UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1313

September Term, 2014

TERRON WILLIAMS

v.

ESTATE OF BILLY FITZGERALD FALBY ET AL.

Kehoe,
Nazarian,
Arthur,

JJ.

Opinion by Kehoe, J.

Filed: February 2, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is an appeal from a judgment of the Circuit Court for Prince George's County dismissing the State of Maryland as a party to Terron Williams's tort action against two former Prince George's County deputy sheriffs. We have reworded the issue presented by Williams as follows:

> 1. Were Williams's claims against the State barred by the notice requirements of the Maryland Tort Claims Act?
>
> 2. Did the District Court's dismissal of the State remove the State as a party to this action?

Because we answer "yes" to the first question, it will not be necessary for us to consider the second. We will affirm the judgment of the circuit court.

Background

On May 6, 2005, Williams was allegedly assaulted by Prince George's County Sheriff's Deputies Bill Falby and Malcolm McGruder, while Williams was awaiting admission to the County jail.

On May 5, 2006, Williams filed a civil action in the Circuit Court for Prince George's County, against Prince George's County, Falby, and McGruder, the latter two being sued in their individual and official capacities. The complaint set out claims for assault and battery, malicious prosecution, excessive force, and negligence. Thereafter, Williams filed a number of amended complaints. We are concerned with amended complaints two through five.

On August 2, 2006, Williams filed a second amended complaint which identified the State as a party. The complaint was not served on the State. On August 21, 2006, Williams filed a third amended complaint, which was served on the State Treasurer. About six weeks later, Williams filed a fourth amended complaint, which alleged violations of his State and Federal Constitutional rights as well as common law tort claims.

At this juncture, the State removed the case to the United States District Court for the District of Maryland and filed a motion to dismiss the fourth amended complaint in its entirety. Among other contentions, the State asserted that Williams was barred from pursuing state law claims against the State, Falby, and McGruder because Williams failed to comply with the pre-litigation notice provisions of the Maryland Tort Claims Act (the "MCTA"), codified at Md. Code Ann. (1984, 2014 Repl.Vol.), §§ 12-101–110 of the State Government (SG) Article.

With regard to Williams's federal excessive force claim, the State asserted that it was improper because Williams brought the claim against Falby and McGruder under the Fourth Amendment and not 42 U.S.C. § 1983. The State went onto explain that even if Williams were to "overcome[] the procedural defect or th[e] Court [were to] liberally construe his complaint as asserting a claim under 42 U.S.C. § 1983" the claim would still fail because: (1) the facts alleged in the complaint failed to state a claim for a violation of

the Fourth Amendment because Williams was in custody at the time of the assault and the Fourth Amendment only applies to excessive force claims arising in the course of an arrest; and (2) Williams cannot maintain a claim against the State or the deputies in their official capacities under 42 U.S.C. § 1983 because the State is not a "person" subject to suit under the statute and suits brought under § 1983 against State officials acting in their official capacities are barred by the Eleventh Amendment.

On March 12, 2007, the District Court granted the motion to dismiss. The Order stated in pertinent part:

> ORDERED
>
> 1. The Motion to Dismiss [Paper No. 22] is **GRANTED** with leave to file a Fifth and **FINAL** Amended Complaint as follows:
>
>   A. The State of Maryland is **DISMISSED** from the case and Plaintiff shall not allege any claims against it in the Fifth Amended Complaint.
>
>   B. Plaintiff shall specify that Count I for assault and battery applies to Defendants Falby and McGruder only.
>
>   C. Plaintiff shall specify that Count II for malicious prosecution applies to Defendants Falby and McGruder only.
>
>   D. Count III, currently labeled "excessive force," shall be replead as a claim under 42 U.S.C. § 1983 claiming violation of the 8th Amendment of the United States Constitution, and/or under Article 24 of the Maryland Declaration of Rights, by Defendants Falby and McGruder ***only in their individual capacities.***

E. Count IV, currently alleging negligence, shall be replead as a claim alleging Gross Negligence and malice against Defendants Falby and McGruder only.

F. Count V alleging "State and Federal (4th Amendment) Constitutional Rights Violated" is **DISMISSED**.

(Italicized emphasis added.)

Williams filed his fifth amended complaint on March 20, 2007. Williams replead his claims for excessive force and gross negligence, but failed to heed the Court's instructions as to the parties.[1] He did not explicitly name the State as a party but set out claims against Falby and McGruder in their official, as well as their individual, capacities.

Falby and McGruder then filed a motion for summary judgment. On May 5, 2008, the District Court granted the motion as to Williams's federal constitutional claim, but declined to exercise supplemental jurisdiction over the state law claims. Accordingly, the District Court, denied the motion as to the state law claims and remanded the case back to state court. Neither party raised the issue that Falby and McGruder were sued in their official, as well as their individual, capacities, and the District Court did not address the matter.

[1]Williams's current counsel did not represent him before the District Court.

Falby died in October 2013, and his estate was substituted as a party to the action. Falby's estate did not request continued representation from the Attorney General.

On March 6, 2014, Williams filed a motion for partial summary judgment against Falby's estate. Williams sought judgment as to liability for his claims of assault and battery and gross negligence. The Estate did not respond to the motion.

With trial scheduled for June 16, 2014, and the motion still pending, Williams's counsel wrote a letter to the circuit court, on June 10, 2014, enclosing a proposed order granting the motion for summary judgment. The proposed order contained the following language: "ORDERED that judgment be and hereby is granted in favor of Plaintiff and against Defendants Estate of Billy Fitzgerald Falby ***and the State of Maryland*** as to liability on Plaintiff's claim for assault and battery." (Emphasis added.) The Office of the Attorney General was copied on the correspondence because it was still representing McGruder. The Attorney General wrote a letter to the court, asserting that the Order should not be entered because it imposed liability on the State, which had previously been dismissed from the action.

On the first day of trial, the court affirmed the State's dismissal, and entered an order stating the following:

> Upon consideration of the pleadings, motions, oral arguments and procedural history in this case, and for the reasons set forth on the record, including but not limited to:

1. The March 12, 2007, order of the . . . United States District Court for the District of Maryland . . . dismissing all claims against the State of Maryland;

2. The May 5, 2008, order of the . . . United States District Court for the District of Maryland . . . remanding the surviving state law claims against Malcolm McGruder and the Estate of Billy Falby to the circuit court for resolution; and

3. Plaintiff's failure to file the requisite notice of claim with the Maryland Treasurer in accordance with the applicable provisions of the Maryland Tort Claims Act,

it is this 16th day of June, 2014 hereby

ORDERED and **ADJUDGED**, that the State of Maryland is no longer a party to this action.

Thereafter, a default as to liability was entered against the Estate, and the case went to the jury on the issue of damages. Williams was awarded a judgment in the amount of $500,000. (McGruder was dismissed from the case on June 10, 2014.). At issue in this appeal is whether the judgment, or any part of it, is enforceable against the State.

Analysis

In Williams's initial brief, he asserts that the State remained a party to this case, despite the District Court's dismissal of his claims against it. Williams contends that the fifth amended complaint, by naming Falby and McGruder as parties in their individual

and official capacities, effectively asserted a claim against the State[2] and that claim was not resolved by the District Court's grant of partial summary judgment. Second, Williams asserts that "the federal court's lack of supplemental jurisdiction and remand had the effect of nullifying its prior rulings on the state law claims, including its ruling purporting to dismiss the State . . . as a defendant."

The State counters that any claims Williams may have had against it are barred by his failure to comply with the mandatory notice requirements of the MTCA. The State also contends that the District Court's dismissal disposed of all claims against it. The State identifies three bases which support this contention. First, the District Court was explicit in its dismissal of the State as a party, and "expressly prohibited []Williams from filing any further claims against the State and instructed him to replead his complaint so that liability could not attach to the State." Second, "the federal court's May 5, 2008[,] order granting summary judgment incorporated within it the court's earlier order[,]" and thus naming Falby and McGruder in their official capacities in the fifth amended complaint was of no effect. Third, the federal court had jurisdiction over the federal claims raised in the fourth amended complaint, and supplemental jurisdiction over the

[2]In his brief, appellant states that the "official-capacity claims against Deputy Falby had the legal effect of naming the State of Maryland as a defendant. *Kennedy v. Widdowson*, 804 F. Supp. 737, 740 (D. Md. 1992) ('by suing the defendants in their official capacities, the [plaintiffs] effectively bring suit against the governmental bodies for which the officials work.')[.]" The State does not contest this premise in this proceeding.

related state law claims, and thus its May 5, 2008, remand was an exercise of discretion rather than a lack of jurisdiction.

In his reply brief, Williams contends that he substantially complied with the notice requirement of the MTCA. He asserts that the State had notice of his claim within one year of the incident because: (1) he filed his initial complaint, on May 5, 2006, identifying Falby and McGruder as parties in their individual and official capacities; (2) Falby and McGruder were represented by the Office of the Attorney General, which also represents the State, in their response to the complaint; and (3) the State conducted an investigation of the assault. Williams also argues that, under *Prince George's County v. Longtin*, 419 Md. 450 (2011), he was not required to provide the State with notice until he was released from prison, an event that occurred in April 2014, and that his third amended complaint, filed on August 17, 2006, provided the State with notice of his claims.

The contentions raised in Williams's initial brief are intriguing, but it is not necessary for us to plumb their depths. Beyond peradventure, Williams's failure to comply with the notice requirement of the MTCA is dispositive of the issues raised in this appeal.

Williams concedes that the MTCA applies to his claims against Falby and McGruder.[3] In order to bring suit under the MTCA, a complainant must "submit a written claim to the Treasurer or designee of the Treasurer within one year of the injury that provides the basis for the claim." SG § 12-106(b)(1).[4] As the Court of Appeals noted in *Barbre v. Pope*, 402 Md. 157, 176-77 (2007), COMAR § 25.02.01.02(b)(7) is

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[3]The MTCA's definition of "state personnel" explicitly includes deputy sheriffs. *See* SG § 12-101(a)(6).

[4]SG § 12-106(b) imposes three conditions precedent to filing suit against the State, under the MTCA. In its entirety, SG § 12-106(b) states:

> (b) *Claim and denial required*. – A claimant may not institute an action under this subtitle unless:
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> (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;
>
> (2) the Treasurer or designee denies the claim finally; and
>
> (3) the action is filed within 3 years after the cause of action arises.

We also note that, as of October 1, 2015, SG § 12-106 has been amended to include an exception to the one year notice requirement. *See* uncodified §3 of Chapter 132 (HB 114) of the Acts of 2015. Pursuant to the addition of subsection (c), "[i]f a claimant fails to submit a written claim in accordance with subsection (b)(1) . . . , on motion by a claimant and for good cause shown, the court may entertain an action under this subtitle unless the State can affirmatively show that its defense has been prejudiced by the claimant's failure to submit the claim." *See* §1 of Chapter 132 (HB 114) of the Acts of 2015. Uncodified § 2 of Chapter 132 (HB 114) of the Acts of 2015 states that "[the] Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of [the] Act."

explicit as to who qualifies as a "designee of the treasurer." COMAR § 25.02.01.02(b)(7) defines "Treasurer's Designee," as follows:

> (7) Treasurer's Designee.
>
> > (a) "Treasurer's designee" means only the:
> > (i) Chief Deputy Treasurer; or
> > (ii) Director of the Insurance Division of the State Treasurer's Office.
> > (b) "***Treasurer's designee" does not mean or include any other person, including, but not limited to:***
> >
> > * * *
> >
> > (ii) The Comptroller of the Treasury, ***the Attorney General***, or the Secretary of State; or
> >
> > * * * *

(Emphasis added.)

Williams did not notify the State Treasurer of his claim until August 21, 2006, more than fifteen months after the alleged assault. His failure to comply with the MTA's one year notice requirement is dispositive of the State's status as a party to this action. Williams is correct that his initial complaint was filed within a year of the incident and named Falby and McGruder in their individual and official capacities. He is also correct that the Office of the Attorney General represented Falby and McGruder after the initial complaint was filed. None of these facts, however, are significant because COMAR § 25.02.01.02(b)(7)(b)(ii) is explicit that the Attorney General is ***not*** a Treasurer's designee for purposes of the MTCA.

Williams's substantial compliance contentions are very similar to those raised by the plaintiff in *Barbre.* In that case, the plaintiff, Pope, who had been seriously injured in an encounter with a Queen Anne's County deputy sheriff, notified a county commissioner approximately five months after the incident of his intent to file an action against the County pursuant to the Local Government Tort Claims Act (the "LGTCA").[5] 402 Md. at 163. Suit was filed against the deputy, in his official and personal capacities, and the County. *Id*. The deputy moved to dismiss the claims against him asserting, among other contentions, that Pope failed to notify the State Treasurer as required by the MTCA. *Id*. at 165. Pope belatedly notified the State Treasurer fourteen months after his injury. *Id.* at 179.

As in the case before us, the plaintiff in *Barbre* argued that he had substantially complied with the notice requirement because the State had conducted an investigation of the incident at issue, and as a result was not prejudiced by the failure to receive timely notice. *Id*. at 177. The Court of Appeals did not agree.

The Court explained that "[n]otice under the MTCA plays an integral part . . . in the invocation of waiver of the State's sovereign immunity," *id*. at 175, and that "[i]n order to comply with the MTCA, a plaintiff must serve written notice upon the State Treasurer, or a designee of the State Treasurer, within one year following the injury." *Id.*

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[5]The LGTCA is codified at Md. Code Ann. (1974, 2013 Repl.Vol.) §§ 5-301–304 of the Courts and Judicial Proceedings Article.

at 176. The Court found no merit in Pope's substantial compliance arguments for two reasons, first, because the MTCA did not provide for substantial compliance, *id.* at 178, and second because the concept of "substantial compliance" was inapplicable when there had been no effort whatsoever to comply with the statutory requirement on a timely basis. *Id.* at 179.[6]

In *Barbre,* the Treasurer was notified fourteen months after the plaintiff's injury; in the case before us, notice was provided fifteen months after the injury. *Barbre* instructs that there was no substantial compliance on Williams's part.

Finally, we are not persuaded by Williams's reliance on *Longtin*. The relevant issue in *Longtin* was when the notice period under the LGTCA commences for claims of false arrest and imprisonment by persons arrested but released before trial. 419 Md. at 466-72. The LGTCA contained a provision requiring that notice of a claim, against a local government or its employees, be given within 180 days of the injury.[7] *Id*. at 466. The Court held that "when a person is arrested, imprisoned, but released before trial, in order to file a false arrest and imprisonment claim, he must file his notice of claim within

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[6]The Court reached the same conclusions on similar facts in *Johnson v. Maryland State Police*, 331 Md. 285, 291-92 (1993), and *Simpson v. Moore*, 323 Md. 215, 218-29 (1991).

[7]The time period for giving notice under the LGTCA is no longer 180 days. Pursuant to Chapter 131 (HB 113) of the Acts of 2015, the time for providing notice under the LGTCA has been extended to one year.

180 days of his release from prison." *Id*. at 477-79. Williams, however, does not assert claims for false arrest or false imprisonment. Accordingly, we cannot extend the Court's rationale in *Longtin* to the notice provision of the MTCA in the case before us.

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS