

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NANCY CARTER, Individually and	§	
as Administratrix of the Estate of	§	No. 207, 1999
Willard Carter, MICHAEL BRIAN	§	
CARTER and MARGARET ANN	§	
CARTER, minor children, by their	§	
Next Friend, Nancy Carter,	§	
	§	
Plaintiffs Below,	§	
Appellants,	§	Court Below: Superior Court
	§	of the State of Delaware
v.	§	in and for New Castle County,
	§	C.A. Nos. 96C-03-128 and
BRIAN MC LAUGHLIN,	§	98C-04-028
DELAWARE ADMINISTRATION	§	
FOR REGIONAL TRANSIT, INC.,	§	
ST. PAUL MERCURY INS. CO.,	§	
and DELAWARE TRANSIT	§	
CORPORATION,	§	
	§	
Defendants Below,	§	
Appellees.	§	

Submitted: January 18, 2000

Decided: April 14, 2000

Before **VEASEY**, Chief Justice, **HOLLAND**, **HARTNETT** and **BERGER**,  
Justices, and **CHANDLER**, Chancellor\*, constituting the Court *en Banc*.

Upon appeal from the Superior Court. **REVERSED.**

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\* Designated pursuant to Art. IV, § 12 of the Delaware Constitution and Supreme Court Rules 2 and 4.

Sidney Balick, Esquire (argued), and Adam Balick, Esquire of Balick & Balick, Wilmington, Delaware, for Appellants.

Joseph R. Slights, III, Esquire (argued), and Nancy W. Law, Esquire, of Morris, James, Hitchens & Williams, Wilmington, Delaware, for Appellee St. Paul Mercury Ins. Co.

W. Wade W. Scott, Esquire (argued), of McCarter & English, Wilmington, Delaware, for Appellees Brian McLaughlin, Delaware Administration for Regional Transit, and Delaware Transit Corporation.

**BERGER**, Justice:

In this appeal, we consider whether there is a limit on DART's<sup>1</sup> liability for damages caused by its gross or wanton negligence. Under the doctrine of sovereign immunity, State agencies, including DART, are protected from liability for damages caused by ordinary negligence. The State Tort Claims Act, however, waived sovereign immunity for claims alleging gross or wanton negligence. A more recent statute also waived DART's sovereign immunity for claims covered by liability insurance, but the statute limited recovery against DART to a maximum of \$300,000. We hold that this damage cap does not apply to claims for gross and wanton negligence. Accordingly, we reverse the Superior Court's grant of summary judgment to DART and denial of summary judgment to the Carters.

### I. Factual and Procedural Background

For purposes of this appeal, the parties stipulated to the following facts. Appellants are the surviving wife and children of Willard Carter, who died as a result of injuries sustained when his vehicle was struck by a DART bus operated by Brian McLaughlin. The accident occurred on February 8, 1996, at the intersection of Delaware Avenue and Jackson Street in the City of Wilmington. The DART bus went through a red light into the intersection, where it struck the vehicle driven by Willard Carter. After striking Carter's vehicle, the bus jumped a curb and came to rest 298

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<sup>1</sup> The Delaware Administration for Regional Transit, Inc. (DART) is a division of the Delaware Transportation Corp. The two entities will be referred to collectively throughout this opinion as "DART."

feet from the point of initial impact. Carter's vehicle was pushed 82 feet to its final resting place. The bus left no skid marks. Willard Carter suffered massive injuries and remained in a coma for fifteen months. On April 25, 1997, he died as a result of the injuries sustained in the collision.

Willard Carter's wife and children filed this action, seeking compensatory and punitive damages, charging DART and its employee with gross negligence. Both sides moved for summary judgment on the issue of whether 2 *Del. C.* §1329, which limits damages against DART to \$300,000, applies to claims alleging gross negligence. The Superior Court, relying on this Court's decision in *Turnbull v. Fink*,<sup>2</sup> held that it does.

## II. Discussion

### A. Standard of Review

This Court reviews summary judgment decisions *de novo*.<sup>3</sup> On cross-motions for summary judgment, neither party's motion will be granted unless no genuine issue of material fact exists and one of the parties is entitled to judgment as a matter of law.<sup>4</sup>

### B. Waiver of DART's Sovereign Immunity

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<sup>2</sup> Del. Supr., 668 A.2d 1370 (1995).

<sup>3</sup> See *Emmons v. Hartford Underwriters Ins. Co.*, Del. Supr., 697 A.2d 742, 744 (1997).

<sup>4</sup> See *id.* at 745.

The parties agree that DART, as a State agency, is protected by the doctrine of sovereign immunity unless the General Assembly has waived that immunity. They also agree that immunity has been waived, at least in part. The question is whether, for this claim, the extent of the waiver is controlled by the State Tort Claims Act or by 2 *Del. C.* §1329. The State Tort Claims Act<sup>5</sup> provides, in relevant part:

Except as otherwise provided by the Constitutions or laws of the United States or of the State, as the same may expressly require or be interpreted as requiring by a court of competent jurisdiction, no claim or cause of action shall arise, and no judgment, damages, penalties, costs or other money entitlement shall be awarded or assessed against the State or any public officer or employee . . . where the following elements are present: . . . (3) The act or omission complained of was done without gross or wanton negligence . . .

By its terms, this statute excludes from the doctrine of sovereign immunity claims of gross or wanton negligence.<sup>6</sup> As a result, under the State Tort Claims Act, there is no limit on the amount of recovery against a State agency for a claim of gross or wanton negligence.

The doctrine of sovereign immunity also is restricted in 2 *Del. C.* §1329, which was enacted by Section 68 of the 1989 Bond Act. At the time of the Carter accident, Section 1329 provided, in relevant part:

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<sup>5</sup> 10 *Del. C.* §4001.

<sup>6</sup> See *Jardell Co., Inc. v. Hughes*, Del. Supr., 523 A.2d 518,530 (1987).

Any operation, service or program provided by the Delaware Transportation Authority . . . not covered by a general liability policy, self-insurance or other insurance policy as shall be legally established and funded by said Authority shall be covered and protected by the doctrine of sovereign immunity of the State . . . In the event that insurance has been provided, such claim, including any award for damages or costs assessed against the Authority, its administrators, subsidiaries, officers or employees either individually or on behalf of their employer shall not exceed the amount of said insurance covering the risk or loss or the amount of \$300,000 whichever amount shall be lesser for any and all claims arising out of a single occurrence.<sup>7</sup>

C. Interpretation of §1329 in *Turnbull v. Fink*

This Court recently examined §1329 in connection with another tort claim against DART. In *Turnbull v. Fink*, like this case, the parties disputed the extent of DART's potential liability for damages arising out of bus accidents. The injured parties argued that, under 18 *Del.C.* §6511, DART should be held liable up to the limits of its insurance coverage (\$5 million), whereas DART contended that the \$300,000 cap in §1329 controlled. Although the majority in *Turnbull* concluded that §1329 controlled, a careful reading of the decision reveals that the same result is not warranted here.

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Section 1329 was amended in 1999. The \$300,000 cap on liability now applies only to passenger rail carrier operations of the Delaware Transit Corporation. For other claims against DART, the statute allows recovery up to the amount of insurance purchased by DART, which must be at least \$300,000 per occurrence.

In *Turnbull*, the alternative to §1329 was 18 *Del.C.* §6511, enacted in 1969 as part of a comprehensive act designed to provide insurance protection for the State. Section 6511 expressly waives sovereign immunity for “any risk or loss covered by the state insurance program or by self-insurance....” Other sections of the act establish a State Insurance Coverage Office, a committee to determine methods of insuring the State, and procedures by which insurance may be obtained either through a self-insurance fund or commercial insurance policies. Because the state insurance coverage program never was established or funded, however, this Court held, in 1985, that §6511 did not waive sovereign immunity.<sup>8</sup> The *Turnbull* majority used the same reasoning to find that §6511 remained inoperative at the time of the accidents at issue.

After determining that §6511 provided no waiver of sovereign immunity, the *Turnbull* majority considered the validity of §1329. It found that the statute was properly enacted and did not deprive injured parties of due process, equal protection of the laws, or the right to a jury trial. In responding to the jury trial argument, the majority noted that §1329 provided a new cause of action not available “heretofore”:

At common law and under the Delaware Constitution, lawsuits against the state have always been barred by the doctrine of sovereign immunity, unless waived by the General Assembly. The enactment of 2 *Del. C.* §1329, therefore, represents a modification of the common law rule, by allowing lawsuits against DART through a limited waiver of sovereign immunity. Section 1329 does not deprive petitioners of their existing

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<sup>8</sup> *Doe v. Cates*, Del. Supr., 499 A.2d 1175 (1985).

right to a jury trial, rather, it creates a new right to sue. By enacting 2 Del. C. §1329, the General Assembly exercised its power to create, and at the same time, limit the new cause of action.<sup>9</sup>

In sum, *Turnbull* held that the injured parties would have had no recourse against DART if not for the limited waiver of sovereign immunity provided by §1329.

D. Interpretation of §1329 in this case

In *Turnbull*, this Court did not reconcile two arguably conflicting statutes. Rather, the majority held that one of the two statutes – §6511 – was inoperative. Here, too, there is no conflict because only one of the two statutes under consideration addresses the parties’ claim. The State Tort Claims Act waives sovereign immunity for claims of gross or wanton negligence. As noted in *Turnbull*, §1329 creates a new, but limited, cause of action against DART for claims that otherwise were barred by the doctrine of sovereign immunity. Since sovereign immunity does not apply to claims for gross and wanton negligence, those claims are not newly created by, or otherwise within the scope of, §1329.

This common sense interpretation of the two statutes finds support in established principles of statutory construction. The General Assembly is presumed to be aware of existing law,<sup>10</sup> and statutes are presumed to be consistent with prior law.<sup>11</sup> The

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<sup>9</sup> 668 A. 2d at 1380.

<sup>10</sup> *Giuricich v. Emtrol Corp.*, Del Supr., 449 A.2d 232, 239 (1982).

<sup>11</sup> *Du Pont v. Du Pont*, Del. Supr., 87 A.2d 394 (1952).



corollary to these rules is that “repeal by implication is not favored in law, except when two provisions are irreconcilably inconsistent [or] repugnant to each other....<sup>12</sup> If §1329 were read to limit the recovery on a claim for gross or wanton negligence, it would be partially repealing the State Tort Claims Act, which has no limit on recovery for such a claim. Instead, the interpretation we adopt harmonizes the two statutes and gives effect to both.

### III. Conclusion

Based on the foregoing, the decisions of the Superior Court are reversed and the matter is remanded for further action in accordance with this opinion. Jurisdiction is not retained.

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<sup>12</sup> *Fraternal Order of Police v. McLaughlin*, Del. Supr., 428 A.2d 1158, 1160 (1981)(Citations omitted).