

Circuit Court for Baltimore City  
Case No. 24-C-17-004752

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1113

September Term, 2019

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STATE OF MARYLAND

v.

KEVIN YOUNGER

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Berger,  
Arthur,  
Zarnoch, Robert A.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Zarnoch, J.

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Filed: April 23, 2021

\*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

This case began in September 2013, when Kevin Younger (“Younger”) was injured as a result of an assault by correctional officers at the Maryland Reception, Diagnostic and Classification Center (“MRDCC”). Younger filed a complaint in the United States District Court for the District of Maryland against the State and State personnel. The court dismissed the claims brought against the State and State personnel under the Maryland Tort Claims Act (“MTCA”), Maryland Code §§ 12-101 et seq. of the State Government Article, because the State had not waived its Eleventh Amendment immunity from tort claims brought in federal court. Younger subsequently filed this action against the State in circuit court on September 21, 2017. The court rejected procedural and jurisdictional challenges to the suit and judgment was later entered against the State. The State presents two questions for our review, as follows:

- I. Is Mr. Younger’s claim barred by sovereign immunity because he failed to submit written notice of the claim to the State Treasurer within one year of his injury, as required by the operative provision of the Maryland Tort Claims Act?
- II. Is Mr. Younger’s claim barred by sovereign immunity because he failed to file his complaint against the State in a court of the State within three years of his inquiry, as required by the operative provision of the Maryland Tort Claims Act?

Though the State raises two questions for our review, because we reverse the circuit court for the reasons set forth below, it is not necessary for us to address the first issue.

## BACKGROUND & PROCEDURAL HISTORY

### I. Maryland Tort Claims Act

The doctrine of sovereign immunity “bars individuals from bringing actions against the State, thus protecting it from interference with governmental functions and preserving its control over its agencies and funds.” *Rodriguez v. Cooper*, 458 Md. 425, 430 (2018) (quoting *Condon v. State*, 332 Md. 481, 492 (1993)). The State and its personnel “may not be sued for a money judgment unless the Legislature has waived that immunity and enabled State agencies to obtain the funds necessary to satisfy such a judgment.” *Id.* In the MTCA, the Legislature “has waived sovereign immunity to a certain degree” to provide a remedy for “a party injured by the negligent act or omission of a State officer or employee within the scope of the officer’s or employee’s public duties.” *Id.* at 451. The MTCA provides relief against the State as a substitute for the State personnel in such an action. *Id.* at 451-52.

Under the MTCA, the waiver of sovereign immunity is limited in several respects, including: “(1) the waiver of sovereign immunity is not effective if the State personnel acted with malice or gross negligence” and “(2) the State’s liability cannot exceed \$200,000 to a single claimant for injuries from a single incident or occurrence.” *Id.* at 452. For causes of action arising before October 1, 2015, State Government § 12-106 of the Maryland Code requires claimants to “submit[] 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 file the action “within 3 years after the cause of action arises.” Md. Code, SG § 12-106(b).<sup>1</sup>

## **II. Facts and Proceedings**

On September 30, 2013, Younger was assaulted by three correctional officers while he was in custody at MRDCC. The attack was prompted by an altercation with a different correctional officer the prior day in a dispute over a food tray. The victim officer identified Younger as one of several inmates involved in the attack, and the following day, three officers entered his cell and assaulted him in retaliation for the attack.<sup>2</sup> According to the record below, Younger sent two written notices to the State Treasurer in October 2013 as required by § 12-106(b) of the Maryland Code, State Government Article, which establishes notice and filing conditions precedent to suit against the State under the MTCA.

On September 28, 2016, Younger filed a civil action against the State and State personnel in the United State District Court for the District of Maryland. The court

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<sup>1</sup> In the 2015 and 2016 legislative session, the General Assembly amended the requirement that a claimant must submit a written claim as a condition precedent to suit. The amendments applied prospectively to causes of action arising on or after their October effective date. The 2015 legislation effectively added State Government § 12-106(c)(1), permitting claimants to bring a cause of action even if the claimant fails to submit a written claim within one year, unless the State can show prejudice. 2015 Md. Laws ch. 132. The 2016 legislation added State Government § 12-106(c)(2), permitting claimants to bring a cause of action even if the claimant fails to submit the written claim within one year if the State has actual or constructive notice of the claimant’s injury. 2016 Md. Laws ch. 623.

<sup>2</sup> Younger was criminally charged for his alleged role in the altercation. The State ultimately dropped the criminal charges and requested Younger testify as a primary witness in the criminal trial of the officers.

dismissed the State on August 22, 2017 for lack of jurisdiction.<sup>3</sup> Younger then filed his action against the State in the Circuit Court for Baltimore City on September 21, 2017. The State moved to dismiss Younger’s complaint, raising lack of MTCA notice and the three-year statute of limitations. The motion was denied on July 11, 2018. The State filed a motion for reconsideration which was subsequently denied without a hearing in August 2018. Younger amended his complaint shortly before trial, and the State again sought dismissal for lack of proper MTCA notice. The motion was again denied.

A seven-day jury trial began on June 3, 2019. The State moved for judgment as a matter of law at the close of Younger’s case, again citing the lack of proper MTCA notice. The court denied the motion. At the end of the State’s case, it again renewed its motion for judgment, which the court also denied.<sup>4</sup> For the purpose of jury instructions, the parties stipulated that the State could not locate “[c]orrespondence between Mr. Younger and the State Treasury in October 2013 regarding notice of the attack of September 30th 2013[.]” The jury returned a verdict in favor of Younger and awarded him \$2.7 million.

The State filed a Motion for Judgment Notwithstanding the Verdict, or in the Alternative, to Reduce Judgment under the MTCA. The State again argued that Younger

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<sup>3</sup> Younger’s federal claims against the individual officers were not dismissed. He obtained a judgment against them in the United States District Court in the amount of \$700,000.

<sup>4</sup> The State did not raise the issue of the three-year statute of limitations in its motion for judgment as a matter of law or the renewed motion for judgment. The question whether Younger’s failure to file a claim within three years is sufficiently preserved for our review.

failed to comply with conditions precedent in the MTCA, and additionally, if the court did not enter judgment in favor of the State, the court should reduce the judgment to \$200,000, the extent of the State’s waiver of sovereign immunity under the MTCA at that time. The court denied the motion for judgment notwithstanding the verdict, but reduced the judgment to \$200,000.

This timely appeal follows.

### DISCUSSION

The standard for reviewing the denial of a motion to dismiss “is whether the trial court was legally correct.” *Schisler v. State*, 177 Md. App 731, 742 (2007).

The State asserts that the court erred in denying the motion to dismiss because Younger failed to file his claim in state court within three years of the cause of action. Younger filed a claim in federal court within three years, and the State was dismissed from suit. Relying on Maryland Rule 2-101(b), Younger filed his claim in state court within 30 days of the federal court dismissal.<sup>5</sup> The State contends that Rule 2-101(b) is not applicable because the three-year filing requirement of SG § 12-106(b)(3) is both a statute of limitations and condition precedent.

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<sup>5</sup> Maryland Rule 2-101(b) provides that:

Except as otherwise provided by statute, if an action is filed in a United States District Court or a court of another state within the period of limitations prescribed by Maryland law and that court enters an order of dismissal (1) for lack of jurisdiction, (2) because the court declines to exercise jurisdiction, or (3) because the action is barred by the statute of limitations required to be applied by that court, an action filed in circuit court within 30 days after the entry of the order of dismissal shall be treated as timely filed in this State.

The court in *Higginbotham v. Public Service Commission of Maryland* analyzed the statutory construction of SG § 12-106(b)(3) and determined that it is “not a ‘mere’ or ‘ordinary’ statute of limitations, but is *both* a statute of limitations and—along with SG § 12-106(b)(1)—a condition precedent to the waiver of sovereign immunity.” 412 Md. 112, 128 (2009) (emphasis in original). The court noted that an amendment to the statute in 1994 imposed the requirement that “all MTCA actions be ‘filed within 3 years after the cause of action arises.’” *Id.* at 121. This three-year requirement replaced the previous language of SG § 12-106 that required MTCA actions to be filed within “the applicable statute of limitations.” *Id.* This amendment, the court explained, “reinforce[s] the presumption that the General Assembly ‘meant what it said and said what it meant’ when it repealed the ‘applicable period of limitations’ restriction and enacted the requirement that an action under the MTCA be ‘filed within 3 years after the cause of action arises.’” *Id.* at 126.

Similarly, the court in *State v. Sharafeldin* was presented with the question of whether “the General Assembly [intended] the requirement that [a contract] action subject to [SG] § 12-201 be filed within one year to be a condition to the waiver of sovereign immunity and thus a condition to the action itself, or merely a shorter statute of limitations...” 382 Md. 129, 138 (2004). The claimant in *Sharafeldin* first filed an action in federal court, but his claim against the State was dismissed for lack of jurisdiction based on Eleventh Amendment immunity. *Id.* at 135. After dismissal of his federal claim, the claimant filed a new suit in state court, but the claim was not filed in state court

within the statutorily required one-year period in State Government § 12-202. *Id.* at 150. The court held that the one-year period for filing contract claims under SG § 12-202 was not a mere statute of limitation but a condition precedent to suit. *Id.* at 148. The court explained that “[t]he waiver of the State’s immunity vanishes at the end of the one-year period,” because the State’s sovereign immunity “could not be waived by subordinate agencies or their attorneys.” *Id.* at 148-49.

The same principles apply here. The three-year filing requirement in SG §12-106(b)(3) is not merely a statute of limitations but also a condition precedent to the State’s waiver of sovereign immunity. *Higginbotham*, 412 Md. at 128. A condition precedent “is a condition attached to the right to sue at all. It operates as a limitation of the liability itself as created, and not of the remedy alone.” *Ferguson v Loder*, 186 Md. App. 707, 714 (2009). The “failure to meet a condition precedent extinguishes the right itself.” *Id.* at 727.

Younger argues that Maryland Rule 2-101(b) is a tolling principle and saves an untimely state court action. The claimant in *Sharafeldin* similarly argued that Rule 2-101(b) saved the untimely state court action. The court in *Sharafeldin* looked to the statutory construction of SG §§ 12-201<sup>6</sup> and 12-SG § 12-202 to resolve this issue. The court explained that SG § 12-201 “precludes the State and its agencies from raising the defense of sovereign immunity in a contract action ‘in a court of the State’” and SG § 12-

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<sup>6</sup> SG § 12-201 established that “[e]xcept as otherwise provided by a law of the State, the State, its officers, and its units may not raise the defense of sovereign immunity in a contract action, in a court of the State...”



202 states that “[a] claim *under this subtitle* is barred unless the claimant files suit within 1 year...” *Sharafeldin*, 382 Md. at 149 (emphasis in original). By reading these two statutes together, “[t]here was clearly no intent on the part of the Legislature to waive the State’s Eleventh Amendment immunity in actions in Federal court or to waive its inherent sovereign immunity in actions filed in the courts of some other State.” *Id.* The court in *Higginbotham* also determined that “statute of limitations tolling principles are inapplicable to conditions precedent.” 412 Md. at 714.

Similar to *Sharafeldin*, we must consider the statute “in light of the whole statute.” *Town of Oxford v. Koste*, 204 Md. App. 578, 585 (2012). SG § 12-104(a)(1) specifies that the MTCA’s waiver of sovereign immunity for torts is limited to claims brought “in a court of the State.” Though SG § 12-106(b)(3) does not specify that the claim must be filed in a court of the State, when read together, “it follows that sovereign immunity is not waived unless the action is filed in a Maryland court.” *Sharafeldin*, 382 Md. at 149-50. As the court in *Sharafeldin* explained, “[t]here would be no reason to impose a condition on the waiver of sovereign immunity with respect to an action in which that immunity had not been waived in the first instance.” *Id.* at 150. As Younger’s action was not filed in a state court within the three-year period and tolling principles (and Rule 2-101(b)) are inapplicable to conditions precedent, it is barred by sovereign immunity. The court erred in denying the State’s motion to dismiss.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY REVERSED.  
COSTS TO BE PAID BY APPELLEE.**