

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1918

MICHELE WILLIAMS,

Plaintiff – Appellant,

v.

MORGAN STATE UNIVERSITY; DEWAYNE WICKHAM, in his personal
capacity,

Defendants – Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
George L. Russell, III, District Judge. (1:19-cv-00005-GLR)

Argued: September 16, 2022

Decided: October 5, 2023

Before DIAZ, Chief Judge, and WILKINSON and WYNN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ARGUED: Daniel Edward Kenney, DK ASSOCIATES, LLC, Chevy Chase, Maryland, for Appellant. Ann M. Sheridan, OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland, for Appellees. **ON BRIEF:** Morris E. Fischer, MORRIS E. FISCHER, LLC, Silver Spring, Maryland, for Appellant. Brian E. Frosh, Attorney General, Catherine A. Bledsoe, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

The background of this case is discussed in more detail in our prior order. *See Williams v. Morgan State Univ.*, No. 21-1918, 2022 WL 7375983, at *1-2 (4th Cir. Oct. 19, 2022). Michele Williams brought federal whistleblower claims against her employer, Morgan State University, and Dean DeWayne Wickham (“Defendants”) under the National Defense Authorization Act, 41 U.S.C. § 4712, and the American Recovery and Reinvestment Act, Pub. L. No. 111-5 § 1553, 123 Stat. 115, 297-302 (2009). Broadly, Williams alleged that Defendants retaliated against her and ultimately terminated her employment for her complaints about Defendants’ purported political and financial impropriety.

The district court dismissed Williams’s federal statutory claims, holding that they were barred by Eleventh Amendment immunity. *Williams v. Morgan State Univ.*, No. GLR-19-5, 2019 WL 4752778, at *5-6 (D. Md. Sept. 30, 2019). We then reversed, finding no Eleventh Amendment protection. *Williams v. Morgan State Univ.*, 850 F. App’x 172, 173-74 (4th Cir. 2021). But we remanded the case for the district court to address whether Maryland had waived state sovereign immunity¹ against federal whistleblower claims by enacting the Maryland Tort Claims Act (“MTCA”). *Id.* The district court again dismissed Williams’s federal claims, explaining that, though the MTCA waives immunity for “tort

¹ There’s no dispute that Defendants are instrumentalities of the State, thus sharing its sovereign immunity. *Williams v. Morgan State Univ.*, Misc. No. 9, 2023 WL 5198267, at *4 (Md. Aug. 14, 2023).

action[s],” the waiver didn’t reach Williams’s claims. *Williams v. Morgan State Univ.*, No. GLR-19-5, 2021 WL 3144890, at *6 (D. Md. July 26, 2021).

Williams appealed, and in an order after oral argument, we certified to the Supreme Court of Maryland the following question: Does Maryland’s waiver of sovereign immunity for a “tort action” under the Maryland Tort Claims Act extend to federal statutory claims?² *Williams*, 2022 WL 7375983, at *1. The Supreme Court has now answered that it doesn’t. *Williams v. Morgan State Univ.*, Misc. No. 9, 2023 WL 5198267, at *10 (Md. Aug. 14, 2023).

In doing so, Maryland’s high court examined the MTCA’s plain language, statutory framework, and historical amendments, with each showing the limited nature of the “tort action” waiver. *Id.* at *4-10. The Court also explained its long-standing policy to “strictly construe any waiver of the State’s immunity in favor of the [State].” *Id.* at *5 (cleaned up). This policy prevailed in part because the “General Assembly has demonstrated that it knows how to waive sovereign immunity to federal claims when that is its intent.” *Id.* at *8. And while the Court was careful “not [to] foreclose the possibility that there might be some federal statutory claim that might be considered a ‘tort action’ for purposes of the MTCA,” neither of Williams’s federal statutory claims could be so considered. *Id.* at *8 n.11. Concluding otherwise, said the Court, would counter the plain language of the MTCA and would produce results inconsistent with the Act’s purpose. *Id.* at *10.

² This is a slightly reformulated version of the question we originally posed to the Supreme Court, as is permissible under state law. *See* Md. Code. Ann., Cts. & Jud. Proc. (“CJP”) (1974, 2020 Repl. Vol.) § 12-604.

* * *

Given the Supreme Court of Maryland's answer to the certified question, the district court was correct to dismiss Williams's federal statutory causes of action. Accordingly, we affirm the district court's judgment.

AFFIRMED