UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 767

September Term, 2016

PRINCE GEORGE'S COUNTY,
MARYLAND, *et al.*

v.

ERSKINE TROUBLEFIELD

Arthur,
Shaw Geter,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: August 15, 2017

*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 case presents us with an opportunity to interpret the Local Government Tort Claims Act (the "Act"),[1] which contains limits for recovery associated with "individual claim" and the "same occurrence": "[T]he liability of a local government may not exceed $200,000 per individual claim, and $500,000 per total claims that arise from the same occurrence . . . ." Section 5-303(a) of the Act. In the present case, the issue is queued up by the awards, after a jury trial, of $250,000 against Officer John Paddy of the Prince George's County Police Department (which was subsequently vacated), and $350,000 against Officer Philchrist Tossou, Appellant, of the Prince George's County Police Department, for having committed a battery, initiating a malicious prosecution, initiating a false arrest, committing false imprisonment, and violations of Article 24 of the Maryland Declaration of Rights, as well as against Prince George's County, also an Appellant, for acts that occurred when Erskine Troublefield, Appellee, was arrested on July 11, 2012.

Mr. Troublefield had alleged in his complaint, in various counts, that the officers[2] had committed tortious acts "within the scope of their employment as . . . employees of defendant Prince George's County, Maryland," when Mr. Troublefield was arrested. The complaint alleged, in various counts, that the officers had committed a "battery causing injury and damages"; had caused the "depriv[ation] . . . of [Mr. Troublefield's]

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[1] Sections 5-301 *et seq.* of the Courts and Judicial Proceedings Article of the Maryland Code (1974, 2013 Repl. Vol.). All references to "the Act" throughout are to Sections 5-301 *et seq.* of the Courts and Judicial Proceedings Article of the Maryland Code (1974, 2013 Repl. Vol.), unless otherwise noted.

[2] The complaint also was against Officer Christopher Gehlhausen of the Prince George's County Police Department, but he was determined not to be liable by the jury.

constitutional rights under Article 24 of the Maryland Declaration of Rights"[3]; committed a "false arrest . . . made without any legal reason or probable cause to believe that [Mr. Troublefield] had committed any wrong and was in fact guilty of any criminal conduct"; confined Mr. Troublefield "against his will and by threat of force, despite his requests to leave, amount[ing] to . . . false imprisonment"; and were liable for malicious prosecution as well as the intentional infliction of emotional distress and negligence. Mr. Troublefield sought over $75,000 in compensatory damages and more than $75,000 in punitive damages. In their Answers, both Prince George's County and each officer asserted as an affirmative defense, that Mr. Troublefield's "claims [were] barred and/or limited by the . . . Local Government Tort Claims Act." After a trial, the jury determined that Officers Tossou and Paddy were each liable to Mr. Troublefield for malicious prosecution, false arrest, false imprisonment, and a violation of Article 24. Officer Tossou was found to be additionally liable for a battery on Mr. Troublefield.

[3] Article 24 of the Maryland Declaration of Rights states, "That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land."

Mr. Troublefield alleged in his complaint that the defendants had deprived him of his Article 24 rights, "including, but not limited to . . .

(a) Freedom from imprisonment and seizure of freehold, liberty and privilege without due process, and without judgment of his peers;
(b) Freedom from the deprivation of liberty without due process of the law, and without the judgment of his peers;
(c) Freedom from the abuse of power by the police; and
(d) Freedom from summary punishment."

Officers Paddy and Tossou, represented by the County Attorney, subsequently moved to alter or amend the judgments against them, pursuant to Maryland Rule 2-534,[4] "request[ing] that the Court vacate the current judgment amounts, and then enter one new aggregate damage award of $200,000, which is the maximum amount permitted by the Local Government Tort Claims Act . . . in effect at the time of the occurrence at issue."[5] Mr. Troublefield, in response, argued that the limits of the Act did not apply; that the awards against both Officers Paddy and Tossou should be maintained; that the County was not entitled to relief because it was not named in the motion to alter or amend the judgment; and that "intentional" torts were not covered by the Act. At the hearing on the motion, Mr. Troublefield also asserted that the motion to alter or amend the judgments

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[4] Maryland Rule 2-534 provides:

> In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial. A motion to alter or amend a judgment filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

[5] Section 5-303(a) of the Courts and Judicial Proceedings Article of the Maryland Code (1974, 2013 Repl. Vol.) provided:

> (a) *Limitation on liability.* — (1) Subject to paragraph (2) of this subsection, the liability of a local government may not exceed $200,000 per individual claim, and $500,000 per total claims that arise from the same occurrence for damages resulting from tortious acts or omissions, or liability arising under subsection (b) of this section and indemnification under subsection (c) of this section.
>
> (2) The limits on liability provided under paragraph (1) of this subsection do not include interest accrued on a judgment.

had incorrectly cited Rule 2-534, which relates to "action[s] decided by the Court," rather than jury trials.

In considering whether the monetary limits of the Act applied, the trial judge determined that the circumstances surrounding Mr. Troublefield's arrest, although one incident, involved at least four, if not five, different causes of action, triggering a separate claim for each. The County consistently urged the trial judge, however, that only one claim existed against both officers acting jointly, because the incident reflected "one set of operative facts."

The judge also addressed whether the separate verdicts of $250,000 against Officer Paddy and $350,000 against Officer Tossou should merge, determined that they should, and vacated the judgment against Officer Paddy. The judge's order and the correlative docket entries, thus, reflect a $350,000 judgment against Prince George's County and Officer Philchrist Tossou.[6]

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[6] The judge entered the following order after the hearing:

> Upon consideration of Defendants' Motion to Alter or Amend Judgment pursuant to the Local Government Act, the Opposition thereto, and the record in this matter, it is this 6th day of May, 2016, by the Circuit Court for Prince George's County, Maryland, hereby:
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> ORDERED, that the Defendants' motion is GRANTED in part and DENIED in part; and it is further;
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> ORDERED, that the Motion to Alter or Amend the Judgment in the amount of $250,000 entered in favor of Erskine Troublefield and against Defendants Prince George's County, Maryland and Officer John Paddy jointly and severally is GRANTED; and it is further
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> ORDERED, that the judgment in the amount of $250,000 entered in favor of Erskine Troublefield and against Defendants Prince George's County, Maryland and Officer John Paddy jointly and severally is vacated in its entirety; and it is further

(continued . . .)

In appealing from the judgment, Prince George's County and Officer Tossou present one question for our consideration:

> Did the trial court err when it determined that Appellee's arrest and prosecution constituted two separate claims as opposed to a single "claim" for purposes of applying the [Local Government Tort Claims Act's] limitation on damages?

Mr. Troublefield cross-appeals asking:

1. Whether the trial court erred in vacating the $250,000.00 jury verdict against the appellants Prince George's County and Paddy.
2. Whether the trial court erred by failing to properly interpret and apply the holding in *Espina v. Jackson*, 442 Md. 311, 112 A.2d 442 (2015).
3. Whether the trial court erred in reducing the jury's verdict against the appellants for intentional wrongs which caused injury and damage to the appellee.
4. Whether the trial court erred by in effect reducing the appellant, Prince George's County financial responsibility under the doctrine of *respondeat superior*.

The County contends that Mr. Troublefield, in his complaint, alleged only "one set of aggregate, operative facts in this matter – his arrest on July 11, 2012, and the subsequent criminal prosecution arising out of the charges for which he was arrested." The County, thus, argues that Mr. Troublefield asserted only one claim, the recovery for which is limited to $200,000 under the language of the Act.

Mr. Troublefield asserts, conversely, that he is entitled to the $600,000 awarded by the jury. He contends that each count for which the jury found each officer liable is an "individual claim," and, thus, "a separate cap applies to 'each set of facts sufficient to

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(. . . continued)

> ORDERED, that judgment in the amount of $350,000 remain entered in favor of Erskine Troublefield and against Prince George's County, Maryland, and Officer Philchrist Tossou jointly and severally.

justify a court in rendering judgment for the plaintiff.'" He asserts that each of the wrongs committed by Paddy and Tossou against him is a separate claim, because "each of the events above occurred at different times, with different elements of proof, and different locations." Mr. Troublefield contends that the trial judge should not have vacated the judgment against Officer Paddy, because the jury separately found Officer Paddy liable for malicious prosecution, false arrest, false imprisonment, and a violation of his Article 24 rights and awarded him $250,000, which should not be collapsed into the $350,000 reward with Officer Tossou. Mr. Troublefield also contends that limitations on damages in the Act do not apply to intentional torts. Mr. Troublefield, finally, asserts that the trial judge erred in granting relief to the County because only the officers were named in the motion to amend or alter the judgment and, thus, the County did not request such relief.[7]

Under the Act, local government employees enjoy an "indirect statutory qualified immunity" from liability for acts or omissions that sound in tort, while acting within the

[7] Mr. Troublefield argued, before the trial court and us, that the motion to amend or alter the judgment, requesting a reduction of the award to $200,000 against both officers and Prince George's County, was asserted only by the officers, rather than the County, and under the wrong rule, Rule 2-534. Mr. Troublefield's contentions are unavailing.

A judgment can only be executed against the County, under Section 5-302(b) (1) of the Act, even though the suit could only be brought against the officers.

Although it is not clear that the citation to Rule 2-534 in the motion to amend or alter the judgment was incorrect, we shall assume, without deciding, that it was a misnomer. The judge and the parties understood, even were the citation a misnomer, that revision of the awards entered by the jury was being sought. As a result, the purported misnomer was not fatal to this appeal. *See Gluckstern v. Sutton*, 319 Md. 634, 650–51 (1990) (recognizing that a motion to revise the judgment under Rule 2-535(a) does not have to be labeled as such when the substance of the motion sought revision of the judgment and was treated as a motion to revise the judgment by the trial court and the parties).

scope of their employment. *Halloway-Johnson v. Beall*, 220 Md. App. 195, 207 (2014), *aff'd in part*, *rev'd in part*, 446 Md. 48 (2016). The Act provides, in part, that the "local government shall provide for its employees a legal defense in any action that alleged damages resulting from tortious acts or omissions" and that the prevailing party "may not execute against an employee on a judgment rendered for tortious acts or omissions," Section 5-302 of the Act, but rather, "the local government shall be liable for any judgment against its employee for damages resulting from tortious acts or omissions committed by the employee," subject to the limitations of the Act. Section 5-303(b)(1) of the Act. The Act is not a blank check, however, because it establishes limits on liability "for the benefit of the local government—for the protection of the public fisc." *Halloway-Johnson v. Beall*, 220 Md. App. at 214. The Act also makes clear that its provisions apply to "tortious acts or omissions committed by the employee within the scope of employment with the local government," Section 5-303(b)(1) of the Act, when there has been no finding that the employee acted with "actual malice." Section 5-302(2)(i) of the Act.

Does the Act, then, apply in the present case? In examining the scope of "tortious acts or omissions" subject to the limits of local government liability under the Act, the Court of Appeals in *Espina v. Jackson*, 442 Md. 311, 324, 330 (2015), recognized that "there is no exception in the statutory language for any category of torts," and that, in looking to the Act's legislative history, "the General Assembly was aware that the [Local Government Tort Claims Act] would be read as covering a broad range of civil actions, and nonetheless declined to carve out any exceptions." The Court acknowledged, also,

that in *Lee v. Cline*, 384 Md. 245 (2004), "tortious act or omission" in the context of the Maryland Tort Claims Act had been interpreted to include constitutional and intentional torts.[8] The Local Government Tort Claims Act and its limitations on liability, thus, apply to the constitutional and intentional torts committed by Officers Tossou and Paddy.

Our primary focus in the present case, however, is to examine whether one set of operative facts or whether each of several causes of action alleged by Mr. Troublefield is encompassed within the language of "per an individual claim" under the Act. Prince George's County contends that Mr. Troublefield has asserted only "one set of aggregate, operative facts" which gives rise to one individual claim, while Mr. Troublefield avers that each legal theory under which the two officers were found liable mandates multiple awards.

Section 5-303(a) of the Act limits the liability of the local government to "$200,000 per an individual claim, and $500,000 per total claims that arise from the same occurrence"[9]:

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[8] Section 5–522(b) of the Courts and Judicial Proceedings Article of the Maryland Code (2013 Repl. Vol., 2016 Supp.) provides:

> State personnel, as defined in § 12–101 of the State Government Article, are immune from suit in courts of the State and from liability in tort for a **tortious act or omission** that is within the scope of the public duties of the State personnel and is made without malice or gross negligence, and for which the State or its units have waived immunity under Title 12, Subtitle 1 of the State Government Article, even if the damages exceed the limits of that waiver.

(Emphasis added.)

[9] Section 5-303(a) was amended in 2015 to increase the limits on damages to "$400,000 per an individual claim, and $800,000 per total claims that arise from the same occurrence." 2015 Md. Laws, Chap. 131.

> (a) *Limitation on liability.* — (1) Subject to paragraph (2) of this subsection, the liability of a local government may not exceed $200,000 per an individual claim, and $500,000 per total claims that arise from the same occurrence for damages resulting from tortious acts or omissions, or liability arising under subsection (b) of this section and indemnification under subsection (c) of this section.
>
> (2) The limits on liability provided under paragraph (1) of this subsection do not include interest accrued on a judgment.

The text of the Local Government Tort Claims Act does not define the phrase "individual claim," nor does the legislative history.

The Court of Appeals, however, has observed, in *Board of County Commissioners of St. Mary's County v. Marcas, LLC*, 415 Md. 676, 684 (2010), that the "monetary limits on the liability of a local government under the [Local Government Tort Claims Act] apply to claims against local governments when named as defendants," and that "the General Assembly intended that courts would use the insurance industry's definitions of 'individual claim,'" when applying Section 5-303(a) of the Act. We observed, accordingly, in *Leake v. Johnson*, 204 Md. App. 387, 413 (2012), that "in this State and other states, courts construe insurance policies with 'each claim' or 'per person' liability limits to include all claims for the injury to one person, including consequential damages and derivative damages to other persons as a result of the injury."

In addressing whether multiple tort counts and injuries in a property owner's complaint alleging migration of toxic compounds over a period of time constituted an "individual claim" under the Local Government Tort Claims Act, the Court of Appeals in *Marcas*, presented with a certified question from the federal district court, determined that but one claim existed, even though multiple counts had been alleged. In addressing "[w]hether multiple tort counts and injuries as alleged in [the] Complaint . . . constitute

an 'individual claim'" under the Act, *id.* at 678, the Court looked to Black's Law Dictionary, which defined "claim" as:

> 1. The aggregate of operative facts giving rise to a right enforceable by a court.... 2. The assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional.... 3. A demand for money, property, or a legal remedy to which one asserts a right.... 4. An interest or remedy recognized at law; the means by which a person can obtain a privilege, possession, or enjoyment of a right or thing; CAUSE OF ACTION....

Id. at 689 (quoting Black's Law Dictionary 281–82 (9th ed. 2009)). The Court further iterated that, "[c]laim is synonymous with 'cause of action,'" which is defined as a "set of facts which would justify judgment for the plaintiff under some recognized legal theory of relief." *Id.* (quoting Paul Mark Sandler and James K. Archibald, Pleading Causes of Action in Maryland 2 (4th ed. 2008)).

The number of "theories of recovery" was not dispositive under Section 5-303(a) of the Act, according to the Court, such that only one "individual claim" would be the basis for recovery by the property owner:

> Under C.J. § 5-303(a), if a local government negligently fails to comply with applicable state and federal regulations pertaining to a particular landfill, and that negligence is the proximate cause of contamination to one or more adjacent properties, each adjacent property owner's claim for money damages would constitute an "individual claim," regardless of how many theories of recovery are asserted.

*Id.*at 688. The Court determined that all of Marcas' claims for money damages encompassed an "'individual claim' under C.J. § 5-303(a), even if [the Board] was

negligent in several different ways." *Id.* at 689.[10]

In the present case, Mr. Troublefield has alleged only "one set of aggregate, operative facts," amounting to one "individual claim" under the Act, regardless of whether he asserted "[d]ifferent legal theories for the same recovery" against multiple officers acting in concert. *See Beall v. Halloway-Johnson*, 446 Md. 48, 70 (2016). Although Mr. Troublefield asserted multiple causes of action, they all arose from the same set of facts, and, as a result, his recovery is limited to the individual claim amount of $200,000 against the County.

Mr. Troublefield asserts, however, that *Espina* mandates a different result, because the Court of Appeals permitted recovery in that case by the estate of a man killed by police under a survivorship theory, as well as by his son who asserted a constitutional violation by the police when he had tried to come to his father's aid. The ultimate result, according to the Court, was a reduction of a jury verdict of $11,000,000 to $400,000 against the County for the survivorship claim of the estate and the constitutional claim of the son. *Espina* is, therefore, inapposite in the present case because there were two claimants asserting two individual claims based on different operative facts.

[10] In *Beall v. Holloway-Johnson*, 446 Md. 48, 70 (2016) (quoting *East v. Gilchrist*, 293 Md. 453, 459 (1982)), the Court of Appeals, in the context of the Local Government Tort Claims Act, recently iterated that "[d]ifferent legal theories for the same recovery, based on the same facts or transaction, do not create separate 'claims.'" In considering whether a claimant, who had been awarded $200,000 in accordance with the Local Government Tort Claims Act based on a single theory of liability, could be entitled to additional compensatory damages based on multiple theories of liability, the Court determined that, based on Maryland law that anticipates "a plaintiff is entitled to but one compensation for her loss," *id.*, she had received a "complete compensatory damages award" because her "multiple claims all ar[o]se from the same set of facts." *Id.* at 71.

Mr. Troublefield, in conclusion, is entitled to recover $200,000 against the County under the Act.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATING JUDGMENT AGAINST OFFICER PADDY AND PRINCE GEORGE'S COUNTY AFFIRMED BUT VACATED WITH RESPECT TO THE JUDGMENT AGAINST OFFICER TOSSOU AND PRINCE GEORGE'S COUNTY. CASE REMANDED TO THE CIRCUIT COURT TO IMPOSE JUDGMENT IN THE AMOUNT OF $200,000 AGAINST PRINCE GEORGE'S COUNTY. COSTS TO BE PAID BY APPELLEE.