

IN THE COURT OF APPEALS  
STATE OF GEORGIA

McINTOSH COUNTY,	)	
Appellant,	)	
	)	
v.	)	CASE NUMBER A25A0874
	)	
MARC NOLDEN,	)	
Appellee.	)	

BRIEF OF MARC NOLDEN, APPELLEE,

Comes now Marc Nolden, Appellee, and designated below as “Plaintiff”  
and shows the Court the following:

INTRODUCTION AND STATEMENT OF CASE

On August 9, 2023, the Plaintiff below, Marc Nolden, brought a complaint for personal injuries against McIntosh County, the Sheriff of McIntosh County in his Official Capacity, and the Deputy Sheriff who was driving the county-owned vehicle and who negligently rear-ended the vehicle Plaintiff was driving, seriously injuring Plaintiff. On October 17, 2023, all Defendants filed a single answer and on the same day, the County, the Sheriff and Deputy filed a motion to dismiss the complaint against them. On February 22, 2024, Plaintiff filed a response to the motion. A hearing was held on the motion on July 10, 2024. At the hearing, Plaintiff agreed that the Deputy had no liability. On September 20, 2024, the Court

found that McIntosh County and not the Sheriff was the proper Defendant, holding that the legislature had waived sovereign immunity as to the County but not as to the Sheriff. Plaintiff agrees that the County is a proper party to sue.

This case turns on this Court's interpretation of O.C.G.A. § 36-92-1. The County and the Sheriff in his Official Capacity contend that the legislature changed the statutory and case law that sovereign immunity had been waived and reestablished sovereign immunity where the negligent party was the Sheriff or a Deputy Sheriff. Plaintiff contends sovereign immunity remains waived as to negligence of both and the proper party to sue is the County. Because this case comes to the Court by way of a motion to dismiss based upon the pleadings, pages 7-60 of the Index are all important to the appeal. All parties preserved their enumerations of error in briefs and oral arguments. Specifically, Plaintiff's brief (Index of companion case brought by McIntosh County, pages 41-52) and his arguments made throughout the hearing as set forth in its transcript show that Plaintiff preserved his enumeration of error for consideration.

### SUMMARY OF ARGUMENT

It is clear that before the amendment to O.C.G.A. § 36-92-1(4), the County was the proper party to sue for the negligence of a sheriff or his deputy in a motor vehicle personal injury case. It is a weighty matter for the legislature to revoke a

waiver of sovereign immunity which had been granted by the legislature and confirmed by case law. While weighty, it is also easy to state that sovereign immunity is reinstated. There is absolutely nothing stated in the amendment that hints that the legislature intended to withdraw the existing waiver of sovereign immunity.

### ARGUMENT AND CITATION OF AUTHORITIES

Because this appeal involves the proper interpretation of a statute, the applicable standard of review is de novo.

On page 7 of the transcript of the hearing, Defendants' attorney, while not speaking for the Sheriff's Association, indicated that the Sheriffs he has spoken to do not believe that people injured by deputies should be left without a remedy, even though he contends that is what the statute in question has done. Plaintiff shows that the statute has codified case law that a person injured in a motor vehicle collision by a sheriff or his deputy clearly have a remedy.

The statute in question, O.C.G.A. § 36-92-1(4), codifies the waiver of sovereign immunity of Sheriffs in their Official Capacities and when read with the pre-existing case law provides that the County is the proper party to sue and is not an attempt by the legislature to revoke sovereign immunity.

This Court in the case of Davis v. Morrison, 344 Ga.App. 527 (2018), found

that subsection (3) applies to sheriff's offices because sheriffs and deputies perform government services on a local level. In the case of Strength v Lovett, 311 Ga.App. 35, (2011), the Court of Appeals explained the following:

A lawsuit against the sheriff in his official capacity is considered a suit against the county, and the sheriff is entitled to assert any defense or immunity, that the county could assert, including sovereign immunity. (Cits omitted.) The question, then, is whether the sovereign immunity of Richmond County has been waived with respect to the claim asserted against the Sheriff in this case.

Under O.C.G.A. § 36-92-2(a), the sovereign immunity of a county is waived “for a loss arising out of claims for the negligent use of a covered motor vehicle.” A “covered motor vehicle” is any motor vehicle owned, leased or rented by the county, O.C.G.A. § 36-92-1(2), and the Sheriff does not dispute that the patrol car in which his deputy pursued Clark was a “covered motor vehicle.”

The 2019 amendment to O.C.G.A. § 36-92-1(4) reads as follows: “‘Local government officer or employee’ means: (A) An officer, agent, servant, attorney, or employee of a local government entity; or (B) A sheriff, deputy sheriff, or other

agent, servant, or employee of a sheriff's office.”

McIntosh County is arguing that the purpose of the 2019 Legislature in adding the language contained in O.C.G.A. § 36-92-1(4)(B), was to withdraw the waiver of sovereign for negligent operation of motor vehicles by sheriffs and their deputy employees. Plaintiff states that the legislature was obviously intending to codify the Davis v. Morrison 344 Ga.App. 527 (2018) decision. The plaintiff in Davis argued unsuccessfully that sheriff's deputies could not be included in the definition of subsection (4). This Court in Davis held that they are included.

At the time of the 2019 amendment, the Legislature was presumed to know that a lawsuit arising out of negligent operation of a county-owned motor vehicle against the sheriff in his official capacity or his deputy is considered a suit against the county. Thus, there was never a need for the Legislature to include in the definition of “Local government entity” the words “sheriff in his official capacity.” Merely, specifying counties was sufficient to bring sheriffs in their official capacities into subsection (4). Clearly that was the law in 2011 and the law in 2018. The deputy in this case was driving a county-owned vehicle, which clearly is a covered vehicle.

If the Legislature intended to revoke the waiver of sovereign immunity as to motor vehicle negligence cases, it would have said that clearly and unequivocally

by amending subsection (3) by adding these or similar words: “The Sheriff and his office and deputies are not local government entities and sovereign immunity is not waived as to them.” The amendment to subsection (4) demonstrates clearly that deputy sheriffs are local government employees and this is exactly the holding of Davis v. Morrison 344 Ga.App. 527 (2018). By leaving subsection (3) as it was, and knowing that the Court of Appeals in Davis had recently found sheriff’s offices are included in subsection (3), the legislature has not changed subsection (3) as it existed before the 2019 amendment.

The clear intent of the Legislature was to make sure people injured by the negligent acts of sheriffs and deputies have a remedy and that the proper party is the county.

### CONCLUSION

For the foregoing reasons, Plaintiff shows that McIntosh County is the proper party to be responsible for the negligence of the deputy and has no sovereign immunity for such negligence in the use of a motor vehicle.

This 14<sup>th</sup> day of January, 2025.

***Certification: This submission does not exceed the word count limit imposed by Rule 24.***

KILLIAN LAW FIRM, LLC

By: /s/Robert P. Killian  
Robert P. Killian  
Georgia State Bar No.: 417575

47 Professional Drive  
Brunswick, GA 31520  
(912) 263-9520  
bob@killianlawfirm.com

ATTORNEY FOR APPELLEE

## **CERTIFICATE OF SERVICE**

This is to certify that I have this day served a copy of the foregoing pleading  
by addressing same to:

Richard K. Strickland  
Emily R. Hancock  
Brown, Readdick, Bumgartner,  
Carter, Strickland & Watkins, LLP  
Post Office Box 220  
Brunswick, GA 31521-0220

and depositing same in the United States Mail with sufficient postage affixed to  
assure delivery.

This 14<sup>th</sup> day of January, 2025.

/s/ Robert P. Killian  
Robert P. Killian  
Georgia Bar Number 417575  
Attorney for Appellant

KILLIAN LAW FIRM, LLC  
47 Professional Drive  
Brunswick, GA 31520  
(912) 263-9520  
bob@killianlawfirm.com