Circuit Court for Baltimore City
Case No. 24-C-21-002622

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 720

September Term, 2023

MAYOR AND CITY COUNCIL OF BALTIMORE

v.

SANJEEV VARGHESE

Ripken,
Albright,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Wright, J.

Filed: September 26, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

A jury sitting in the Circuit Court for Baltimore City found the Mayor and City Council of Baltimore (together the "City" and appellant) liable in negligence for injuries sustained by Sanjeev Varghese, appellee, when he rode his bicycle into a traffic control device in downtown Baltimore. On appeal, the City raises the following questions[1] for our review, which we have condensed and rephrased for clarity:

I. Did the circuit court err when it denied the City's motion for judgment notwithstanding the verdict because it was entitled to common law governmental immunity?

II. Did the circuit court err when it denied the City's motion for judgment notwithstanding the verdict because it was entitled to statutory immunity?

For the following reasons, we shall affirm the judgment.

[1] In the City's appellate brief, the questions were phrased as follows:

1. Did the circuit court err when it failed to grant judgment to the City because the design or review of the design of the bollard-cable traffic control device was a governmental function for which the City has governmental immunity?

2. Did the circuit court err when it failed to grant judgment to the City because the fall occurred outside of any path in a park or park-like area, the maintenance of which is a governmental function for which the City has governmental immunity?

3. Did the circuit court err when it failed to grant judgment to the City because the fall occurred on land that the City allows the general public to use, free of charge, for recreational and educational purposes, and for which the City therefore enjoys statutory immunity?)

FACTS AND PROCEEDINGS

Around dusk on October 2, 2018, Sanjeev Varghese ("Mr. Varghese") was riding his bicycle on the red brick "Promenade"[2] located on Pier 5 in downtown Baltimore. He was biking to Canton to meet a friend for dinner. With the Institute of Marine and Environmental Technology (formerly the Columbus Center) on his left and the U.S. Coast Guard Cutter 37 on his right, he turned left and departed the Promenade, riding his bicycle up a set of two stairs located between a handrail and a concrete block. When he reached the top of the stairs, he crashed into a traffic control device, a 3/8 inch black metal cable strung between two concrete posts, resulting in injury to his left arm that required surgery.

Mr. Varghese filed a complaint against the Mayor and City Council of Baltimore City, among others, alleging negligence and premises liability.[3] As to the negligence claim, Mr. Varghese argued that the City failed to maintain a reasonably safe public walking area, and the City had notice of the existence of the unsafe condition. He prayed a jury trial. The City answered the complaint, raising, among other defenses, common law governmental immunity and statutory immunity under the Maryland Recreational Use Statute ("MRUS"). *See* Md. Code Ann., Nat. Res. Art, §§ 5-1101 through 1109.

[2] A "promenade" is defined as "a paved public walk, esp. one along the seafront at a resort." *Promenade*, Oxford English Dictionary (2024).

[3] In his complaint, Mr. Varghese raised negligence and premises liability counts against seven defendants: the City; the Baltimore Development Corporation; TPOB Pier Five, LLC; the City of Baltimore Development Corporation; Chesapeake Contracting Group; STV Incorporated; and MJ Harbor Hotel, LLC. Following various motions, only one count of negligence against the City went before the jury. Accordingly, this appeal concerns only the negligence count against the City.

After the parties engaged in discovery, the City moved for summary judgment, which Mr. Varghese opposed. The City raised its two immunity defenses. Mr. Varghese opposed the motion for summary judgment, arguing that neither immunity defense applied. The circuit court held a hearing on the City's motion for summary judgment, after which the court denied the motion.

A three-day trial was held before a jury in December 2022. Testifying on behalf of Mr. Varghese was himself; the doctor who attended to his injuries; the Chief of the Maintenance Division of the City's Department of Transportation; and a civil engineer, who was admitted as an expert. The City called no witnesses.

Mr. Varghese testified that, upon leaving the Promenade and riding his bicycle up the "two small" steps, he found himself on the ground. His bike, which had struck the cable, was laying underneath and perpendicular to the cable of the traffic control device. He had seen no signs prohibiting biking, but after the crash, he learned that there was a sign prohibiting various activities, including biking, about thirty feet in front of where he crashed.

Several photographs were admitted into evidence depicting the area where the crash occurred. The photographs show traffic control devices located on dark gray bricks that run parallel to and are located on each side of the "Pier 5 Access Drive," an access road used by vendors and delineated by light gray bricks. Parallel to the dark gray bricks on which the traffic control devices are located is the red brick Promenade. In some places, the Promenade abuts the dark gray bricks. In other places, stairs, concrete blocks, and handrails lay between the Promenade and the dark gray bricks.

A bike map issued by Baltimore City was introduced into evidence. The City's Chief of Transportation Maintenance testified that the City owns and maintains all of the bike path, which he described as the red brick Promenade. However, when asked how far the bike path extends away from the water, he testified that the bike path went from the Promenade outward to the "gray area," which he described as "the access road." He explained that the traffic control devices were placed on either side of the access road for safety – so vendor vehicles would not veer off the access road and hit a pedestrian or crash into the water. He admitted that there are no signs on the access road prohibiting pedestrian or bicycle traffic. The parties stipulated that "[i]n January 2018, a notice of an alleged defect in the cable near 701 East Pratt Street at the Magic Harbor entrance was sent to the Mayor and City Council of Baltimore."

At the close of the evidence, the City moved for judgment. The City again argued that it was immune from liability. The City argued that common law governmental immunity applied because the crash occurred within a public park and not on a path, and because Mr. Varghese was alleging a design defect. The City also argued that the MRUS applied because Mr. Varghese was recreating when he rode his bicycle through a public park. Mr. Varghese countered that: 1) governmental immunity did not apply because he was on a public path, an exception to the governmental immunity doctrine, and he was not alleging a design defect cause of action but a failure to warn negligence cause of action where the City had notice of the unsafe condition, and 2) the MRUS did not apply because he was not recreating but biking to meet his friend for dinner. The court reserved on the

motion. The jury ultimately found the City negligent and awarded Mr. Varghese $500,206 in damages.

The City moved for judgment notwithstanding the verdict ("JNOV").[4] Mr. Varghese opposed the motion. Nine days before the hearing on the City's JNOV motion, Mr. Varghese filed a supplemental opposition memorandum, arguing for the first time that he had not fallen in the Inner Harbor Park. He explained that it had come to his attention that the City had misleadingly quoted only a portion of their Charter describing the Inner Harbor Park in their summary judgment motion, and when the Charter was read in full, it was clear that Mr. Varghese had not fallen in the Inner Harbor Park.[5]

[4] The City also moved in the alternative for remittitur to reduce the damages award pursuant to the $400,000 Maryland statutory tort claims cap. *See* Md. Code Ann., Cts. & Jud. Proc. Art. § 5-303(a)(1) (providing for a local government's liability damages cap of $400,000 per individual claim). The court granted the City's uncontested motion for remittitur.

[5] In the City's motion for summary judgment, the City had not included the highlighted portion of its charter:

> There is hereby dedicated to public park uses for the benefit of this and future generations of the City of Baltimore and the State of Maryland the portion of the City that lies along the north, west and south shores of the Inner Harbor, south of Pratt Street to the water's edge, east of Light Street to the water's edge and north of Key Highway to the water's edge, **from the World Trade Center around the shoreline of the Inner Harbor to and including Rash Field[.]**

See Baltimore City Charter, Art. I. § 9 (emphasis added). The full description has beginning and ending boundaries and delineates Inner Harbor Park from the World Trade Center around to Rash Field. Based on the full description, the crash site, which was more than two blocks from and two piers to the east of the World Trade Center where the park begins, was not in Inner Harbor Park.

The circuit court held a hearing on the City's motion for JNOV and orally ruled from the bench. The court denied the motion as to the MRUS, explaining that it was for an appellate court to decide whether the "recreating" as used in the MRUS was subjective or objective. The court denied the motion as to the City's common law immunity design defect argument, stating that it would rely on its previous reasoning at summary judgment that the City had notice of the hazardousness of the traffic control devices. As to the City's common law public park immunity argument, the court found that the public path exception did not apply, finding that Mr. Varghese did not fall on, but between, two pathways. However, because neither the City nor the court had received Mr. Varghese's supplemental motion prior to the hearing, the court requested further briefing on the governmental immunity argument. The court stated that if the accident occurred within a City park, the City was entitled to immunity and it would grant the City's motion for JNOV, but, if the accident occurred outside a City park, the City would not be entitled to immunity and it would deny the City's motion.

Both parties filed supplemental motions. In its supplemental motion, the City did not argue that the crash occurred in Inner Harbor Park but argued for the first time that the crash occurred in Pierce's Park, but even if it did not, it still had governmental immunity because the incident occurred in a "park-like area." Mr. Varghese argued that the crash did not occur in any public park or park-like area but occurred on a path that the City was required to maintain.

The circuit court held a second JNOV hearing on the parties' supplemental briefing. The court subsequently issued a written order denying the City's motion. The court

explained that the City had failed to meet its burden and prove that the crash occurred within a park – the court found that the crash did not occur within the Inner Harbor Park but was unable to find that it occurred within Pierce's Park or a park adjacent to Inner Harbor Park. The City timely appealed.

DISCUSSION

The City argues on appeal that the circuit court erred in denying its motion for judgment (or JNOV) because it was entitled to both common law governmental immunity and statutory immunity. The City argues that it was entitled to common law governmental immunity for two reasons. First, Mr. Varghese's negligence action was based on the argument that the traffic control devices were "designed" poorly, which is a governmental function protected by governmental immunity. Second, regardless of whether Mr. Varghese's negligence claim is based on a design flaw, he fell in a City park or City park-like area, and not on any path. The City argues that it was entitled to statutory immunity under the MRUS because Mr. Varghese was "recreating" by riding his bicycle in an area open to the general public free of charge. Mr. Varghese responds, arguing: 1) common law immunity does not apply because his cause of action was a notice-based negligence action, not a design defect action, and he fell on a public path, an exception to public parks governmental immunity; and 2) MRUS does not apply because he was not "recreating" when the incident occurred, within the meaning of the MRUS, but riding his bicycle to meet his friend for dinner.

Standard of Review

"The standard of review of a court's denial of a motion for JNOV is the same as the standard of review of a court's denial of a motion for judgment at the close of the evidence[.]" *Univ. of Md. Med. Sys. Corp. v. Gholston*, 203 Md. App. 321, 329, *cert. denied*, 427 Md. 65 (2012). We determine whether the decision was legally correct while reviewing the evidence and all reasonable inferences from it "in the light most favorable to the non-moving party." *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 333 (quotation marks and citation omitted), *cert. denied*, 571 U.S. 1045 (2013).

I. Does common law immunity apply?

A. Design defect action or known hazardous condition action.

Casting Mr. Varghese's complaint as one where the City had "designed (or failed to redesign) an inherently dangerous traffic control device," the City argues it is immune from suit because Maryland common law holds that "design work is a governmental function for which local governments enjoy governmental immunity." The City cites *Maxwell v. Washington Metropolitan Area Transit Authority*, 98 Md. App. 502 (1993), to support its argument. Mr. Varghese responds that his suit was grounded in notice of a hazard, not negligent design. He cites *Montgomery County v. Voorhees*, 86 Md. App. 294 (1991) to support his argument.

In a negligence action, a plaintiff must prove: "1) that the defendant was under a duty to protect the plaintiff from injury, 2) that the defendant breached that duty, 3) that the plaintiff suffered actual injury or loss, and 4) that the loss or injury proximately resulted from the defendant's breach of duty." *Rowhouses, Inc. v. Smith*, 446 Md. 611, 631 (2016)

(cleaned up). Immunity is a defense to a duty. *Fried v. Archer*, 139 Md. App. 229, 262 (2001), *aff'd*, 370 Md. 447 (2002).

Governmental immunity is a defense to negligence liability and applies to the State of Maryland, and its counties, municipal subdivisions, and local agencies. *Mayor & City Council of Balt. v. Whalen*, 395 Md. 154, 162-63 (2006). It is an affirmative defense that cannot be waived. *See* Md. Rules 2-322(b)(5), (c), 2-324; *Zilichikhis v. Montgomery Cnty.*, 223 Md. App. 158, 165, *cert. denied*, 444 Md. 641 (2015). "When a defendant asserts an affirmative defense, the defendant has taken the affirmative of an issue and therefore assumes the burden of production and the burden of persuasion as to the elements of that defense." *Bd. of Trs., Cmty. Coll. of Balt. Cnty. v. Patient First Corp.*, 444 Md. 452, 470 (2015).

Although the State possesses total immunity from tort liability, the immunity of counties "is limited to tortious conduct which occurred in the exercise of a governmental rather than a proprietary function." *Whalen*, 395 Md. at 163 (quotation marks and citations omitted). Although this distinction between governmental and proprietary functions is "sometimes illusory," the modern test of whether a function is governmental or proprietary is "whether the act performed is for the common good of all or for the special benefit or profit of the corporate entity." *Tadjer v. Montgomery Cnty.*, 300 Md. 539, 546-47 (1984). *See also Voorhees*, 86 Md. App. at 300 (stating that when the act in question "is solely for the public benefit, with no profit or emolument inuring to the municipality, and tends to benefit the public health and promote the welfare of the whole public, and has in it no

element of private interest, it is governmental in its nature" (quotation marks and citation omitted)).

The Maryland Supreme Court has held that "a municipality is acting in its governmental capacity when maintaining, controlling, and operating a public park." *Whalen*, 395 Md. at 165 (holding that the Baltimore City government was immune in a negligence action arising from its maintenance of a public park where a blind pedestrian was injured after she fell into an uncovered utility hole while walking through a public park with her guide dog). However, a local government is not immune if performing a proprietary function, such as maintaining a public sidewalk. *Mayor & City Council of Balt. v. Eagers*, 167 Md. 128, 136-38 (1934) (holding that the Baltimore City government was not immune from a tort suit arising from the death of a pedestrian walking down a walkway, who was struck by a branch from a tree being felled by a City crew twenty feet away from the walkway). When the interests in maintaining a public park and the interests of safety of a public way, such as a sidewalk or path, intersect, the latter duty is superior and a government is acting in its proprietary interest and is not immune. *Whalen*, 395 Md. at 166-67. "This is sometimes known as the 'public ways' exception to governmental immunity."[6]

[6] We recently summed up the law on the public ways exception, stating:

> The public ways exception allows a *user* of the public way to recover from the local government when the *user is injured while traveling on that public way*. . . . *See, e.g.*, *Pierce v. City of Baltimore*, 220 Md. 286, 290 (1959) ("[A] municipality has a duty to maintain streets, sidewalks, and footways, and the areas contiguous to them, in a reasonably safe condition."); *Eagers*, 167 Md. 128, 137 ("The duty to keep the street and footways of the municipality in a safe condition for public *travel*, and to prevent and remove

(continued…)

Anne Arundel Cnty. v. Fratantuono, 239 Md. App. 126, 133 (2018) (stating that a local government does not enjoy governmental immunity for failing "to maintain its streets, as well as the sidewalks, footways and the areas contiguous to them, in a reasonably safe condition" (quotation marks and citation omitted)).

We find *Voorhees*, *supra*, on point. In that case, Ms. Voorhees sued Montgomery County in negligence for personal injuries she sustained when her car was struck by another car as she was turning left at an intersection. 86 Md. App. at 297. She claimed that the County failed to repair and properly maintain the traffic light (and left turn signal) because the timing of the left arrow signage was too fast for a car to clear the intersection. *Id*. The County's designees testified that there was no indication that the light had malfunctioned.

> a nuisance affecting the *use and safety of these public ways* extends to the land immediately contiguous to these public ways" for the protection of "a traveler while walking along the street in the exercise of reasonable care."). *Compare Haley v. Mayor & City Council of Baltimore*, 211 Md. 269 (1956) (holding city liable when two pedestrians were injured while walking on steps inside a park); *Pierce*, 220 Md. 286 (holding city liable when a pedestrian was injured on a metal plate covering a drain while walking on an unpaved walkway to get to a sidewalk); *Higgins* [*v. City of Rockville*], 86 Md. App. [670,] 678 [(1991)] (holding city liable when a pedestrian was injured by a hazard while walking from a city-maintained parking lot to a city-maintained athletic field along a path created by the city); *Eagers*, 167 Md. 128 (1934) (holding city liable when a pedestrian was struck and killed by a branch while walking on a path within a park); *with Mayor & City Council of Baltimore v. State, use of Ahrens*, 168 Md. 619 (1935) (holding city immune from suit when a boy died swimming in a naturally occurring stream at Gwynns Falls Park); *Mayor & City Council of Baltimore v. Whalen*, 395 Md. 154 (2006) (holding city immune from suit when a blind pedestrian veered off the walkway and fell into an uncovered utility hole).

Creighton v. Montgomery Cnty., 254 Md. App. 248, 255-56 (2022).

Id. at 298. Previously, the County was aware that it was not possible for a car to turn left and pass completely through the intersection within the three seconds allotted for the yellow cycle without a red clearance interval. *Id*. at 299. Nonetheless, the County had decided not to install a red clearance interval. *Id*. The circuit court rendered judgment for Ms. Voorhees. *Id.* at 297.

We affirmed on appeal. We reasoned that the "planning, designing and timing of traffic lights is a governmental act," since it appears to promote the welfare of the public; however, we recognized an exception to common law immunity arising out of a county's "maintenance and control of the county roads[.]" *Id*. at 301 (quotation marks and citation omitted). We cited to *Mayor and City Council of Baltimore v. Seidel*, 44 Md. App. 465, 475-76, *cert. denied*, 287 Md. 750 (1980) where a motorist was struck by a train at a railroad crossing with no warning signs, and in the subsequent negligence litigation, an expert testified that a hazardous condition existed at the railway crossing by the lack of signage. In *Seidel*, we held that the placing of warning signs on public highways is a proprietary function, and therefore, the City was not immune from suit. *Id*. at 476. Applying the *Seidel* reasoning to the facts in *Voorhees*, we likewise found that the City was not immune where the negligence occurred on a municipal road.

Turning to the facts before us, we find no merit in the City's argument that it had immunity from suit because Mr. Varghese alleged a design defect negligence cause of action. Contrary to the City's argument, Mr. Varghese has continually maintained that the City was liable, not for a design flaw in the traffic control devices, but for the City's failure to fix or warn of a known hazard (the traffic control devices) where it had notice of the

hazard posed by the traffic control devices several months earlier. The City's failure, based on the reasoning of *Voorhees* and *Seidel*, is a proprietary function to which the City is not immune from suit.

We agree with Mr. Varghese that the case cited by the City in support of their argument, *Maxwell*, *supra*, is easily distinguishable. In *Maxwell*, the plaintiffs sued the Washington Metropolitan Area Transit Authority ("WMATA") for damages due to personal injuries they sustained after their car ran over a partially completed concrete ticket island in a parking garage in dark conditions. 98 Md. App. at 507. The WMATA was formed as a multi-state agency by an act of Congress to regulate regional transportation services for Virginia, Maryland, and D.C. *Id*. at 506. The contract in *Maxwell* was between the WMATA and Montgomery County where the former was to review the planning and design of the parking garage and the latter was to construct and operate the garage. *Id*. The plaintiffs acknowledged that the only evidence presented during litigation related to the design, not operation or maintenance, of the ticket island. *Id*. at 509. Under these circumstances, we held that WMATA (a state or federal agency) was immune from suit. *Id*. at 513, 516.

Unlike the plaintiffs in *Maxwell*, who had only alleged and provided evidence of poor design, Mr. Varghese's complaint was not a design defect negligence action but a notice-based negligent maintenance action. The City argues that the "line of cases" that hold that street and sidewalk maintenance are proprietary functions are "logically questionable preceden[ce,]" but the City has not put forward any persuasive argument that would cause us to jettison established precedence. (Footnote omitted.) *See Fratantuono*,

239 Md. App. at 133 n.1 (stating that our appellate courts have long recognized the distinction between governmental and proprietary, and even though we have questioned the logic of the distinction, we have consistently chosen to maintain the distinction). For the above reasons, we reject the City's design defect argument.

B. In a park or not in a park.

The City next argues that even if Mr. Varghese's suit is construed as a negligence cause of action and not a design flaw cause of action, it was still entitled to governmental immunity because Mr. Varghese fell in a park outside of any path. Pointing out that the circuit court at the JNOV hearing found that the crash did not occur on a public path, the City argues on appeal that Mr. Varghese should be equitably estopped from now claiming that he was not in a City park when he repeatedly conceded at trial that he fell in a City park, there was evidence that he fell in a City park, and, even if he did not fall within a City park, he fell in a park-like area to which governmental immunity attaches. Mr. Varghese argues that the circuit court did not err in denying the City's JNOV.

The doctrine of equitable estoppel is comprised of three elements: a voluntary representation by a party; that is relied on by the other party; to the other party's detriment. *Creveling v. Gov't Emps. Ins. Co.,* 376 Md. 72, 102 (2003). The party attempting to prove estoppel bears the burden of producing evidence to support its contention. *Reichs Ford Rd. Joint Venture v. State Rds. Comm'n of the State Highway Admin.*, 388 Md. 500, 524 (2005). The Maryland Supreme Court has stated:

> Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and in equity, from asserting rights which might perhaps have otherwise existed . . . as against another person,

> who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, of contract, or of remedy.

Knill v. Knill, 306 Md. 527, 534 (1986) (quotation marks and citations omitted). Whether or not an estoppel exists is a question of fact to be determined in each case. *Olde Severna Park Improvement Ass'n Inc. v. Barry*, 188 Md. App. 582, 595 (2009), *cert. denied*, 412 Md. 496 (2010).

Here, in raising the affirmative defense of governmental immunity in its motion for judgment and motion for JNOV, the City had the burden of proving by a preponderance of the evidence that the crash occurred in a park. Equitable estoppel does not apply here for the simple reason that it was the City that raised the argument that Mr. Varghese fell within a park by repeatedly focusing and asserting that the accident occurred in a City park to support its affirmative defense that governmental immunity applied. The City cites to a mere five instances in which they argue that Mr. Varghese conceded that the accident occurred in a park. We are not persuaded. The five instances comprise sentences and half-sentences and are entirely outweighed by the volumes of filings and motions in this litigation, including the transcripts of the many hearings during the course of the three-day trial. Moreover, there is no evidence that the City *relied* on any representations by Mr. Varghese that he fell within a City park. Under the circumstances, we agree with Mr. Varghese that equitable estoppel is inapplicable here, for the doctrine "only protects against detrimental reliance, not self-induced prejudice."

The City, seemingly grasping at ever elusive straws, argues "it simply does not matter whether the exact spot on Pier 5 where [Mr.] Varghese fell is within the City

parkland named Pierce's Park or if it is in part of the parklands named the Waterfront Promenade or if it is in one of the nameless pieces of City parkland that the Promenade cross[es] over and through; it is all park." Suffice it to say that the evidence and argument the City put before the circuit court that the crash occurred on park land or park-like land was insufficient to meet its burden.

For the above reasons, we find no error by the circuit court in denying the City's motion for JNOV on grounds of common law governmental immunity.[7]

II. Immunity under the MRUS.

Lastly, the City argues that even if it does not have common law governmental immunity, it was entitled to immunity under the MRUS because the City owned the land where the incident occurred, the land was open to the general public for recreational purposes, the City did not charge for use of the land, and Mr. Varghese was engaging in a recreational activity by riding a bicycle. We disagree.

[7] Although not raised by either party, we note that the jury and the circuit court came to different conclusions regarding whether Mr. Varghese was on a path. We think this reflects the different roles played by the jury and court and has no bearing on the case before us. The jury was not asked to determine if the City had governmental immunity and was immune from suit but only whether the City was negligent. The court in ruling on the City's motions for judgment and JNOV was only asked to determine if the City was immune from suit. Moreover, the court's determination at the first JNOV hearing that Mr. Varghese was not on a path (an exception to governmental immunity) occurred before it determined whether the City was immune from suit. At the second and final JNOV hearing, the court ruled that the government was not immune from suit because the crash did not occur in a park. This ruling in effect vitiated the court's earlier finding that it had not occurred on a path, because whether Mr. Varghese was on a path or not was irrelevant once the court determined that the crash did not occur in a park. In other words, whether "the exception to the rule" applied became irrelevant once it was determined that "the rule" did not apply.

The MRUS limits liability of property owners (including governmental entities) when they permit persons to enter their land for recreational purposes. Specifically, it provides that, except for willful or malicious failure to warn against a dangerous condition:

> an owner of land who either directly or indirectly invites or permits without charge persons to use the property for any recreational or educational purpose . . . does not by this action:
>
> (1) Extend any assurance that the premises are safe for any purpose;
> (2) Confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed; or
> 3) Assume responsibility for or incur liability as a result of any injury to the person or property caused by an act of omission of the person.

Nat. Res. § 5-1104. The statute defines "lands" that are immune from liability to include "roads, paths, [and] trails," and the statute defines "recreational purpose" as "any recreational pursuit." *See* Nat. Res. § 5-1101(d)(1), and § 5-1101(g), respectively.

Our recent decision of *Mayor and City Council of Baltimore v. Wallace*, 260 Md. App. 388, *cert. granted*, 487 Md. 213 (2024) is instructive. In that case, Ms. Wallace sustained injury while riding her bicycle on the Promenade in the Inner Harbor Park on her way home from work when her wheel became stuck between a gap between a bulkhead and the red brick pavers. *Id*. at 392. She filed a complaint in negligence, and the City filed a motion for summary judgment, arguing that it was entitled to common law immunity and immunity under the MRUS. *Id*. at 393. The circuit court denied the City's motion, holding that common law immunity did not apply because Ms. Wallace was on a thoroughfare owned by the City, who encouraged bike riders to use it as reflected in its City's Bicycle Master Plan. *Id*. at 394. The court also held that the MRUS did not apply because Ms.

Wallace was commuting home from work on her bike, and even if she enjoyed bike riding, she was not using the land "for" recreational purposes. *Id*. at 393. After a jury found the City negligent, the City filed a motion for JNOV asserting that it was entitled to immunity under the MRUS. *Id*. at 398. The court denied the motion for the reasons stated in its denial of the City's motion for summary judgment. *Id*.

The City appealed, arguing that it was entitled to immunity under the MRUS.[8] *Id*. at 406. We affirmed on appeal. We discussed the enactment of the MRUS in 1966 and its subsequent legislative reiterations and history. *Id*. at 399-401. We discussed the common law governmental immunity regarding parks. *Id*. at 401-02. We then addressed the ultimate question: "[W]hy did the General Assembly extend immunity to local governments under the MRUS if they already had immunity under the common law?" *Id*. at 414. Based on the legislative history from 2000, we found it clear that the MRUS extended immunity to local governments "to serve as an alternative source of immunity for local governments, *if protections under the common law were to no longer exist in the future*." *Id*. at 415 (emphasis added).

Although the circuit court had found the MRUS inapplicable because Ms. Wallace was not "subjectively" engaged in recreating when the incident occurred but was instead commuting home from work, we affirmed the circuit court's ruling on the grounds that the MRUS did not abrogate common law liability for an incident that occurred on a public path. *Id*. at 415-16. *See also Creighton*, 254 Md. App. at 253 ("Our review is not limited

[8] Notably, the City in *Wallace* did not raise governmental immunity on appeal. *Id*. at 402 n.2.

to the reasons given by the trial court or the reasons argued by the parties, and we may affirm or reverse on any ground shown by the record." (citing *Parks v. Alpharma, Inc.*, 421 Md. 59, 65 (2011))). Because we agreed with the circuit court's conclusion that the MRUS was inapplicable, we did not examine whether Ms. Wallace was using the property for recreational purposes. *Wallace*, 260 Md. App. at 416.

The reasoning of *Wallace* applies to the case before us. As we found in *Wallace*, the MRUS was not intended to extend immunity to local governments beyond the common law. Although the circuit court ruled at the first JNOV hearing that the MRUS did not apply because Mr. Varghese was not recreating within the meaning of the statute, at the second JNOV hearing, the circuit court ruled that common law governmental immunity did not apply because it could not determine if the crash occurred in a public park. If common law governmental immunity does not apply because the City failed to prove that the crash occurred in a park, based on the reasoning in *Wallace*, we will not extend governmental immunity under the MRUS. As in *Wallace*, because we are affirming the circuit court's ruling that the MRUS was not applicable on different grounds than those relied on by the circuit court, we need not determine whether Mr. Varghese was "recreating" under the MRUS.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.


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