

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE DEPARTMENT )  
OF HEALTH AND SOCIAL SERVICES, ) No. 176, 2004  
DELAWARE DIVISION OF )  
ALCOHOLISM DRUG ABUSE AND ) Court Below: Superior Court  
DRUG ABUSE AND MENTAL HEALTH, ) of the State of Delaware in  
DELAWARE PSYCHIATRIC CENTER, ) and for New Castle County  
VINCENT P. MECONI, RENATA J. )  
HENRY, MICHAEL TALMO AND ) C.A. No. 03C-01-096  
DIANE BIGHAM, PH.D. )  
)  
Defendants Below, )  
Appellants, )  
)  
v. )  
)  
LARON SHEPPARD, Individually, )  
and as Administrator of the ESTATE OF )  
CAMELLIA N. WASHINGTON, and )  
LARON SHEPPARD, Individually and )  
as next friend of CAMERON SHEPPARD, )  
a minor, )  
)  
Plaintiff Below, )  
Appellee. )

Submitted: November 17, 2004

Decided: December 10, 2004

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

***ORDER***

This 10<sup>th</sup> day of December 2004, it appears to the Court that:

1. We granted this interlocutory appeal pursuant to Supreme Court Rule 42<sup>1</sup> to determine the following two questions certified by the Superior Court:

(1) Whether 10 *Del. C.* § 4001 constitutes a waiver of sovereign immunity in this case involving allegations of gross negligence where the State has not provided insurance coverage; and

(2) Whether an action for money damages may be maintained against the State and its agencies pursuant to 42 U.S.C. § 1983.<sup>2</sup>

After careful review, we conclude that 10 *Del. C.* §4001, part of the State Tort Claims Act, does not constitute a waiver of sovereign immunity where the State has not provided insurance coverage, even where a party alleges gross negligence. We further conclude that an action for monetary damages may not be maintained against the State or its agencies pursuant to 41 U.S.C. §1983.

2. The underlying action stems from the suicide of Camellia Washington, an individual in the care of the Delaware Psychiatric Center. Laron Sheppard, acting in both his individual capacity and as the administrator of Washington's estate, instituted this action, alleging gross negligence, civil rights violations, and various other theories of liability. The State filed a motion to dismiss and asserted that sovereign immunity barred the claims as a matter of law. In December 2003, a Superior Court judge denied the State's motion. This certification followed.

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<sup>1</sup> *DHSS v. Sheppard*, Del. Supr., No. 176, 2004, Berger, J. (June 3, 2004) (ORDER).

<sup>2</sup> *Sheppard v. DHSS*, Del. Super., C.A. No. 03C-01-096, (May 13, 2004) (ORDER).

3. The Court must review certified questions in the context in which they arise.<sup>3</sup> We review questions concerning the applicability or construction of a statute *de novo*.<sup>4</sup>

4. In *Pauley v. Reinhoehl*, we articulated a two-prong test to be used in determining whether sovereign immunity would bar an action under Delaware law.<sup>5</sup> Under *Pauley*, a plaintiff must show that “(1) the State has waived the defense of sovereign immunity for the actions mentioned in the complaint; and (2) the State Tort Claims Act does not bar the action.”<sup>6</sup> The defense of sovereign immunity only can be waived by an act of the General Assembly that expressly manifests an intention to do so.<sup>7</sup> An example of an express intention to waive sovereign immunity can be found in 18 *Del. C.* § 6511, which waives sovereign immunity where actions complained of are covered by the state insurance program.<sup>8</sup>

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<sup>3</sup> *State v. Anderson*, 697 A.2d 379, 382 (Del. 1997), citing *Rales v. Blasband*, 634 A.2d 927, 931 (Del. 1993).

<sup>4</sup> *State v. Lewis*, 797 A.2d 1198, 1199 (Del. 2002).

<sup>5</sup> 848 A.2d 569 (Del. 2004).

<sup>6</sup> *Id.* at 573 (citation omitted).

<sup>7</sup> DEL. CONST. art. I § 9; *Pauley*, 848 A.2d at 573, citing *Shellhorn & Hill, Inc. v. State*, 187 A.2d 71, 74 (Del. 1962).

<sup>8</sup> *Pauley*, 848 A.2d at 573, citing *Doe v. Cates*, 499 A.2d 1175, 1177 (Del. 1985).

5. Grossly negligent acts *per se* and the State Tort Claims comes into play only *after* an express intent to waive sovereign immunity has been identified. An insurance-dependent provision, 18 *Del. C.* § 6511 does not waive sovereign immunity under these circumstances because there was no insurance in place to cover the alleged loss. Similarly, the Mental-Health Patients’ Bill of Rights does not expressly waive sovereign immunity because the statute does not contain any language that expresses that intention explicitly or implicitly.<sup>9</sup>

6. We, therefore, answer “no” to the first certified question.

7. An action for money damages may not be maintained against a state or its agencies pursuant to 42 U.S.C § 1983 because neither a state nor its agencies are considered “persons” for the purpose of such an action.<sup>10</sup>

8. We, therefore, answer “no” to the second certified question.

**NOW, THEREFORE, IT IS ORDERED** that both certified questions of law are answered in the negative.

**BY THE COURT:**

/s/ Myron T. Steele  
Chief Justice

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<sup>9</sup> See 16 *Del. C.* § 5161-5162.

<sup>10</sup> *Lapides v. Bd. of Regents*, 535 U.S. 613, 617 (2002), citing *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 66 (1989); see also *Neeley v. Samis*, 183 F. Supp. 2d 672, 678 (D. Del. 2002) (reiterating that states are not persons for the purpose of § 1983 claims for monetary damages).