What's Good for the Goose Is Good for the Government

BY ANDREW J. NOEL

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Sterry v. Minnesota Department of Corrections, 8 N.W.3d 224 (Minn. 2024) places Minnesota governmental employers on the same footing as private employers for the purposes of vicarious liability. The State, cities, and counties fought against the result. But the Minnesota Supreme Court's recent decision means victims of intentional torts by governmental employers will not be uncompensated simply because of the brand of harm.

Sterry addressed Minnesota law. There is a large body of federal law analyzing employer liability for constitutional torts, commonly known as *Monell* claims. A brief look at federal law helps set the stage for why state law may come into play.

42 U.S.C. § 1983 is the federal vehicle through which persons vindicate constitutional rights against governmental actors. *Albright v. Oliver*, 510 U.S 266, 271 (1994). The statute provides, in pertinent part:

> Every *person* who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, *subjects, or causes to be subjected*, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]

42 U.S.C. § 1983 (emphases added). Because the statute refers to a "person" committing a deprivation of rights, debate arose whether a *municipality* could be liable for a constitutional violation under Section 1983. The United States Supreme Court answered this question in the affirmative in 1978, holding that a municipality is in fact a "person" subject to suit under the statute. *Monell v. Dept. of Soc. Svcs.*, 436 U.S. 658 at 690-91 (1978).

The unconstitutional act of a municipal employee cannot be foisted upon the municipality under *Monell* "solely on the basis of the existence of an employer-employee relationship." *Id.* at 692. In other words, a municipality will not be liable for a constitutional violation on the basis of *respondeat superior*. Id. at 693. Rather, as a "person" under Section 1983, a municipality is legally responsible only for its *own* conduct – or in the words of the statute, the municipality itself must "subject" a plaintiff, or "cause [her] to be subjected," to a deprivation of rights. *E.g., City of Canton v. Harris*, 489 U.S. 378, 385 (1989) ("[A] municipality can be found liable under § 1983 only where the municipality *itself* causes the constitutional violation at issue.")

Monell claims typically require extensive discovery to meet the elements of proof. Section 1983 claims against individual state actors are difficult enough in the land of qualified immunity. See Karen M. Blum, *Qualified Immunity: Time to Change the Message*, 93 Notre Dame L. Rev. 1187 (2018) (arguing that qualified immunity has prevented the development of the law, provided too much protection to governmental officials, and added more complexity to civil rights litigation). Proving a *Monell* claim against a

municipality puts even more burden and expense on the plaintiff.

This brings us to Minnesota state law. It provides another option for plaintiffs against municipalities albeit one with inferior remedies like damage caps and its own set of immunities. But, unlike Section 1983 and *Monell*, Minnesota law allows for vicarious governmental liability in certain situations.

In 1975, Minnesota abolished sovereign immunity for common law tort claims, recognizing that it was "an exception" to the fundamental concept "that liability follows tortious conduct," and there was no reason to make the exception. *Nieting v. Blondell*, 235 N.W.2d 597, 601 (Minn. 1975). The old doctrine was "associated with the maxim that 'the King can do no wrong.'" *Id.* at 600. Over a decade later, the Minnesota Supreme Court reflected on the change: "[P]rior to *Nieting* and the legislation governing tort claims against the state, the general rule was immunity with limited exceptions of liability. After *Nieting*, however, the general rule is now liability . . . with limited exceptions of immunity." *ß*, 422 N.W.2d 713, 718 (Minn. 1988).

There are some oft-cited cases involving private employers that are found in the recent *Sterry* opinion. *Lange v. Nat'l Biscuit Co.*, 211 N.W.2d 783 (Minn. 1973) broke some early ground. In *Lange*, the Minnesota Supreme Court held that an employer is liable for a physical assault by its employee when "the source of the attack is related to the duties of the employee and the assault occurs within work-related limits of time and place." *Id.* at 784.

Fahrendorff ex rel. Fahrendorff v. N. Homes, Inc., 597 N.W.2d 905 (Minn. 1999) added important considerations to vicarious liability. North Homes, Inc. hired a program counselor to supervise minors in a crisis shelter. *Id.* at 907. One of the counselors, labeled a "group home parent," sexually assaulted a 15-year-old girl while she was in North Homes's custody. *Id.* at 908. The Minnesota Supreme Court allowed the vicarious liability claim to proceed against North Homes for the counselor's criminal sexual assault. *Fahrendorff* held that there was a material question of fact as to whether the wrongful acts were foreseeable and connected with acts otherwise within the counselor's scope of employment. *Id.* at 913. The fact that the underlying conduct was criminal in nature did not preclude vicarious liability under Minnesota common law. *Id.*

Sterry implicates the Minnesota State Tort Claims Act ("MSTCA"). But its outcome will have a parallel effect of Minnesota cities and counties, which are covered by the Municipal Tort Claims Act ("MTCA").

The underlying conduct in *Sterry* resulted in criminal charges against the individual tortfeasor. An inmate at Minnesota Correctional Facility-Moose Lake, Nicholas Sterry, alleged that he was sexually harassed and assaulted by Correctional Officer Ashley Youngberg. *Sterry*, 8 N.W.3d at 229. The district court granted the Department of Correction's ("DOC") motion to dismiss and held that Sterry did not state a vicarious liability claim. The issue before the Minnesota Supreme Court was under what circumstances a state employer is vicariously liable for an intentional tort under the MSTCA. *Id.* The Minnesota Court of Appeals previously called it an issue of first impression. *Sterry v. Minnesota Department of Corrections*, 986 N.W.2d 715, 722 (Minn. Ct. App. 2023).

Earlier, the *Sterry* district court reasoned: "Although Officer Youngberg may have abused her authority as a correctional officer, her doing so was not part of her duty as a DOC employee and it certainly was not a lawful task performed at the behest of the DOC." *Id.* at 720. The problem there is, in many instances, tortious—especially illegal—conduct by a governmental employee will not be "performed at the behest" of the officer's employer. The Court of Appeals reversed in 2023, and the Minnesota Supreme Court affirmed that opinion in 2024.

At oral argument before the Minnesota Supreme Court, Justices questioned both sides on law and policy considerations. *Sterry* has plenty of both as evidenced by the fact that multiple amicus briefs were filed, including one by the Minnesota Association for Justice. A leading policy argument advanced by the DOC focused on taxpayer dollars. It contrasted a private employer's ability to insure against risk and adapt to the market versus a public employer's obligation to provide goods and services with limited resources. The

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DOC warned that allegations akin to criminal conduct should not result in vicarious liability. Mr. Sterry countered by pointing out that the MSTCA was intended to compensate individuals injured by public officials. Mr. Sterry argued that reversal of the Court of Appeals' decision would leave him without a recovery simply because he suffered a particularly egregious tort.

The Minnesota Supreme Court did not address these policy arguments in its analysis. Rather, it concluded the statutory language was unambiguous. *Id.* at 235. The magic language in the MSTCA requires an employee to be acting within the "scope of her office or employment" when the tortious conduct occurred for vicarious liability to attach. Sterry, 8 N.W.3d at 230. That phrase is statutorily defined as containing two parts: (1) "acting on behalf of the state;" and (2) "in the performance of duties or tasks lawfully assigned by competent authority." *Id.* at 230-31. Officer Youngberg's conduct was undisputedly "on behalf of the state." *Id.* at 231.

The State argued the second part requires the tortious act to be lawfully assigned by competent authority. *Id.* The Court rejected that argument and stated the only language modified by "lawfully assigned by competent authority" is the preceding phrase "the performance of duties or tasks"—not the tortious conduct described elsewhere in the MSTCA. *Id.* Ultimately, so long as the employee was performing duties or tasks lawfully assigned when the tortious conduct occurred the second part of the test is satisfied. *Id.* Nor did the nature of Officer Youngberg's conduct bother the Court because common law holds that intentional conduct can be attributed to the employer if it is related to the duties of the employee and occurs within work related limits of time and place. *Id.* at 232. This well-established principle led the State to pivot and argue that the common law standard for vicarious liability did not apply. *Id.* But this fell flat too. *Id.* at 232-33.

The Court held that Mr. Sterry's complaint adequately stated a vicarious liability claim against the Department of Corrections by satisfying this two-part test: (1) the alleged conduct was related to the duties of the employee; and (2) occurred within work-related limits of time and place. *Id.* at 234. There are safeguards built into the first prong to ensure that not all conduct by employees is imputed to the employer. Specifically, it raises "a question of fact whether the employee's acts were foreseeable, related to, and connected with acts otherwise within the scope" of employment. *Id.* (citing *Fahrendorff*, 597 N.W.2d at 911).

There is no doubt that the opinion will shape the future of vicarious liability for public employers and victims of their employees' tortious conduct. *Sterry's* holding will benefit our clients and it is consistent with Minnesota's strong interest in compensating tort victims. *See Jepson v. General Cas. Co. of Wisconsin*, 513 N.W.2d 467, 472 (Minn. 1994) (stating as part of choice of law analysis that Minnesota has even refused to apply its own state law when the law of another state would better compensate a tort victim).