaluate the circuit court's denial of the motion to bifurcate.

The decision of whether to bifurcate a trial—to hear the issues of liability before the issue of damages for "convenience" or "avoid[ance] of prejudice"—is committed to the discretion of the trial court and is reviewed in the appellate courts through the lens of a deferential, abuse of discretion standard. MD. R. 2-503(b); *Ruiz v. Kinoshita*, 239 Md. App. 395, 416 (2018) (explaining bifurcation); *Myers v. Celotex Corp.*, 88 Md. App. 442, 448 (1991) (describing the standard of review). Despite that deference, we hold that the trial court abused its discretion by refusing to bifurcate the trial. The circuit court's failure to bifurcate allowed the jury that considered Marlow's liability to view inadmissible evidence of the videotape. In doing so, the court failed to "avoid [the] prejudice" of the inadmissible videotape and erred as a matter of law. Accordingly, we reverse the denial of the motion to bifurcate.[7]

[7] In addition, Merritt has moved to dismiss Marlow's appeal under MD. R. 8-602(c)(4) on the ground that Marlow did not file trial transcripts. Marlow's selections for the record on appeal were indeed unusual and omitted significant portions of the proceedings. Nonetheless, we were able to resolve his appeal with the sparse record that he did provide for us. Merritt's motion to dismiss is, therefore, denied.

The result is that we vacate the judgment of the trial court and remand with instructions to hold a new trial in which the videotape is inadmissible.[8]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED; MOTION TO BIFURCATE REVERSED; CASE REMANDED FOR NEW TRIAL. COSTS TO BE PAID BY APPELLANT.

[8] Because of the resolution of Marlow's appeal, Merritt's cross-appeal is moot. Nevertheless, we observe that for us to decide Merritt's question regarding the effect of a settlement and release on the total judgment, we must examine the release. *See Porter Hayden Co. v. Bullinger*, 350 Md. 452, 469-71 (1998) (comparing *pro tanto* releases, which automatically reduce a verdict by the settlement amount, with *pro rata* releases, which require that the settling defendant must be determined to be a joint tortfeasor to reduce the verdict by the settlement amount). Merritt, however, neither produced this release for the circuit court to consider, nor for us to examine on appeal.