

Circuit Court for Howard County  
Case No.: C-13-CV-22-000693

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 2182

September Term, 2022

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DONTE SHAW

v.

BRIAN MEEKINS

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Wells, C.J.,  
Zic,  
Wright, Alexander, Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: November 7, 2023

\*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Donte Shaw, appellant, sued Brian Meekins, appellee, in the Circuit Court for Howard County alleging assault. Meekins is an officer with the Howard County Police Department. In Shaw’s complaint, he alleged that Meekins, while executing a warrant for Shaw’s arrest, pointed a rifle at Shaw and fired a single shot at Shaw’s vehicle, piercing the passenger’s side window and causing shrapnel to strike Shaw. Shaw further alleged that Meekins’s actions violated Department regulations. Shaw did not allege that he complied with the notice provision of the Local Government Tort Claims Act (“LGTCA”). Instead, when Meekins moved to dismiss the case on that ground, Shaw argued that he was not required to comply with the notice provision because (1) Meekins acted outside the scope of his employment, and (2) the notice provision does not apply to claims of malice. The circuit court disagreed and dismissed the case. This timely appeal followed.

We review the grant of a motion to dismiss for legal correctness—*i.e.*, *de novo*. *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 350 (2019). “We will affirm the circuit court’s judgment on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.” *Id.* (cleaned up).

The LGTCA provides that “an action for unliquidated damages may not be brought against a local government or its employees unless [] notice of the claim . . . is given within 1 year after the injury.” Md. Code Ann., Cts. & Jud. Proc. § 5-304(b)(1). Failure to give the required notice—and then plead that the notice was given—is grounds for dismissal. *Hansen v. City of Laurel*, 420 Md. 670, 694 (2011). This requirement extends to “all torts without distinction, including intentional and constitutional torts.” *Thomas v. City of Annapolis*, 113 Md. App. 440, 457 (1997).

Shaw raises the same two arguments on appeal as he did in the circuit court. Both lack merit. *First*, an employee acts within the scope of employment if their “actions were incidental to the performance of the duties that were entrusted to the employee by the employer, even though in opposition to the employer’s express and positive orders.” *Balt. City Police Dep’t v. Potts*, 468 Md. 265, 289 (2020) (cleaned up). Here, Shaw admits that Meekins was performing a legitimate law enforcement function—executing an arrest warrant—when the alleged assault occurred. It was therefore incidental to the performance of Meekins’s duties. And even if Meekins violated Department policy, his actions remained within the scope of his employment. *See id.*

*Second*, malice is irrelevant to the LGTCA’s notice requirement. The issue of malice is relevant only as to a local government’s right to seek indemnification from its employee. *See Houghton v. Forrest*, 412 Md. 578, 592 (2010). The local government would still be required to defend the employee, *Ennis v. Crenca*, 322 Md. 285, 291 n.2 (1991), and it would remain liable to the plaintiff regardless of actual malice. *Holloway-Johnson v. Beall*, 220 Md. App. 195, 209 (2014), *rev’d in part on other grounds*, 446 Md. 48 (2016). Thus, because the notice requirement is intended to “apprise a local government of its possible liability at a time when it could conduct its own investigation” and enable it to “predict its potential tort liability and budget accordingly[,]” the requirement is unaffected by malice. *Rios v. Montgomery Cnty.*, 386 Md. 104, 126, 135 (2005) (cleaned up).

In sum, Shaw’s failure to comply with the LGTCA’s notice requirement—and to plead compliance in his complaint—was fatal to his assault claim. The circuit court did not err in dismissing his complaint.

**JUDGMENT OF THE CIRCUIT  
COURT FOR HOWARD COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**