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Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE
May 25, 2022 Session Heard at Cookeville[1]

PENNY LAWSON ET AL. v. HAWKINS COUNTY, TENNESSEE ET AL.

Appeal by Permission from the Court of Appeals
Circuit Court for Hawkins County
No. 20-CV-37 Alex E. Pearson, Judge

No. E2020-01529-SC-R11-CV

Governmental entities generally are immune from suit. But the Governmental Tort Liability Act removes immunity for certain injuries caused by the negligent acts of an employee. In this case, we consider whether the term "negligent" in the Act's removal provision is limited to ordinary negligence or instead also encompasses gross negligence or recklessness. We hold that the Act removes immunity only for ordinary negligence. Because the Court of Appeals held to the contrary, we reverse the decision below and remand for further proceedings.

Tenn. R. App. P. 11 Appeal by Permission; Judgment of the Court of Appeals Reversed; Case Remanded to the Court of Appeals

SARAH K. CAMPBELL, J., delivered the opinion of the court, in which ROGER A. PAGE, C.J., and SHARON G. LEE, JEFFREY S. BIVINS, and HOLLY KIRBY, JJ., joined. HOLLY KIRBY, J., filed a concurring opinion.

Russell W. Adkins, Kingsport, Tennessee, for the appellant, Hawkins County Emergency Communications District Board.

Jeffrey M. Ward, Greeneville, Tennessee, for the appellants, Hawkins County Emergency Management Agency and Hawkins County, Tennessee.

Thomas J. Seeley, III, and Brett N. Mayes, Johnson City, Tennessee, for the appellees, Penny Lawson and Corey Lawson.

W. Bryan Smith, Memphis, Tennessee, John Vail, Washington, D.C., and Brian G. Brooks, Greenbrier, Arkansas, for the Amicus Curiae, Tennessee Trial Lawyers Association.

[1] Oral argument was heard in this case on the campus of Tennessee Tech University in Cookeville, Tennessee, as part of the Tennessee American Legion Boys State S.C.A.L.E.S. (Supreme Court Advancing Legal Education for Students) project.

OPINION

I.

A.

In the early morning hours of February 22, 2019, a mudslide washed away part of Highway 70 on Clinch Mountain in Hawkins County, Tennessee.[2] A driver traveling north on Highway 70 called the Hawkins County Emergency Communications District ("ECD-911") at 12:58 a.m. to report that trees were blocking the road. The driver warned the 911 dispatcher that the highway was "cut off" and that a driver "going up the mountain" would "go off the road."

A Hawkins County deputy was dispatched to the scene about five minutes later and arrived before 1:13 a.m. Once at the scene, the deputy called ECD-911 and advised contacting the highway department to report a "big mudslide" and a leaning power pole. Although the dispatcher expressed concern that "one of these days . . . the whole mountain is just gon' come down," neither the dispatcher nor the deputy discussed closing the road. Instead, the dispatcher jokingly warned the deputy not to "let a rock fall on" him.

From around 1:21 a.m. to 1:30 a.m., the dispatcher placed calls to the Tennessee Department of Transportation, the director of the Hawkins County Emergency Management Agency ("EMA"), and Holston Electric Company.

Fifteen minutes later, at about 1:46 a.m., the deputy called ECD-911 again. This time, he reported that a car had hit a "rock embankment" and flipped down the mountain. The driver of that car was Steven Lawson. He was trapped inside the vehicle for eleven hours and died before help arrived.

Shortly after 1:46 a.m., the deputy told the dispatcher that a second vehicle had also rolled down the mountain. At that time, the deputy advised ECD-911 that he would ask neighboring Hancock County to "block the road off." The EMA director, whom the dispatcher had called earlier that morning, did not arrive at the scene until 3:07 a.m.

B.

Mr. Lawson's surviving spouse, Penny Lawson, on her own behalf and on behalf of Mr. Lawson's surviving child, Corey Lawson, brought this wrongful-death action against

[2] In reviewing a motion for judgment on the pleadings, we accept as true all factual allegations by the non-moving party. *King v. Betts*, 354 S.W.3d 691, 709 (Tenn. 2011).

Hawkins County, ECD-911, and EMA in Hawkins County Circuit Court.[3] She alleged that "grossly negligent and reckless conduct" by these parties and their employees caused Mr. Lawson's death. All three defendants moved for judgment on the pleadings. ECD-911 argued that the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-201 (2012 & Supp. 2013) ("the Act" or "GTLA"), provided immunity from suit for claims based on recklessness. Hawkins County and EMA similarly argued that they were immune under the Act from claims based on non-negligent conduct. And all three defendants invoked the public-duty doctrine as an additional basis for immunity.

The trial court granted the motions and dismissed the case with prejudice. The court concluded that the Act gave defendants immunity from claims alleging recklessness and that the public-duty doctrine independently barred any claims based on negligence.

The Court of Appeals reversed. *See Lawson v. Hawkins Cnty.*, No. E2020-01529-COA-R3-CV, 2021 WL 2949511 (Tenn. Ct. App. July 14, 2021), *perm. app. granted* (Tenn. Nov. 17, 2021). First, it held that the Act did not provide immunity for claims based on gross negligence or recklessness. The court reasoned that "negligence is a subspecies of" gross negligence and recklessness, and immunity from claims based on those "heightened forms of negligence" is therefore removed by Tennessee Code Annotated section 29-20-205, *id.* at *10, which lifts immunity for "injury proximately caused by a negligent act or omission of any employee within the scope of his employment," *id.* at *5 (quoting Tenn. Code Ann. § 29-20-205). Next, the court concluded that plaintiff's complaint alleged sufficient facts to state claims for recklessness and gross negligence. *Id.* at *11. Finally, it held that the public-duty doctrine did not bar plaintiff's suit because her allegations of "recklessness and gross negligence" were sufficient at the judgment-on-the-pleadings stage to trigger an exception to the doctrine for claims involving reckless misconduct. *Id.* at *12.

We granted defendants' application for permission to appeal. That application raised three issues. The first issue—and the only one we decide in this opinion—is whether the Court of Appeals erred by holding that Tennessee Code Annotated section 29-20-205 allows a plaintiff to sue a governmental entity for employee conduct that exceeds mere negligence.[4]

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[3] Plaintiff also sued several individual defendants in their official capacities. The trial court dismissed those claims for redundancy, and plaintiff did not challenge those dismissals on appeal.

[4] Defendants' Rule 11 application also sought review of the Court of Appeals' ruling that the public-duty doctrine did not bar plaintiff's claims alleging gross negligence and recklessness. Because we conclude that the Act does not remove immunity for claims alleging gross negligence or recklessness, we need not reach that issue. We also decline to reach plaintiff's arguments that the complaint sufficiently alleges ordinary "negligence . . . on the part of each governmental employer in addition to the reckless and grossly negligent actions of their employees," and that two other statutory provisions—Tennessee Code Annotated sections 7-86-320 and 29-20-108—remove immunity for certain claims against ECD-911. The Court of Appeals may consider those arguments in the first instance, including whether plaintiff sufficiently preserved and presented the arguments below and whether the public-duty doctrine independently bars any claims that may proceed under applicable statutory law.

II.

We review de novo a motion for judgment on the pleadings. *Mortg. Elec. Registration Sys., Inc. v. Ditto*, 488 S.W.3d 265, 275 (Tenn. 2015); *see also* Tenn. R. Civ. P. 12.03. We accept all the non-moving party's factual allegations as true and draw all reasonable inferences in that party's favor. *King*, 354 S.W.3d at 709. A judgment on the pleadings for a defendant should be affirmed when the plaintiff "can prove no set of facts" in support of a claim entitling her to relief. *Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. 2003); *see also McClenahan v. Cooley*, 806 S.W.2d 767, 769 (Tenn. 1991) (stating that, under these circumstances, the issue is whether "the Plaintiff's complaint states a cause of action that a jury should have been entitled to decide").

We also review de novo questions of statutory interpretation like the one presented here. *See State v. Marshall*, 319 S.W.3d 558, 561 (Tenn. 2010). In interpreting statutory provisions, our role is to determine how a reasonable reader would have understood the text at the time it was enacted. *State v. Deberry*, 651 S.W.3d 918, 924 (Tenn. 2022). We undertake that task by considering the statutory text "in light of 'well-established canons of statutory construction.'" *Id.* (quoting *State v. Sherman*, 266 S.W.3d 395, 401 (Tenn. 2008)).

We give terms their natural and ordinary meaning in their statutory context unless the statute defines them. *Mills v. Fulmarque, Inc.*, 360 S.W.3d 362, 368 (Tenn. 2012). When a statute uses a common-law term without defining it, we assume the enacting legislature adopted the term's common-law meaning "unless a different sense is apparent from the context, or from the general purpose of the statute." *In re Estate of Starkey*, 556 S.W.3d 811, 817 (Tenn. Ct. App. 2018) (quoting *Lively v. Am. Zinc Co. of Tenn.*, 191 S.W. 975, 978 (Tenn. 1917)). Statutes "in derogation of the common law," moreover, must be "strictly construed and confined to their express terms." *Moreno v. City of Clarksville*, 479 S.W.3d 795, 809 (Tenn. 2015) (quoting *Doyle v. Frost*, 49 S.W.3d 853, 858 (Tenn. 2001)).

III.

The question before us is whether, as the Court of Appeals held, the Tennessee Governmental Tort Liability Act lifts immunity for grossly negligent and reckless employee actions, in addition to merely negligent ones. We begin our analysis with some background about common-law governmental immunity and the Act. We then examine the relevant statutory text—Tennessee Code Annotated section 29-20-205—and conclude that it removes immunity only for ordinary negligence, not gross negligence or recklessness.

A.

At common law, the State and its political subdivisions were generally immune from suit under the doctrine of sovereign immunity. *Hughes v. Metro. Gov't of Nashville & Davidson Cnty.*, 340 S.W.3d 352, 360–61 (Tenn. 2011). This "doctrine has been a part of Tennessee jurisprudence for well over one hundred years." *Id.* at 360. It has its roots in

feudal England, where "the King . . . was answerable to no court." *Moreno*, 479 S.W.3d at 809 (quoting *Hawks v. City of Westmoreland*, 960 S.W.2d 10, 14 (Tenn. 1997)).

Yet sovereign immunity does not bar suit when the government has "specifically consent[ed]" to be sued. *Hughes*, 340 S.W.3d at 360. Our Constitution empowers the legislature to "waive the protections of sovereign immunity," *id.*, by providing that "[s]uits may be brought against the State in such manner and in such courts as the Legislature may by law direct," Tenn. Const. art. I, § 17.

In 1973, our General Assembly exercised this authority by passing the Act. *Hughes*, 340 S.W.3d at 360. The Act reiterated the general rule of sovereign immunity. *See* Tenn. Code Ann. § 29-20-201. But it also removed the immunity of the State's political subdivisions "in limited and enumerated instances for certain injuries." *Hawks*, 960 S.W.2d at 14. In particular, the Act lifted immunity for "injur[ies] proximately caused by a negligent act or omission of any employee within the scope of his employment." Tenn. Code Ann. § 29-20-205 (2012); *see also id.* § 29-20-310(a) (2012 & Supp. 2013) (providing that a court "must first determine that the employee's . . . acts were negligent" before "holding a governmental entity liable for damages").

That removal of immunity is subject to certain exceptions. If the injury at issue "arises out of" one of the acts specified in Tennessee Code Annotated section 29-20-205(1)–(9), then immunity still holds. *Id.* § 29-20-205; *see also Limbaugh v. Coffee Med. Ctr.*, 59 S.W.3d 73, 84 (Tenn. 2001). Those enumerated acts include, among other things, discretionary decisions and some intentional torts. Tenn. Code Ann. § 29-20-205(1)–(9).[5]

Because governmental immunity is narrower under the Act than under the common law, the Act is "in derogation of the common law" and must be "strictly construed and confined to [its] express terms." *Moreno*, 479 S.W.3d at 809 (quoting *Doyle*, 49 S.W.3d at 858); *see also Hughes*, 340 S.W.3d at 361 ("[S]tatutes which waive immunity of the [governmental entity] from suit are to be construed strictly in favor of the sovereign." (quoting *McMahon v. United States*, 342 U.S. 25, 27 (1951))). The Act "expressly incorporate[s]" this rule of strict construction. *Ezell v. Cockrell*, 902 S.W.2d 394, 399 (Tenn. 1995). It provides that "[w]hen immunity is removed by this chapter any claim for damages must be brought in strict compliance with the terms of this chapter." Tenn. Code Ann. § 29-20-201(c).

Even when the Act removes immunity, governmental entities still may be immune under the public-duty doctrine. We previously held that the Act did not abolish that common-law doctrine, which shields governmental entities and their employees from "suits for injuries that are caused by the public employee's breach of a duty owed to the

[5] In 2020, the legislature enacted an additional exception for certain injuries arising from the COVID-19 pandemic. *See* Tennessee COVID-19 Recovery Act, ch. 1, § 2, 2020 (2nd Ex. Sess.) Tenn. Pub. Acts 1, 1. That exception, which we discuss later in this opinion, was codified as Tennessee Code Annotated section 29-20-205(10). It was repealed on July 1, 2022, but remains in effect for some injuries occurring before that date. *See id.* § 7(b), 2020 (2nd Ex. Sess.) Tenn. Pub. Acts at 4.

public at large." *Ezell*, 902 S.W.2d at 397, 400–01. But the public-duty doctrine has exceptions too, including one known as the special-duty exception. That exception applies in three circumstances, including, as relevant here, when "the plaintiff alleges a cause of action involving intent, malice, or reckless misconduct." *Id.* at 402.

When we consider whether a governmental entity is immune from suit, the threshold question is whether immunity has been removed *under the Act*. We need not consider the public-duty doctrine or its exceptions unless we first conclude that the Act waives immunity. *See Chase v. City of Memphis*, 971 S.W.2d 380, 385 (Tenn. 1998).

B.

As explained, the Act waives immunity for "injury proximately caused by a negligent act or omission of any employee within the scope of his employment." Tenn. Code Ann. § 29-20-205. The question before us is whether the term "negligent" in this provision encompasses gross negligence or recklessness.

i.

The term "negligent" is a common-law term that the Act does not define. We therefore interpret that term by looking to its common-law meaning. *See In re Estate of Starkey*, 556 S.W.3d at 817. At the time of the Act's passage in 1973, Tennessee courts distinguished between the terms "negligence," on one hand, and "gross negligence" and "recklessness," on the other, and used those terms in distinct senses. That distinction persists today.

This Court has long defined negligence as the "want of ordinary care." *Inter-City Trucking Co. v. Daniels*, 178 S.W.2d 756, 757 (Tenn. 1944) (quoting *Craig v. Stagner*, 19 S.W.2d 234, 236 (Tenn. 1929), *abrogated on other grounds by McIntyre v. Balentine*, 833 S.W.2d 52, 54 (Tenn. 1992)). To prove negligence, a plaintiff must establish "(1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty; and (3) a causal relation between the injury to the plaintiff and the defendant's breach of his duty of care." *Shouse v. Otis*, 448 S.W.2d 673, 676 (Tenn. 1969); *see also McClenahan*, 806 S.W.2d at 774 (specifying that a plaintiff must prove "an injury or loss," "causation in fact," and "proximate, or legal, cause"). Negligence does not require proof that the defendant intended to harm the plaintiff or of any other mental state. To the contrary, this Court has explained that "[w]illfulness and negligence are the opposite of each other; the former signifying the presence of intention, and the latter its absence." *Memphis St. Ry. Co. v. Roe*, 102 S.W. 343, 346 (Tenn. 1907) (quoting *Cleveland, Cincinnati, Chi. & St. Louis Ry. Co. v. Miller*, 49 N.E. 445, 449 (Ind. 1898)), *abrogated on other grounds by McIntyre*, 833 S.W.2d at 54.

Recklessness, by contrast, does require proof of the defendant's subjective state of mind. We have explained that "recklessness contains an awareness component similar to intentional conduct which is not demanded of negligence." *Doe 1 ex rel. Doe 1 v. Roman*

Cath. Diocese of Nashville, 154 S.W.3d 22, 38 (Tenn. 2005). Specifically, the defendant must "be aware of, but consciously . . . disregard, a substantial and unjustifiable risk." *Id.* at 39; *see also Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 (Tenn. 1992) (same). This requirement "imposes a significantly higher burden than is required for mere negligence actions." *Doe 1*, 154 S.W.3d at 39. The "recklessness analysis" is therefore "something unique which differs from" an "analys[i]s based strictly on . . . negligence." *Id.* at 38. Tennessee courts had recognized this distinction between negligence and recklessness before the Act was adopted. *See, e.g.*, *Wells v. S. Ry. Co.*, 1 Tenn. App. 691, 700 (Tenn. Ct. App. 1926) (distinguishing negligence from "recklessness or wantonness" and explaining that the latter indicate a "willingness to inflict the impending injury, or willfulness in pursuing a course of conduct which will naturally or probably result in disaster").

Gross negligence likewise requires proof of the defendant's subjective mental state. *See, e.g.*, *Olsen v. Robinson*, 496 S.W.2d 462, 463 (Tenn. 1973) (requiring proof of "willful or wanton misconduct" to prove gross negligence and distinguishing such conduct from "ordinary negligence"), *abrogated on other grounds by Hudson v. Gaitan*, 675 S.W.2d 699, 703 (Tenn. 1984); *see also Craig*, 19 S.W.2d at 236 (defining "gross negligence" as "[s]uch entire want of care as would raise a presumption of a conscious indifference to consequences"). As we put it in *Craig*, gross negligence requires "more than . . . want of ordinary care—a common definition of negligence." 19 S.W.2d at 236. The required "mental attitude" is instead "one of indifference to injurious consequences, conscious recklessness of the rights of others." *Id.*

This distinction between gross negligence and negligence led Tennessee courts to attach different legal consequences to grossly negligent behavior. Before adopting a comparative-fault system, we disallowed contributory negligence as a defense to grossly negligent conduct, "unless the contributory negligence [was] also gross or wanton." *Stinson v. Daniel*, 414 S.W.2d 7, 10 (Tenn. 1967); *Ellithorpe v. Ford Motor Co.*, 503 S.W.2d 516, 521–22 (Tenn. 1973) (similar), *abrogated by McIntyre*, 833 S.W.2d at 54. Punitive or exemplary damages are permissible in a negligence action only if the negligence is "so gross and wanton as to 'raise a presumption of conscious indifference to consequences.'" *Se. Aviation, Inc. v. Hurd*, 355 S.W.2d 436, 447 (Tenn. 1962) (quoting *Inter-City Trucking Co.*, 178 S.W.2d at 757). And under our former premises-liability rules, we dismissed a complaint that "allege[d] no more than ordinary negligence on the [defendant's] part" because the defendant host owed the plaintiff guest "no duty except to refrain from willfully injuring him or from committing negligence so gross as to amount to willfulness." *Olsen*, 496 S.W.2d at 463.[6] These cases underscore that, under Tennessee's common law, negligence and gross negligence are distinct concepts.

[6] *See also Kaset v. Freedman*, 120 S.W.2d 977, 983 (Tenn. Ct. App. 1938) (affirming dismissal of claim under Georgia guest statute where facts were sufficient to show "negligence" but not "gross negligence"); *cf. Ellithorpe*, 503 S.W.2d at 521 (noting that a plaintiff's "[o]rdinary negligence, defined generally as the failure to exercise the care of a reasonably prudent man, is not a proper defense to strict liability actions").

Plaintiff, meanwhile, points us to no precedent using the term "negligence" to encompass grossly negligent or reckless conduct. Amicus curiae, the Tennessee Trial Lawyers' Association, cites *Anderson v. Westfield Group*, 259 S.W.3d 690 (Tenn. 2008), to support its argument that the Act removes immunity for recklessness. But that case involved a very different question from the one presented here. In *Anderson*, we considered whether "acting in a 'rash' manner within the meaning of [a workers' compensation precedent] necessarily exclude[d] negligent conduct by the employee." *Id.* at 698. In holding that it did not, we explained that "rash" conduct includes conduct that is "unadvised, imprudent, unwise, improvident, ill-advised, foolhardy, reckless, unnecessarily dangerous, impulsive, [or] stupid" or that demonstrates a "disregard for consequences" or that "imprudently involv[es] or incur[s] risk." *Id.* (internal quotation marks and footnotes omitted). Because "negligence"—the "failure to exercise reasonable care under the circumstances"—is "synonymous" with these "descriptions of rash," we held that "conduct which may be characterized as rash . . . includes negligent conduct" in addition to "reckless conduct and intentional conduct." *Id.* (footnotes omitted). In other words, we held only that the meaning of "rash" was broad enough to include intentional torts, recklessness, and negligence—not that negligence and recklessness are indistinguishable.

Amicus curiae also cites a South Carolina case—*Berberich v. Jack*, 709 S.E.2d 607 (S.C. 2011). But *Berberich* actually supports defendants' position. In that case, the South Carolina Supreme Court held that "comparative negligence encompasses the comparison of ordinary negligence with heightened forms of misconduct such as recklessness, willfulness, and wantonness." *Id.* at 614. Significantly, though, the court did not equate negligence with recklessness or even negligence with gross negligence. It instead stated, consistent with our reasoning, that willful or wanton negligence is "synonymous with" recklessness and that when "negligence [is] so gross as to amount to recklessness, . . . it ceases to be mere negligence and assumes very much the nature of willfulness." *Id.* at 612 (internal quotation marks omitted) (quoting *Jeffers v. Hardeman*, 99 S.E.2d 402, 404 (S.C. 1957)). The court also observed that "'negligence' in its *broadest* sense is often said to encompass [recklessness, willfulness, and wantonness]." *Id.* at 613 (emphasis added) (quoting *Stockman v. Marlowe*, 247 S.E.2d 340, 342 (S.C. 1978)). But that statement is no help to plaintiff: Here, we are concerned with the meaning of negligence in its *narrowest* sense because we are required to strictly construe the Act's removal of immunity.

In sum, Tennessee courts have consistently defined gross negligence and recklessness in a manner distinct from ordinary negligence. The term "negligence" in section -205 is therefore best understood to mean only ordinary negligence, not gross negligence or recklessness. If there were any doubt on this point, the strict-construction rule that applies here would require us to resolve that doubt in favor of governmental immunity. "[C]onfined to [its] express terms," *Moreno*, 479 S.W.3d at 809, section -205 waives immunity only for employee acts that constitute ordinary negligence.

ii.

Examination of section -205's statutory context reinforces this conclusion. When interpreting a statute, we generally presume that when the legislature uses one term in one part of a statute, and a different term elsewhere in the same or a related statute, those terms mean different things. *See Griffitts v. Humphrey*, 288 S.W.2d 1, 3–4 (Tenn. 1955) (concluding that the words "injury" and "accident" had different meanings in related provisions of a workers' compensation statute); *Wis. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2071 (2018) (giving different meanings to two terms—"money remuneration" and "all remuneration"—used in companion statutes). That canon of construction is relevant here because, while the General Assembly used the term "negligent" in the part of section -205 that we are interpreting, it used the term "gross negligence" in another subsection of section -205 and a related statutory provision.

In 2020, the General Assembly amended section -205 to except from the general waiver of immunity injuries "arising from COVID-19" unless a claimant proved that "gross negligence" caused the harm. Tenn. Code Ann. § 29-20-205(10) (Supp. 2021). The General Assembly's use of both "negligent" and "gross negligence" in the very same section suggests that it understood the difference in meaning between those two terms and used them intentionally. *See Griffitts*, 288 S.W.2d at 4; *Wis. Cent. Ltd.*, 138 S. Ct. at 2072.[7]

The General Assembly also used the term "gross negligence" in a later-enacted provision in the same chapter—Tennessee Code Annotated section 29-20-108. That section grants immunity to certain entities and individuals that provide emergency communication services "except in cases of gross negligence" or "gross negligence or willful misconduct." Tenn. Code Ann. § 29-20-108(a)–(c), (e) (Supp. 2022).[8] Once again, the General Assembly's decision to use "gross negligence" instead of simply "negligence" suggests that it did not view the terms as synonyms.

[7] As explained, subsection -205(10) was a later-in-time amendment to section -205 that was later repealed. *See supra* note 5. The presumption discussed above is strongest when two provisions are enacted at the same time. *See* Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 173 (2012). But we also presume that the General Assembly "has knowledge of its prior enactments," especially a law it is amending. *State v. L.W.*, 350 S.W.3d 911, 918 (Tenn. 2011).

[8] More specifically, section -108 immunizes emergency communications district boards and their members "except in cases of gross negligence," Tenn. Code Ann. § 29-20-108(a); extends such immunity to emergency district employees and local governmental 911 communicators or dispatchers, assuming they maintain certain training requirements, *id.* § 29-20-108(b); immunizes emergency call takers and public safety dispatchers related to CPR instruction via telephone "except in cases of gross negligence or willful misconduct," *id.* § 29-20-108(c); and immunizes the emergency district and local government from civil damages and suit "for employees who answer 911 emergency calls and employees who are recently hired, except in cases of gross negligence or willful misconduct," *id.* § 29-20-108(e).

* * *

The Act removes immunity only for "negligent" employee acts. Common-law precedent and statutory context make clear that the term "negligent" in section -205 means ordinary negligence, not gross negligence or recklessness. The Court of Appeals erred by holding otherwise.

C.

The Court of Appeals' contrary decision relied heavily on *Brown v. Hamilton County*, 126 S.W.3d 43 (Tenn. Ct. App. 2003). *Brown* arose from a murder committed by a criminal defendant who was on house arrest. *Id.* at 46. The plaintiff, suing on behalf of the murder victim, alleged that Hamilton County was responsible for the murder because one of its employees had inadequately supervised the defendant. *Id.* at 46–47. The trial court dismissed the plaintiff's claims as barred by the public-duty doctrine. *Id.* at 46. The Court of Appeals reversed, holding that the record established "extreme dereliction by the County in the operation of its program" and thus "support[ed] findings of reckless misconduct and omissions sufficient to come within the exception to the public duty rule." *Id.* at 50. The court then considered "whether the plaintiff ha[d] shown the elements of a negligence claim under the GTLA." *Id.* Pointing largely to the same evidence considered in its recklessness analysis, the court held that the plaintiff had established negligence. *Id.* at 50–51.

The Court of Appeals read *Brown* to "stand[] for the proposition that a plaintiff's claims based upon reckless conduct may proceed under the GTLA." *Lawson*, 2021 WL 2949511, at *10. *Brown*'s analysis is not a model of clarity. But we read it as holding only that there was reckless conduct sufficient to satisfy the special-duty exception to *the public-duty doctrine*. *See id.* As discussed above, whether the special-duty exception applies under the public-duty doctrine is secondary to the threshold inquiry whether immunity is removed under the Act. *See Chase*, 971 S.W.2d at 385. To the extent *Brown* addressed the Act, it held only that the plaintiff had established "the elements of a negligence claim under the GTLA." 126 S.W.3d at 46, 50. *Brown* thus provides no support for plaintiff's interpretation of the Act. To the extent *Brown* can be read as holding that the Act waives immunity for reckless or grossly negligent employee acts, we reject that holding as inconsistent with the statutory text.

The Court of Appeals' other reasons for interpreting "negligent" to include gross negligence and recklessness do not convince us either. While the court acknowledged that simple negligence is "conceptually distinct" from gross negligence and recklessness, it nevertheless concluded that the term "negligent" should be construed to include recklessness and gross negligence because all three terms are "related," and the Act "d[id] not exclude claims based on heightened forms of negligence." *Lawson*, 2021 WL 2949511, at *10. This analysis ignores that we are required to strictly construe the Act's waiver of immunity and "confine[]" it to its "express terms." *Moreno*, 479 S.W.3d at 809 (quoting *Doyle*, 49 S.W.3d at 858); *see also* Tenn. Code Ann. § 29-20-201(c). Interpreting

"negligent" to include related but conceptually distinct terms unless the legislature has specifically excluded those terms would turn the strict-construction rule on its head.

The Court of Appeals also reasoned that construing the Act to remove immunity only for ordinary negligence would "perversely incentivize [the] government, should it commit a negligent act, to commit worse forms of negligence" to avoid liability. *Lawson*, 2021 WL 2949511, at *10. This concern is misplaced: It overlooks that governmental *employees*, unlike the government itself, are not necessarily immune from tort liability. At common law, governmental employees could be "personally liable for their torts" even when acting within the scope of their employment. *Johnson v. Smith*, 621 S.W.2d 570, 571 (Tenn. Ct. App. 1981) (citing *City of Memphis v. Bettis*, 512 S.W.2d 270, 274 (Tenn. 1974)). Although the Act "immunizes a governmental employee when the governmental entity is liable[,] . . . the immunity afforded governmental entities does not extend to the employee." *Hughes*, 340 S.W.3d at 359 n.3 (citing *Fann v. City of Fairview*, 905 S.W.2d 167, 174 (Tenn. Ct. App. 1994) (rejecting municipal employees' argument that the Act granted them the same immunity as their employer)); *see also* Tenn. Code Ann. § 29-20-310(b) (providing, subject to exceptions, that "[n]o claim may be brought against an employee . . . for which the immunity of the governmental entity is removed by this chapter"); *id.* § 29-20-310(c) (providing that an employee whose governmental employer is immune is generally not liable "in excess of the amounts established for governmental entities").

The upshot is that a plaintiff may seek to hold employees personally liable when their governmental employer is immune, at least insofar as the public-duty doctrine or other applicable law would not independently bar the suit. *See Hughes*, 340 S.W.3d at 371–72; *Harp v. Metro. Gov't of Nashville*, No. M2012-02047-COA-R3-CV, 2014 WL 265713, at *3 (Tenn. Ct. App. Jan. 22, 2014)*; see also Marlie Ford v. City of Goodlettsville*, No. 19-c-1707, at 3 (Tenn. Cir. Ct. Feb. 18, 2020) (holding city immune under the Act but allowing recklessness claim to proceed against city officers under special-duty exception to the public-duty doctrine).[9] Interpreting the Act to preserve governmental immunity for employee actions exceeding ordinary negligence therefore does not leave plaintiffs without recourse. It simply means that plaintiffs may seek relief from a governmental entity's employees instead of the government itself.

To be sure, a plaintiff may prefer to sue the government rather than its employees given that the government will often have deeper pockets. But the potential availability of

[9] Tennessee is not the only State to allow suit against a governmental employee when the municipal employer is immune. *See, e.g.*, *City of Hartford v. Edwards*, 946 F.3d 631, 634 (2d Cir. 2020) (holding that city was not liable under Connecticut law for damages awarded against employee defendant arising from employee's "willful or wanton" conduct); *Ex parte City of Tuskeegee*, 932 So. 2d 895, 910–11 (Ala. 2005) (holding claims based on municipal employees' negligence could proceed against municipality but claims based on employees' bad faith or malicious acts could proceed only against employees); *see also* Dan B. Dobbs et al., *Dobbs' Law of Torts* § 343 (2d ed. July 2022 Update) (noting that in some States, "the employee may be exposed to liability when the municipality is not").

a suit against a governmental entity's employee undercuts the Court of Appeals' conclusion that the General Assembly could not have "intended to remove governmental immunity for simple negligence, but preserve governmental immunity for recklessness or gross negligence." *Lawson*, 2021 WL 2949511, at *10. Especially against the Act's common-law backdrop, it was hardly unreasonable for the General Assembly to bar claims against governmental entities for gross negligence, recklessness, and intentional acts while allowing certain of those claims to proceed against the entities' employees.[10]

D.

Plaintiff raises several additional arguments in defense of the Court of Appeals' interpretation.

i.

First, plaintiff contends that restricting the Act's waiver of immunity in section -205 to acts of ordinary negligence would bring it into conflict with Tennessee Code Annotated sections 29-20-108 and 7-86-320(d)(1). As discussed above, section 29-20-108 generally immunizes emergency communications district boards, their members, their employees, and certain local governmental employees from claims arising from their work, "except in cases of gross negligence." Tenn. Code Ann. § 29-20-108(a)–(b). Section 7-86-320(d)(1), for its part, immunizes emergency communications districts from claims arising from their employees' processing of emergency calls, except claims based on "recklessness or intentional misconduct." Tenn. Code Ann. § 7-86-320(d)(1) (2015). Plaintiff contends that construing section -205 to waive immunity only for ordinary negligence would prevent or be inconsistent with removal of immunity under sections 29-20-108 and 7-86-320(d)(1) for gross negligence and willful misconduct.

But application of a well-settled canon of statutory construction resolves any contradiction between these provisions: "[W]here a conflict is presented between two statutes, a more specific statutory provision takes precedence over a more general provision." *Coffman v. Armstrong Int'l, Inc.*, 615 S.W.3d 888, 894 (Tenn. 2021) (alteration in original) (quoting *State v. Frazier*, 558 S.W.3d 145, 153 (Tenn. 2018)). Applying this

[10] Tennessee also is not the only State to bar governmental liability—or lift employee immunity—for "wanton" employee acts. *See Myers v. Hartford*, 853 A.2d 621, 625 (Conn. App. Ct. 2004) (noting that Connecticut municipalities have a statutory duty to indemnify their employees for injuries caused by certain on-the-job acts, except "willful or wanton" acts), *cert. denied*, 859 A.2d 582 (Conn. 2004); Fla. Stat. Ann. § 768.28(9)(a) (2011 & Supp. 2022) (immunizing the State and its subdivisions from liability for tortious employee acts that "exhibit[] wanton and willful disregard of human rights, safety, or property"); Ohio Rev. Code Ann. § 2744.03(6)(b) (2019) (immunizing a municipal employee from tort liability unless the employee acted "in a wanton or reckless manner"); *cf. Pleasant v. Johnson*, 325 S.E.2d 244, 248–49 (N.C. 1985) (noting that "wanton and reckless behavior may be equated with an intentional act for certain purposes" and reasoning that removing co-employee immunity from suit for wanton behavior, as for intentional torts, in the workers' compensation context "places responsibility upon the tortfeasor where it belongs").

canon here, in the event of a conflict, the more specific provisions waiving immunity for emergency communications district boards, their members, and certain others would govern in situations involving the entities, individuals, and circumstances specified in sections 29-20-108 and 7-86-320(d)(1), while section 29-20-205's general waiver of immunity for negligence would continue to govern the immunity of governmental entities in other situations.[11] Moreover, as ECD-911 acknowledges, section 29-20-108(b)'s gross-negligence standard would protect 911 dispatchers and their employers only where the dispatchers had "attain[ed] and maintain[ed]" certain training requirements; otherwise, they would be subject to suit for ordinary negligence under section 29-26-205. Tenn. Code Ann. § 29-20-108(b). In short, the statutes are complementary, not contradictory.

ii.

Second, plaintiff argues that it would be strange for the General Assembly to have included exceptions from section 29-20-205's removal of immunity for recklessness and intentional torts if the Act waives immunity only for simple negligence. This argument misconstrues both the role of these exceptions and our case law applying them. The exceptions apply where a plaintiff has first established negligent supervision of an employee acting within the scope of employment. *See Hughes*, 340 S.W.3d at 368–69 (holding that a plaintiff was required to demonstrate negligent supervision to lift immunity under section 29-20-205 based on an employee's intentional tort); *see also Limbaugh*, 59 S.W.3d at 84 (holding that a defendant was not immune under section 29-20-205 where "the injury inflicted on [plaintiff] was 'proximately caused by a negligent act or omission' of [defendant's] supervisory personnel" and where plaintiff's injuries "arose out of" intentional torts not excepted by subsection -205(2)). In other words, section 29-20-205 removes immunity for injuries "proximately caused by a negligent act or omission of any employee," including the negligent supervision of other employees. Tenn. Code Ann. § 29-20-205. But it creates exceptions from that removal of immunity where negligently supervised employees committed certain intentional torts and other acts.

Indeed, plaintiff does not argue that, in the absence of the exceptions for certain enumerated intentional torts, the Act would remove immunity for all intentional torts. To do so would require contending that section 29-20-205's reference to "negligent act[s] or omission[s]" includes *intentional* acts. And our case law clearly has rejected that argument. *See, e.g.*, *Hughes*, 340 S.W.3d at 368 ("[T]he GTLA does not allow plaintiffs to hold governmental entities vicariously liable for intentional torts not exempted under section 29-20-205(2), but rather requires a direct showing [of] negligence on the part of the governmental entity." (alteration in original) (quoting *Pendleton v. Metro. Gov't of Nashville & Davidson Cnty.*, No. M2004-01910-COA-R3-CV, 2005 WL 2138240, at *3 (Tenn. Ct. App. Sept. 1, 2005))); *see also* Dobbs, *supra*, § 31 ("Intent and negligence are

[11] As ECD-911 points out, section 7-86-320(d)(1) appears in a different title and chapter than the Act and applies only to "claims for recklessness or intentional misconduct in processing emergency calls." We take no position on whether that provision applies in this case or, if so, whether its application would conflict with the Act.

entirely different concepts . . . [and] are regarded as mutually exclusive grounds for liability."). It therefore makes little sense to argue that section 29-20-205 must waive immunity for gross negligence and recklessness because certain grossly negligent and reckless acts, like the enumerated intentional torts, are excepted from its coverage.

Relatedly, plaintiff argues that the public-duty doctrine's special-duty exception for cases involving "intent, malice, or reckless misconduct" could never apply if the Act removes immunity only for negligent employee acts. Not so. The exception would apply in at least one situation: when a plaintiff adequately alleges a reckless-misconduct claim against an *employee*. *See Ford*, No. 19-c-1707, at 3. As explained, the Act does not grant immunity to governmental *employees*. The public-duty doctrine, however, applies to governmental entities and employees alike. *See Matthews v. Pickett Cnty.*, 996 S.W.2d 162, 163 (Tenn. 1999) (noting that the public-duty doctrine "shields public entities and public employees from tort liability for injuries caused by a breach of a duty owed to the public at large"). There may be other situations in which the special-duty exception would continue to apply. For present purposes, the exception's continued application to claims against employees suffices to defeat plaintiff's argument.

CONCLUSION

We hold that section -205's waiver of immunity for "negligent" acts includes only ordinary negligence, not gross negligence or recklessness. We reverse the Court of Appeals to the extent it held otherwise and remand for further proceedings consistent with this opinion. Costs of this appeal are taxed to plaintiff, for which execution may issue.

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SARAH K. CAMPBELL, JUSTICE