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Georges v. State, 249 A.3d 1261 (R.I. 2021)

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Tort Liability. *Georges v. State*, 249 A.3d 1261 (R.I. 2021). The public duty doctrine bars negligence actions against the State for personal injuries when the conduct was a discretionary governmental action not normally performed by private individuals.

FACTS AND TRAVEL

On May 13, 2011, Yvon Georges, the plaintiff, was driving in Warwick, Rhode Island, when he ran over a pothole.¹ Instead of simply driving over it, the eighteen-inch pothole caused one wheel of the car that made contact to dislodge.² The plaintiff was injured due to this accident and was absent from work for over a month, as required, to recover.³

Plaintiff filed suit against the State.⁴ Specifically, he argued that the State was “negligent and careless” in its duty to maintain the roads.⁵ Furthermore, due to the State’s negligence, the plaintiff suffered injuries.⁶

The State’s response was to file a motion for summary judgment because the public doctrine barred the plaintiff from recovery.⁷ Plaintiff insisted the trial court consider his claim because government liability regarding potholes and their repairs was a severely unaddressed problem by the judiciary and legislature.⁸ Further, per the exception to the public duty doctrine under Rhode Island General Laws § 24-8-35, he argued that the State was liable because this activity was normally performed by private individuals.⁹ Additionally, the plaintiff argued that if repairing potholes

1. *Georges v. State*, 249 A.3d 1261, 1263 (R.I. 2021).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*; *see also* 24 R.I. GEN. LAWS § 24-8-35, Damage caused by potholes—Claims against the state (quoting in part “If any person shall incur damage to

fell within the public duty doctrine, an exception applies.¹⁰ The court granted summary judgment in favor of the State, concluding that the public duty exception was inapplicable here.¹¹ Plaintiff appealed to the Rhode Island Supreme Court.¹²

ANALYSIS AND HOLDING

The Court considered whether the public duty doctrine bars a negligence action against the state for personal injuries caused by a pothole.¹³ This Court first considered the statute, Rhode Island General Laws § 24-8-35, for authority to determine if it discussed State liability.¹⁴ The Court found references to motor vehicle damages, not to personal injury.¹⁵ Thus, the plaintiff could not prevail under a negligence theory per the statute.¹⁶

Next, the Court considered the public duty doctrine, which shields the state from tort liability arising out of discretionary governmental actions not normally performed by private individuals.¹⁷ The three applicable scenarios are limited to when: (1) the State owes a special duty to plaintiff; (2) the State participates in “egregious conduct”; or (3) the activity is normally performed by private individuals.¹⁸ Here, there was no special duty, nor was there egregious conduct; thus, the Court considered the exception in scenario three whether private individuals normally performed the activity.¹⁹ In other words, if the pothole resulted from discretionary conduct that is normally performed by private individuals, then the

his or her motor vehicle by reason of a pothole on any state highway, causeway, or bridge which damage would not have occurred without the existence of the pothole, he or she may recover from the state the amount of damages sustained up to and not more than the sum of three hundred dollars (\$300”).

10. *Georges*, 249 A.3d at 1263-64.

11. *Id.* at 1264.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 1264-65.

16. *Id.* at 1265.

17. *Id.* (“Shields the state and its political subdivisions from tort liability arising out of discretionary governmental actions that by their nature are not ordinarily performed by private persons” (quoting *Morales v. Town of Johnston*, 895 A.2d 721, 730 (R.I. 2006))).

18. *Id.* at 1265.

19. *Id.*

public duty doctrine would limit the State's liability.²⁰ Discretionary decisions require the state to allocate resources and require sufficient time to implement.²¹ Indeed, pothole repairs are a discretionary function of government, similar to roadway design, construction, and maintenance.²² Because repairing potholes requires the government to allocate sufficient resources and time, pothole repair is a discretionary governmental action, and therefore, meets the first criteria for the public duty doctrine.²³

After concluding that pothole repairs are a discretionary function of government, the Court considered whether private individuals normally repair potholes.²⁴ The Court found that private individuals may repair roadways on private property; these same private individuals do not repair public roads.²⁵ Additionally, the State was charged with an affirmative duty to maintain its roads.²⁶ As such, repairing potholes is not an activity a private individual could perform.²⁷ In sum, because repairing potholes on public roads is a discretionary governmental function and is not normally performed by private individuals, the Court held that the public duty doctrine limited the State's liability from the plaintiff's injuries, thus, affirming the trial court's decision to grant the State summary judgment.²⁸

COMMENTARY

The public duty doctrine helps shield the state from tort liability arising from discretionary governmental actions not normally performed by private individuals.²⁹ The purpose of the public duty doctrine is to encourage the effective administration of governmental actions by shielding the state from potential litigation.³⁰ If this

20. *Id.*

21. *Id.* at 1266.

22. *Id.*

23. *Id.*

24. *Id.* at 1265.

25. *Id.* at 1266; *see also* 37 R.I. GEN. LAWS § 37-5-2(a) ("The department shall maintain and construct highways, roads, freeways, bridges, and incidental structures . . .").

26. *Georges*, 249 A.3d at 1266.

27. *Id.*

28. *Id.* at 1266-67.

29. *Id.* at 1265.

30. *Id.*

were not the case, the State would not be able to function if it was held liable for any and all times a private individual was negatively affected by failure to perform government activities.³¹

Additionally, this Court needed to parse whether this action was a discretionary governmental function and is not normally performed by private individuals.³² The Court determined repairing potholes is a discretionary governmental function because it requires time and resource allocation to perform.³³ The Court also determined that private individuals do not normally repair potholes on public roads.³⁴ Private individuals are inherently incapable of repairing potholes on public roads because the State is charged with this activity.³⁵ This determination was made by precedent, statutory requirements, and this being an activity that private individuals cannot perform.³⁶

The public duty doctrine is a valuable tool for the government. Local and state governments only receive a certain amount of funding and must allocate those funds as efficiently as possible. Therefore, these discretionary decisions in the government's purview should be shielded from potential liability. Taxes could be raised for additional funding for pothole repair. Alternatively, the state or local governments could create a committee to survey the roads, document the repairs needed, and ensure the progress of the repairs in reasonable time. Since potholes continue to be a problem, the committee would need to continue to survey.

Even so, these discretionary decisions are not always protected, such as if the state owes a special duty to a plaintiff or if the state performs some egregious conduct.³⁷ Immunizing the state from non-egregious failure to perform certain functions is important because, otherwise, the "state would be unable to function if liability was imposed each time an individual was deleteriously affected by such activities."³⁸

31. *Id.* at 1266-67.

32. *Id.* at 1265.

33. *Id.* at 1266.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.* at 1265.

38. *Id.* at 1266-67 (quoting *Catone v. Medberry*, 555 A.2d 328, 333 (R.I. 1989)).

CONCLUSION

The Rhode Island Supreme Court held that discretionary governmental activities that private individuals do not normally perform fall under the public duty doctrine.

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