

Supreme Court Limits GTLA Immunity, Imposes Joint and Several Liability for Injuries Caused by Foreseeable Conduct of Intentional Tortfeasor

By Douglas B. Janney III

In *Limbaugh v. Coffee Medical Center*, 59 S.W.3d 73 (Tenn. Oct. 16, 2001), the Tennessee Supreme Court limited, or read more narrowly, the immunity that the Tennessee Governmental Tort Liability Act (“GTLA”) affords governmental entities. The court also held that juries and/or judges cannot compare and apportion fault between negligent and intentional actors who are co-defendants where the conduct of the intentional actor was a foreseeable risk created by the negligent actor. In such a scenario, both defendants are subject to joint and several liability for all of the plaintiff’s damages.

The defendants in *Limbaugh* were a county-operated nursing home and one of its nursing assistant employees. The plaintiff was the conservator for his mother, a ninety year-old resident of the nursing home, and, after she passed away, the executor of her estate.

The nursing assistant physically assaulted and injured the plaintiff’s mother when she was living at the nursing home. The plaintiff’s lawsuit was based on the following allegations: the nursing home knew about the nursing assistant’s propensity for violence based on other altercations involving the employee that had been reported to it. Therefore, the nursing home had a duty to protect its residents from the foreseeable acts of its employee. Because the nursing home breached its duty by failing to remove the nursing assistant from direct contact with residents, the nursing home’s negligence caused the mother’s injuries.

After a bench trial, the trial court entered judgment against the nursing home and the nursing assistant, and awarded the plaintiff different amounts of damages against each. The plaintiff and the nursing home appealed. The plaintiff asserted that both defendants should be

liable for the entire amount of his mother's damages. The nursing home claimed that fault could not be allocated among intentional and negligent actors. The nursing home also claimed that it was immune from liability under the GTLA. The Court of Appeals affirmed the judgment against the nursing assistant, but reversed as to the nursing home. It held that the nursing home was immune from suits for injuries arising out of the intentional conduct of its employees.

The supreme court granted the plaintiff's application for permission to appeal. The court addressed two issues: (1) whether a governmental entity's negligence can provide the basis for liability under the GTLA for injuries arising out of a reasonably foreseeable assault and battery by an employee of that entity; and (2) whether comparative fault principles should apply when the negligent and intentional tortfeasors are both made parties to the suit.

As to the first issue, the court held that the negligent nursing home was liable for the injuries caused by the foreseeable intentional acts of the nursing assistant. The GTLA generally immunizes governmental entities from suit. The GTLA contains a waiver of that immunity, however, for suits for personal injuries caused by the negligence of governmental employees within the scope of their employment. An exception to the waiver provision bars suits against covered entities for injuries resulting from certain intentional torts of such employees. Another exception precludes suits for injuries resulting from an entity's exercise or performance of, or failure to exercise or perform, "discretionary functions," which include planning or policy making decisions.

After scrutinizing the statute and its legislative history, the court held that the "intentional tort exception" did not exempt the nursing home from liability. It reasoned that assault and battery were not included among the intentional torts listed in that exception. The court also held that the "discretionary function exception" did not immunize the nursing home. The court

recognized that the nursing home's decision to implement a policy for disciplining combative employees was a discretionary function, but found that the nursing home negligently failed to follow the policy.

As to the second issue, the court held that where intentional and negligent actors are both named as defendants and each is found responsible for the plaintiff's injuries, each will be liable for the entire amount of the plaintiff's damages, not just their perceived portions. The court relied upon its previous decision in *Turner v. Jordan*, 957 S.W.2d 815 (Tenn. 1997), in which it articulated several policy reasons supporting its conclusion that the conduct of a negligent defendant should not be compared with the intentional conduct of another where the intentional conduct is the foreseeable risk created by the negligent actor.

The court reversed the trial court's apportionment of fault between the nursing home and the nursing assistant, and held both defendants liable for the full amount of damages awarded to the plaintiff. The court affirmed the Court of Appeals' finding that the nursing home was negligent, but reversed its judgment holding the nursing home immune from suit.