

NAVIGATING THE GTLA

by Erik C. Lybeck

Tort lawsuits can be beautiful in their simplicity. Usually, they come down to a familiar question—whether one person’s carelessness caused another person’s injuries. Sometimes, though, those simple tort cases get complicated. One way that happens? When the careless person is the government. Bringing or defending a lawsuit involving the government can seem like a daunting task, and it involves many traps for the unwary. This primer on suits against the government—and specifically on suits against local governments under the Governmental Tort Liability Act (“GTLA”), Tenn. Code Ann. § 29-20-201, *et seq.*—is intended to help lawyers meet these issues with confidence.

So, let’s say you’ve been asked to handle a personal injury case involving the government. As a threshold matter, you have to figure out whether the GTLA applies to your case at all. As its name suggests, the Governmental Tort Liability Act applies to all tort claims against “governmental entities.” Tenn. Code Ann. § 29-20-103(b). But what is a governmental entity? Well, pretty much everything you think of as local government, from the big (cities and counties) to the small (school districts, utility districts, even volunteer fire departments). Tenn. Code Ann. § 29-20-102(2). Note the adjective, though—*local* government. You cannot use the GTLA to bring claims against the State or Federal governments. (Those claims are for a different article.) Also note the noun—*local government*. The GTLA generally does not apply to claims against private companies that are providing public services, such as regulated gas, electric, or telephone utilities. (You get to sue them in a good old-fashioned negligence case).

Next, you need to figure out whether there is a claim under the GTLA. The default rule when you are suing a governmental entity is sovereign immunity. Tenn. Code Ann. § 29-20-201(a). In other words, most of the time, there is no claim at all. But there’s a catch—governmental entities have immunity . . . “[e]xcept as may be otherwise provided in” the GTLA. There are three general ways around the default rule of sovereign immunity.

The first way is the easiest. Section 202 removes immunity “for injuries resulting from the negligent operation by any employee of a motor vehicle or other equipment while in the scope of employment.” Tenn. Code Ann. § 29-20-202(a). There are no extra hoops to jump through here; if a car driven by a government employee on the clock hits someone, there’s probably a claim under the GTLA.

The second way can be thought of as the “premises liability” exception (although it is slightly broader than that in practice). Under Sections 203 and 204, immunity is removed for the dangerous condition of any street (Tenn. Code Ann. § 29-20-203(a)) or building or other “improvement” (Tenn. Code Ann. § 29-20-204(a)) owned or controlled by the government. This is where you need to look for injuries caused by (for example) a broken stop light, an uneven sidewalk, or a puddle in a government building. Here, though, there is an extra hoop to jump through; under either of these sections, immunity is only removed when the governmental entity had actual or constructive notice of the problem. Tenn. Code Ann. § 29-20-203(b) & -204(b). As a result, lawsuits under these sections typically come to what the government knew and when it knew it.

The third way should be the easiest way to remove immunity, but is anything but. Under Tenn. Code Ann. § 29-20-205, immunity is removed for “any injury proximately caused by a negligent act or omission of *any* employee within the scope of his employment.” That sounds broad. In practice, though, this exception is extremely limited. First are the limitations set on it by the General Assembly. Section 205 itself contains ten enumerated cases in which immunity still applies notwithstanding employee negligence, including injuries resulting from (i) “discretionary functions” (a much litigated and amorphous concept), (ii) inadequate inspections, (iii) almost anything occurring in connection with an arrest, investigation, or lawsuit, and (iv), COVID-19. And that still leaves the limitations set by the Tennessee Supreme Court. In *Ezell v. Cockrell*, 902 S.W.2d 394 (Tenn. 1995), the Court



decreed that the common law “public duty doctrine” survived the enactment of the GTLA. The upshot of this ruling is a near total bar on claims under Section 205 unless your case fits into one of the three narrow circumstances known as the “special duty exceptions”— (1) reliance on an affirmative undertaking to protect the plaintiff, (2) claims explicitly allowed by statute, or (3) intentional, malicious, or reckless misconduct. Finding a case that fits into one of these circumstances is rare. The last work around, then, is not nearly as expansive as it appears.

Let’s assume, though, that there is a claim under the GTLA. Next, you have to deal with the procedural quirks. Start with the question of venue; where can suit be filed? Claims under the GTLA must be brought in the Circuit Court of the county (i) where the governmental entity is located or (ii) where the injury occurred (almost always the same place). Tenn. Code Ann. § 29-20-308(a). Failure to file in the correct court can be devastating. The savings statute does not apply to claims under the GTLA, so a dismissal without prejudice on jurisdictional grounds can effectively operate as a dismissal with prejudice when it happens after the one year statute of limitations has run. *See, e.g., Lynn v. City of Jackson*, 63 S.W.3d 332, 337 (Tenn. 2001). (One solution? Ask that the case be transferred to the proper venue instead of dismissed without prejudice). And note well — if you want a jury, you’ll need to

find a non-governmental co-defendant. Lawsuits solely involving GTLA claims are limited to bench trials by statute. Tenn. Code Ann. § 29-20-307. When filing the complaint, make sure you cross your t’s and dot your i’s; the claim “must be brought in strict compliance with the terms of this chapter,” Tenn. Code Ann. § 29-20-201(c). In other words, don’t forget to explain how and why immunity is removed in your complaint. See also Tenn. R. Civ. P. 8.05(1). Once the complaint has been filed, the governmental entity gets sixty days to respond, so don’t get an itchy trigger finger on that motion for default judgment just because a month passed without an answer. Tenn. Code Ann. § 29-20-304(a). Finally—and perhaps most important as a practical matter—any recovery is capped at \$300,000 per injury or death of any one person, and \$700,000 total per accident (no matter how many people are injured). Tenn. Code Ann. § 29-20-311, -403(b)(4).

The GTLA, while complicated, is not impossible to understand. Hopefully, with the help of this article, you can jump through its hoops with confidence and get back to that beautifully simple question we all love to litigate—did one person’s carelessness cause another person’s injury?



Erik Lybeck is a litigator at Neal & Harwell. He has a broad practice focused on complex litigation, whether civil, criminal, or administrative. Erik is included in the 2021 edition of Best Lawyers: Ones to Watch for Commercial Litigation and Criminal Defense: White-Collar. Contact: elybeck@nealharwell.com