Circuit Court for Baltimore County
Case No.: C-03-CV-23-001680

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1856

September Term, 2023

ANDREW RATHMELL

v.

WYATT JAMES SMITH

Wells, C.J.
Albright,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Hotten, J.

Filed: October 21, 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).

Appellant, Andrew Rathmell, appeals the grant by the Circuit Court for Baltimore County of a motion to dismiss in favor of appellee, Wyatt James Smith. Rathmell presents three questions for this Court's review,[1] which we have consolidated and rephrased, as follows:

1. Did the circuit court err in dismissing Rathmell's complaint on the ground that it was barred by the Fireman's Rule?

For the reasons that follow, we affirm the circuit court's grant of the motion to dismiss.

BACKGROUND

On April 21, 2020, Rathmell, a Baltimore County police officer, and another officer responded to the scene of a report that Smith was threatening to kill his family and himself. Upon arrival, the officers separated the family members in an attempt to deescalate the situation. However, a struggle ensued as Smith grabbed his mother's arm when she attempted to show the officers a report reflecting his mental evaluations. Rathmell attempted to separate them while ordering Smith several times to release his mother. When Smith refused, Rathmell took Smith down to the floor and restrained him until he calmed down, then Rathmell released him.

[1] Rathmell presented the following questions on appeal:

1. Does the Fireman's Rule apply to bar a claim by a police officer injured by an individual whose intentional criminal acts [are] the reason for his arrival on the scene?
2. Does the Fireman's Rule apply to bar a claim by a police officer injured by the intentional acts of an individual which occur after the officer's arrival on the scene?
3. Does the Fireman's Rule apply to bar a claim by a police officer against an individual which occur after the initial period of occupational risk has passed?

On April 21, 2023, three years after the incident, Rathmell filed suit against Smith in the Circuit Court for Baltimore County alleging that he sustained injuries to his right arm during the course of the struggle, resulting in physical pain, mental anguish, permanent physical impairment, and economic loss, including, but not limited to, loss of wages and expenses for reasonable and necessary medical treatment. Rathmell alleged that the injuries were solely and proximately caused by Smith's negligence in failing to release his mother when ordered to do so, failing to obey a lawful order of a police officer, and in resisting Rathmell's attempts to get Smith to release his mother.

On August 16, 2023, Smith moved to dismiss, claiming that the Fireman's Rule barred Rathmell's claim because Rathmell was allegedly injured while trying to defuse a domestic disturbance under the scope and course of his employment as a police officer, his sole reason and purpose to be in Smith's home. On November 9, 2023, the circuit court held a hearing on the motion and found that the Fireman's Rule bars Rathmell's claim in this case. The court reasoned that Rathmell was injured during the period of anticipated occupational risk because his injury occurred during a further altercation between Smith and his mother when Rathmell attempted to restrain Smith. That same day, the circuit court entered an order granting Smith's motion to dismiss. Thereafter, Rathmell noted this timely appeal.

STANDARD OF REVIEW

We review the grant of a motion to dismiss to determine "whether the trial court was legally correct." *Hancock v. Mayor and City Council of Balt.*, 480 Md. 588, 603 (2022) (quoting *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 350 (2019)). We

do so without deference to the circuit court and "assume the truth of all relevant and material facts that are well pleaded and all inferences which can reasonably be drawn from those pleadings." *Id.* (quoting *Wheeling v. Selene Fin. LP*, 473 Md. 356, 374 (2021)). A motion to dismiss should be granted only "where the allegations presented do not state a cause of action." *Id.* (quoting *Wheeling*, 473 Md. at 374). The question of whether the Fireman's Rule applies is a question of law for the judge. *See Shastri Narayan Swaroop, Inc. v. Hart*, 158 Md. App. 63, 74 (2004).

DISCUSSION

The circuit court's ruling on the motion to dismiss in this case hinged on the applicability of the Fireman's Rule. "[T]he doctrine known as the fireman's rule generally prevents fire fighters and police officers injured in the course of their duties from recovering tort damages from those whose negligence exposed them to the risk of injury." *White v. State*, 419 Md. 265, 272 (2011); *Southland Corp. v. Griffith*, 332 Md. 704, 713 (1993).

The rationale behind the Fireman's Rule was originally based on premises liability law. *See Steinwedel v. Hilbert*, 149 Md. 121, 123–24 (1925) ("[T]he general rule of common law is that a fireman entering premises to put out fire is a licensee only, and not an invitee, and that the owner or occupant of the premises is not under any duty of care to keep his premises prepared and safe for a fireman."). However, in *Flowers v. Rock Creek Terrace Ltd. P'ship*, the Supreme Court of Maryland reversed course, finding instead that the Fireman's Rule is best explained by public policy. 308 Md. 432, 447 (1987) ("Instead of continuing to use a rationale based on the law of premises liability, we hold that, as a

matter of public policy, firemen and police officers generally cannot recover for injuries attributable to the negligence that requires their assistance."). The Court in *Flowers* further held that "[t]his public policy is based on a relationship between firemen and policemen and the public that calls on these safety officers specifically to confront certain hazards on behalf of the public." *Id.* In other words, the duties of a public safety officer's job include confronting certain hazards, and thus, the officer may not complain when injured as a result of the hazard.

Rathmell argues that the Fireman's Rule only applies to police and firemen responding to calls in which there was a negligently created risk requiring their presence at the scene, as opposed to a risk created by an intentional or criminal act. Under this argument, since Rathmell was present at the scene due to Smith's intentional and criminal acts of threatening to kill himself and his mother, Smith should not be afforded the protection of the Fireman's Rule.

Rathmell cites *Flowers* in support of his argument that the Fireman's Rule should be limited to negligently created risks. The Court in *Flowers* did use language of negligence to describe the act creating the risk.[2] However, the Court also held that the fireman's claim at issue in *Flowers* was barred pursuant to the Fireman's Rule despite the fact that there were "not allegations of negligence in the creation of the fire that originally brought the

[2] "A fireman or police officer may not recover if injured by the *negligently* created risk that was the very reason for his presence on the scene in his occupational capacity. Someone who *negligently* creates the need for a public safety officer will not be liable to a fireman or policeman for injuries caused by this *negligence*." *Flowers*, 308 Md. at 447–48 (emphasis added).

firemen to the apartment building," reasoning that "an accident involving an open elevator shaft nevertheless is within the range of the anticipated risks of firefighting." 308 Md. at 451.[3]

The Court has at other times indicated that the Fireman's Rule may apply even where the act creating the risk was an intentional or even criminal act. For example, in *Sherman v. Suburban Trust Co.*, the Supreme Court of Maryland held that a police officer's tort claims were barred by the Fireman's Rule even though the act creating the risk was the criminal act of attempting to pass a forged check. 282 Md. 238, 246 (1978). And in *Tucker v. Shoemake*, the Court found that even where the act creating the risk was a domestic dispute, the Fireman's Rule "likely would apply" if the officer had suffered some injury due to a negligent condition where the domestic dispute was or had been in progress. 354 Md. 413, 419–21 (1999). Thus, although it referred to negligently created risks when describing the applicability of the Fireman's Rule, the Court in *Flowers* did not intend to limit application of the rule to only those cases.

Rathmell also argues that his claim is not barred by the Fireman's Rule because he was injured by Smith's intentional acts. Rathmell is correct that the Fireman's Rule does not bar claims by public safety officers against intentional tortfeasors. *See State Farm Mut. Auto. Ins. Co. v. Hill*, 139 Md. App. 308, 324 (2001) ("[T]he Fireman's Rule does not bar a public safety officer's claim when the defendant intentionally causes harm."). However,

[3] *See also* Margaret Fonshell Ward, *Clearing the Smoke Around the Fireman's Rule*, 34 Md. Bar J. 48, 51 (2001) ("Injuries to police officers while responding to criminal acts are inherently 'within the anticipated risks' of their jobs, particularly since police are rarely called to respond to 'negligence.'").

Rathmell did not allege in his complaint that Smith intentionally harmed him. Rather, Rathmell alleged that his injuries were "solely and proximately caused by the negligence of Defendant Wyatt James Smith in failing to release his mother when ordered to do so, failing to obey a lawful order of a police officer and in resisting Plaintiff's attempts to get him to release his mother and to restrain him." Thus, absent any allegation of an intentional harm, this argument is irrelevant to the applicability of the Fireman's Rule.

Finally, Rathmell argues that the act causing his injuries occurred after the initial period of occupational risk had passed, rendering the Fireman's Rule inapplicable. We disagree.

Generally, "the fireman's rule should not apply 'when the fireman sustains injuries after the initial period of his anticipated occupational risk, or from perils not reasonably foreseeable as part of that risk.'" *Flowers*, 308 Md. at 448 (quoting *Aravanis v. Eisenberg*, 237 Md. 242, 252 (1965)). Both this Court and the Supreme Court of Maryland have sought to define the "initial period of anticipated occupational risk" in subsequent cases. Both courts have found that the Fireman's Rule should not apply to bar a claim when the negligence causing the officers' injuries was independent from and unrelated to the situation requiring their services as police officers. *See, e.g.*, *Tucker*, 354 Md. at 419–20 (finding Fireman's Rule did not apply when police officer was at trailer park in response to domestic dispute call and was subsequently injured after falling into manhole while walking through common area of trailer park); *Rivas v. Oxon Hill Joint Venture*, 130 Md. App. 101, 108–09 (2000) (finding Fireman's Rule did not apply where deputy sheriff slipped and fell on patch of ice while en route to serving subpoena to witness in landlord-

tenant case); *Schreiber v. Cherry Hill Constr. Co.*, 105 Md. App. 462, 475 (1995) (finding police officer's claims not barred by the Fireman's Rule when injured by passing driver while inspecting accident at negligently designed road construction site).

When an officer sustains injuries that are "directly related" to the situation requiring their presence at the scene, however, the Supreme Court of Maryland has found that the Fireman's Rule applies to bar their claims. *Hart v. Shastri Narayan Swaroop, Inc.*, 385 Md. 514, 529 (2005) (finding a fireman's claims barred where his "inability to perceive an open stairwell before him . . . was *directly related* to smoky conditions from the fire itself"); *see also White*, 419 Md. at 281 (quoting *Flowers*, 308 Md. at 447–48) (holding an officer's claim against the State for dispatcher's negligent report that shoplifting incident was armed robbery, causing him to be injured in a high-speed pursuit, was barred by the Fireman's Rule because the negligent report "'was the very reason for his presence on the scene in his occupational capacity'"); *Sherman*, 282 Md. at 246 (finding that when the officer responding to a call about a forged check struck his back on coin changing machine, injury occurred "during, and not after, the initial period of his anticipated occupational risk, and from a hazard reasonably foreseeable as a part of that risk").

Here, the act requiring Rathmell's presence at Smith's home in his law enforcement capacity was prompted by a domestic dispute between Smith and his mother.[4] Rathmell was injured while he attempted to defuse a struggle between Smith and his mother over

[4] The call for service that brought Rathmell to Smith's home was a report that Smith's brother was calling on behalf of his mother, who reported that Smith was threatening to kill his family and himself.

Smith's mental evaluations. Thus, the act causing Rathmell's presence at the scene is closely connected to his injuries, similar to the negligent police report in *White* and the forged check in *Sherman*. In other words, Rathmell "was unquestionably in the process of performing the duty for which he was ordered." *Hart*, 385 Md. at 525.

Rathmell was not injured by an unrelated or unexpected act, like a negligently maintained manhole cover or a patch of ice, while on his way to Smith's home, nor was Rathmell injured by someone other than the individual prompting his presence at the scene. Rather, he was injured at the scene of the domestic dispute, by the person whose actions initiated the call for police intervention. Rathmell was called to respond to a domestic dispute, a risk that police officers frequently confront on behalf of the public. It is foreseeable that while responding to a domestic dispute, an officer may have to restrain an individual to defuse the situation. Thus, because Rathmell was injured in the course of his occupational duties by the person who "was the very reason for his presence on the scene in his occupational capacity," *Flowers*, 308 Md. at 447–48, the Fireman's Rule bars Rathmell's claims.

We conclude that the Fireman's Rule bars Rathmell's negligence claim. The circuit court was correct in granting Smith's motion to dismiss.

ORDER OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.