

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: February 25, 2025)

TRACY L. CAMPBELL and
COURTNEY J. CAMPBELL,
Individually and as Co-Personal
Representatives of the ESTATE OF
DAVID W. CAMPBELL; GAIL M.
CAMPBELL, Individually; DAVID J.
CAMPBELL, Individually; and
TIMOTHY J. CAMPBELL, Individually

v.

C.A. No. PC-2021-02604

CARDI CORPORATION; DEMCO LLC;
ARDEN ENGINEERING CONSTRUCTORS,
LLC; AETNA BRIDGE COMPANY; THE
STATE OF RHODE ISLAND;
WILLIAM E. LAURIE, Individually;
HASSIB T. MAWAD, Individually;
FERNANDO PANNOZZO, JR., Individually;
R.A. CATALDO & ASSOCIATES, INC.; and
JACOB CAVALLARO, Individually

DECISION

LICHT, J. Defendants William E. Laurie, Fernando Pannozzo, and Jacob Cavallaro (collectively, the State Employees) ask this Court to certify and substitute the State of Rhode Island (the State) for the State Employees pursuant to G.L. 1956 § 9-31-12(b). The State Employees argue that certification and substitution are proper as the Rhode Island Attorney General, in making the decision to defend the State Employees pursuant to §§ 9-31-8 and 9-31-9, already found that the State Employees acted within the scope of their employment when engaging in the complained of conduct without any indication of actual fraud, willful misconduct, or actual malice. However, Plaintiffs argue that the Attorney General’s decision to represent the State Employees does not bind the court when it independently decides whether substitution and certification is proper

pursuant to § 9-31-12(b). Plaintiffs contend that the Court should deny certification and substitution as the relevant facts indicate that the State Employees acted outside the scope of their employment by engaging in willful misconduct. For the reasons stated herein, this Court denies the State Employees' motion to certify and substitute without prejudice.

I

Facts and Travel

Plaintiffs the Estate of David W. Campbell, Tracy L. Campbell, Courtney J. Campbell, Gail M. Campbell, David J. Campbell, and Timothy J. Campbell (collectively, Plaintiffs) bring this wrongful death action in connection to the death of David W. Campbell (Mr. Campbell) during the late evening or early morning hours of September 3, 2020. (Defs.' Mem. in Supp. Mot. to Certify and Substitute (Defs.' Mem.) 3-4.) Specifically, Mr. Campbell was driving home from Twin River Casino when he inadvertently drove into the entrance of the site of a bridge replacement and highway construction project on Route 146-N in North Smithfield (the Farnum Pike Project). *Id.* Mr. Campbell's vehicle traveled through the Farnum Pike Project and off the highway embankment, resulting in his vehicle traveling off the highway and landing on the street below. *Id.* Mr. Campbell died upon impact. *Id.*

The Farnum Pike Project was commissioned by the Rhode Island Department of Transportation (RIDOT) in 2018. *Id.* at 3. In February 2018, RIDOT issued a request for proposals to work on the Farnum Pike Project, resulting in Cardi Corporation (Cardi) being awarded the contract in January 2019. *Id.* Cardi's responsibilities included designing and building the bridges, developing a Transportation Management Plan (the TMP), developing a Temporary Traffic Control Plan (the TTC), and installing/maintaining all required traffic control devices in accordance with the TMP and the TTC. *Id.* Separately, RIDOT contracted with third-party

company Kapsch to design, build, operate and maintain a tolling facility on Route 146 south of the Farnum Pike Project. *Id.* Kapsch subcontracted with Aetna Bridge Company (Aetna), DEMCO, LLC (DEMCO), and Arden Engineering Constructors, LLC (Arden).¹ *Id.*

Plaintiffs' suit was brought against the State, the State Employees, Aetna, DEMCO, Arden, Cardi, R.A. Cataldo & Associates, Inc. (R.A. Cataldo), and Hassib T. Mawad (Mawad). *Id.* at 1. As to the State Employees, Plaintiffs alleged that each failed to supervise, inspect, and place the traffic control devices for the Farnum Pike Project and failed to ensure the safety of the overall construction site. *Id.* at 4. All pleading allegations have categorized Laurie, Pannozzo, and Cavallaro's respective negligence as concerning their failure to fulfill their duties as state employees. *Id.* at 5. Nonetheless, Plaintiffs have advanced negligence claims against the State Employees in their personal capacities. *Id.* at 5-6. As to Laurie, Plaintiffs' claim of negligence is predicated on his alleged failure to inspect the installed traffic plan to determine that the actual traffic control setup was in conformity with the TTC.² *Id.* at 6. As to Pannozzo, Plaintiffs' claim of negligence is predicated on his alleged failure to fulfill his duties as an engineering technician on the Farnum Pike Project.³ *Id.* at 7. As to Cavallaro, Plaintiffs' claim of negligence is predicated on his failure to know that the construction zone presented an unreasonable risk of danger to members of the traveling public.⁴ *Id.* at 7-8.

¹ The State Employees never worked on the toll project. (Defs.' Mem. 3.)

² Laurie was a RIDOT employee and the resident engineer for the Farnum Pike Project. (Defs.' Mem. 6.) The State Defendants argue that (a) Laurie was allegedly not aware that Cardi's traffic setup was noncompliant with the TTC until after the crash and (b) Laurie had neither approval change authority in the TTC nor authorization to unilaterally change the setup in the field without Cardi. *Id.*

³ Pannozzo was a RIDOT employee and an engineering technician III for the Farnum Pike Project. (Defs.' Mem. 7.) The State Defendants argue that Pannozzo was unaware that Cardi's setup did not comply with the TTC and that he was not responsible to ensure such compliance. *Id.*

⁴ Cavallaro was a RIDOT employee and an entry-level engineering technician II in construction and maintenance materials. (Defs.' Mem. 7.) The State Defendants argue that Cavallaro's job

II

Analysis

The State Employees argue that the Attorney General, in making the decision to defend the State Employees pursuant to §§ 9-31-8 and § 9-31-9, must have necessarily found that the State Employees only acted within the scope of their employment when engaging in the complained of conduct without any indication of actual fraud, willful misconduct, or actual malice. (Defs.' Mem. 8-9.) However, Plaintiffs argue that the Attorney General's decision to defend the State Employees does not bind the court when it independently decides whether substitution and certification is proper pursuant to § 9-31-12(b). (Pls.' Obj. to Defs.' Mot. to Certify and Substitute (Pls.' Obj.) 1-2, 4-9.) As such, Plaintiffs urge the Court to deny certification and substitution as they have alleged facts in this case which indicate that the State Employees acted outside the scope of their employment by engaging in willful misconduct. *Id.* at 13-28.

The statutory scheme at issue in this case is the Governmental Tort Liability Act, G.L. 1956 chapter 31 of title 9. Three sections of the Act are pertinent to the present motion. The first two sections pertain to the Attorney General's authority in opting to defend state employees. Section 9-31-8 states that, "[e]xcept as provided in § 9-31-9, the attorney general shall, upon a written request of an employee or former employee of the state of Rhode Island, defend any action brought against the state employee or former state employee, on account of an act or omission that occurred within the scope of his or her employment with the state." Section 9-31-9 outlines the specific circumstances in which the Attorney General may refuse to defend an action referred to in § 9-31-8, such as if the Attorney General determines that: (1) the act or omission was not within the scope

responsibilities only included describing the work being performed by the contractor, as well as describing the labor/equipment/material used on the project to ensure the contractor's invoices for payment could be approved by RIDOT. *Id.*

of employment or (2) the act or the failure to act was due to actual fraud, willful misconduct, or actual malice. The third section of the Act at the crux of this motion is § 9-31-12, which, in part, details when the State can be substituted for its employees. Specifically, § 9-31-12(b) provides that “[u]pon ***certification by the court*** in which the tort action against a state employee is pending that (1) the defendant employee was acting within the scope of his or her office or employment when the claim arose, and (2) the claim does not arise out of actual fraud, willful misconduct, or actual malice by the employee, any civil action or proceeding commenced upon the claim under this statute shall be deemed to be an action or proceeding brought against the state under the provisions of this title and all references thereto, and the state shall be substituted as the party defendant.” (Emphasis added.)

The essence of the State Employees’ argument is that the Attorney General, as an independent constitutional officer, has unfettered discretion to substitute the State for the State Employees. *See generally* Defs.’ Mem. To support their position, the State Employees rely on two Rhode Island Supreme Court decisions, namely *Mottola v. Cirello*, 789 A.2d 421 (R.I. 2002) and *State by & through Kilmartin v. Rhode Island Troopers Association*, 187 A.3d 1090 (R.I. 2018). However, much to the State Employees’ dismay, this Court does not read those cases as giving such unfettered discretion to the Attorney General’s Office when deciding whether to certify and substitute under § 9-31-12(b).

In *Mottola*, the Rhode Island Supreme Court reviewed a trial court’s *sua sponte* order that directed defense counsel to withdraw their appearance on behalf of a state employee and mandated that the Attorney General step in to represent the state employee instead. *Mottola*, 789 A.2d at 423-25. Ultimately, the Supreme Court held that the trial justice abused his discretion by ordering the Attorney General to do anything in the case. *Id.* at 425. The Supreme Court noted that “[i]t is

not the province of this Court, or the Superior Court, to dictate how the Attorney General elects to carry out the statutory functions of his office.” *Id.* Years later, the Supreme Court considered in *State by & through Kilmartin v. Rhode Island Troopers Association* whether the Attorney General possesses the nondelegable, nontransferable sole legal duty to determine whether a state employee is acting within the scope of his or her employment such that the state employee is entitled to defense and indemnification by the Attorney General’s Office. *Kilmartin*, 187 A.3d at 1101–04. Citing its prior holding in *Mottola*, the Supreme Court reaffirmed that the Attorney General acts within the exclusive exercise of his or her statutory authority in opting to undertake a defense and offer indemnification to a state employee under the Governmental Tort Liability Act. *Id.* at 1103. As such, neither the Supreme Court nor the Superior Court can dictate how the Attorney General carries out this function. *Id.* Rather, the courts can only review the Attorney General’s discretionary decision to defend a state employee acting within the scope of his or her employment when a state employee is denied such protections. *Id.* at 1104.

Both *Mottola* and *Kilmartin* address the Attorney General’s statutory authority to determine whether to defend and indemnify a state employee who is sued for acts undertaken within the scope of his or her employment without touching upon the distinct issue as to whether the court must afford deference to the Attorney General when electing to certify and substitute under § 9-31-12(b).⁵ Because neither case states implicitly or explicitly that any level of deference

⁵ In *Mottola v. Cirello*, 789 A.2d 421 (R.I. 2002), the Supreme Court only briefly touched upon the Attorney General’s decision to defend as it related to the court’s decision to certify and substitute by stating the following, “once the state stipulated that Cirello was acting within the scope of his employment and that the suit was not improperly motivated, the court appropriately substituted the state as the party defendant.” *Mottola*, 789 A.2d at 424. Based on this language, it is uncertain whether the plaintiff in *Mottola* objected to the Attorney General’s stipulation. However, in this case the Plaintiffs are objecting, making *Mottola* unhelpful on the decision to certify and substitute.

must be given to the Attorney General's decision to defend and/or indemnify when the court acts pursuant to § 9-31-12(b), the Court need not treat the Attorney General's decision as binding when undertaking its own decision to certify and substitute. As discussed in *Kilmartin*, the Attorney General's decision to defend and indemnify is not an unchecked power but rather is a determination subject to review by the courts upon an appeal by a state employee. *Kilmartin*, 187 A.3d at 1104. Given that the Attorney General's independent decision to defend a state employee is contestable by way of judicial review, the Court has trouble reconciling why the Court would need to treat the Attorney General as having sole discretion to determine whether the court should substitute under § 9-31-12(b). Rather, since the statute says the Court certifies, this inquiry is one that the Court must undertake. With that said, this Court in no way questions the Attorney General's decision to defend and indemnify the State Employees. However, that decision does not bind this Court when exercising its independent authority under § 9-31-12(b) to certify and substitute.

Accordingly, this Court now must independently consider whether certification and substitution are proper pursuant to § 9-31-12(b). To the Court's knowledge, there is no standard of review established by our Supreme Court for making this determination. Whether one acted within the scope of his or her employment and whether the claim against him or her arose out of "actual fraud, willful misconduct, or actual malice" requires fact finding, which is customarily the province of the jury. However, there are a few instances where a trial justice makes limited factual findings prior to trial. For example, before the financial information of a defendant must be disclosed in a case involving punitive damages, a trial judge must hold an evidentiary hearing to determine if the facts indicate that a prima facie case for punitive damages exists. See *Palmisano v. Toth*, 624 A.2d 314, 320 (R.I. 1993). Similarly, to resolve the statute of limitations in light of

the discovery rule in a malpractice case, the Supreme Court stated that a preliminary evidentiary hearing must be held before a trial judge to determine when reasonable diligence would have put a person on notice that a potential claim existed. *See Sharkey v. Prescott*, 19 A.3d 62, 67-68 (R.I. 2011). Yet, there is an important distinction between those courts conducting an evidentiary hearing and the Court doing so here. In those situations, the Supreme Court instructed the trial justice to make such limited factual findings—that has not happened yet with § 9-31-12(b). Consequently, the Court will apply the standards it uses in other cases. In other words, at this stage, the Court will examine the Third Amended Complaint to determine if it states a claim which arises out of “actual fraud, willful misconduct, or actual malice.”

The Court recently granted Plaintiffs’ motion to amend, which allowed for the submission of Plaintiffs’ Third Amended Complaint. The Third Amended Complaint is replete with allegations that each of the State Employees habitually failed to inspect the Farnum Pike Project site to ensure compliance with Phase 2 of the TTC. Third Am. Compl ¶¶ 17-38, 60-97. The Third Amended Complaint alleges that such habitual noncompliance was outside the scope of each of the State Employees’ job responsibilities and that such misconduct was grossly negligent, egregious, and willful. *Id.* ¶¶ 20, 25-26, 31-32, 37-38, 60-97. Given the aforementioned allegations in the Third Amended Complaint, the Court declines to certify and substitute the State for the State Employees because the allegations, if proven true, could support a finding by the jury that the State Employees were engaging in willful misconduct that went beyond the scope of their employment on the Farnum Pike Project site. Although the Third Amended Complaint provides sufficient allegations to justify the Court denying the motion to substitute and certify at this stage, nothing prohibits the State Employees from reseeking certification and substitution in its motion for summary judgment.

III

Conclusion

For all the reasons previously stated, the Court **DENIES** Defendants William E. Laurie, Fernando Pannozzo, and Jacob Cavallaro's motion to certify and substitute without prejudice. However, the State Employees may again move for certification and substitution in their impending motion for summary judgment.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Tracy L. Campbell, et al. v. Cardi Corporation, et al.

CASE NO: PC-2021-02604

COURT: Providence County Superior Court

DATE DECISION FILED: February 25, 2025

JUSTICE/MAGISTRATE: Licht, J.

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