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Opinion No. 12-58

Healthcare Liability Actions under the Tennessee Civil Justice Act of 2011

QUESTIONS

1. Do the limitations on damage awards in Tenn. Code Ann. §§ 29-39-101 to -104 apply to health care liability actions?
2. Do the limitations on damage awards in Tenn. Code Ann. §§ 29-39-101 to -104 apply to physicians and nurses employed by a local governmental entity who are litigants in a health care liability action?

OPINIONS

1. The limitations on damage awards in Tenn. Code Ann. §§ 29-39-101 to -104 apply to all civil actions, including health care liability actions, with the exception of claims against the State of Tennessee, local governmental entities and the employees of local governmental entities. With respect to such claims, Tenn. Code Ann. §§ 29-39-101 to -104 would not apply to the extent those code sections are inconsistent with or conflict with the provisions of the Tennessee Claims Commission Act or the Tennessee Governmental Tort Liability Act (“GTLA”).
2. The limitations on noneconomic damages awards in Tenn. Code Ann. §§ 29-39-101 to -104 apply to physicians and nurses employed by a local governmental entity. The limitations on punitive damages are inapplicable to the extent that the GTLA completely excludes these physicians and nurses from liability for punitive damages.

ANALYSIS

1. Tenn. Code Ann. §§ 29-39-101 to -104, passed as part of the Tennessee Civil Justice Act of 2011 (“The Act”), limit damage awards in civil actions. 2011 Tenn. Pub. Acts 510, § 10. Compensation for noneconomic damages is limited to \$750,000 for each injured plaintiff unless the injury is catastrophic. Tenn. Code Ann. § 29-39-102(a)(2) & (b). Compensation for noneconomic damages for catastrophic injuries is limited to \$1,000,000. Tenn. Code Ann. § 29-39-102(c).

The Act also limits punitive damages. Tenn. Code Ann. § 29-39-104(a)(5). However, the Act does not create any claim for punitive damages. Tenn. Code Ann. § 29-39-104(b). *See*

also Tenn. Code Ann. § 29-39-102(m). Under the Claims Commission Act the State of Tennessee is not liable for punitive damages. Tenn. Code Ann. § 9-8-307(d). Under the GTLA neither the governmental entity nor the governmental employees are liable for punitive damages in an action arising out of the negligence of an employee. *Johnson v. Smith*, 621 S.W.2d 570, 572 (Tenn. Ct. App. 1981).

The Act replaces the term “medical malpractice action” throughout the Tennessee Code with “health care liability action.” 2011 Tenn. Pub. Acts 510, § 9. The term “health care liability action” is defined by the Act as “any civil action, including claims against the state or a political subdivision thereof, alleging that a health care provider or providers have caused an injury related to the provision of, or failure to provide, health care services to a person, regardless of the theory of liability on which the action is based.” Tenn. Code Ann. § 29-26-101(a)(1).

The Act’s limitations on noneconomic damages apply to all civil actions, which would include health care liability actions, with the general exception of claims against the State of Tennessee, local governmental entities and the employees of local governmental entities, notwithstanding conflicting statutes or common law.¹ Tenn. Code Ann. § 29-39-102(l)&(n). The Act specifically addresses claims against the state, and local governmental entities and their employees, as follows:

No provision in this part [title 29, chapter 39, part 1] shall apply to claims against this state to the extent that such provision is inconsistent with or conflicts with the Tennessee Claims Commission Act, compiled in title 9, chapter 8, part 3. In addition, no provision in this part shall apply to claims against a governmental entity or its employees to the extent that such provision is inconsistent with or conflicts with the Governmental Tort Liability Act, compiled in chapter 20 of this title.

Tenn. Code Ann. § 29-39-102(l).

Consequently, Tenn. Code Ann. §§ 29-39-101 to -104 apply to all civil actions, including health care liability actions, with the exception of claims against the State of Tennessee, local governmental entities and the employees of local governmental entities to the extent that the provisions of Tenn. Code Ann. §§ 29-39-101 to -104 are inconsistent with or conflict with the provisions of the Tennessee Claims Commission Act or the GTLA.

2. Tenn. Code Ann. §§ 29-39-101 to -104 apply to health care liability actions against physicians and nurses employed by local governmental entities² to the extent that these

¹ Damages in medical malpractice actions have been limited since 1975 by Tenn. Code Ann. § 29-26-119 which abrogates the collateral source rule. *See Baker v. Vanderbilt University*, 616 F. Supp. 330, 332-33 (M.D. Tenn. 1985). This provision does not conflict with the damage limitations in Tenn. Code Ann. §§ 29-39-101 to -104.

² Local governmental health facilities do not fall within the definition of “health care providers” for the purposes of health care liability actions. Tenn. Code Ann. § 29-26-101(a)(2)(B)&(C).

provisions are not inconsistent with or in conflict with the GTLA. The question presented then is to what extent do the damage award limits in Tenn. Code Ann. §§ 29-39-101 to -104 apply to health care liability actions brought against physicians and nurses employed by a local governmental entity. The primary rule governing the construction of any statute is to ascertain and give effect to the legislature's intent. *Walker v. Sunrise Pontiac-GMC Truck, Inc.*, 249 S.W.3d 301, 309 (Tenn. 2008). A conflict between statutes will be recognized only when no fair and reasonable construction will permit the statutes to stand together. *Cronin v. Howe*, 906 S.W.2d 910, 912 (Tenn. 1995).

Generally speaking, local governmental entities are immune from suit for any injury resulting from their tortious actions, except in those instances in which immunity is expressly removed by the GTLA. Tenn. Code Ann. § 29-20-201(a). One example of express removal under the GTLA is for injuries proximately caused by a negligent act or omission of a governmental employee, such as may be the case in a health care liability action. Tenn. Code Ann. § 29-20-205. The GTLA further provides that the limits of liability for governmental agencies for health care liability actions arising on or after July 1, 2007, in the absence of the purchase of insurance coverage in excess of such limits, are \$300,000 for bodily injury or death of any one person in any one accident, occurrence or act, and \$700,000 for bodily injury or death of all persons in any one accident, occurrence or act. Tenn. Code Ann. §§ 29-20-311, -403(b)(4).

If the immunity of the governmental entity is removed by the GTLA, no claim may be brought or judgment entered against a health care practitioner employed by that entity unless the claim is one for health care liability against a healthcare practitioner.³ If a claim for health care liability is filed, no such claim may be brought against the health care practitioner or judgment entered against a health care practitioner unless the amount of damages sought or judgment entered is in excess of the minimum limits set out in Tenn. Code Ann. § 29-20-403 or the amount of insurance carried by the governmental entity, whichever is greater, and the entity is also made a party. Tenn. Code Ann. § 29-20-310(b). In that event, the health care practitioner may be liable for an unlimited amount over the governmental entity liability. *Id.*

If the governmental entity is immune under the GTLA, there are no damage limits imposed by the GTLA on health care liability claims brought against health care practitioners employed by the entity. Tenn. Code Ann. § 29-20-310(c).

Tenn. Code Ann. § 29-39-102(l) provides expressly that “no provision in this part [Tenn. Code Ann. §§ 29-39-101 to -104] shall apply to claims against a governmental entity or its employees to the extent that such provision is inconsistent with or conflicts with the Governmental Tort Liability Act.” The GTLA does not specify what kind of damages can be awarded against physicians and nurses employed by a local governmental entity and sued for health care liability. Nor does the GTLA impose a cap on damages awarded against such physicians and nurses. Cases filed against such physicians and nurses where the governmental

³ For the purposes of the GTLA only, the term “health care practitioner” is limited to “physicians licensed under title 63, chapter 6, and nurses licensed under title 63, chapter 7.” Tenn. Code Ann. § 29-20-310(b)&(c).

entity is immune⁴ appear no different from cases filed against private defendants. In this circumstance, the damage awards limits provisions in Tenn. Code Ann. §§ 29-39-101 to -104, including both noneconomic and punitive damages, are not in conflict with or inconsistent with the GTLA and would be controlling. *See Cronin v. Harris*, 906 S.W.2d at 912.

If the Tennessee Civil Justice Act damage award limits apply in those cases where the immunity of the governmental entity is removed by the GTLA and the entity is sued along with its physicians and nurses, the amount of all noneconomic damages, not to exceed \$750,000 for each injured plaintiff (\$1,000,000 if the injury is catastrophic), is apportioned among the defendants based upon the percentage of fault. Tenn. Code Ann. § 29-39-102(b). The GTLA however provides that the total damages (economic and noneconomic) that can be awarded against the governmental entity is limited to \$300,000 for each injured plaintiff pursuant to Tenn. Code Ann. §§ 29-20-311, 29-20-403(b)(4). Since here the GTLA damage limits may conflict with the damage limits in Tenn. Code Ann. § 29-39-102(b), on this point the GTLA controls with regard to the governmental entity given the express recognition by Tenn. Code Ann. § 29-39-102(1) that any conflict between the Tennessee Civil Justice Act and the GTLA is resolved in favor of the GTLA. With respect to the physicians and nurses sued in this situation, their liability for noneconomic damages would be limited to no more than \$750,000, unless the injury was catastrophic, less any amount for which the governmental entity is found liable. Cases filed against such physicians and nurses where the governmental entity is not immune do not appear significantly different from cases filed against private defendants. In this circumstance, the limitations on noneconomic damages under the Act are not in conflict with or inconsistent with the GTLA and would be controlling. *See Cronin v. Harris*, 906 S.W.2d at 912.

As for punitive damages where immunity of a governmental entity is removed by the GTLA, the GTLA precludes both the local governmental entity and its employees from liability for punitive damages in an action arising out of the negligence of an employee. *Johnson v. Smith*, 621 S.W.2d at 572. Thus in this case the GTLA controls, since it provides greater protection than Tenn. Code Ann. § 29-39-104(a)(5), which merely limits punitive damages.

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⁴ Health care liability actions where the governmental entity is immune would be very rare as the overwhelming majority of such actions are premised on negligence, which as previously mentioned is an action for which the GTLA has removed immunity.

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