Circuit Court for Baltimore City
Case No. 24-C-16-002208

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2366

September Term, 2017

BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS

v.

STARR NEAL, ET AL.

Fader, C.J.,
Nazarian,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: February 21, 2019

This appeal presents the issue of whether a school board that (1) is sued for damages based on the conduct of one of its employees, (2) moves for summary judgment on the grounds that it could not have any liability to the plaintiffs either directly or under the provisions of § 5-518 of the Courts Article, and (3) is awarded summary judgment and dismissed with prejudice from the case in an order from which the plaintiffs do not appeal, can nonetheless later be held liable to the plaintiffs under § 5-518. We hold that the answer is no. Section 5-518 contains no exception to res judicata principles that would allow a plaintiff to suffer an adverse judgment as to a defendant's liability, fail to take an appeal from the adverse judgment, and then later relitigate the same claim against the same defendant. We therefore reverse the judgment entered against the appellant Baltimore City Board of School Commissioners (the "Board").

BACKGROUND

The incident underlying this action involved an altercation between the student appellees, Starr Neal, Ty'llah Neal, and Diamond McCallum (the "Students"), on the one hand, and Officer Lakisha Pulley, then a school police officer at Vanguard Collegiate Middle School in Baltimore City, on the other. According to the Students' complaints, for no apparent reason, Officer Pulley: (1) verbally and then physically assaulted Ms. Starr Neal, including dragging her by her hair across the hallway, pushing her against a window and door, hitting her, and directing pepper spray at her face; (2) hit Ms. Ty'llah Neal and then pushed her out of a school door; and (3) chased and then "brutally beat" Ms. McCallum in the face and head with her baton. Officer Pulley later pleaded guilty to three counts of second-degree assault.

Through their parents and guardians, the Students filed three nearly identical complaints in the Circuit Court for Baltimore City against, among others, Officer Pulley and the Board.[1] They each brought claims against Officer Pulley and the Board for (1) false imprisonment, (2) malicious prosecution, (3) violation of Article 26 of the Maryland Declaration of Rights, (4) false arrest, (5) violation of Article 24 of the Maryland Declaration of Rights, and (6) intentional infliction of emotional distress. Each of the Students also brought a claim of negligent hiring, retention, supervision, and credentialing against the Board and a claim of assault against Officer Pulley.

The Summary Judgment Hearing and the Trial

After discovery, the Board moved for summary judgment. The Board argued that the Students had not identified any evidence to support their direct claims against it for negligent hiring, retention, supervision, and credentialing. With respect to the remaining claims naming the Board, all of which sought to hold the Board responsible for Officer Pulley's actions, the Board argued in its written motion that it had no liability because, among other things: (1) if Officer Pulley was acting within the scope of her employment, she had immunity both as a police officer and under § 5-518(e) of the Courts Article and, therefore, had no liability that could be the responsibility of the Board; (2) if Officer Pulley

[1] The appellees also named Mr. Charley Surida, a teacher at the school, Baltimore School Police Chief Marshall Goodwin, Baltimore City Schools Chief Executive Officer Gregory Thornton, the City of Baltimore, the Baltimore City School Police Force, and the Baltimore City Public School System as defendants. Each of those defendants was either dismissed or awarded judgment in rulings that the Students do not challenge on appeal.

was acting outside the scope of her employment or committed an intentional tort, the Board could not have liability under § 5-518; and (3) the Students' allegations that Officer Pulley acted with malice also took their claims outside the scope of the Board's possible responsibility under § 5-518.[2] At oral argument, the Board similarly argued that, based on the Students' allegations and Officer Pulley's immunity, "there is no judgment that would be required to be indemnified by [the Board]."

Although the Board's motion for summary judgment relied heavily on its contention that it could not possibly be responsible for damages or indemnification under § 5-518, and cited the statute eight times in its written motion, the Students' response failed even to mention that statute and did not dispute the Board's interpretation of it. The Students instead argued that they could hold the Board responsible under respondeat superior because, they claimed, the Board ratified Officer Pulley's tortious actions when the Board's employee, then-City Schools Chief Executive Officer Gregory Thornton, upheld the Students' suspensions after an investigation. The Students also argued that they could hold the Board responsible in respondeat superior for Officer Pulley's conduct based on a "custom or policy" of the Board.

[2] For example, the Board argued that Officer Pulley's immunity as a police officer "would preclude liability being imposed against [the Board] pursuant to Md. Code Ann., Cts. & Jud. Proc. § 5-518 . . . ." The Board also argued that it could not have any liability to the Plaintiffs under § 5-518 because that statute precludes liability for malicious acts by Board employees and the Students' "factual contentions are that Defendant Pulley acted maliciously towards them on October 28, 2014 . . . ."

In August 2017, the court entered an order granting the Board's motion for summary judgment and ordering "that all claims against the [Board] are DISMISSED with prejudice." The court also dismissed with prejudice several of the Students' claims against Officer Pulley, but left pending claims against her for certain intentional torts and claims that she violated the Students' rights under Article 24 of the Maryland Declaration of Rights. The court's orders did not explain the bases for either decision.

The Students presented their cases against Officer Pulley to a jury over the course of three days in September 2017. At trial, the Students dropped their intentional tort claims and proceeded solely on their Article 24 claims. They did not argue to the jury that Officer Pulley had acted with malice or gross negligence and they stipulated that she was acting within the scope of her employment during the altercation. The jury ultimately determined that Officer Pulley violated the constitutional rights of each of the Students and awarded damages of $100,000 in favor of Ms. McCallum, $30,000 in favor of Ms. Ty'llah Neal, and $150,000 in favor of Ms. Starr Neal. The three judgments were entered on the docket on October 4 and 5, 2017.

The Motion to Enforce the Judgments

Following trial, the Students asked the Board to satisfy the judgments entered against Officer Pulley. When the Board declined, the Students filed a motion to enforce against it. The Students argued that the Board was obligated to satisfy the judgments pursuant to § 5-518 of the Courts Article because Officer Pulley committed her tortious acts within the scope of her employment and, they now contended, without malice or gross

negligence. The Students also claimed—based on their stipulation at trial that Officer Pulley acted within the scope of her employment and their new concession that she acted without malice or gross negligence—that "the statute forbids the[m] from levying the judgment against Defendant Pulley personally."

During argument on their motion, counsel for the Students conceded that he had made a strategic decision—"specifically with an eye towards" later establishing the Board's liability under § 5-518—to proceed at trial only on the Article 24 counts and without arguing that Officer Pulley acted with malice. That is because (1) the Article 24 counts, unlike the common law torts that survived summary judgment, did not require proof of malice and (2) the Students' counsel interpreted § 5-518 as providing that "if a school board employee does have malice, then the schools may not have to indemnify them." The Students' counsel acknowledged that the intended effect of this decision was to preserve the Students' claims against the Board even while effectively forfeiting their claims against the judgment-proof Officer Pulley.

The Board argued, among other things, that it was not obligated to pay the judgments because summary judgment had been entered in its favor, all claims against it were dismissed with prejudice, the Students failed to appeal from that judgment, and it was no longer a party in the case. Therefore, the Board argued, the Students' claim was barred by res judicata and collateral estoppel. The Board also argued that it could not be held liable to the Students because the entry of summary judgment in its favor had been premised on Officer Pulley having acted "with malice and/or gross negligence," as the

Students had asserted in their complaint, and liability could not be resurrected against it based on the Students' change in theory at trial, during which the Board was absent.

In an order dated January 16, 2018, the court granted the Students' motion. The Board appealed.

DISCUSSION

The first question we must confront, and the one on which we ultimately resolve this appeal, is whether the entry of summary judgment in favor of the Board and against the Students encompassed the Students' claim for indemnification under § 5-518 of the Courts Article such that the Students' current claims are barred by res judicata.[3] The answer to that question turns on § 5-518, the interpretation of which is a matter we consider without affording any deference to the decision of the trial court. *Bell v. Chance*, 460 Md. 28, 52 (2018).

I. SECTION 5-518 OF THE COURTS ARTICLE PARTIALLY WAIVES A SCHOOL BOARD'S SOVEREIGN IMMUNITY AND REQUIRES INDEMNIFICATION FOR ACTIONS OF ITS EMPLOYEES SUBJECT TO CERTAIN CONDITIONS.

The parties' dispute is grounded in a fundamental disagreement about the operation of § 5-518 in this circumstance. To resolve that disagreement, we turn to an examination

[3] Because we conclude that the Students' claims are barred, we do not address the Board's claims that the circuit court erred: (1) in entering a judgment against the Board even though it was not "joined" as a party at trial; (2) in entering a judgment against the Board even though there had been no determination binding as to the Board that Officer Pulley's tortious acts were undertaken within the scope of her employment and without malice or gross negligence; and (3) in determining that the Board was responsible for the entire amount of the Students' combined judgments against Officer Pulley even though its liability under § 5-518 was limited, the Board contends, to $100,000 per occurrence.

of the statute itself. In doing so, we note that our discussion throughout this opinion is limited to the application of § 5-518 to county board employees. County board members and volunteers are treated similarly under the statute in many respects, but differently in other ways that are beyond the scope of this opinion.

A. The Statutory Scheme

"When we construe a statute, we search for legislative intent." *Bell*, 460 Md. at 53. Our "primary guide" in that search is the statutory text. *Id.* "We may refer to the statute's legislative history to 'confirm conclusions or resolve questions' from our examination of the text." *Id.* (quoting *Blue v. Prince George's County*, 434 Md. 681, 689 (2013)). We must also "check our interpretation against the consequences of alternative readings of the text. Throughout this process, we avoid constructions that are illogical or nonsensical, or that render a statute meaningless." *Bell*, 460 Md. at 53 (citation omitted).

We thus begin with the relevant portions of the text of § 5-518, which, at the relevant time,[4] provided:

> (b) A county board of education, described under Title 4, Subtitle 1 of the Education Article, may raise the defense of sovereign immunity to any amount claimed above the limit of its insurance policy or, if self-insured or a member of a pool described under § 4-105(c)(1)(ii) of the Education Article, above $100,000.

[4] The General Assembly amended § 5-518, effective October 1, 2016, to increase the extent of the waiver of sovereign immunity to reach claims of up to $400,000. 2016 Md. Laws, ch. 680 §§ 1, 3. The change was expressly made applicable "only prospectively." *Id.* § 2. As the relevant events in this case occurred in 2014 and the complaints were filed in April 2016, we apply the law as it existed before Chapter 680 became effective.

> (c) A county board of education may not raise the defense of sovereign immunity to any claim of $100,000 or less.
>
> (d)(1) The county board shall be joined as a party to an action against a county board employee[5] . . . that alleges damages resulting from a tortious act or omission committed by the employee in the scope of employment . . . .
>
> (2) The issue of whether the county board employee acted within the scope of employment may be litigated separately.
>
> . . .
>
> (e) A county board employee acting within the scope of employment, without malice and gross negligence, is not personally liable for damages resulting from a tortious act or omission for which a limitation of liability is provided for the county board under subsection (b) of this section . . . .
>
> . . .
>
> (h) Except as provided in subsection (e) . . . of this section, a judgment in tort for damages against a county board employee acting within the scope of employment . . . shall be levied against the county board only and may not be executed against the county board employee . . . personally.

Md. Code Ann., Cts. & Jud. Proc. § 5-518 (Repl. 2013).

From the plain language of § 5-518, we make several relevant observations. First, in § 5-518(c), the statute makes a county school board potentially liable to a plaintiff through a limited waiver of sovereign immunity. *Bd. of Educ. of Balt. County v. Zimmer-Rubert*, 409 Md. 200, 203 (2009) ("[W]e conclude that § 5-518(c) waives the Board's . . . general sovereign immunity . . . for all claims in the amount of $100,000 or less."). As the Court of Appeals recently explained, county school boards are hybrid entities that are

[5] Section 5-518(a)(3) defines who qualifies as a "County board employee." The parties here agree that Officer Pulley was an employee of the Board for purposes of the application of the statute. The parties also agree that the Board falls within the definition of a "County board" pursuant to § 1-101(d) of the Education Article.

treated as local for some purposes and as arms of the State for others. *Donlon v. Montgomery County Public Schools*, 460 Md. 62, 80-82 (2018). One purpose for which such school boards have universally been recognized as arms of the State is sovereign immunity. *Id.* at 80-81, 86-88, 94; *see also Beka Indus., Inc. v. Worcester County Bd. of Educ.*, 419 Md. 194, 210 (2011) ("We affirm that a county board of education, is 'a State agency entitled to governmental immunity.'") (citation omitted). Thus, in the absence of a specific statutory waiver, county school boards have complete immunity from any tort claim, whether for their own conduct or based on that of an employee or agent. Section 5-518(c) abrogates that immunity, but only for claims up to, at the relevant time, $100,000. Section 5-518(b) confirms that county school boards maintain their sovereign immunity for claims above that amount.

Second, § 5-518(d) requires joinder of a county board in any action against one of its employees "that alleges damages resulting from a tortious act or omission committed by the employee in the scope of employment." Cts. & Jud. Proc. § 5-518(d)(1). Thus, in any action in which the county board, now partially shorn of its sovereign immunity, might have responsibility for the actions of an employee, the statute requires that the board be "joined as a party." *Id.* The purpose of that mandatory joinder is "to satisfy any judgment entered against the employee." *Bd. of Educ. v. Marks-Sloan*, 428 Md. 1, 21 (2012). Notably, the question on which the liability of a board hinges—whether the employee was acting "within the scope of employment"—may be litigated separately from the core action. Cts. & Jud. Proc. § 5-518(d)(2).

Third, § 5-518(e) and (h) provide protection for county board employees by (1) establishing that such employees are not liable for damages in tort for an act or omission for which a county board has liability, as long as the employees were "acting within the scope of employment, without malice and gross negligence," § 5-518(e); and (2) providing that "a judgment in tort for damages against a county board employee acting within the scope of employment . . . shall be levied against the county board only and may not be executed against the county board employee . . . personally," § 5-518(h).[6]

[6] The Board and the Students both seem to accept that the liability of county boards and the liability of county board employees under § 5-518 are mutually exclusive, with no room for overlap. That understanding—and, most importantly, their belief that a county board has no liability if its employee acted with malice or gross negligence—appears to have been behind both some of the positions the Board took on summary judgment and the Students' strategic choice at trial not to argue that Officer Pulley acted with malice.

We need not resolve here whether that understanding is correct because our resolution of this case does not depend on it. However, because no case has previously addressed it, we note that the parties' interpretation is at least arguably in tension with the plain language of the statute. Section 5-518(e) precludes personal liability for a county board employee who meets two criteria: (1) acting within the scope of employment; and (2) without malice or gross negligence. This provision, by its unambiguous terms, addresses only one subject: when the employee has no personal liability for damages. *See Marks-Sloan*, 428 Md. at 20-21 (stating that subsection (3) "expressly provides the circumstances under which an employee may not be held personally liable for damages").

Section 5-518(h) then addresses enforcement of a judgment rendered "against a county board employee acting within the scope of employment," specifying that such judgment "shall be levied against the county board only and may not be executed against the county board employee." Subsection (h) thus has two components: (1) establishing the scope of a board's liability; and (2) limiting the extent of a board employee's liability. With an important caveat, both components are expressly made dependent only on whether the employee acted "within the scope of employment."

The caveat is that subsection (h) is introduced by the phrase "Except as provided in subsection (e) . . . ." The Board apparently reads that cross-reference to subsection (e) as modifying both components of subsection (h)—board liability and employee liability. But

B. *Board of Education v. Marks-Sloan*, 428 Md. 1 (2012)

In *Marks-Sloan*, the Court of Appeals engaged in a detailed analysis of § 5-518 for the purpose of determining whether the statute "provides for indemnification or immunity for county board of education employees" and, therefore, whether the statutory requirements to join the board as a party and for the board to "satisfy any judgment . . . violates the exclusivity rule of the Workers' Compensation Act." 428 Md. at 20, 33. In addressing the first question, the Court found the statute ambiguous as to whether the protection it provides county board employees is in the nature of indemnification or immunity. *Id.* at 20. To resolve the ambiguity, the Court looked to the immunity of the

subsection (e) says nothing at all about a board's liability. As a result, the effect of this cross-reference would seem to most naturally be read as modifying only the component of subsection (h) that addresses the liability of board employees.

Reading these provisions together and in context, it is at least arguably the case that there is an overlap of liability when a board employee acts within the scope of employment *and* with malice or gross negligence. If correct, such a partial overlap in responsibility would be similar to the overlap that exists when an employee acts within the scope of employment *and* with malice under the Local Government Tort Claims Act ("LGTCA"). *Compare* Cts. & Jud. Proc. § 5-302(b) (prohibiting execution of a judgment against an employee who acted within the scope of employment unless the employee also acted with actual malice) *with* § 5-303(b)(1) (making a local government "liable for any judgment against its employee for damages resulting from tortious acts or omissions committed by the employee within the scope of employment with the local government"); *see also Houghton v. Forrest*, 412 Md. 578, 591-92 (2010) (explaining that whether employee acted with malice would be relevant to the employee's liability to a plaintiff, but not to the local government's liability to a plaintiff). Under the Maryland Tort Claims Act ("MTCA"), by contrast, there is no such overlap. Cts. & Jud. Proc. § 5-522(a)(4) & (b) (stating that State personnel are immune only when they act within the scope of their public duties *and* without malice or gross negligence and that the State's immunity is only waived if both of those are true).

county boards under the statute,[7] legislative history, the broader context of the Education Article's insurance scheme,[8] and a comparison between § 5-518 and the terms of the protection provided to employees under the MTCA and the LGTCA. *Id.* at 25.

The Court concluded that the General Assembly did not intend to provide county board employees with an immunity from suit. Instead, the Court held, the statutory scheme contemplates that: (1) a suit in tort may be brought directly against an employee; (2) if the employee was acting within "the scope of his or her employment without malice or gross negligence, the county board *must be joined* as a party"; (3) a judgment could "then be entered against both the employee and the county board of education"; but (4) "the judgment may be levied and executed against the county board of education only." *Id.* at 28-29 (emphasis added). The Court later summarized its holding in similar terms:

> Tort suits may be brought against county board employees and judgments may be entered against them. The county board of education *must be joined* as a party to the tort action in situations where the employee has acted within the scope of employment without malice or gross negligence. If a judgment

[7] The Court observed that "[t]he immunity given to county boards of education under CJ § 5-518(c) is an *immunity from damages* in excess of $100,000." *Marks-Sloan*, 428 Md. at 27. By its terms, § 5-518(c) imposes a limitation on a county board's right to assert sovereign immunity, which would otherwise operate as a complete bar to liability as well as damages. In that respect, the statute, much like the MTCA, *see Rodriguez v. Cooper*, 458 Md. 425, 451 (2018) ("[T]he General Assembly has enacted a limited waiver of the State's sovereign immunity . . . ."), operates as a limited waiver of sovereign immunity, not as a grant of immunity. We do not interpret the Court's reference in *Marks-Sloan* to "immunity *given* to county boards" (emphasis added) as a disavowal of the sovereign immunity otherwise enjoyed by those boards, especially in light of the Court's more recent discussion of that issue in *Donlon*, discussed above.

[8] The Court observed that §§ 4-105 and 4-106 of the Education Article (Repl. 2018), which address insurance requirements for county boards and the immunity of county board employees, volunteers, and board members, are structured to provide an immunity from damages, not liability. *Marks-Sloan*, 428 Md. at 27.

> is entered against the employee and the county board, the county board alone is responsible for satisfying the judgment, as county board employees may not be held personally liable in tort for damages.

Id. at 32 (emphasis added). These passages make clear the Court's understanding that the proper way of proceeding under § 5-518 is for a plaintiff to sue both the county board and its employee, to obtain a judgment against both, and then to satisfy the judgment against the board alone.

In *Marks-Sloan*, both the plaintiff and the alleged tortfeasor were county board of education employees who had been involved in an automobile accident. *Id.* at 11. The county board prevailed on an early motion to dismiss the plaintiff's direct claims against it based on the exclusivity provision of the Workers' Compensation Act. *Id.* at 11-12. However, the circuit court "directed that [the county board] 'remain a party in this case for the purposes of any potential indemnification . . . required under . . . § 5-518(h)." *Id.* at 12. At the conclusion of the litigation, the circuit court entered judgment against both the employee defendant and the board but then dismissed the employee. *Id.* The Court of Appeals held that this all complied with the requirements of § 5-518. *Id.*

The Court then went on to hold that the county board's obligation to indemnify negligent employees "does not offend the exclusivity rule" of the Workers' Compensation Act because the underlying action is fundamentally against the negligent co-employee. *Id.* at 46-47. As a result, "[i]t was not improper for [the tort plaintiff] to initiate a third party tort action against [the tort defendant] . . . *and to join the Board as a party for purposes of indemnification* [under § 5-518]." *Id.* at 47 (emphasis added).

II. THE CIRCUIT COURT ERRED IN GRANTING THE MOTION TO ENFORCE AGAINST THE BOARD BECAUSE THE COURT HAD PREVIOUSLY ENTERED SUMMARY JUDGMENT IN FAVOR OF THE BOARD ON THE SAME CLAIM AND THE STUDENTS DID NOT APPEAL.

A. The Students' Motion to Enforce Is Barred by Res Judicata.

The Students complied with the initial requirements of § 5-518 as laid out in the statute and in *Marks-Sloan* by filing suit against both Officer Pulley and the Board. However, when the Board sought summary judgment on all claims against it—expressly arguing that it could have no liability to the Students for the actions of Officer Pulley under § 5-518—the Students failed to contradict that argument and also failed to argue that the Board's continued presence was required under § 5-518. And when the circuit court later entered a final judgment against only Officer Pulley, the Students failed to appeal.

The Board argues that the judgment in its favor acts as a res judicata bar to the Students' later-filed motion to enforce. "Res judicata is an affirmative defense that precludes the same parties from relitigating any suit based upon the same cause of action because" the judgment already rendered "'is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit.'" *Powell v. Breslin*, 430 Md. 52, 63 (2013) (quoting *Alvey v. Alvey*, 225 Md. 386, 390 (1961)). The doctrine "restrains a party from litigating the same claim repeatedly and ensures that courts do not waste time adjudicating matters which have been decided or *could have been* decided fully and fairly." *Anne Arundel County Bd. of Educ. v. Norville*, 390 Md. 93, 107 (2005). The doctrine precludes relitigation "if (1) the parties in the present litigation are the same or in privity with the parties to the earlier

action; (2) the claim in the current action is identical to the one determined in the prior adjudication; and (3) there was a final judgment on the merits in the previous action." *Powell*, 430 Md. at 63-64.

Here, the first and third factors are easily satisfied, as (1) the Board and the Students were parties to both the original suit and the motion to enforce and (2) the Board obtained an award of summary judgment that became final when judgment was ultimately entered in the case and the Students did not file a timely appeal. The question is whether the Students' current claim—to enforce against the Board the judgment they obtained against Officer Pulley—"is identical to the one determined" on summary judgment.

The Board contends that the claims are the same. In their complaints, the Students alleged that the Board was liable to them both directly—for negligent hiring, retention, supervision, and credentialing—and based on the Board's responsibility for Officer Pulley's actions. The Board sought summary judgment as to both types of claims. In doing so, the Board argued expressly that it could not possibly be responsible for a judgment under § 5-518 because of the nature of Officer Pulley's actions, the circumstances in which they believed she would have immunity, and the plaintiffs' allegations of malice and intentional acts.[9] The Students did not make any argument to the contrary, did not contend

[9] As discussed above in footnote 6, some of the arguments the Board made in the circuit court, especially with respect to the effect of a finding that Officer Pulley had acted with malice on the Board's potential indemnification obligation, may have been based on an incorrect interpretation of the statute. However, the Students never offered a contrary interpretation and they acceded to the Board's interpretation of the statute both in the circuit court and on appeal.

that the Board could still be held responsible under § 5-518, and failed to ask that the Board remain in the case for that purpose.

The Students argue that res judicata does not apply here because we should interpret the circuit court's entry of summary judgment to apply only to their claims against the Board based on direct liability and non-§ 5-518 respondeat superior liability. Their indemnification claim under § 5-518, they assert, is an entirely separate claim that was not at issue on summary judgment. For several reasons, we disagree.

First, although the plaintiffs rely primarily on *Marks-Sloan*, that decision does not support their claim that they could proceed to trial without the Board present and then later seek indemnification. In *Marks-Sloan*, the Court of Appeals clearly identified how § 5-518 is supposed to operate when there is a claim that a county board must indemnify its employee: (1) the suit is to be brought against both the employee and the county board; (2) the "county board must be joined as a party"; (3) judgment should then be entered against both the employee and the board; and (4) the judgment may then be executed against the board. 428 Md. at 28-29, 32. There, that is exactly what happened. Here, by contrast, although the Students joined the Board as a party at the outset, they acceded through silence to the Board's contention that it could not possibly have any liability under § 5-518, and they failed to argue that the Board's ongoing presence was required to satisfy any potential indemnification obligation. As a result, the circuit court's entry of judgment in favor of the Board and dismissal of the Board from the case with prejudice went unchallenged and is no longer subject to appeal.

Second, we do not read the Court of Appeals's opinion in *Marks-Sloan* as holding that a county board of education's indemnification obligation is immune from application of the res judicata doctrine. Section 5-518 requires joinder of a county board "as a party in the suit to satisfy any judgment entered against the employee."[10] *Marks-Sloan*, 428 Md. at 21. In other words, *the very purpose* of requiring joinder of a county board as a party to such an action is to provide for enforcement of any judgment obtained pursuant to § 5-518. The Students' contention here that the circuit court's entry of judgment in favor of the Board and dismissal with prejudice of the Board from the case was somehow entirely separate from and unrelated to the Board's potential indemnification obligation is thus fundamentally at odds with the structure and purpose of the statute. To be sure, the Students also made direct claims against the Board, but they concede—as they must—that the Board's presence as a party in the litigation was at least partly to satisfy the mandatory joinder requirement of § 5-518(d).[11] The Students' indemnification claims under § 5-518

[10] The Students argue that the sole purpose of mandatory joinder in § 5-518(d) is to ensure that the county board receives notice of the claim. As we have noted, that contention is inconsistent with the Court of Appeals's conclusion that the purpose of joinder is "to satisfy any judgment entered against the employee." *Marks-Sloan*, 428 Md. at 21. It is also inconsistent with the structure of the statute; with the common application of mandatory joinder under Rule 2-211(a); and with our knowledge that the General Assembly knows how to create a true notice requirement, as it did in, for example, the LGTCA, *see* Cts. & Jud. Proc. § 5-304.

[11] In arguing that their joinder of the Board as a party at the outset fulfilled their obligation under § 5-518(d)(1), the Students at least implicitly concede that their complaints included their indemnification claims against the Board. Indeed, were they to argue otherwise, they would be effectively conceding that they had not complied with that mandatory requirement of the statute.

were thus necessarily in the case at the time the Board sought summary judgment against them, and the dismissal with prejudice of all claims against the Board necessarily encompassed a dismissal of those claims.[12]

Third, a primary focus of the Board's successful motion for summary judgment was its claim that it could not possibly have a responsibility to the Students pursuant to § 5-518. Although the circuit court did not explain its rationale for granting the Board's motion, it must necessarily have concluded that the Board's argument as to § 5-518 was correct or else it could not have dismissed the Board entirely and with prejudice. None of the other arguments the Board made—other than the Board's arguments that Officer Pulley was also entitled to summary judgment, which the court did not entirely accept—would have justified failing to keep the Board in the case for purposes of satisfying any obligation that might arise under § 5-518.

Fourth, even if the Students' indemnification claim under § 5-518 had not been specifically raised in the Board's summary judgment motion, that claim would still be barred by res judicata because it is beyond reasonable dispute that it was based on the "same set of facts" as the respondeat superior claim that the Students concede was resolved on summary judgment. As noted, res judicata bars not only claims that were previously

[12] The Board also argues that one purpose of mandatory joinder under § 5-518(d) is to enable a county board to protect its interests at trial and, therefore, that the dismissal of the Board in this case prevented it from protecting those interests. We find that argument wholly without merit. The Board was let out of the case on its own motion. It cannot reasonably complain that it was unable to participate in the proceedings that followed. The Board is saved here only by the res judicata effect of the order that dismissed the claims against it, not by its absence from the case after that.

decided but also claims that could have been decided fully and fairly in the earlier final judgment. *Norville*, 390 Md. at 107. Maryland courts have adopted the transactional approach to determining whether a subsequent claim could have been decided with an earlier claim for res judicata purposes. *Id.* at 108-10. Under that approach, the critical question is whether "the two claims or theories are based upon the same set of facts and one would expect them to be tried together ordinarily." *Id.* at 109. If so, "res judicata generally prevents the application of a different legal theory to that same set of facts, assuming that 'the second theory of liability existed when the first action was litigated.'" *Id.* at 111 (quoting *Gertz v. Anne Arundel County*, 339 Md. 261, 270 (1995)). Here, the Students' respondeat superior claim and their § 5-518 indemnification claim—to the extent they are distinct at all, which we accept only for purposes of argument—are both premised on the Board's liability for the actions of Officer Pulley undertaken in the scope of her employment. The factual basis for the claims is identical. Moreover, the indemnification theory of liability not only existed at the time of the summary judgment adjudication, but (1) the Board raised the issue in its summary judgment motion and (2) the statute required joinder of the Board in the lawsuit for the purpose of resolving that claim.

B. Legislative History and a Comparison of § 5-518 to Other Immunity Provisions Supports Our Conclusion.

As the Court of Appeals did in *Marks-Sloan*, 428 Md. at 25, we will also consider our interpretation of § 5-518 in light of (1) a comparison between the terms of § 5-518 and the LGTCA and the MTCA, and (2) the statute's legislative history. Although the plaintiffs attempt to find support for their position in a comparison between § 5-518 and the LGTCA,

they ignore a critical difference in the statutes. Unlike § 5-518, the LGTCA does not authorize, much less require, joinder of the local government as a party. *Nam v. Montgomery County*, 127 Md. App. 172, 184-85 (1999) ("The LGTCA . . . does not authorize the maintenance of a suit directly against the local government.") (quoting *Williams v. Prince George's County*, 112 Md. App. 526, 554 (1996)); *accord Livesay v. Balt. County*, 384 Md. 1, 11, 20 (2004) (affirming entry of summary judgment in favor of county named as a party and finding it solely an "indemnor" pursuant to the LGTCA); *Khawaja v. City of Rockville*, 89 Md. App. 314, 326 (1991) ("The [LGTCA] . . . does not *create* liability on the part of the local government as a party to the suit.").

Instead, the LGTCA contemplates a suit against only the individual employee, requires the local government to provide the employee with a defense, Cts. & Jud. Proc. § 5-302(a), and then makes the local government "liable for any judgment against its employee for damages resulting from tortious acts or omissions committed by the employee within the scope of employment with the local government," *id.* § 5-303(b)(1); *see also Brown v. Mayor*, 167 Md. App. 306, 314-17, 326 (2006) (concluding that, under the LGTCA, Baltimore City and the Baltimore Police Department had properly been awarded judgment in the underlying lawsuit, which did not preclude later claim for indemnification).

The General Assembly thus enacted two different statutory indemnification schemes applicable to two different categories of government employees and employers: (1) for purposes of § 5-518, a county board of education must be joined as a party to

establish its obligation to satisfy a judgment against its employee; and (2) for purposes of the LGTCA, a local government may not be joined for that purpose.[13] As a result of that difference, although a complaint filed under § 5-518 necessarily includes the plaintiff's indemnification claim against the employer, a complaint filed under the LGTCA necessarily does not. The MTCA provides yet a third model, substituting the State entirely for State personnel in the circumstances in which it applies. *Rodriguez v. Cooper*, 458 Md. 425, 451-52 (2018) ("In effect, the MTCA substitutes the State for the State personnel as the appropriate defendant in such an action."). We must "give effect to [each] statute as it is written." *Bellard v. State*, 452 Md. 467, 481 (2017) (quoting *Wagner v. State*, 445 Md. 404, 418 (2015)).

As a final check on our analysis, we turn to the legislative history of Chapter 666 of the 1985 Laws of Maryland, the law that created the current structure of § 5-518 by, among other things, adding the mandatory joinder requirement.[14] *See Zimmer-Rubert*, 409 Md. at

[13] Even if we were otherwise to agree with the Students that they had the right to pursue the Board notwithstanding the prior dismissal of all claims against it with prejudice, that still would not absolve the Students of the need to prove vis-à-vis the Board that Officer Pulley acted within the scope of her employment. In the LGTCA context, the local government generally has the right to contest scope of employment in an enforcement action following entry of judgment against the employee. *Johnson v. Francis*, 239 Md. App. 530, 548 (2018); *Balt. Police Dep't v. Cherkes*, 140 Md. App. 282, 326 (2001).

[14] The provisions that are now contained in § 5-518 of the Courts Article originally resided in § 4-105.1 of the Education Article. *Marks-Sloan*, 428 Md. at 25; 1985 Md. Laws, ch. 666. The Court of Appeals succinctly explained the rather complicated history of the provision in *Marks-Sloan*:

> In 1990, House Bill 206 was signed into law, creating CJ § 5-353. 1990 Md. Laws, ch. 546. Thereafter, much of the language in ED § 4-105.1 was moved

215 ("[W]e may resort to legislative history to ensure that our plain language interpretation [of a statute] is correct.") (quoting *Kushell v. DNR*, 385 Md. 563, 576-77 (2005)). A review of that history confirms our view that the intent of the General Assembly in requiring joinder of county boards of education in cases against their employees was to include in those cases the plaintiffs' indemnification claims against the boards as a means of protecting the employees. For example, a report of the Senate Judicial Proceedings Committee identified the problem the law was intended to address as that trial courts had interpreted the existing law as protecting only the county boards, not their employees, thus subjecting the employees "to tort liability without limit." The solution identified by the committee was to require joinder of the county board as a party. Montgomery County's statement in support of the legislation similarly identified the problem as that "various trial court decisions . . . have interpreted the existing [law] as protecting the entity only, i.e., the Boards of Education, and not the employees." The County thus supported the bill's provisions "requir[ing] that the Board of Education be joined in any suit against an employee," mandating collection against the board rather than the employee, and providing that claims against employees also cannot exceed "the $100,000 limitation of liability."

> to CJ § 5-353. In 1996, Senate Bill 11 was signed into law and redesignated ED § 4-105.1 as ED § 4-106. 1996 Md. Laws, ch. 10. In 1997, Senate Bill 114 renumbered CJ § 5-353 to its present codification at CJ § 5-518. 1997 Md. Laws, ch. 14. Today, ED §§ 4-105 and 4-106 direct the reader to CJ § 5-518 for an explanation of the protection given to county boards of education and county board of education employees.

428 Md. at 26-27.

The Prince George's County Public Schools similarly supported "requir[ing] a county board of education to be joined in any tort claims against a county board employee who was acting within the scope of employment without malice or gross negligence . . . as a protection for board employees." Perhaps most telling, the Chief City Solicitor of Baltimore's Labor and Education Section opposed the bill for this very reason, arguing that requiring joinder of, and indemnification from, county boards of education would encourage the filing of frivolous lawsuits under the theory that the county board's presence as a party might make the board "more willing to settle such claims rather than endure the time and expense of litigation."

CONCLUSION

We conclude that the Students' claims that the Board was responsible for indemnification under § 5-518 were included in their initial complaints and that those claims were resolved by the circuit court's awards of summary judgment in favor of the Board and dismissals with prejudice of all claims against the Board. That is based on (1) the statutory scheme, which requires joinder of the Board for the purpose of the indemnification claim; (2) the language of the Students' complaints against the Board, which sought to hold the Board responsible for damages based on the actions of Officer Pulley; and (3) the actual arguments made on summary judgment, in which the Board sought judgment based on the absence of any potential obligation under § 5-518 and the plaintiffs did not contest that claim.

Our holding today should not serve as a substantial hurdle to other claims for indemnification under § 5-518. The Court of Appeals laid out the course that must be followed in *Marks-Sloan*. All that is needed is to follow that guidance and, as in any other case, to appeal if judgment is improperly awarded to the opposing party. Because the Students' claim raised in their motion to enforce is identical to a claim that was conclusively resolved in the summary judgment ruling from which they did not appeal, res judicata bars their effort to relitigate the claim. We therefore reverse the judgment of the circuit court.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. COSTS TO BE PAID BY APPELLANT.