IN THE COURT OF APPEALS
STATE OF GEORGIA

MARC NOLDEN, Appellant on Cross Appeal	)	
v.	)	CASE NUMBER A25A0875
McINTOSH COUNTY, et. al., Appellees on Cross Appeal	)	

BRIEF OF MARC NOLDEN, APPELLANT ON CROSS APPEAL

Comes now Marc Nolden, Appellant on Cross Appeal and designated below as "Plaintiff" and shows the Court the following:

PART ONE

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 diving 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 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 the proper party to sue. However, if not the County, then the Sheriff in his Official Capacity would be the proper entity 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 it did not waive sovereign immunity for either where the negligent party was a Deputy Sheriff. Plaintiff contends sovereign immunity is waived as to both. 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.

PART TWO

ENUMERATION OF ERROR

While Plaintiff believes the trial court properly ruled that McIntosh County is the proper party to be sued for the negligence of a deputy sheriff, because this Court could find that the Sheriff is the proper party, out of an abundance of

caution, Plaintiff shows that if the County is not the proper party, the court erred when it found that the legislature did not waive the sovereign immunity of the Sheriff in his Official Capacity for the negligent acts of his Deputies.

This Court and not the Supreme Court has jurisdiction over this case in that this case deals with the construction of a statute and is not within the exclusive jurisdiction of the Supreme Court

PART THREE

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 clearly codified that a person injured in a motor vehicle collision by a sheriff or his deputy clearly have remedy.

It may be an inconsequential point, but Plaintiff, the Appellant on the cross appeal, contends that the statute in question, O.C.G.A. § 36-92-1(4), waives the sovereign immunity of Sheriffs in their Official Capacity and when read with the

pre-existing case law provides that the County is the proper party to sue.

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 OCGA § 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, OCGA § 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."

Defendants seem to be 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). The Davis court held that they are included.

At the time of the 2019 amendment, the Legislature was presumed to know that a lawsuit against the sheriff in his official capacity 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.

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

amending subsection (3) by adding these words: "The Sheriff and his office are not a local government entity 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 the 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.

CONCLUSION

For the foregoing reasons, if this Court finds that McIntosh County is not the proper party to be responsible for the negligence of the deputy, then the Sheriff of McIntosh County in his official capacity does not have sovereign immunity and is responsible.

This thirty-first day of December, 2024.

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 APPELLANT

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
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 thirty-first day of December, 2024.

/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