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ADA UPDATE: SUPREME COURT REJECTS “ABILITY TO PERFORM JOB TASKS” STANDARD IN FAVOR OF FOCUSING ON A CLAIMANT’S ABILITY TO PERFORM ACTIVITIES OF “CENTRAL IMPORTANCE TO DAILY LIFE”

Employers have won the latest round in the ADA game. The United States Supreme Court recently ruled that in determining whether a claimant is disabled, the inquiry is focused not on whether one can physically perform the job tasks at hand, but, rather, whether he can perform basic tasks of “central importance to daily life.” *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (January 8, 2002).

In *Toyota Motor*, a worker at the Toyota manufacturing facility in Georgetown, Kentucky, developed carpal tunnel syndrome and tendonitis in her hands and arms. Her job functions involved using pneumatic tools causing repetitive motion and vibration. A doctor for Toyota put her on restrictive duties. She was given new duties which did not aggravate her conditions. She experienced marked improvement.

Eventually Toyota added new duties to her job. As luck would have it, these new duties brought back the carpal tunnel syndrome and tendonitis. This time, though, the condition was even more severe. Additional medical restrictions were added but Toyota allegedly refused to allow her to perform the job functions that were not causing physical problems. She was subsequently fired for poor attendance. Claimant later sued, alleging Toyota failed to provide her “reasonable accommodations”.

The plaintiff’s own testimony was that she was able to brush her teeth, bathe, tend her flower garden, prepare meals, launder clothes, and other typical household chores and personal care functions. Some of these, like bathing and brushing one’s own teeth are common sense matters of “central importance to daily life.” Despite her testimony, the Sixth Circuit Court of Appeals held that since she was still substantially limited in performing her job with Toyota, she was able to sue under the ADA.

The Supreme Court reversed the Sixth Circuit’s decision in favor of Toyota, saying the court “disregarded the very type of evidence that it should have focused on.” The real focus should be on whether or not an alleged disability prevents someone from functioning and maintaining their own well-being as opposed to the particular functions or actions involved with their job. If someone is able to continue living life pretty much as normal and be gainfully employed doing some other job function, then there is no disability for purposes of employment discrimination under the ADA.

The Court stated “when addressing the major life activity of performing manual tasks, the central inquiry must be whether the claimant is unable to perform the variety of tasks central to most people’s daily lives, not whether the claimant is unable to perform the task associated with her particular job.” The Court went on to say that the impairments “must also be permanent or long term.” Such wording and application should greatly reduce the number of ADA claims by narrowing the focus of what actually is a disability warranting protection.

The Court noted this type of common sense approach was critical. Otherwise, “everyone with a physical impairment that precluded the performance of some isolated, unimportant or particularly difficult manual tasks” would be covered under the ADA. This would be far more extensive than Congress intended when the ADA was enacted. The Court noted the manual tasks the Plaintiff was unable to perform were “not an important part of most peoples’ daily lives.”

The bottom line analysis is whether or not a “disability” keeps one from performing those daily life functions too many of us take for granted. If that is the case, then ADA is probably applicable. If someone can walk, talk, hear, see, get around fairly well and take care of themselves, then the Supreme Court has said the ADA is, in all likelihood, not available as an avenue for employment discrimination claims. ■

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POLICE PURSUIT LIABILITY

I. INTRODUCTION

The police pursuit liability legal landscape has drifted back and forth over the past 10-12 years. The promulgation of O.C.G.A. § 40-6-6 in 1995 was an attempt by the General Assembly to set judicial standards by which these types of cases could be resolved. After swimming around in the vagaries of this particular statute for the first few years of the statute's existence, Georgia's appellate courts were asked by litigants on an increasing basis to resolve basic questions of immunities prior to involving application of the statute. This was a correct analysis, inasmuch as questions of immunity should always be decided before a court or jury reaches questions of duty, breach and proximate cause as set forth in the aforementioned statute.

Not necessarily favoring the direction of the judiciary, the Georgia General Assembly responded in 2002 with O.C.G.A. §§ 36-92-1 through 5. The chapter, which became effective on January 1, 2005, eliminated most of the traditional immunity questions by calling for waivers of sovereign immunity up to minimum amounts, and eliminating all causes of action against city and county police officers for damages caused during the course of police pursuits. As is often the case, the implementation of new law leaves as many unanswered questions as did the former law.

The following paper attempts to clarify local government and public officials police pursuit liability under Georgia law (2006) as well as briefly touching on the status of such claims under the federal law.

II. STATE LAW CLAIMS

A. PUBLIC ENTITY LIABILITY FOR POLICE PURSUITS UNDER GEORGIA LAW

O.C.G.A. § 36-92-2 waives the immunities of local governmental entities (cities or counties) up to the limits described below. This waiver, unlike former law, occurs whether or not the local governmental entity has procured insurance covering such losses. The limits set forth in O.C.G.A. § 36-92-2 are extended to the extent the local government entity has chosen to purchase more insurance coverage than the statutory pronouncement. In other words, under O.C.G.A. § 36-92-2(a)(1) if a negligent loss incurred in 2006, and a particular governmental entity has purchased limits more than the amounts described therein, the sovereign immunity of that particular local government entity is the extent of the limits purchased. O.C.G.A. § 36-92-2 provides as follows:

36-92-2 Maximum waiver amount; exceptions; liability; recovery of interest.

- (a) The sovereign immunity of local government entities for a loss arising out of claims for the negligent use of a covered motor vehicles is waived up to the following limits:
 - (1) \$100,000.00 because of bodily injury or death of any one person in any one occurrence, an aggregate amount of \$300,000.00 because of bodily injury or death of two or more persons in any one occurrence, and \$50,000.00 because of injury to or destruction of property in any one occurrence, for incidents occurring on or after January 1, 2005, and until December 31, 2006;
 - (2) \$250,000.00 because of bodily injury or death of any one person in any one occurrence, an aggregate amount of \$450,000.00 because of bodily injury or death of two or more persons in any one occurrence, and \$50,000.00 because of injury to or destruction of property in any one occurrence, for incidents occurring on or after January 1, 2007, and until December 31, 2007; and
 - (3) \$500,000.00 because of bodily injury or death of any one person in any one occurrence, an aggregate amount of \$700,000.00 because of bodily injury or death of two or more persons in any one occurrence, and \$50,000.00 because of injury to or destruction of property in any one occurrence, for incidents occurring on or after January 1, 2008.

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- (b) The sovereign immunity of local government entities for a loss arising out of claims for the negligent use of a covered motor vehicle is waived only to the extent and in the manner provided in this chapter and only with respect to actions brought in the courts of this state. This chapter shall not be construed to affect any claim or cause of action otherwise permitted by law and for which the defense of sovereign immunity is not available.
- (c) Local government entities shall have no liability for losses resulting from conduct on any part of local government officers or employees which was not within the scope of their official duties or employment.
- (d) The waiver provided by this chapter shall be increased to the extent that:
 - (1) The governing body of the local government entity by resolution or ordinance voluntarily adopts a higher waiver;
 - (2) The local government entity becomes a member of an interlocal risk management agency created pursuant to Chapter 85 of this title to the extent that coverage obtained exceeds the amount of the waiver set forth in this Code section; or
 - (3) The local government entity purchases commercial liability insurance in an amount in excess of the waiver set forth in this Code section.
- (e) Interest prior to judgment may be recovered pursuant to the "Unliquidated Damages Interest Act" as provided for in Code Section 51-12-14; however, any recovery of interest prior to judgment shall be included within the applicable aggregate amount per occurrence as set forth in this Code section. (Code 1981, § 36-92-2, enacted by Ga. L. 2002, p. 579, § 3.)

B. NO MORE INDIVIDUAL OFFICERS LIABILITY FOR POLICE PURSUITS UNDER STATE LAW

O.C.G.A. § 36-92-3 significantly alters claims against public officials for alleged wrong-doings during the course of police pursuits. To wit, no longer may a plaintiff bring a lawsuit against a local government officer or employee who commits a tort resulting from the use of a motor vehicle while in the performance of his or her official duties. O.C.G.A. § 36-92-3(a) provides as follows:

- (a) Any local government officer or employee who commits a tort involving the use of a covered motor vehicle while in the performance of his or her official duties is not subject to lawsuit or liability therefor. Nothing in this chapter, however, shall be construed to give the local government officer or employee immunity from suit and liability if it is proved that the local government officer's or employee's conduct was not within the performance of his or her official duties.

This is a significant change to Georgia law. No longer are officers individually liable under state law for torts committed involving the use of a covered motor vehicle when acting in the course and scope of their employment. Covered motor vehicles are defined as any motor vehicle owned, leased, or rented by the local government entity. O.C.G.A. § 36-92-1(2). Should a plaintiff improperly name an individual officer as a party defendant to a lawsuit involving the use of a covered motor vehicle, then the public entity is substituted by operation of law as the proper defendant.

**C. THE LAW GOVERNING OFFICER'S ACTIONS DURING PURSUITS -
O.C.G.A. § 40-6-6**

This particular statute is found in Title 40, Chapter 6, which is entitled "Uniform Rules of the Road." The relevant statute is entitled "Authorized Emergency Vehicles." Although this particular statute deals with both ambulances and law enforcement vehicles, for purposes of this paper, we will deal only with law enforcement vehicles. Known by many, this statute allows law enforcement officers, "when responding to an emergency call, when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm," to exercise certain privileges in violation of the basic uniform rules of the road. To wit, the driver of an authorized law enforcement vehicle, in the circumstances dictated above, may:

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- (1) Park or stand, irrespective of the provisions of this chapter;
- (2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operations;
- (3) Exceed the maximum speed limits so long as he or she does not endanger life or property; and
- (4) Disregard regulations governing direction of movement or turning in specified directions.

O.C.G.A. § 40-6-6(b). The exceptions granted above apply only when the law enforcement vehicle is making use of an audible signal, and the use of a flashing or revolving blue light visible under normal atmospheric conditions of a distance of 500 feet to the front of the vehicle. Law enforcement officials may undertake the actions set forth in O.C.G.A. § 40-6-6(b), but they are not relieved from driving with “due regard for the safety of all persons.” Where the person suing is actually the “pursued” person, or a person actually injured by the law enforcement officer himself, then the test is:

Whether, under all the circumstances and conditions, the officer act of pursuing a criminal suspect’s vehicle is performed without the requisite due regard for the safety of all persons.

Thompson v. Payne, 216 Ga. App. 217 (1995). Summary judgment is authorized only if the evidence, construed favorably to the plaintiff, “demand[s] the finding of the officer properly balanced the risk to the safety of other drivers and that, in his pursuit of the fleeing suspect, he therefore acted with due regard for the safety of other drivers.” Id. 216 Ga. App. at 219. Whether an officer in pursuit of a criminal suspect exercised the care required by law will generally be a question for the jury, as are other questions of negligence; it is only in a plain and undisputed case that the courts, rather than the jury, can make that determination. Id.

In such circumstances where it is the fleeing suspect himself who damages property, or injures or kills persons during the pursuit, the law enforcement officer’s actions are not the proximate cause of the accident unless the law enforcement officer acted with “reckless disregard for proper law enforcement procedures in the officer’s decision to initiate or continue the pursuit.” O.C.G.A. § 40-6-6(b)(2). Moreover, the existence of such reckless disregard shall not in and of itself establish causation. Id. A third party injured by a fleeing suspect, therefore not only has the burden of proving “reckless disregard for proper law enforcement procedures” by the officer, but also the burden of proving causation by some additional evidence. It has been suggested that proof of reckless disregard required expert testimony. See Standard v. Hobbs, 263 Ga. App. 873 (2003).

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¹ As usual, there is ambiguity. “Local government entity” as defined in O.C.G.A. § 36-92-1(3) means “any county, municipal corporation, or consolidated city-county government of this state. Such term shall not include a local school system.” Does it include a sheriff’s department? Likely so, but again, the oft-confusing line between where a county ends and a sheriff’s department begins is brought straight to the forefront.