

[Home](#) / [Public](#) / [Amicus Section](#) / Briefs

[GTLA Home](#)

[Join GTLA](#)

[Resources](#)

[Continuing](#)

[Advertise with](#)

[Contact GTLA](#)

IN THE COURT OF APPEALS

STATE OF GEORGIA

Rosa Walker Hilson,

Appellant,

v.

State of Georgia, Department of Public Safety,

Appellee.

CASE NO. A98A1979

**AMICUS CURIAE BRIEF OF THE
GEORGIA TRIAL LAWYERS ASSOCIATION**

I. IDENTITY AND INTEREST

COMES NOW, the Georgia Trial Lawyers Association and files this Amicus Curiae Brief in accordance with Rule 25 of this Court and respectfully requests this Court to consider this Brief and reverse the ruling of the Trial Court.

The Georgia Trial Lawyers Association is a voluntary organization comprised of more than 2,000 lawyers licensed to practice law in the State of Georgia, whose clients have an interest in this Court's rulings on important issues.

Historically the Georgia Trial Lawyers Association has spoken for the interests of injured victims.

II. STATEMENT OF PERTINENT FACTS

On June 14, 1994, the Appellant, Rosa W. Hilson, a civilian, was operating a car on Georgia State Route 3 at its intersection with Georgia State Route 32 in Leesburg, Lee County, Georgia (Plaintiff's Complaint at 3, R4). State Trooper, Rufus Grace (hereinafter "Trooper") struck Appellant's car with his cruiser. The cruiser operated by Trooper on said occasion was owned by Appellee and was being operated within the scope of Trooper's employment as a Georgia State Trooper. Trooper contended he was chasing a speeder. Trooper was operating his cruiser at a speed of 65 to 70 miles per hour in a congested area. Trooper may or may not have had his emergency lights and siren operating, but in construing the pleadings on a Motion to Dismiss it should be presumed that the Trooper's lights and siren were not functioning (Pretrial Order, 6, R94). The Appellant contended the motor vehicle accident between the two vehicles and the Appellant's resulting injuries, including in excess of \$37,000.00 in medical expenses, were a direct and proximate result of Trooper's negligence (Plaintiff's Complaint, 6, R5).

III. LITIGATION BACKGROUND

The Appellant brought her lawsuit pursuant to the Georgia Tort Claims Act, O.C.G.A. § 50-21- 20, et seq. for recovery of her medical expenses and her injuries sustained when her vehicle was struck by a vehicle operated by a State Trooper within the course and scope of the Trooper's employment by the Appellee, the State of Georgia, Department of Public Safety.

The Appellee filed a motion to dismiss for failure to state a claim pursuant to O.C.G.A. § 9-11-12 (b)(6) which was granted by the Trial Court based solely upon the Trial Court's interpretation of O.C.G.A. § 50-21-24 (6) relating to exemptions to the waiver of sovereign immunity under the Georgia Tort Claims Act.

IV. ARGUMENT AND CITATION OF AUTHORITY

A. The Trial Court's interpretation of the exception O.C.G.A. § 50-21-24 (6), "method of providing law enforcement," is incorrect.

The Attorney General's Office in Appellee's Brief wrote on page 17:

Conclusion. The trial court's dismissal of Plaintiff's claims based on O.C.G.A. § 50-21-24 (6), the "method of providing law enforcement exception" to the State's waiver of sovereign immunity was correct and should be affirmed.

When the General Assembly wrote the Georgia Tort Claims Act it defined certain terms as used in the Act. It defined the terms of loss, occurrence, person and state. No where did it define the term "method".

The Georgia Supreme Court in the case of *Risser vs. City of Thomasville, et al.* 248 Ga. 866 (1982) gave us helpful guidance in our case. In the *Risser* case, the Georgia Supreme Court used a dictionary to define a word whose meaning was not defined in the law.

Random House Webster's College Dictionary of the English Language defines "method" as, "a procedure, technique, or planned way of doing something". It further explains that "method implies a fixed procedure usually following a logical and systematic plan."

An example of a "method" of providing law enforcement is the procedure used by the Georgia State Crime Lab in analyzing blood samples to detect illegal drugs or alcohol. In the event that a citizen suffered a loss because these blood testing procedures were defective, the State of Georgia would have sovereign immunity for this law enforcement methodology.

Another method of law enforcement would include the methodology of categorizing fingerprints for use in criminal investigations. In the event the fingerprint methodology was defective, the State of Georgia would have sovereign immunity for this methodology of law enforcement.

B. Operating a motor vehicle is a form of transportation and not a method of providing law enforcement.

Civilians as well as police operate motor vehicles on the road. Teenagers can operate motor vehicles on the road starting at the age of 16 in the State of Georgia.

The Georgia General Assembly did intend to exclude the operation of a motor vehicle in its definition of a method of law enforcement. Operating a motor vehicle is done by civilians in everyday life. It is not a methodology that is exclusive to the domain of law enforcement or policing.

Other forms of transportation in addition to operating a motor vehicle include walking, jogging, and running.

When a police officer walks on the sidewalks of the City of Atlanta, Georgia, it would be absurd to label his act of walking, which is a form of transportation, as a method of law enforcement. Walking is a form of locomotion to transport the police officer from Point A to Point B and not a method of law enforcement.

To call walking a method of law enforcement would offend the ordinary thinking of citizens.

Simply because a State Trooper uses a form of transportation while in the course of his employment does not mean

that this form of transportation is a method of law enforcement.

C. If the Georgia General Assembly had intended the operation of motor vehicles to be one of the twelve exceptions to the waiver of sovereign immunity, it would have written such specific language in an exception in O.C.G.A. § 50-21- 24.

The General Assembly in O.C.G.A. § 50-21-24 lists twelve exceptions to the wavier of sovereign immunity. If the General Assembly had intended for law enforcement officers to have blanket sovereign immunity when operating motor vehicles, the General Assembly would have written exception number 13 to read: "The State shall have no liability for losses resulting from:... (13) The operation of a motor vehicle by law enforcement or police."

The fact is the Georgia General Assembly intended to waive sovereign immunity for the operation of motor vehicles.

The Georgia Civil Justice Foundation financed a study of tort lawsuits in the State of Georgia. Four counties were selected in the State of Georgia that represented a cross section of urban, suburban, and rural Georgia. The study was a detailed examination of court records to offer a fact based profile of tort litigation in Georgia.

The Georgia Civil Justice Foundation research report was conducted by Professor Thomas A. Eaton, J.D. of the University of Georgia Law School and Susette Talarico, Ph.D. of the University of Georgia. They wrote an article in the Georgia Law Review, volume 30, number 3, Spring 1996. In that article it stated that 69% of tort litigation in the Georgia study involved motor vehicle accidents. Ga. L. Rev. volume 30, number 3, Spring 1996, page 652. In other words, the vast majority of tort cases are the result of motor vehicle accidents, not medical malpractice or product liability.

If the General Assembly intended to provide blanket sovereign immunity for this most common type of tort, it would have done so explicitly.

The case of Hinton vs. State of Georgia , 24 Ga. App. 49 (1996) is helpful in our case. The Georgia Court of Appeals in Hinton wrote:

If the General Assembly intended to require the State to plead essential facts, it simply could have stated, ... that the State is required to set forth 'all essential facts supporting each assertion.' In the absence of such express requirement, we conclude that O.C.G.A. § 16-13-49 (d)(1) does not require the state to plead essential facts... (My underlining for emphasis)

In our case the General Assembly did not specifically list an exception for law enforcement when operating motor vehicles. No such exception to sovereign immunity should be grafted into the law.

If the Georgia General Assembly had intended to include such a broad and sweeping exception it would have done so. Neither was there any exception for operating a motor vehicle while in pursuit of an alleged criminal. No such specific exception to sovereign immunity was specifically stated as one of the twelve exceptions.

D. Granting sovereign immunity to the operation of motor vehicles under this exception will gut the Georgia Tort Claims Act.

The Attorney General's Office wants this Court to interpret the exception language so broadly as to make the exception swallow the rule.

The decision of a State Trooper to take a left turn from a major highway to a side road should not be considered a method of law enforcement. The State Trooper's decision to go 65 miles per hour, rather than 55 miles per hour, is not a method of law enforcement. The State Trooper's decision to apply his brake to reduce his speed from 65 miles per hour to 45 miles per hour is not a method of providing law enforcement.

Those activities described above are simply the acts of a driver of a car. In our case a motor vehicle owned by the State of Georgia.

If this Court allows "method" to include any act or motion that State Troopers do while on duty, whether it is walking, running, jogging, talking, looking, riding a bicycle, driving a car, then State Troopers will have blanket

immunity for any activity they do while on duty.

The Georgia General Assembly did not intend to prevent its citizens from receiving justice when they are the victims of motor vehicle accidents caused by State Government employees.

E. Since "operating a motor vehicle" was omitted from the language of the 12 exceptions to the waiver of sovereign immunity, the General Assembly intended for it to be excluded.

The Georgia Supreme Court case of Morton vs. Bell, et al., 264 Ga. 832 (1995) is helpful in our case. In that case the issue was the definition of "equipment". The Georgia Supreme Court used the Venerable Principle of Statutory Construction "expressum facit cessare tacitum", which means that, "if some things (of many) are expressly mentioned, the inference is stronger that those omitted are intended to be excluded, than if none at all had been mentioned." Morton at page 104.

This rule of statutory construction applies in our case. The Georgia General Assembly could have written an additional thirteenth exception to the waiver of sovereign immunity. This thirteenth exception could have specifically stated "the operation of motor vehicles by law enforcement".

No such specific thirteenth exception covering the operation of motor vehicles by law enforcement exists.

It was not the intention, nor the desire of the General Assembly to leave its citizens without recourse when they are injured by negligent operators of motor vehicles owned by the State of Georgia.

F. The policy of the State of Georgia as enunciated in the Georgia Tort Claims Act does not support the ruling of the Trial Court.

The Georgia Tort Claims Act is an expression of the public policy by the Georgia General Assembly contrary to the ruling of the trial court.

O.C.G.A. § 50-21-21 reads in part:

The General Assembly recognizes the inherently unfair and inequitable results which occur in the strict application of the traditional doctrine of sovereign immunity.

This clear expression of a legislative intent is totally contrary to a wholesale broad exemption of any particular class of State employees solely upon the doctrine of sovereign immunity. The General Assembly did not mean to create a loophole by which State Troopers could escape accountability for operating motor vehicles.

The Georgia Constitution, Article I, Section 1, Paragraph 2 states in pertinent part:

Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied equal protection of a loss. (My underlining for emphasis)

Protection of persons and property is more important than catching a speed violator. Appellant's person and property were injured in this case. The State of Georgia has a paramount duty to protect her person and her property. One way of protecting the persons and property is to hold negligent operators of motor vehicles accountable when they damage others.

An interpretation of the Georgia Tort Claims Act that would eliminate tort responsibility laws for the operating of State vehicles would deny citizens their constitutional right of protection of persons and property.

G. Unfair double standard for financial accountability in the operating of motor vehicles.

In the State of Georgia private citizens and private corporations are financially accountable when they are negligent and their negligence causes injuries to others when operating motor vehicles on the roads. This is a basic concept of responsibility.

When the State Government puts motor vehicles on the road in the form of cars, trucks, and buses, it is an unfair standard to have state owned vehicles exempt from accountability, whereas private citizens and private corporations are financially accountable for their torts.

Private citizens lose respect for the government when the government enforces laws that exempt the government, but apply to private citizens.

H. Sovereign immunity for operating motor vehicles by the State would perpetuate an injustice and is counter intuitive to any ordinary person's sense of justice.

The Supreme Court of North Dakota in the case of *Bulman vs. Hulstrand Construction Co., Inc. and the State of North Dakota, et al.*, 521 N.W. 2d, 632 (1994) wrote an excellent commentary on sovereign immunity in modern America. In that case the Plaintiff's husband was killed in an automobile accident at a road construction site in North Dakota. Plaintiff sued the State and Hulstrand Construction Company. The Plaintiff asserted that sovereign immunity for tort actions against the state should be judicially abolished. The State responded that Article I, paragraph 9 of the North Dakota Constitution authorizes only the legislature to modify or waive the State's sovereign immunity and, because the Legislature had not done so for torts, the District Court granted summary judgment dismissal of Bulman's action.

The Supreme Court of North Dakota in *Bulman* wrote at page 638:

Historically, the doctrine of sovereign immunity had been justified on the grounds that the king could do no wrong, the diversion of funds required for other governmental purposes could bankrupt the state and retard its growth, the State could perform its duties more efficiently and effectively if it were not faced with the threat of a floodgate of action involving tort liability, and it was more expedient for an individual to suffer than for society to be inconvenienced. ... Whatever justifications initially existed for sovereign immunity, they are not longer valid in today's society. Few principles of modern law have been so uniformly and soundly criticized. ... Sovereign immunity from tort liability..., perpetuates injustice by barring recovery for tortious conduct merely because of the status of the wrongdoer. Sovereign immunity contradicts the essence of tort law that liability follows negligence and that individuals and corporations are responsible for the negligence of their agents and employees acting in the course of their employment. We do not believe that it requires laborious analysis to assert that the harshness and inequity of the doctrine of sovereign immunity are counter intuitive to any ordinary person's sense of justice. It is sufficient to comment that, even under the earliest common law of England, sovereign immunity did not produce the harsh results it does today and only rarely did it completely deny relief. We are aware of no persuasive public policy reasons to continue a constitutional interpretation that condones an absolute bar to tort liability. (My underlining for emphasis)

The North Dakota Supreme Court in *Bulman* wrote at page 639 that:

*We conclude that the State's sovereign immunity for tort liability is outdated and is no longer warranted. We expressly overrule our prior cases sustaining that obsolete doctrine, and we join those states that have judicially abolished it. (See *Stone vs. Arizona Highway Commission*, 93 Ariz. 384, 381 P.2d 107 (1963); *Muskopf vs. Corning Hospital District*, 55 Cal.2d 211, 11 Cal.Rptr. 89, 359 P.2d 457 (1961); *Evans vs. Board of County Commissioners*, 174 Col. 97, 482 P.2d 968 (1971); *Smith vs. State*, 93 Idaho 795, 473 P.2d 937 (1970); *Molitor vs. Kaneland Community Unit District No.302*, 18 Ill.2d 11, 163 N.E.2d 89 (1959), cert. denied, 362 U.S. 968, 80 S.Ct. 955, 4 L.Ed.2d 900 (1960); *Perkins vs. State*, 252 Ind. 549, 251 N.E.2d 30 (1969); *Board of Commissioners of Port of New Orleans vs. Splendour S. & E. Co.*, 273 So.2d 19 (La.1973); *Nieting vs. Blondell*, 306 Minn. 122, 235 N.W.2d 597 (1975); *Pruett vs. City of Rosedale*, 421 So.2d 1046 (Miss.1982); *Jones vs. State Highway Commission*, 557 S.W.2d 225 (Mo.1977); *Willis vs. Department of Conservation & Economic Development*, 55 N.J. 534, 264 A.2d 34 (1970); *Hicks vs. State*, 88 N.M. 588, 544 P.2d 1153 (1975); *Vanderpool vs. State*, 672 P.2d 1153 (Okla.1983); *Mayle vs. Pennsylvania Department of Highways*, 479 Pa. 384, 388 A.2d 709 (1978); *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741(1985).)*

The North Dakota Supreme Court's decision is persuasive legal authority for the proposition that sovereign immunity perpetuates injustice by barring recovery for tortious conduct merely because of the status of the wrongdoer. Few principles of modern laws have been so uniformly and soundly criticized. Georgia law should be construed to give citizens justice under tort law.

V. CONCLUSION

Operating a motor vehicle by a State Trooper on the roads of Georgia is not the type of method of law enforcement that the Georgia General Assembly intended or that the Judiciary of Georgia should permit to have the shield of sovereign immunity. To grant the State immunity in operating motor vehicles would do a great injustice to the citizens who must share the roads of Georgia with motor vehicles driven by State employees.

The Trial Court's interpretation of the Georgia Tort Claims Act exception is contrary to the public policy of this State and should be reversed and the case remanded to the trial court to be decided on the merits of tort law that apply to all citizens.

This ___ day of _____, 1998.

Respectfully submitted:
/s/ MATTHEW C. FLOURNOY

Web Development by:

[Terms of Use](#)

© Copyright 2002. All Rights Reserved.
Georgia Trial Lawyers Association
Website Mail: web@gtla.org