IN THE COURT OF APPEALS
STATE OF GEORGIA

APPEAL NUMBER A25A0875

MARC NOLDEN,
Appellant (Plaintiff below)

v.

STEPHEN JESSUP,
Appellee (Defendant below)

BRIEF OF APPELLEE

Appeal from the Superior Court of McIntosh County
Civil Action No. SUV2023000114
The Honorable Michael L. Karpf, Presiding

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I. INTRODUCTION

This appeal raises the question of whether, under O.C.G.A. § 36-92-1 *et seq.*, a sheriff may be held liable for motor-vehicle-related torts committed by his employees. The plain language of the statute permits only one answer: "no." Under O.C.G.A. §36-92-3, liability for the torts of a local government employee rests with his employer, and as a matter of law, a deputy's employer is the sheriff in his official capacity. But sheriffs are excluded from the short and finite list of "local government entities" which may be sued under O.C.G.A. §36-92-3. Instead, they are named as "local government officers or employees," which are explicitly made immune from liability.

As discussed fully in the companion appeal filed by McIntosh County, the effect of the plain language of O.C.G.A. §36-92-3, combined with well-settled law precluding liability on the part of a county for the torts of a sheriff's deputies, is that there is *no* appropriate defendant for claims arising from alleged motor-vehicle-related torts committed by sheriffs' deputies under the current version of O.C.G.A. §36-92-3. But the statutory language is clear and unequivocal: sheriffs cannot be held liable

for motor-vehicle torts committed by their deputies. Any attempt to venture beyond the plain text of the statute – into legislative intent, legislative history, or practical effects – is consequently improper. Even if these extrinsic items could be considered, they would not support any different interpretation of the statute. The trial court correctly granted dismissal to Sheriff Jessup on the ground that he is not subject to suit under O.C.G.A. §36-92-3, and that portion of its ruling should be affirmed.

II. STATEMENT OF JURISDICTION & STATEMENT OF THE CASE

Appellant's factual recitations regarding procedural history and preservation of errors are accurate. Appellee likewise agrees with the jurisdictional statement contained in Appellant's brief. To the extent that any elaboration on these items would be of assistance to the Court, Appellee incorporates by reference the statement of jurisdiction and statement of the case provided by Appellant McIntosh County in Appeal No. A25A0874.

III. ARGUMENT AND CITATION OF AUTHORITIES

A. The trial court correctly ruled that O.C.G.A. §36-92-3 bars any claim against Sheriff Jessup for alleged tortious conduct by Deputy Sanchez.

The Georgia Supreme Court has held that Georgia sheriffs enjoy the same sovereign immunity as do the counties in which they serve. *Gilbert v. Richardson*, 264 Ga. 744, 746 n. 4 (1994) ("Millard was sued in his capacity as Walker County Sheriff. . . . and [] may raise any defense available to the county, *including sovereign immunity*.") (emphasis supplied); *Howard v. City of Columbus*, 239 Ga. App. 399, 410, 521 S.E.2d 51 (1999) ("[T]he county sheriff in his official capacity is immune from tort liability in performing an official function and may be liable only to the extent that the county has waived sovereign immunity by statute."). The statute governing the waiver of sovereign immunity in connection with the purchase of vehicle-liability insurance provides that "[t]he sovereign immunity of *local government entities* for a loss arising out of claims for the negligent use of a covered motor vehicle is waived." O.C.G.A. §36-92-2 (emphasis supplied). A "local government officer or employee" is not subject to suit under the statute. O.C.G.A. §36-92-3.

Prior to a 2019 amendment, O.C.G.A. §36-92-1 was silent as to whether a sheriff is a "local government entity" – the only type of defendant for which immunity is waived by the statute – or a "local government officer or employee." Under that earlier version of the statute, this Court held that "the term 'local government entity' should [not] be construed so narrowly as to exclude sheriff's offices . . ." *Davis v. Morrison*, 344 Ga. App. 527, 531, 810 S.E.2d 649, 652 (2018). Shortly after the Court issued its decision in *Davis*, the legislature amended the definitions applicable to the statute waiving sovereign immunity for motor-vehicle claims:

> "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.
>
> O.C.G.A. §36-92-1(4).

"Local government entity," in turn, is defined as "any county, municipal corporation, or consolidated city-county government of this state." O.C.G.A. §36-92-1(3).

The new version of the statute explicitly indicates that a sheriff is a "local government officer or employee" – *not* a "local government entity." O.C.G.A. §36-92-1(4). Justice Nahmias, in a concurrence, weighed in on the effect of the 2019 amendment:

> [I]t is textually clear now that a 'sheriff' is not a 'local government entity' . . . going forward, it appears that a plaintiff injured by a sheriff's deputy negligently using a covered motor vehicle is statutorily prohibited from suing the deputy or the sheriff . . .".
> *See Mendez v. Moats*, 310 Ga. 114, 124, 852 S.E.2d 816, 822 (2020) (Nahmias, J., concurring).

Not only is Sheriff Jessup not a "local government entity" for which immunity could potentially be waived by the statute – he is a "local government officer or employee," and would potentially be entitled to the additional statutory immunity granted by O.C.G.A. §36-92-3(a) if he were not entitled to sovereign immunity.

O.C.G.A. §36-92-2 allows claims only against "local government entities," and explicitly disallows claims against "local government officers or employees." A sheriff is a "local government officer or employee." O.C.G.A. §36-92-1(4). And a "local government entity" can only be a county, a city, or a joint county-city government. O.C.G.A. §36-92-1(3). By

its plain terms, O.C.G.A. §36-92-2 does not allow a claim to be brought against Sheriff Jessup for the alleged actions of Deputy Sanchez, and the trial court correctly granted dismissal to Sheriff Jessup on this ground.

B. Because the text of the relevant statute is clear and unambiguous, the intent of the legislature is irrelevant.

Nolden argues that the General Assembly cannot possible have intended to "withdraw the waiver of sovereign [immunity] for negligent operation of motor vehicles by sheriffs and their deputy employees" when it enacted the current version of O.C.G.A. §36-92-1 *et seq.* Brief of Appellant, p. 5. But as the Supreme Court has made clear, the fact that a law produces seemingly arbitrary or unfair results is irrelevant if the text of the law is unambiguous.

"When determining the meaning of a statute, we start with the statutory text itself, because a statute draws its meaning from its text." *Alston & Bird, LLP v. Hatcher Mgmt. Holdings, LLC*, 312 Ga. 350, 353 (2021) (citation and punctuation omitted). A court construing a statute must "afford the statutory text its plain and ordinary meaning," view it "in the context in which it appears," and read it "in its most natural and reasonable way, as an ordinary speaker of the English language would."

Deal v. Coleman, 294 Ga. 170, 172-173 (2013) (citation and punctuation omitted). "[W]hen we interpret unambiguous statutory text that appears not to serve the purpose we imagine the statute to have, we must follow the path of the text, not the apparently different path of the 'purpose.'" *Alston & Bird,* 312 Ga. at 350.

In *Alston & Bird*, the Georgia Supreme Court confronted a provision in Georgia's apportionment statute that had the devastating – and seemingly unintended – effect of precluding the reduction of damages for comparative fault in a wide class of cases. O.C.G.A. §51-12-33(a) provides that "[w]here an action is brought against one or more persons for injury to person or property and the plaintiff is to some degree responsible for the injury or damages claimed," any award of damages to the plaintiff shall be reduced in accordance with the plaintiff's share of fault. At the time of the *Alston & Bird* decision, O.C.G.A. §51-12-33(b) – which covers apportionment of damages among responsible parties other than the plaintiff – was structured similarly to subsection (a), but stated that it applied only "[w]here an action is brought against more than one person."

The plaintiff corporation in *Alston & Bird* brought a legal malpractice suit against the firm that represented it through its formation. 312 Ga. at 351. The law firm filed a notice of nonparty fault under O.C.G.A. §51-12-33(d), naming the corporation's manager – against whom the corporation had already won a substantial judgment for embezzlement – as a party to whom fault should be apportioned. *Id.* A jury ultimately found for the plaintiff on its claims of legal malpractice and breach of fiduciary duty and awarded more than two million dollars, apportioning 32% of fault to the law firm, 8% to the plaintiff, and 60% to the nonparty manager. *Id.* at 352. The trial court ordered the law firm to pay 32% of the judgment, but the plaintiff appealed, arguing that the apportionment provision of O.C.G.A. §51-12-33(b) was inapplicable because the case had been brought against only one defendant. *Id.* This Court agreed with the plaintiff, and ultimately, the Supreme Court felt constrained to do so as well. *Id.* Although the apportionment statute allowed a notice of nonparty fault to be filed in *any* case, and required juries to compute percentages of fault in *every* case, the plain language of subsection (b) allowed the reduction of

damages clearly contemplated by these provisions only if the case was "brought against more than one person." *Id.* at 356.

The Supreme Court, while not disagreeing with the defendant's arguments that this result was clearly unfair and that there was no reason for apportionment to be unavailable in single-defendant cases, quickly disposed of the defendant's argument that the court could do something to prevent this result:

> A&B and amici argue that allowing apportionment of damages according to the percentage of fault allocated to nonparties in multiple-defendant cases but not in single-defendant cases would be arbitrary and not reflective of the General Assembly's intent. But "[t]he best indicator of the General Assembly's intent is the statutory text it actually adopted." [cit.] If the General Assembly intended subsection (b) to apply to cases brought against a single defendant, it could have and should have said so . . . The General Assembly chose to exclude single-defendant cases from the scope of subsection (b). And "we must presume that the General Assembly meant what it said and said what it meant." [cit.]
>
> Applying subsection (b) to single-defendant cases may well advance some of the intentions behind the Tort Reform Act better than the statute as we interpret it today. But the "General Assembly does not enact a general intention; it enacts statutes. Statutes have words, and words have meanings. It is those meanings that we interpret and apply, not some amorphous general intention." [cits.] The General Assembly chose to exclude single-defendant cases from apportionment among non-parties. A&B does not argue that such a choice was beyond

> the legislative power the Georgia Constitution vests in the General Assembly. And the judicial power we exercise today does not permit us to make a different choice.
> *Id.* at 358-59.

Following the issuance of the Georgia Supreme Court's opinion in *Alston & Bird*, the General Assembly quickly amended subsection (b) of the apportionment statute to apply to cases "brought against one or more persons." 2022 Georgia Laws Act 876 (H.B. 961).

Here, as in *Alston & Bird*, the statutory language is unambiguous: only "local government entities" can be sued under O.C.G.A. §36-92-3, and sheriffs are not "local government entities." O.C.G.A. §36-92-1. Rather, sheriffs and their deputies are "local government employees," who cannot be held liable under the statute. O.C.G.A. §36-92-1. "We must presume that the General Assembly meant what it said and said what it meant" when, in 2019, it amended O.C.G.A. §36-92-1 to add sheriffs and their deputies to the class of persons who may not be sued under O.C.G.A. §36-92-3.

Nolden argues that the 2019 amendment, which followed this Court's decision in *Davis,* was "obviously intend[ed] to codify the [*Davis*] decision." Brief of Appellant, p. 5. But "we must presume that the legislative addition of language to [a] statute was intended to make some

change in the existing law." *Wausau Ins. Co. v. McLeroy*, 266 Ga. 794, 796, 471 S.E.2d 504, 506 (1996). Although the intent of the legislature is irrelevant given that the statutory text is clear, an inquiry into legislative intent would not benefit Nolden in any event. Just after this Court held in *Davis* that the definition of "local government entity" could be read to encompass a sheriff, the legislature amended the statute. Absent evidence to the contrary – and Nolden has offered none – it must be presumed that the purpose of that amendment was to change, rather than codify, the result reached in *Davis. Wasau*, 266 Ga. at 796.

Similarly, Nolden argues that if the General Assembly truly intended to preclude suit against sheriffs in their official capacities under O.C.G.A. §36-92-3, "it would said [sic] 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.'" Brief of Appellant, pp. 5-6. But the referenced subsection is the definition of "local government entity," and the list provided in that definition is exhaustive: "'Local government entity' means any county, municipal corporation, or consolidated city-county government of this

state. Such term shall not include a local school system." O.C.G.A. §36-92-1(d). "A well-established canon of statutory construction, *inclusio unius, exclusio alterius*, provides that the inclusion of one implies the exclusion of the others." *Davis v. Wallace*, 310 Ga. App. 340, 345 (2011) (citation omitted, alteration adopted). The rule that Nolden contends should have been spelled out explicitly – that "the sheriff and his office are not a local government entity" – is inherent in the exclusion of the sheriff from the list of "local government entities." Whether or not this *should* be the rule, and whether or not the legislature *intended* for this to be the rule, it currently *is* the rule due to the plain language of O.C.G.A. §36-92-1.

IV. Conclusion

For the foregoing reasons, Appellee respectfully requests that the Court affirm the order of the trial court to the extent that it granted his motion to dismiss.

This twenty-seventh day of January, 2025.

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

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CERTIFICATE OF SERVICE

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

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This twenty-seventh day of January, 2024.

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