KATHLEEN SLAVIN, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE,[1] VS. AMERICAN MEDICAL RESPONSE OF MASSACHUSETTS, INC., & ANOTHER [2]

Docket:	19-P-1762
Dates:	November 5, 2020 - January 11, 2021
Present:	Henry, Sacks, & Englander, JJ.
County:	Bristol
Keywords:	Massachusetts Tort Claims Act. Governmental Immunity. Municipal Corporations, Liability for tort, Governmental immunity. Negligence, Governmental immunity, Ambulance. Practice, Civil, Motion to dismiss.

Civil action commenced in the Superior Court Department on April 24, 2019.

A motion to dismiss was heard by Renee P. Dupuis, J.

Bradford N. Louison for city of Taunton.

Kenneth I. Kolpan for the plaintiff.

SACKS, J. The defendant city of Taunton (city) appeals, under the doctrine of present execution, see Brum v. Dartmouth, 428 Mass. 684, 687-688 (1999), from a Superior Court judge's order denying the city's motion to dismiss the plaintiff's claims under the Massachusetts Tort Claims Act.[3] The plaintiff alleges that city employees negligently delayed in responding to her 911 call reporting that she and her mother had been stabbed by an intruder, and that this delay caused the mother's wrongful death and the plaintiff's emotional distress. We conclude, applying the plain language of G. L. c. 258, § 10 (j), that these harms were "not originally caused by" the city's delayed response, but instead were caused by "the violent or tortious conduct of a third person" -- the intruder -- and thus that § 10 (j) bars the claims. We also must reject the plaintiff's argument that the claims fall within an exception to § 10 (j) for harm caused by negligent medical treatment. Accordingly, the claims should have been dismissed.[4]

Background. We recount the essential allegations of the complaint as they apply to the city. An intruder entered the home of the plaintiff and her mother and stabbed them multiple times. The plaintiff called 911 and reported the stabbings at her address to the city's 911 dispatcher. The dispatcher sent a fire truck to the scene, and also called the city's contracted ambulance service provider, see note 3, supra, which sent an ambulance.

The fire truck, however, went to the wrong address, and due to the alleged negligence of city employees, it did not arrive at the correct address until approximately twenty minutes after the plaintiff's 911 call. Upon arrival, the fire truck's crew, trained in basic life support, rendered first aid to the plaintiff and cardiopulmonary resuscitation (CPR) to her mother. The ambulance did not arrive until approximately thirty minutes after the call from the 911 dispatcher. Ambulance personnel rendered emergency treatment to both victims and transported the plaintiff's mother to a hospital, but, tragically, she died there a short time later due to cardiac arrest.

The complaint, insofar as applicable to the city, alleges that negligence in how the city operated its 911 response system, along with negligent actions by city employees on the day of the stabbings, caused a delay in its medical response. The complaint alleges that this negligent delay was a proximate cause of the death of the plaintiff's mother, and of emotional distress to the plaintiff.

Discussion. We review the sufficiency of the complaint de novo, taking as true its factual allegations and drawing all reasonable inferences in the plaintiff's favor. See Curtis v. Herb Chambers I-95, Inc., 458 Mass. 674, 676 (2011). "[W]e look beyond the conclusory allegations in the complaint and focus on whether the factual allegations plausibly suggest an entitlement to relief." Id., citing Iannacchino v. Ford Motor Co., 451 Mass. 623, 635-636 (2008).

The city's motion to dismiss argued that the tort claims were barred by, among other provisions, G. L. c. 258, § 10 (j). Section 10 (j) provides that a public employer's liability for negligence does not extend to

"any claim based on an act or failure to act to prevent or diminish the harmful consequences of a condition or situation, including the violent or tortious conduct of a third person, which is not originally caused by the public employer or any other person acting on behalf of the public employer."

This exclusion is itself subject to several exceptions; relevant here is that the exclusion does not bar "any claim by or on behalf of a patient for negligent medical or other therapeutic treatment received by the patient from a public employee." G. L. c. 258, § 10 (j) (4).

Applying the plain language of § 10 (j), the harm to the plaintiff was originally caused by the violent and tortious conduct of a third person, the perpetrator of the stabbings, and not by the public employer or anyone acting on its behalf. This is exactly the type of claim the Legislature excluded; it is a "claim based on an act or failure to act to prevent or diminish the harmful consequences of a condition or situation, including the violent or tortious conduct of a third person." It is true that a more prompt response by city personnel might have diminished the harmful consequences of the stabbings, but the lack of a prompt response was not the original cause of the harm.[5] Thus § 10 (j) bars the negligence claims, unless the exception of § 10 (j) (4) for negligent medical treatment applies.

The exception does not apply, because the complaint does not allege any "negligent medical . . . treatment . . . from a public employee." G. L. c. 258, § 10 (j) (4). The complaint does not allege that, once the public employees responded to the scene, the medical treatment that they furnished -- first aid to the plaintiff and CPR to her mother -- was provided in a negligent manner. Nor does it allege that they were negligent in not providing additional or different treatment. Rather, the complaint alleges that the city breached its duties only "by delaying its emergency medical response by approximately [twenty] minutes."[6] The complaint focuses solely on the delayed arrival, not on the medical treatment furnished thereafter. We cannot stretch the plain language of the operative phrase of § 10 (j) (4) -- negligent medical treatment -- to encompass nonmedical acts or omissions by public employees before they arrive at the location where they could provide such treatment.[7] Accordingly, the § 10 (j) (4) exception does not apply, and § 10 (j) bars the tort claims.[8]

Conclusion. The order denying the city's motion to dismiss the tort claims against it is reversed.

So ordered.

footnotes

[1] Of the estate of Patricia Slavin.

[2] City of Taunton.

[3] The defendant American Medical Response of Massachusetts, Inc., the city's contracted ambulance service provider and the subject of separate damages claims by the plaintiff, has not participated in this appeal.

[4] The judge also denied the city's motion to dismiss other claims asserted against it for damages directly under the State constitution. The city, while contending that that decision was erroneous, has disclaimed any argument that the decision on the constitutional claims denied the city an immunity from suit so as to make the decision appealable under the doctrine of present execution. See Shapiro v. Worcester, 464 Mass. 261, 265 (2013). See also Chiulli v. Liberty Mut. Ins., Inc., 87 Mass. App. Ct. 229, 232–233 (2015). Compare Brum, 428 Mass. at 688 (claim properly before appellate court under doctrine of present execution may be disposed of on other grounds). Although the constitutional claims may implicate such immunity, cf. Doe, Sex Offender Registry Bd. No. 474362 v. Sex Offender Registry Bd., 94 Mass. App. Ct. 52, 64-65 (2018), the city has not briefed the issue. Accordingly, the viability of the constitutional claims is not properly before us, and we do not discuss them further.

[5] Also, "[t]o have 'originally caused' a condition or situation for the purposes of § 10 (j), the public employer must have taken an affirmative action; a failure to act will not suffice." Cormier v. Lynn, 479 Mass. 35, 40 (2018). We need not address whether the plaintiff sufficiently alleged such an affirmative act.

[6] The complaint elsewhere alleges that the city negligently inflicted emotional distress on the plaintiff "by delaying its emergency medical response by approximately [thirty] minutes" and "by delaying its response to the 911 call from [the plaintiff] by approximately [thirty] minutes." In light of the clear allegations earlier in the complaint that city personnel arrived on the scene within approximately twenty minutes of the 911 call and began CPR and first aid, it is unclear whether the allegations of a thirty-minute delay are typographical errors or instead are intended to refer to the city's role in causing a thirty-minute delay in the contracted ambulance's arrival at the scene. Assuming the latter, the plaintiff fares no better under § 10 (j) (4), because negligently causing a delay in a private party's rendition of medical treatment does not constitute "negligent medical . . . treatment . . . from a public employee." See Baptiste v. Executive Office of Health & Human Servs., 97 Mass. App. Ct. 110, 121–122 (2020) (alleged negligence by State-contracted medical provider did not bring claim within § 10 [j] [4]).

[7] Other cases may present different questions about precisely when medical treatment has begun for purposes of § 10 (j) (4). Our decision addresses only the allegations of the complaint in this case.

[8] We thus need not discuss the city's arguments that the claims are barred by other provisions of G. L. c. 258, § 10, and that the presentment of the claims under G. L. c. 258, § 4, was defective.