Legal Update

ROPER, TOWNSEND & SUTPHEN, P.A.

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ELEVENTH CIRCUIT ONCE AGAIN AFFIRMS DISMISSAL OF 42 U.S.C. § 1983 VIOLATION OF CIVIL RIGHTS CLAIMS

We had previously discussed how in *Baker v. City of Madison, Alabama*, 67 F.4th 1268 (11th Cir. 2023) the Eleventh Circuit Court of Appeals reiterated the well-known exceptions under which a trial court may consider materials outside a complaint at the motion-to-dismiss stage, without converting motion into one for summary judgment, and affirmed the district court's dismissal of a civil right lawsuit based on the body camera footage filed by the defendant, and referred to in the plaintiff's complaint several times. Accordingly, the Eleventh Circuit held that the requirements of the incorporation-by-reference doctrine were met, and the district court properly considered the body camera footage when granting the motions to dismiss.

In a recent opinion, *Johnson v. City of Atlanta*, ___ F.4th ___, 2024 WL 3384936 (11th Cir. 2024), the incident was recorded in the officer's body camera, as well as his vehicle's dash camera, but neither recording was mentioned or referred to in the plaintiff's complaint. The defendant officer filed a dispositive motion [for judgment on the pleadings] and filed copies of the videos, while the co-defendant City of Atlanta just filed an answer to the

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WILL THE FLORIDA SUPREME COURT FINALLY RESOLVE WHETHER THE FLORIDA LEGISLATURE WAIVED SOVEREIGN IMMUNITY OF SCHOOL BOARDS FOR PIP REIMBURSEMENT CLAIMS?

In the consolidated cases of *School Board of Broward County v. State Farm Mutual Automobile Insurance Company* and the *Palm Beach County School Board v. State Farm Mutual Automobile Insurance*, the Fourth District Court of Appeal recently certified a conflict with the Second District Court of Appeal's decision in *Lee County School Board v. State Farm Mutual Automobile Insurance,* 276 So. 3d 352 (Fla. 2d DCA 2019).

Both School Boards appealed three county court final judgments entered against them on State Farm's claims for reimbursement of PIP benefits paid to persons injured in separate

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complaint. The district court granted the officer's motion and although the City had not filed a dispositive motion, it also dismissed the claims against the City because they were subject to the officer's alleged wrongdoings.

The Eleventh Circuit affirmed the decision and stated that the district court properly considered the body camera and dashboard camera footage under the incorporation-by-reference doctrine and noted that there was no claim that the videos were altered in any way or did not depict what actually occurred. Therefore, based on the videos, there was no constitutional violation, the officer was entitled to qualified immunity and the plaintiff's Monell claim against the City also failed.

It is of utmost importance that officers, as well as governmental entities and commercial establishments, continue the practice of ensuring that they have working cameras and properly preserve all video recordings – including videos from different vantage points-relevant to any incident that could potentially become a claim. Additionally, the authenticity of the video plays an important role and one should make sure that it should not be questioned by taking all measures necessary to preserve it in its original format.

By: Ramon Vazquez

HOUSE BILLS 103 AND 983 ARE ENACTED INTO LAW WHICH EXEMPT CERTAIN INFORMATION FROM PUBLIC RECORDS DISCLOSURES FOR CITY ATTORNEYS, COUNTY ATTORNEYS, CLERKS OF COURT, CLERK OF THE CIRCUIT COURT PERSONNEL, AND THEIR SPOUSES AND CHILDREN

On July 1, 2024, Florida Statute §119.071 was amended to include exemptions from public disclosure, under our state's public record laws, certain information pertaining to city attorneys, county attorneys, clerks of court, clerk of the circuit court personnel, and the spouses and children thereof. The new language added to §119.071 by House Bill 103 provides:

> The home addresses, telephone numbers, dates of birth, and photographs of current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, and deputy city attorneys; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, and deputy city attorneys; and the names and locations of schools and day care facilities attended by the children of current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city

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school bus accidents. In the underlying cases, State Farm cited *Lee County* for the proposition that it could sue the School Boards for reimbursement under Section 627.7405(1), Florida Statutes. After hearing motions for summary judgment on the issue, the county courts relied on the *Lee County School Board* decision which held that 627 clearly and expressly waives the sovereign immunity of school boards for such claims and granted summary judgment in favor of State Farm.

On appeal, the Fourth District determined that based on its "reading of the applicable statutes, the plain language of Chapter 627 does not clearly and unequivocally waive the sovereign immunity of school boards for PIP reimbursement claims. Although Section 627.732(3)(b) clearly includes school buses in the category of vehicles covered by Section 627.7405(1), Chapter 627 does not identify a school board or any government entity as a proper party to be sued for reimbursement. Therefore, a finding that Chapter 627 waives sovereign immunity would require us to infer that Section 627.7405(1) authorizes PIP reimbursement suits against school boards, which cannot form the basis of a waiver. *See Hightower*, 306 So. 3d at 1196."

The Fourth District further "declined to infer that Chapter 627 authorizes reimbursement suits against school boards for two reasons. First, because Chapter 627 does not name any state entity as a proper party to be sued for PIP reimbursement, that inference is not based in the text of Chapter 627. Second, that inference assumes only the state and its subdivisions, i.e., school boards, can be owners of school buses; thus, a waiver of sovereign immunity must have been created. However, Florida Administrative Code Rule 6A-3.0171 (2021) specifically recognizes that school boards can contract with private entities to provide transportation to public school students. *See* Fla. Admin. Code R. 6A-3.0171 (1), (5), and (8). Therefore, Section 627.7405(1) allows for the potential reimbursement of PIP benefits from those private owners of school buses serving public schools who are not otherwise entitled to sovereign immunity and their insurers. However, Chapter 627 does not create a waiver of school boards' sovereign immunity."

The final summary judgments were reversed and remanded for entry of judgments in the School Boards' favor. The Fourth District also certified the conflict with *Lee County* decision.

By: Cindy A. Townsend

ELEVENTH CIRCUIT COURT OF APPEALS AFFIRMS HOLDING FINDING HEALTH INSURANCE PROVIDER LIABLE UNDER TITLE VII OF THE CIVIL RIGHTS ACT WHEN IT EXCLUDED SPECIFIC COVERAGE TARGETED TO TRANSGENDER EMPLOYEES

The Eleventh Circuit Court of Appeals recently affirmed a district court's order finding a health insurance provider liable pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et., when the coverage provided specifically denied gender-affirming care to transgender employees. The Circuit Court of Appeals also held that an insurance company can be held liable under Title VII as an agent of an employer when it accepted the employer's delegation of providing health insurance coverage to its employees.

In *Anna Lange v. Houston County, GA, Houston County Sheriff Cullen Talton, and Houston County Board of Commissioners, et. al*, Houston County provided health insurance plans to its own employees as well as employees of the Houston County Sheriff's Office. The health plan covers "medically necessary" services, including office visits, doctor services, prescription drugs, surgical supplies, inpatient hospital care, and inpatient professional services, such as surgery and general anesthesia. A surgery is considered medically necessary if there is a "significant functional impairment and the procedure can be reasonably expected to improve the functional impairment." The County set the benefit terms, decided changes to the health plan, determined deductibles and premiums, and provided services to all enrollees. The health plan specifically excluded "drugs for sex change surgery" as well as "services and supplies for a sex change and/or the reversal of a sex change."

Lange worked for the Houston County Sheriff's Office since 2016. She was diagnosed with gender dysmorphia in 2017. She notified the Sheriff's Office in 2018 that she would be living as a woman. Lange's treatment plan consisted of hormone therapy and gender-affirming surgery. Lange requested that the County provide coverage as she claimed the gender-affirming surgery was medically necessary. The County disagreed and denied coverage pursuant to the exclusions above. When Lange requested an appeal of the coverage decision from the County, and that the exclusions be removed, Lange's appeal was denied and she did not receive a response to her request regarding the removal of the exclusions from the plan.

Lange filed suit in the Middle District Court of Georgia alleging discrimination pursuant to the ADA, Title VII of the Civil Rights Act of 1964, and the Due Process Clause. Upon completion of discovery, both parties filed cross-motions for summary judgment. Of importance, the District Court granted Lange's Motion for Summary Judgment finding that the defendants discriminated against her in violation of Title VII of the Civil Rights Act. The District Court also issued an injunction permanently enjoining Defendants from enforcing or applying those policy exclusions.

On appeal, the County and Sheriff's Office asked the Eleventh Circuit to determine whether the district court erred in granting Lange's Motion for Summary Judgment and in

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ordering a permanent injunction enjoining enforcement and application of those policy exclusions.

The Eleventh Circuit Court of Appeals affirmed the district court's granting of Lange's Motion for Summary Judgment and upheld the district court's permanent injunction enjoining the enforcement and application of those policy exclusions.

The Eleventh Circuit specifically held that the policy exclusions were facially discriminatory pursuant to Title VII of the Civil Rights Act. In reaching that conclusion, the Court relied on the Supreme Court's explanation in *Bostock* which provided that "discrimination based on …transgender status necessarily entails discrimination based on sex." Discrimination based on sex is in violation of Title VII. The Court reasoned that the employer who discriminates based on transgender status is intentionally treating that employee differently because of their sex. The Court also cited to its decision in *Glenn v. Brumby*, 663 F.3d 1312, 1319 (11th Cir. 2011) where they held that an individual may not "be punished because of his or her perceived gender-nonconformity." The Court found that because transgender persons are the only plan participants who qualify for gender-affirming surgery, the plan denies health coverage based on transgender status. The Court found that the County deprived Plaintiff of the benefit or privilege of her employment by reason of her non-conforming traits, thereby unlawfully punishing her for her gender nonconformity.

The Court further held that the County qualified itself as an agent of the employer under Title VII and therefore assumed liability stemming from its delegated role to provide health insurance coverage to the Sheriff's employees. The Court specifically relied on *Newport News Shipbuilding & Dry Dock Co. v. E.E.O.C.*, 462 U.S. 669, 682 (1983) which held that insurance is a benefit within Title VII's "compensation, terms, conditions, or privileges of employment." The Sheriff's Office was also liable because it was Lange's employer even if it delegated the insurance coverage to the County.

The Eleventh Circuit Court of Appeals affirmed the district court's order granting Lange's Motion for Summary Judgment finding that the policy exclusions violated Title VII of the Civil Rights Act. The Eleventh Circuit Court of Appeals also affirmed the permanent injunction enjoining the County and Sheriff's Office from enforcing and applying the policy's exclusions. The Eleventh Circuit Court of Appeals reasoned that the policy exclusions violated Title VII of the Civil Rights Act, the district court utilized its equitable discretion and did not abuse its discretion when it granted the permanent injunction as monetary damages would not cure the discrimination, making it an appropriate remedy, and similarly did not abuse its discretion in assessing the balance of hardships.

By: Farideh E. Tadros

> attorneys, and deputy city attorneys are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption does not apply to a county attorney, assistant county attorney, deputy county attorney, city attorney, assistant city attorney, or deputy city attorney who qualifies as a candidate for election to public office. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

The new language added to §119.071 by House Bill 983 provides:

> The home addresses, telephone numbers, dates of birth, and photographs of current clerks of the circuit court, deputy clerks of the circuit court, and clerk of the circuit court personnel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current clerks of the circuit court, deputy clerks of the circuit court, and clerk of the circuit court personnel; and the names and locations of schools and day care facilities attended by the children of current clerks of the circuit court, deputy clerks of the circuit court, and clerk of the circuit court personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

By: Chris Prusinowski

FIRM SUCCESS

Summary Judgment for Failure to Notify Florida's Department of Financial Services

Ramon Vazquez recently obtained a summary judgment in favor of a Community Development District ("CDD") due to the plaintiff's failure to strictly comply with the statutory notice required by Fla. Stat. §768.28(6) & (7). Defendant alleged that the CDD is a governmental entity created under Chapter 190, Florida Statutes, and Fla. Stat. §190.043 provides that it is entitled to sovereign immunity. Plaintiff failed to provide the required statutory notice to the Florida Department of Financial Services ("DFS") within three years.

The Court held that dismissal was appropriate and granted summary judgment in favor of the CDD.

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