IN THE

COURT OF APPEALS OF MARYLAND

September Term, 2004
No. 71

NELLY RIOS, as Parent and Next Friend of
Her Son, LUIS FERNANDO RIOS,

Appellant

v.

MONTGOMERY COUNTY, MARYLAND, et al.,

Appellees

On Writ of Certiorari to the Court of Special Appeals
On Appeal from the Circuit Court for Montgomery County, Maryland
(Patrick L. Woodward, Judge)

BRIEF OF APPELLEES

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STATEMENT OF THE CASE

Nelly Rios, on behalf of her minor child, filed suit in July 2001 against Montgomery County, Maryland, and Richard N. Footer, M. D., who provided medical services on a part-time basis at the County's health clinic.[1] (Apx. 41-46) The County filed an answer noting that Ms. Rios had not complied with the notice requirement of the Local Government Tort Claims Act (LGTCA).[2] (Apx. 48) More than one year after filing her complaint, Ms. Rios filed a motion to waive the notice requirement based on her son's status as a minor and her limited knowledge of English. (E. 1) The County opposed the motion, based on the lack of good cause for the delay between the alleged injury in December 1991 and the lawsuit filed in 2001. (E. 23-24)

The circuit court heard argument and found that Ms. Rios had not shown good cause for failing to comply with the law. The court entered an order denying the motion to waive the notice requirement and dismissing the case against the County and Dr. Footer with prejudice.[3] (E. 137) Without additional evidence, Ms. Rios filed a motion for reconsideration of whether she had shown good cause and, for the first time, challenged the constitutionality of the notice requirement in relation to her son's claim. (E. 138-145) The motion was denied without a hearing, and she appealed the denial of her motion to the Court

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[1]In three subsequent amendments, Ms. Rios added another doctor as a defendant, and then substituted that doctor's employer—a private hospital—as a defendant. The allegations against the County defendants remained the same. (R. 13, 34, 55)

[2]The LGTCA appears in Md. Code Ann., Cts. & Jud. Proc. § 5-301 et seq. (2002).

[3]The County also filed a motion to dismiss and/or for summary judgment, which the court declared to be moot once the motion to waive notice was denied. (R. 80, 81)

of Special Appeals. (E. 155) Because the hospital and the other doctor remained in the case as defendants, Ms. Rios then dismissed them without prejudice[4] and re-filed the notice of appeal. (Apx. 55-56) The intermediate appellate court reviewed the purpose of the LGTCA along with the record and determined that the circuit court did not abuse its discretion when it did not find good cause to waive the notice requirement. In addition, the Court of Special Appeals concluded that the LGTCA does not violate constitutional principles of equal protection or access to the courts. *Rios v. Montgomery County*, 157 Md. App. 462, 852 A.2d 1005 (2004).

Ms. Rios filed a petition for writ of certiorari with this Court challenging the denial of her request for a waiver of the notice requirement and again argued that the statute denied her son equal protection and access to the courts in violation of constitutional principles.[5] This Court granted the petition.

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[4]Ms. Rios filed a separate lawsuit against the hospital and the private doctor, which remains pending in the circuit court as Civil No. 250787.

[5]With every part of Ms. Rios' case reflecting adversely on diligence, the case may not be an appropriate vehicle for this Court to decide the issues raised. After not timely filing the notice of claim, and not arguing a denial of equal protection in her initial opposition to the motion to dismiss, Ms. Rios now seeks to bring the due process argument for the first time in this Court. The petition for writ of certiorari identified the constitutional issues as involving only equal protection and access to the courts, as did the motion for reconsideration filed in the circuit court, and the arguments presented to the Court of Special Appeals. (E. 141-145) *See Rios*, 157 Md. App. at 493-494, 852 A.2d at 1023.

QUESTIONS PRESENTED

I. Did the circuit court abuse its discretion when it found that Ms. Rios did not show good cause for failing to serve written notice on the County within 180 days of her son's birth?

II. Is the notice requirement mandated by the Local Government Tort Claims Act unconstitutional when applied to an injury suffered by a minor?

STATUTES, ORDINANCES, AND CONSTITUTIONAL PROVISIONS

The full text of all relevant statutes, ordinances and constitutional provisions appears in the appendix to this brief.

STATEMENT OF ADDITIONAL FACTS

Beginning in June 1991, Nelly Rios obtained prenatal care and delivery services through a program offered through the Montgomery County Health Department.[6] (Apx. 42) To do so, she had to meet certain residency requirements. She completed and signed a form that was written in Spanish to prove her residency and to request obstetrical services (prenatal and delivery) on June 12, 1991. (E. 52) The form contained at least two indicia

[6]Local health departments in other counties within the State similarly denominate themselves as that county's health department, even though they are creatures of the State. The Attorney General has recognized that the context may determine whether local health departments are state agencies for particular purposes. *See* 83 Op. Atty. Gen. 180 (1998). This combination of functions makes it unclear whether the prenatal care program and the obstetrics services involved in this case were programs or services of the County or of the State provided through the local health department. *Compare* Health-General Article *with* art. 25A, §§ 5(C), (J), (S), and (Y) (1998); Montg. Co. Code §§ 1A-201 and 2-42A (1994). *See also* Md. Ann. Code art. 88A, § 13A (1998) (State social services were combined with the County health department to create the Department of Health and Human Services in 1996).

that Ms. Rios was dealing with the Montgomery County Health Department—the words "Montgomery County Government" and the County seal appeared prominently displayed on the top of the form, and the address and telephone number for the Department of Health appeared at the bottom of the form. (E. 52, 55) She also signed a "Face Sheet" for her records on June 17, 1991, again with the words "Montgomery County" prominently displayed on the top of the form. (E. 53) During her visits to the clinic, Ms. Rios spoke to the nurses in Spanish and the nurses translated for Ms. Rios so that she could communicate with the physicians. (E. 45)

On December 31, 1991, Ms. Rios was admitted to Holy Cross Hospital to give birth to her son, Luis. (Apx. 43) Dr. Footer worked for the local health department and participated in the delivery. The complaint alleged that Luis suffered an injury to his left shoulder during labor and delivery. (Apx. 43) At no time during her pregnancy or after her son was born did Ms. Rios ask who ran the clinic or for whom the doctors and nurses worked. (E. 20, 47) Notice was not given to the County Executive until April 6, 2001, and suit was filed on July 24, 2001. (E. 14-15, 50-51; R. 1)

ARGUMENT

Nearly 10 years after the date of the claimed injury, Ms. Rios gave notice to the County. Although Ms. Rios claims that she did not know that the doctor who delivered her baby worked for the local health department, she did not exercise ordinary diligence in protecting her child's interest in this claim. She apparently never asked the nurses at the clinic who ran the clinic or which doctor attended her baby's birth. Because Ms. Rios did

not offer any plausible reason for failing to investigate the source of her son's injury so as to timely seek redress, the circuit court exercised its discretion properly and denied the request to waive notice.[7] Moreover, the notice requirement does not violate constitutional principles of equal protection and access to the courts in relation to minors. Rather, it promotes early investigation of a claim and allows a local government defendant to budget properly by setting appropriate reserves for claims, which becomes especially important for a self-insured county. Most importantly, it allows a local government to engage in high-risk services to its residents with an understanding that knowledge of claims will come quickly to allow it the opportunity to weigh cutting services against the cost of continuing them.

I. Ms. Rios did not show good cause for failing to comply with the notice requirement mandated by State law.

Nelly Rios did not serve notice of her son's claim on the County until almost 10 years after her son's birth. This delay does not satisfy the purpose of the LGTCA, nor did Ms. Rios show good cause for failure to give notice within the statutory period. When the General Assembly enacted the LGTCA and reaffirmed the notice of claim provisions, it did so in reliance on facts of an insurance crisis facing the local governments. Counties and cities were being dropped by their carriers or their insurance premiums were being raised to

[7]Ordinarily, when a motion for reconsideration is denied, appellate review "is limited to whether the trial court abused its discretion in denying the motion." *Falcinelli v. Cardascia*, 339 Md. 414, 430, 663 A.2d 1256, 1264 (1995) (citations omitted). In the present case, neither the denial of the motion to waive notice nor the motion for reconsideration became appealable final judgments until the other defendants were voluntarily dismissed. The good cause determination already is subject to the abuse of discretion standard, so little if any distinction occurs in this case.

levels often equal to the level of coverage. Since then, the case law that has developed shows that a claimant's representative must comply with the notice requirement and cannot rely solely upon the claimant's minority to postpone compliance with the statutory prerequisite. Based on the absence of any evidence to show good cause, the circuit court properly exercised its discretion when it denied both the initial request for a waiver of the notice requirement and the motion for reconsideration.

The legislative history reflects a purposeful intent to enable local governments to conduct prompt investigations and to obtain insurance coverage.

Long before the creation of the LGTCA, a notice requirement existed in State law that prohibited any action from being brought against Montgomery County for unliquidated damages unless notice was given to the County Commissioners within 90 days of the injury or damage. 1941 Md. Laws ch. 405. Over the next 30 years, the Legislature periodically amended the law until the notice requirement applied to all counties and municipal corporations. 1972 Md. Laws ch. 519. In 1972, the Legislature also expressly permitted a trial court to entertain a suit, even if notice was not given, if the plaintiff first showed good cause for omitting to give notice and the court declared that no prejudice resulted to the defendant.

Even with these provisions in place, during the late 1970's and the early 1980's, local governments began encountering difficulties obtaining adequate insurance coverage. Not only were claims increasing and higher judgments being assessed against them, but insurance companies were raising prices and, in some cases, abandoning the business of insuring

governments. (Apx. 26-36) Some insurance premiums were increasing as much as 80 % in one year. (Apx. 28) Faced with these increased expenses, local governments could impose higher taxes or reduce their services, neither of which was attractive. (Apx. 31) They began to self-insure and to look to self-insurance pools. The self-insured counties fared no better, and encountered more difficulty in providing an adequate budget to cover liability claims. (Apx. 37-40) Testimony in favor of a legislative response to the crisis emphasized the scope of the problem affecting local governments:

> Two recent events will give you some idea why [the Maryland Association of Counties] continues to support this bill before you. On the tenth, Monday two weeks ago, Washington County was informed that their insurance policy for public officials' liability would not be renewed. At the end of that week Caroline County received even worse news, their carrier for general liability and some property coverage was not renewing a relationship which had lasted for over 20 years. . . .
>
> Local governments need the protection afforded by the Local Government Tort Claims Act because we are facing a liability crisis[:] everyone wants to sue us. Our liability is only limited by the size of our tax base. Unlike corporations and persons operating in the private sector, it is just not right for us to seek the protection of bankruptcy.

Heron v. Strader, 361 Md. 258, 294, 761 A.2d 56, 75 (2000) (dissenting opinion quoting testimony before the Legislature).

To address this economic crisis, the Legislature enacted the LGTCA in 1987, which recodified the 46-year-old notice requirement, while comprehensively addressing issues of limited liability of local governments and indemnification of their employees. 1987 Md. Laws ch. 594. In this way, the statute provided "a remedy for those injured by local government officers and employees, acting without malice in the scope of their employment,

while ensuring that the financial burden of compensation is carried by the local government ultimately responsible for the public officials' acts." *Ashton v. Brown,* 339 Md. 70, 108, 660 A.2d 447, 466 (1995). This Court has repeatedly admonished that the LGTCA neither waives governmental immunity nor creates liability, but instead, obligates local governments to defend their employees and requires successful plaintiffs to execute any judgment against the local government. *Williams v. Maynard*, 359 Md. 379, 394, 754 A.2d 379, 388 (2000).

The purpose of the notice requirement is "to protect the . . . counties of the State from meretricious claimants and exaggerated claims by providing a mechanism whereby the . . . county would be apprised of its possible liability at a time when it could conduct its own investigation, i.e., while the evidence was still fresh and the recollection of the witnesses was undiminished by time, 'sufficient to ascertain the character and extent of the injury and its responsibility in connection with it.'" *Moore v. Norouzi*, 371 Md. 154, 167-168, 307 A.2d 632, 640 (2002) (quoting *Williams v. Maynard*, 359 Md. at 389-90, 754 A.2d at 385 (citations omitted)). That the Legislature did not intend to place a local government in the same position as a private tortfeasor is evident from the specific preservation of any immunity that existed prior to the enactment of the statute. Cts. & Jud. Proc. § 5-303. Rather, the notice provision gives a claimant access to government financial resources that otherwise would not exist. Coupled with other provisions of the LGTCA, the notice provision allows a local government to provide services that might not be accessible through private enterprise due to the high risk, the cost of the services, and the inability of the recipient to pay for the services. In exchange for this benefit, prompt service of notice and

principles of immunity allow a government defendant to budget properly, to set appropriate reserves, and to account for payment of claims under complex accounting rules and tax statutes.[8] The requirements and protections of the LGTCA can tip the balance in favor of offering a service that might not otherwise be available, such as obstetric services for high-risk patients.

The legislative history and the recognized purpose of the statute reflect a fundamental difference between a suit against a governmental entity and a claim against a private tortfeasor. Unlike a private individual, local governments are creatures of the State and "the Legislature may grant or deny to individuals a right of action against municipal corporations for injuries resulting from [negligence]. . . ." *Neuenschwander v. Washington Suburban Sanitary Commission*, 187 Md. 67, 76, 48 A.2d 593, 598 (1946) In light of the broad authority of the General Assembly, the Legislature could require written notice as a prerequisite to filing a suit for damages against a municipal corporation. *Id.* Having done so, failure to comply with the notice requirement or to show good cause for a waiver demands dismissal of the case. *See Neuenschwander*, 187 Md. at 81, 48 A.2d at 600.

Ms. Rios did not show any evidence that she exercised reasonable diligence in pursuing this claim.

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[8]Unlike private businesses, a local government raises revenue through a process of taxation that includes limitations on the amounts that can be raised. *See, e.g.*, Md. Code Ann., Tax-Gen'l §§ 10-103 and 10-106 (1997) (income tax); Tax-Prop. § 6-302 (2001) (property tax). Furthermore, monies raised and budgeted in a specific tax year can be diverted to other uses only in limited circumstances. Montg. Co. Charter § 309. The impact on taxes was recognized during the legislative process of enacting the LGTCA. (Apx. 31, 39)

The Legislature recognized that circumstances may exist that merit allowing a plaintiff to pursue a claim without having complied with the notice requirement of the LGTCA. The statute provides an exception to the notice prerequisite by permitting the circuit court to grant a waiver, but the court may do so only if a claimant can show *both* good cause for failing to give notice *and* that no prejudice will result to the defendant:

> Notwithstanding the other provisions of this section, unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, upon motion and for good cause shown the court may entertain the suit even though the required notice was not given.

Cts. & Jud. Proc. § 5-304(c). The appellate court will not disturb the trial court's findings as to whether good cause exists to waive the notice requirement unless the lower court has abused its discretion. *Moore*, 371 Md. at 168, 307 A.2d at 641 (citing *Heron v. Strader,* 361 Md. at 270, 761 A.2d at 62). Ordinarily, a court does not abuse its discretion unless it makes a decision that is manifestly unreasonable or based upon untenable grounds. *In Re Don Mc.*, 344 Md. 194, 201, 686 A.2d 269, 272 (1996).

Maryland courts evaluate good cause based upon "[w]hether the claimant prosecuted his claim with that degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances." *Heron,* 361 Md. at 271, 761 A.2d at 63 (quoting *Westfarm Associates v. Washington Suburban Sanitary Commission*, 66 F.3d 669, 676-677 (4th Cir. 1995), *cert. denied*, 517 U.S. 1103 (1996)). The court reviews the diligence standard in light of the goal of the LGTCA—to promote prompt investigations and evaluations of liability by local governments. This Court has recognized the discretion of

the trial court to determine good cause and has rejected the notion that a plaintiff who takes no action to investigate somehow shows good cause for failing to give notice.

Instead, this Court has acknowledged that "[t]he same acts and conduct that establishes that the purpose of the statute has been satisfied may also constitute a waiver of notice or create an estoppel." 371 Md. at 180, 807 A.2d at 648. The conduct that reflects good cause involves an affirmative action by the claimant to investigate the claim and to determine who might bear responsibility for her injury. Failure to take any action does not establish good cause for a waiver. Thus, in *Madore v. Baltimore County*, 34 Md. App. 340, 345, 367 A.2d 54, 57 (1976), a plaintiff who was in and out of the hospital for surgery during the 180-day notice period and could have contacted an attorney, but did not, failed to show good cause for failing to comply with the notice requirement. *Madore*, 34 Md. App. at 346, 367 A.2d at 58; *see Moore*, 371 Md. at 182, 807 A.2d at 649 (discussing *Madore*). Similarly, a plaintiff who did not give notice when he learned of a witness' testimony, but waited for additional information from county employees did not satisfy the good cause standard for a waiver. *Downey v. Collins*, 866 F. Supp. 887, 889-890 (D. Md. 1994) (quoting *Madore*, 34 Md. App. at 342, 367 A.2d at 57). On the other hand, in *Moore*, the plaintiffs contacted the claims administrator for the County and provided details of their respective claims to the investigative entity within 180 days of their injuries. 371 Md. at 163-164, 807 A.2d at 637-638. This Court found that contacting the claims administrator showed substantial compliance with the statute and would have shown good cause. *Id*. at 171, 807 A.2d at 642.

Even the facts presented in *Westfarm Associates Limited Partnership v. Washington Suburban Sanitary Commission*, do not support Ms. Rios' delay, but reinforce the concept that a claimant must take some action to investigate her claim. 66 F.3d at 676. In *Westfarm*, a plaintiff in an environmental contamination suit failed to give notice to the WSSC within 180 days of the injury as required by the LGTCA. The plaintiff explained to the district court that it exercised due diligence in investigating the contamination and, due to the nature of the injury, it was not possible to learn of the WSSC's involvement earlier than it did. The district court concluded that this showed good cause for failing to give notice. In addition, because WSSC had participated in discovery before it was made a party, it suffered no prejudice. On appeal, the Fourth Circuit found no abuse of discretion. *Id.* at 677.

The mere ignorance of the doctor's employment asserted by Ms. Rios does not establish good cause any more than a claimant's ignorance of the notice requirement. *Moore*, 371 Md. at 182, 307 A.2d at 649 (citing *Bibum v. Prince George's County*, 85 F.Supp. 2d 557, 565 (D. Md. 2000)); *Hargrove v. Mayor and City Council of Baltimore*, 146 Md. App. 457, 463-464, 807 A.2d 149, 153 (2002). The key fact is not whether she knew who the doctor worked for, but whether she knew of her son's injury and acted with reasonable diligence in seeking to learn the doctor's identity and for whom he worked. Unlike the claimant in *Westfarm*, Ms. Rios did nothing to investigate the circumstances of the injury to her son—she did not ask anyone who the doctor was or who he worked for, even though the nurses at the clinic spoke Spanish. (E. 45, 48) Nor did she contact an attorney to handle the

investigation or inquiry for her.[9] The plaintiff in *Westfarm*, however, filed suit against an identified business and conducted discovery that included contact with WSSC. As soon as the link to the sewer owned by WSSC became apparent, notice was given and suit was filed. 66 F.3d at 676-677. As the Fourth Circuit made clear, the nature of the injury made it reasonable that it would take time to discern that WSSC had a role in addition to the business owner and the property owner identified initially. 66 F.3d at 677.

In fact, the circumstances of the present case more closely mirror those in *Gould v. United States Department of Health and Human Services,* 905 F.2d 738 (4th Cir. 1990). In *Gould*, a spouse failed to serve the notice required under the Federal Tort Claims Act, claiming that she did not know that the doctor who treated her husband was a federal employee. The Court held that ignorance of an employment relationship did not affect the running of the notice period, especially where the spouse knew enough facts to support the elements of her claim and simply failed to check the doctor's employment status. 905 F.2d at 743.

Finally, Ms. Rios contends that her limited understanding of English showed good cause for her failure to give notice timely.[10] As elaborated by the amicus brief, the

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[9]Ms. Rios vaguely recalled that her husband may have contacted an attorney 8 months or one year after her son's birth, but her testimony did not specify further details of any contact. (E. 48) Even an attorney's ignorance of the notice requirement does not show good cause for a claimant's failure to comply with the law. *Hargrove*, 146 Md. App. at 464-465, 807 A.2d at 153.

[10]The Amici, Public Justice Center, et al., ably describe the obstacles that residents of limited English proficiency encounter in daily life, including accessing the Maryland justice

suggestion becomes one of treating her language barrier as good cause per se. Yet, the logic of the argument could extend equally to illiterate individuals and those who cannot afford an attorney. The Legislature avoided making this kind of categorical exception when it established the criterion of good cause, leaving to the trial court the authority to evaluate whether a particular claimant's circumstances support good cause for waiving notice. The circuit court may consider evidence of language limitations along with other disabilities that may affect a claimant's delay or failure to give notice, but the trial court retains full discretion to determine whether the information presented amounts to good cause. Although the Amici make forceful and compelling arguments, those arguments ought to be pursued legislatively in a forum that allows a full and fair opportunity for all residents of Maryland to comment on whether a law that has existed for almost 60 years should be changed and to vote on that change through referendum if necessary.

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system. Indeed, those facts justify legislative review and hearings designed to address the problems. While the Legislature might conclude that the Code should be printed in several languages or, as in Quebec, that all business be transacted in two languages, the Amici's line of reasoning fails when measured against Ms. Rios' abject failure to investigate timely any aspect of this claim. Knowledge of a notice requirement does not spur a mother to inquire as to who was responsible for her child's injury—maternal instinct plays that role. Yet, the record reflects that Ms. Rios did not seek out that information until almost 10 years had passed. Had she waited 17 years, her arguments would be the same, and the Amici's would be the same. Perhaps, these facts offer support for the old adage that "Ignorance of the law excuses no man; not that all men know the law, but because 'tis an excuse every man will plead, and no man can tell how to confute him." *Ohio Casualty Insurance Co. v. Insurance Commissioner*, 39 Md. App. 547, 555 n.7, 387 A.2d 622, 626 n.7 (1978) (quoting John Seldon, *The Table Talk of John Seldon*, p. 99 (edited by Samuel Harney Reynolds 1892)).

In the present case, the alleged injury occurred on December 31, 1991. Under the LGTCA, notice was required within 180 days—by July 1, 1992. Yet, no notice was provided to the County for almost 10 years, depriving it of the opportunity to investigate the claim promptly. Ms. Rios contends that she established good cause because she had a limited understanding of English and had no way of knowing that Dr. Footer worked for the local health department rather than Holy Cross Hospital. Yet, she voluntarily enrolled in the program offered by the health department and sought prenatal care and delivery services from the department and its employees. (E. 18-19, 45-46) In addition, Ms. Rios signed documents written in her native language that contained the County seal and otherwise identified the local health department as the health care provider. (E. 52) For her prenatal visits, she went to a Montgomery County Health Department clinic staffed with Spanish interpreters located at 50 Monroe Street, Rockville, Maryland. (E. 18, 45) Like all local health department facilities, the clinic also had markings reflecting its ties to the local jurisdiction. In her deposition, Ms. Rios even testified that she believed the doctor who provided her prenatal care was the same doctor who attended the birth of her son at Holy Cross Hospital.[11] (E. 20-47) Ms. Rios' language limitations did not prevent her from

[11]Her deposition revealed this belief:

Q Just so I'm clear, it's your understanding that the doctor that saw you at the clinic was the same doctor who delivered your son; is that right?

A Right, because I was just told wait for your doctor, your doctor is coming, so I would have to say that he was the doctor.

(E. 20, 47)

returning to the clinic to ask a nurse at the clinic about the doctors who treated her. But she asked no one.

Not only did Ms. Rios have information from which she could have discerned the local health department's role in this case within the notice period, but she has provided no indication of having tried to determine who the doctor worked for within a reasonable time of delivering her child. (E. 20-47) Nor did she contact an attorney who could have investigated on her son's behalf. (E. 48) Having undertaken no affirmative act to pursue her claim, Ms. Rios did not show good cause for failing to comply with the notice requirement.

The circuit court closely analyzed the evidence in the record and saw that Ms. Rios did nothing for almost 10 years, despite knowledge of the injury and knowing that her husband may have consulted an attorney. (E. 131) The court also noted that the County seal appeared on the clinic and on the documents Ms. Rios signed at the clinic, which gave her some notice of the local health department's involvement or an indication that more investigation was appropriate. (E. 132) Although the court searched diligently to find good cause, it could not do so based on the facts presented—good cause required Ms. Rios to do something and she did nothing. (E. 133) The circuit court properly found that a plaintiff does not show good cause to waive the notice requirement by doing nothing.

The claimant's minority does not establish good cause.

The LGTCA provides that notice must be given "by the claimant or the representative of the claimant. . . ." Cts. & Jud. Proc. § 5-304(b). The language of the section contemplates that a claimant may not always be in a position to serve notice. Rather than delay the notice,

allowing a representative of the claimant to serve it enables an attorney, a guardian, or a family member to provide prompt notice that allows the local government to investigate the matter early.

Ms. Rios filed suit as next friend of her son, effectively asserting herself as his representative. *See* Md. Rule 2-202(b). Although an infant lacks the capacity to sue or be sued, the next friend mechanism removes the disability and allows the suit to proceed before the child reaches majority.[12] *Id*. Once the disability is removed, however, the next friend must comply with the applicable procedures and "owes the infant good faith and diligence." *See Berrain v. Katzen*, 331 Md. 693, 707, 629 A.2d 707, 713 (1993) (citation omitted).[13]

The notice requirement of the LGTCA operates independently of the limitations period that applies to the filing of the lawsuit and serves as a condition precedent to filing suit against a local government. *Faulk v. Ewing*, 371 Md. 284, 304, 808 A.2d 1262, 1265 (2002) (citing *Neuenschwander v. Washington Suburban Sanitary Commission*, 187 Md. at 77, 48 A.2d at 599). (Apx. 22) Serving notice effectively preserves the claimant's right to file suit at any time during the limitations period, but nothing in the statute provides for an automatic tolling of the notice period—only a showing of good cause will excuse compliance

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[12]The Rule would provide the same option to an adult who suffers a mental or physical disability that would prevent the individual from making the decisions independently.

[13]At least two federal circuits have imputed the parent's knowledge of an injury to the child for notice purposes under the FTCA. *See Landreth v. United States*, 850 F.2d 532, 534 (9th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989); *Portis v. United States*, 483 F.2d 670, 673 (4th Cir. 1973).

with the notice requirement. To preserve the choice of whether to file suit as next friend or to allow Luis to file on his own behalf at a later date, notice had to be provided within 180 days of the injury.[14]

Several jurisdictions have refused to toll the notice period for claims of minors absent an express provision in the statute. The Supreme Court of Mississippi refused to apply a general tolling provision to a tort claim under that state's act, but noted that subsequent to the events in the case before it, the Legislature had enacted a specific provision allowing the claims of minors to be tolled. *Stockstill v. Mississippi*, 854 So.2d 1017 (2003). And the Supreme Court of Texas reached a similar conclusion that a general tolling provision for minors did not apply to the tort claims act notice requirement, because no express language existed to extend the general rule to the tort claims act. *Martinez v. Val Verde County Hospital District*, 140 S.W.3d 370 (2004). These courts exemplify the concept that to allow tolling without clear legislative approval would undermine the goal of notice as a mechanism to promote the ability of local governments to anticipate and to plan for potential liability. *See* Isham, James L., *Local Government Tort Liability: Minority as Affecting Notice of Claim Requirement*, 58 A.L.R. 4th 402 §§ 11, 12, and 13 (1987).[15]

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[14]Whether the failure to file a notice of claim affects a person such as Luis should he bring suit upon attaining majority is not before the Court in this case. The issue here is whether a parent can ignore the time requirements for filing a notice of claim and bring suit at any time during a child's minority.

[15]Jurisdictions that have allowed tolling of the notice requirement during a minor's incapacity often defer to the discretion of the trial court in finding good cause. *See, e.g., Marchetti v. East Rochester Central School District*, 754 N.Y.S.2d 489 (App. Div. 4th Dept.

Although the LGTCA does not include an exception or toll the 180-day notice period based on a claimant's age, a circuit court has the discretion to waive notice for good cause shown and a lack of prejudice to the defendant. In this way, the statute effectively achieves a similar result to a tolling provision, but requires case-by-case consideration of the issue, rather than a blanket exception. Each of the cases cited by Ms. Rios to encourage this Court to rely solely on her son's minor status involved facts that could support a finding of good cause under the Maryland statute. In two of the cases, notice was given verbally during the notice period. *Schumer v. City of Perryville*, 667 S.W.2d 414 (Mo. 1984); *Lazich v. Belanger*, 111 Mont. 48, 105 P.2d 738 (1940). Although the remaining cases averred that the requirement did not apply to minors, none of the courts had to address a delay of almost 10 years—in each case, the claimant provided notice within one year of the injury and while the claimant was still a minor. *McDonald v. City of Spring Valley*, 285 Ill. 52, 120 N.E. 476 (1918) (notice due within 6 months, but given 8 or 9 months after injury); *Hunter v. North Mason High School*, 529 P.2d 898 (Wash. App. 1974) (notice due within 120 days, but given 11 months after injury); *McCrary v. City of Odessa*, 482 S.W.2d 151 (Tex. 1972) (notice due within 60 days, but given 51 weeks after injury).

2003) (trial court did not abuse discretion in granting leave to serve late notice based on mother's preoccupation with caring for infant while maintaining her job and dealing with her father's terminal illness, and no prejudice resulted to the district). But minority alone did not satisfy good cause. *See Faucher v. Auburn*, 465 A.2d 1120 (Me. 1983); *Langevin v. Biddeford*, 481 A.2d 495 (Me. 1984). *See also* cases collected in 58 A.L.R.4th 402, *supra*.

Unlike the situations presented in other states, Ms. Rios failed to provide any evidence of good cause for her failure to serve notice on the County within 180 days of her son's birth and provided no notice at all for almost 10 years. To accept her delay contradicts the clear purpose of the LGTCA to permit a prompt investigation of the facts. Moreover, the implication of her argument is that a parent could wait 17 or almost 18 years before taking any action to protect her child's rights and still bring suit.[16] The circuit court had a reasonable basis for its finding that Ms. Rios did not act with reasonable diligence and, therefore, the court did not abuse its discretion in denying the waiver request and dismissing the case. This Court needs to address only the circumstances presented in this record and should affirm the circuit court's reasonable exercise of its discretion.

II. The notice requirement mandated by the Local Government Tort Claims Act does not violate constitutional principles of equal protection, due process,[17] and access to the courts when applied to a minor's claim.

Having shown no good cause for failing to provide notice to the County, Ms. Rios challenges the requirement as an unconstitutional barrier to her son's claim. Not only does

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[16]Even the Court of Special Appeals has recognized the ease with which notice may be given, commenting that the requirements of the LGTCA "are not numerous or burdensome." *Williams v. Maynard*, 123 Md. App. 119, 134, 716 A.2d 1100, 1107 (1998), *aff'd on other grounds*, 359 Md. 379, 754 A.2d 379 (2000).

[17]For the first time, Ms. Rios argues that the notice requirement violates due process principles. Ordinarily, this Court will not address issues raised for the first time on appeal. Md. Rule 8-131(a). Even if this issue were preserved, this Court rejected the logic presented by Ms. Rios in its decision in *Johnson v. Maryland State Police*, 331 Md. 285, 628 A.2d 162 (1993), which is discussed *infra*.

the statute protect the ability of a claimant to have someone serve notice for him, but the notice requirement furthers a legitimate governmental objective by facilitating early investigations of claims.[18] Minors have the same access to the courts as any other claimant—all claimants must serve notice on a local government to protect their ability to file suit within the applicable statute of limitations (which usually runs past the notice period).[19] The waiver provision in the statute adequately safeguards a minor's constitutional rights while enabling the trial court to balance the interests of the claimant and the local government.

Ms. Rios ignores the legislative history of the LGTCA that plainly showed an insurance crisis facing local governments. She also gives little attention to the choices of local governments either to raise taxes or to reduce services. Ms. Rios urges that these choices are resolved simply by increasing payments for insurance premiums. During the insurance crisis of the 1980's (as previously documented), and as part of the malpractice insurance crisis extant today, the monies budgeted for obstetrics services for the poor might be consumed by the demand for insurance. Obviously, these are trade-offs, but they are

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[18]The importance of early investigation is evident in the depositions of the other defendant doctor and a nurse who attended the delivery of Luis. The doctor had little or no recollection of the delivery, and the nurse had no memory of the situation even after seeing a chart that she completed. (E. 57-58, 61)

[19]As noted previously, this case does not present the Court with the issue of whether Luis can bring suit when he achieves majority despite the absence of the notice of claim. As it is not generally the practice of the Court to decide constitutional questions that are not squarely before it, the constitutional arguments ought not to be decided until an appropriate case reaches the Court.

trade-offs that fall squarely within the ambit of legislative policy. The problems that accompany serving the poor in our society do not affect private businesses directly, but are inherent to the operation of a governmental entity. Both the purpose and the effect of the LGTCA must not be overlooked in reviewing this case.

The reasoning of this Court in Johnson v. Maryland State Police should govern the result in this case.

This Court rejected the same challenges presented by Ms. Rios in a case involving the Maryland Tort Claims Act (MTCA). In *Johnson v. Maryland State Police*, the minor plaintiffs claimed that the 180-day notice requirement in the MTCA violated their constitutional rights to equal protection and due process under the law and unreasonably restricted their right of access to the courts.[20] Beginning with the equal protection argument, this Court first held that the notice requirement was neither arbitrary nor unreasonable and met the rational basis test by allowing the State to evaluate claims against it and to prepare for potential financial liability:

> The 180-day administrative claim requirement allows the State to predict its potential tort liability more accurately, so that it may enact a more accurate annual budget. In addition, the claim requirement enables the State to make early decisions on the merits of particular claims, and allows the State to take remedial safety measures more quickly, thereby minimizing the cost of litigation for the taxpayers.

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[20]This Court adopted the rational basis test to evaluate the notice requirement in the Maryland Tort Claims Act. In doing so, the Court recognized 18 jurisdictions that also applied a rational basis standard to uphold the constitutionality of various State and local government notice requirements. *Johnson v. Maryland State Police*, 331 Md. at 294-295, 628 A.2d at 166-167.

Id. at 296, 628 A.2d at 167. Turning to the claim that the notice requirement violated a minor's guaranteed access to the courts under Article 19 of the Maryland Declaration of Rights, this Court reiterated its previous explanation that a statutory restriction on access to the courts becomes unconstitutional "only if the restriction is unreasonable." *Johnson*, 331 Md. at 297, 628 A.2d at 168 (citations omitted). The restriction imposed by the MTCA was reasonable because it provided the benefit of the State's financial resources in exchange for providing prompt notice of a claim and, therefore, created no constitutional violation. *Id*. at 297, 628 A.2d at 168.

The restriction is equally reasonable in relation to the LGTCA. Although the statute does not waive immunity, it includes a waiver provision that the State Act does not include to excuse compliance with the notice requirement. The absence of a waiver of governmental immunity takes the LGTCA out of the purview of *Reich v. State Highway Department*, 194 N.W.2d 700, 702 (Mich. 1972) (object of the act was to waive immunity and to put governmental agency on equal footing with private tortfeasors). In addition, by authorizing a claimant or his representative to give notice, the LGTCA recognizes the potential disability of a plaintiff, whether due to age or a physical impairment. Any remaining potential hardship in satisfying the notice requirement may be alleviated upon a showing of good cause and lack of prejudice to the defendant.

Similarly, the due process argument found no purchase with this Court in *Johnson*. Like Ms. Rios, the plaintiffs relied upon the analysis used by the Supreme Court of Michigan and argued that the tort claims act was intended to put the government on the same footing

as a private tortfeasor. The Michigan court considered a plaintiff to have a vested property right in a cause of action against a tortfeasor, which made the notice requirement arbitrary and, in turn, violated due process. *Johnson*, 331 Md. at 298, 628 A.2d at 168 (discussing *Grubaugh v. City of St. Johns*, 384 Mich. 165, 180 N.W.2d 778 (1970)). Despite the waiver of immunity that accompanied the MTCA, this Court did not find the reasoning of *Grubaugh* "at all persuasive" and flatly rejected the notion that the MTCA "intended to put governmental entities on exactly the same footing as private tortfeasors." *Id*. Finding no vested right in a cause of action, and reiterating the reasonableness of the requirement in light of the purpose of the MTCA, this Court held that no due process violation existed. *Id*. at 299, 628 A.2d at 169.

Circumstances have not changed so drastically as to make notice unnecessary. Rather than overrule *Johnson*, this Court should apply the same logic to the LGTCA. Like the State Act, the purpose of the notice requirement is to provide the local government with an early opportunity to investigate the potential claim and to budget appropriately. In exchange for the benefit of the local government's financial resources satisfying any judgment in a case, a claimant or his representative must serve notice on the local government within 180 days of the alleged injury. This benefit becomes even more significant for a local government, because the LGTCA does not waive immunity, but only provides a mechanism for the local government to pay any judgment against its employee for tortious conduct. The notice requirement is reasonable in light of the legitimate purpose of the LGTCA. Even as applied to a minor, the LGTCA does not violate constitutional principles of equal protection or due

process, and it does not interfere with the access to courts protected by Article 19 of the Maryland Declaration of Rights.[21]

This Court's handling of private medical malpractice claims does not apply to a local government.

The Health Claims Arbitration Act establishes an administrative prerequisite to initiation of a lawsuit in circuit court alleging medical malpractice. *Goicochea v. Langworthy*, 345 Md. 719, 694 A.2d 474, *cert. denied*, 118 S.Ct. 321 (1997). In effect, the Act provides a mechanism that screens medical malpractice claims and tries to eliminate those without merit. The anticipated reduction of claims is intended to lower the cost of malpractice insurance and the overall cost of health care. *Adler v. Hyman*, 334 Md. 568, 575, 640 A.2d 1100, 1103 (1994) (citing *Group Health Ass'n. v. Blumenthal*, 295 Md. 104, 113, 453 A.2d 1198, 1204 (1983)). A plaintiff must file a claim with the Health Claims Arbitration Office as a condition precedent to filing suit, but the parties may waive arbitration and proceed to court. *Goicochea*, 345 Md. at 725, 694 A.2d at 478; Md. Code Ann., Cts. & Jud. Proc. § 3-2A-04.

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[21]The majority of cases relied upon by Ms. Rios are inapposite to this case because they assert grounds that contradict the LGTCA. *See, e.g., Turner v. Staggs*, 510 P.2d 879, 882 (Nev. 1973) (notice of claim serves no beneficial purpose and arbitrarily differentiates between public and private tortfeasors); *Hunter v. North Mason High School*, 539 P.2d 845, 847 (Wash. 1975) (differentiates between public and private tortfeasors; ignorance of law is a defense to not giving notice). And the assertion in *Hunter* that governments are small enough to know if liability exists is at odds with the legislative history of the LGTCA that notice would enable better planning and budgeting by local governments.

The issue before this Court in *Piselli v. 75th Street Medical*, 371 Md. 188, 808 A.2d 508 (2002), involved the statute of limitations for medical malpractice suits. The law purported to remove a minor's disability from filing suit at 11 years of age or 16 years of age, depending on the circumstances. *See* Cts. & Jud. Proc. § 5-109. This Court noted the established principle of tolling the period for an infant to file suit and refused to alter the policy for a medical malpractice claim against a private doctor. 371 Md. at 214, 808 A.2d at 524. The Court did not address the notice requirement at all, but acknowledged that the Legislature may place reasonable restrictions on access to the court. *Id*. (citing *Johnson*). Similarly, in *Johns Hopkins Hospital v. Pepper*, 346 Md. 679, 697 A.2d 1358 (1997), this Court considered a child's claim for medical expenses in a medical malpractice case against a private hospital.

Neither case involved a legislatively created authorization to seek damages from a local government or its employee, nor did they address a notice requirement or other condition precedent. The LGTCA does not alter the statute of limitations. Moreover, the LGTCA protects a government employee who is sued by providing indemnification and a defense. The LGTCA does not purport to put the County in the same posture as a private tortfeasor, but protects the County's governmental immunity. Instead, the LGTCA provides financial resources to satisfy the judgment and provides a defense to County employees as long as notice is given promptly to the County. The applicable statute of limitations remains unaffected and a minor's common law rights remain intact.

The good cause exception provides an adequate basis for a court to entertain suit if notice is not given timely. Any other exception should be crafted by the Legislature, not by this Court. *See Graves v. State*, 364 Md. 329, 351, 772 A.2d 1225, 1238 (2001). The notice requirement satisfies constitutional principles and the dismissal of the complaint in this case should be affirmed by this Court.

CONCLUSION

Ms. Rios did not comply with the notice requirement in the LGTCA, which establishes a condition precedent to filing suit against the County and its employees. She produced no evidence of good cause for her non-compliance, and the requirement does not violate constitutional principles of equal protection and access to the courts. The circuit court did not abuse its discretion in denying the waiver request, and properly denied the motion for reconsideration based on the constitutionality of the requirement and the absence of good cause. This Court should affirm the dismissal of this case.

Respectfully submitted,

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Statement pursuant to Maryland Rule 8-504(a)(8): This brief was prepared with proportionally spaced type, using Times New Roman font and 13pt type size.

APPENDIX

Maryland Annotated Code

Art. 25A, § 5. Enumeration.

* * *

(C) *County Institutions*

To erect, establish, maintain and control hospitals, almshouses, pesthouses or other similar institutions within the county, and make all regulations for the government and conduct of the same; to erect, establish and maintain courthouses; to establish, maintain, regulate and control county jails, and county houses of correction or detention and reformatories, and to regulate all persons confined therein; to make proper provision for female and juvenile offenders.

* * *

(J) *Health and Nuisances*

To prevent, abate and remove nuisances; to prevent the introduction of contagious diseases into such county; and to regulate the places of manufacturing soap and candles and fertilizers, slaughterhouses, packinghouses, canneries, factories, workshops, mines, manufacturing plants and any and all places where offensive trades may be carried on, or which may involve or give rise to unsanitary conditions or conditions detrimental to health.

Nothing in this article or section contained shall be construed to affect in any manner any of the powers and duties of either the Secretary of Health and Mental Hygiene or the Secretary of the Environment or any public general laws of the State relating to the subject of health.

* * *

(S) *Amendment of County Charter*

To pass any ordinance facilitating the amendment of the county charter by vote of the electors of the county and agreeable to Article XI-A of the Constitution.

The foregoing or other enumeration of powers in this article shall not be held to limit the power of the county council, in addition thereto, to pass all ordinances, resolutions or bylaws, not inconsistent with the provisions of this article or the laws of the State, as may be proper in executing and enforcing any of the powers enumerated in this section or elsewhere in this article, as well as such ordinances as may be deemed expedient in maintaining the peace, good government, health and welfare of the county.

Provided, that the powers herein granted shall only be exercised to the extent that the same are not provided for by public general law; provided, however, that no power to legislate shall be given with reference to licensing, regulating, prohibiting or submitting to local option, the manufacture or sale of malt or spirituous liquors.

* * *

(Y) *County Board of Health*

To organize and establish a county board of health to act instead of the county council as the county board of health under Title 3, Subtitle 2 of the Health - General Article.

* * *

Art. 88A, § 13A. Montgomery County - Administration of programs by County government.

(a) *Legislative intent; purpose.* It is the intent of the General Assembly that:

(1) The purpose of this section is to provide better integrated, more efficient, and accountable human services delivery within Montgomery County by the State and county governments; and

(2) Implementation of this section shall be cost-neutral to both the Montgomery County government and the State of Maryland.

(b) *Administration by Montgomery County government; grant.*

(1) In Montgomery County, there is no local department of social services. In Montgomery County, State social service and public assistance programs administered by a local department shall be administered by the Montgomery County government.

(2) The grant agreement provided under subsection (c) of this section shall be provided in the same budget categories within the State budget as appropriations for other local departments of social services.

(3) Notwithstanding any other law, the proportion of State and federal funds to be paid in Fiscal Year 1997 to the Montgomery County government under this section relative to those funds provided by the Secretary to all local departments may not be less than the proportion of funds disbursed in Fiscal Year 1996 to the Montgomery County Department of Social Services.

(4) After Fiscal Year 1997, the amount of the grant to Montgomery County government shall be proportionally adjusted each year to:

(i) Reflect changes in case loads, the number of children in poverty, and any other relevant cost factors agreed to by the parties; and

(ii) Ensure that the grant is equitable in relation to funds provided to all local departments.

(c) *Grant agreement.* The Secretary of Human Resources shall enter into a grant agreement with the Montgomery County government for administration in Montgomery County of programs administered by local departments elsewhere in the State. The grant agreement shall:

(1) Provide for payment to Montgomery County for costs to administer State programs, including salaries, overhead, general liability coverage, workers' compensation, and employee benefits, at State funding rates as provided in §13 (d) of this article, excluding amounts attributable to county salaries or benefits that exceed comparable State salaries or benefits; and

(2) Require that the State shall continue to provide for the payment of State accrued leave.

(d) *Use and release of recipient information.* The use and release of information concerning recipients of State social service and public assistance programs by the Montgomery County Department of Health and Human Services shall be governed by the confidentiality provisions of State law and regulations, including § 6 of this article and Article 49D, § 10 of the Code. The Montgomery County Department of Health and Human Services shall be treated as one agency for purposes of confidentiality provisions of State law and regulations.

(e) *Governed by State and federal regulations.* The administration of State programs by Montgomery County shall continue to be governed by State and federal regulations.

(f) *Administration of child welfare programs.*

(1) The administration of State child welfare programs by Montgomery County shall be conducted in the same manner as the administration of the programs in other counties.

(2) The unit of the Montgomery County government that administers programs under paragraph (1) of this subsection is exempt from licensing requirements in the same manner as a local department of social services.

* * *

Cts. & Jud. Proc. (2002)

§ 3-2A-04. Filing of claim; appointment of arbitrators; arbitrators' immunity from suit.

(a) *Filing of claim and response.*

(1) A person having a claim against a health care provider for damage due to a medical injury shall file his claim with the Director, and, if the claim is against a physician, the Director shall forward copies of the claim to the State Board of Physicians. The Director shall cause a copy of the claim to be served upon the health care provider by the appropriate sheriff in accordance with the Maryland Rules. The health care provider shall file a response with the Director and serve a copy on the claimant and all other health care providers named therein within the time provided in the Maryland Rules for filing a responsive pleading to a complaint. The claim and the response may include a statement that the matter in controversy falls within one or more particular recognized specialties.

(2) A third-party claim shall be filed within 30 days of the response of the third-party claimant to the original claim unless the parties consent to a later filing or a later filing is allowed by the panel chairman for good cause shown.

(3) A claimant may not add a new defendant after the arbitration panel has been selected, or 10 days after the prehearing conference has been held, whichever is later.

(4) Until all costs attributable to the first filing have been satisfied, a claimant may not file a second claim on the same or substantially the same grounds against any of the same parties.

* * *

§ 5-109. Actions against health care providers.

(a) Limitations. An action for damages for an injury arising out of the rendering of or failure to render professional services by a health care provider, as defined in § 3-2A-01 of this article, shall be filed within the earlier of:

(1) Five years of the time the injury was committed; or

(2) Three years of the date the injury was discovered

(b) Actions by claimants under age 11. Except as provided in subsection (c) of this section, if the claimant was under the age of 11 years at the time the injury was committed, the time limitations prescribed in subsection (a) of this section shall commence when the claimant reaches the age of 11 years.

(c) Exceptions to age limitations in certain actions.

(1) The provisions of subsection (b) of this section may not be applied to an action for damages for an injury:

(i) To the reproductive system of the claimant; or

(ii) Caused by a foreign object negligently left in the claimant's body.

(2) In an action for damages for an injury described in this subsection, if the claimant was under the age of 16 years at the time the injury was committed, the time limitations prescribed in subsection (a) of this section shall commence when the claimant reaches the age of 16 years.

(d) Effect of filing claim. For the purposes of this section, the filing of a claim with the Health Claims Arbitration Office in accordance with § 3-2A-04 of this article shall be deemed the filing of an action.

(e) Effect of other provisions. The provisions of § 5-201 of this title that relate to a cause of action of a minor may not be construed as limiting the application of subsection (b) or (c) of this section.

(f) Application. Nothing contained in this section may be construed as limiting the application of the provisions of:

(1) § 5-201 of this title that relate to a cause of action of a mental incompetent; or

(2) § 5-203 of this title.

§ 5-303. Liability of government; defenses.

* * *

(d) *Defenses not waived.* Notwithstanding the provisions of subsection (b) of this section, this subtitle does not waive any common law or statutory defense or immunity in existence as of June 30, 1987, and possessed by an employee of a local government.

(e) *Defenses available to government.* A local government may assert on its own behalf any common law or statutory defense or immunity in existence as of June 30, 1987, and possessed by its employee for whose tortious act or omission the claim against the local government is premised and a local government may only be held liable to the extent that a judgment could have been rendered against such an employee under this subtitle.

* * *

§ 5-304. Actions for unliquidated damages.

(a) Notice required. Except as provided in subsection (c) of this section, an action for unliquidated damages may not be brought against a local government or its employees unless the notice of the claim required by this section is given within 180 days after the injury.

(b) Manner of giving notice.

(1) Except in Anne Arundel County, Baltimore County, Harford County, and Prince George's County, the notice shall be given in person or by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, by the claimant or the representative of the claimant, to the county commissioner, county council, or corporate authorities of a defendant local government, or:

(i) In Baltimore City, to the City Solicitor;

(ii) In Howard County, to the County Executive; and

(iii) In Montgomery County, to the County Executive.

(2) In Anne Arundel County, Baltimore County, Harford County, and Prince George's County, the notice shall be given in person or by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, by the claimant or the representative of the claimant, to the county solicitor or county attorney.

(3) The notice shall be in writing and shall state the time, place, and cause of the injury.

(c) Waiver of notice requirement. Notwithstanding the other provisions of this section, unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, upon motion and for good cause shown the court may entertain the suit even though the required notice was not given.

Tax-Gen'l (1997)

§ 10-103. County income tax.

(a) Required. Each county shall have a county income tax on the Maryland taxable income of:

(1) each resident, other than a fiduciary, who on the last day of the taxable year:

(i) is domiciled in the county; or

(ii) maintains a principal residence or a place of abode in the county;

(2) each personal representative of an estate if the decedent was domiciled in the county on the date of the decedent's death;

(3) each resident fiduciary of:

(i) a trust that is principally administered in the county; or

(ii) a trust that is otherwise principally connected to the county and is not principally administered in the State; and

(4) except as provided in § 10-806 (c) of this title, a nonresident who derives income from salary, wages, or other compensation for personal services for employment in the county.

(b) Limitation. Except for the county income tax, a county, municipal corporation, special taxing district, or other political subdivision may not impose a general local income, earnings, or payroll tax, a general occupational license tax, or a general license or permit tax based on income, earnings, or gross receipts.

§ 10-106. County income tax rate.

(a) In general; exception in Howard County.

(1) Each county shall set, by ordinance or resolution, a county income tax equal to at least 1% but not more than the percentage of an individual's Maryland taxable income as follows:

(i) 3.05% for a taxable year beginning after December 31, 1998 but before January 1, 2001;

(ii) 3.10% for a taxable year beginning after December 31, 2000 but before January 1, 2002; and

(iii) 3.20% for a taxable year beginning after December 31, 2001.

(2) A county income tax rate continues until the county changes the rate by ordinance or resolution.

(3) (I) A county may not increase its county income tax rate above 2.6% until after the county has held a public hearing on the proposed act, ordinance, or resolution to increase the rate.

(ii) The county shall publish at least once each week for 2 successive weeks in a newspaper of general circulation in the county:

1. notice of the public hearing; and

2. a fair summary of the proposed act, ordinance, or resolution to increase the county income tax rate above 2.6%.

(4) Notwithstanding paragraph (1) or (2) of this subsection, in Howard County, the county income tax rate may be changed only by ordinance and not by resolution.

(b) Rate change. If a county changes its county income tax rate, the county shall:

(1) increase or decrease the rate in increments of one one-hundredth of a percentage point, effective on January 1 of the year that the county designates; and

(2) give the Comptroller notice of the rate change and the effective date of the rate change on or before July 1 prior to its effective date.

Tax-Prop. (2001)

§ 6-302. Setting of county property tax rate.

(a) In general. Except as otherwise provided in this section and after complying with §6-305 of this subtitle, in each year after the date of finality and before the following July 1, the Mayor and City Council of Baltimore City or the governing body of each county annually shall set the tax rate for the next taxable year on all assessments of property subject to that county's property tax.

(b) Single rate for all property.

(1) Except as provided in subsection (c) of this section, §§ 6-305 and 6-306 of this subtitle and § 6-203 of this title:

(i) there shall be a single county property tax rate for all real property subject to county property tax except for operating real property described in § 8-109 (c) of this article; and

(ii) the county tax rate applicable to personal property and the operating real property described in § 8-109 (c) of this article for taxable years beginning after June 30, 2001 shall be 2.5 times the rate for real property.

(2) Paragraph (1) of this subsection does not affect a special rate prevailing in a taxing district or part of a county.

(c) Intangible personal property.

(1) Intangible personal property is subject to county property tax as otherwise provided in this title at a rate set annually, if:

(i) the intangible personal property has paid interest or dividends during the 12 months that precede the date of finality;

(ii) interest or dividends were withheld on the intangible personal property during the 12 months that precede the date of finality to avoid the tax under this subsection;

(iii) the intangible personal property consists of newly issued bonds, certificates of indebtedness, or evidences of debt on which interest is not in default; or

(iv) a stock dividend has been declared on the intangible personal property during the 12 months that precede the date of finality.

(2) The county tax rate for the intangible personal property is 30 cents for each $ 100 of assessment.

Maryland Rules

Rule 2-202. Capacity.

(a) *Generally.* Applicable substantive law governs the capacity to sue or be sued of an individual, a corporation, a person acting in a representative capacity, an association, or any other entity.

(b) *Suits by individuals under disability.* An individual under disability to sue may sue by a guardian or other like fiduciary or, if none, by next friend, subject to any order of court for the protection of the individual under disability. When a minor is in the sole custody of one of its parents, that parent has the exclusive right to sue on behalf of the minor for a period of one year following the accrual of the cause of action, and if the custodial parent fails to

institute suit within the one year period, any person interested in the minor shall have the right to institute suit on behalf of the minor as next friend upon first mailing notice to the last known address of the custodial parent.

* * *

Montgomery County Charter

§ 309. Transfer of Funds.

The County Executive may at any time transfer an unencumbered appropriation balance within a division or between divisions of the same department. Transfers between departments, boards or commissions, or to any new account, shall be made only by the County Council upon the recommendation of the County Executive. The total cumulative transfers from any one appropriation shall not exceed ten percent of the original appropriation. No transfer shall be made between the operating and capital budget appropriation.

Montgomery County Code (1994, as amended)

§ 1A-201. Establishing departments and principal offices.

(a) Executive Branch.

(1) These are the departments and principal offices of the Executive Branch.

* * *

Health and Human Services [Section 2-42A]

* * *

§ 2-42A. Functions, powers, and duties.

(a) Generally. The Department is responsible for providing a single integrated system for the provision of health and human services with other public and private agencies that provide health and human services in the County. Department services are supportive services that provide the basic necessities, such as food, clothing, and shelter to people, and those services that directly serve and protect the health, mental health, economic well-being, and social functioning of individuals and families. The Department administers programs and provides services in the areas of:

(1) individual and community health services;

(2) public health services; and

(3) human services to clients.

(b) Non-merit positions. The Department has 5 senior level management positions that are non-merit positions. These positions consist of a chief operating officer; a chief of special needs housing; and 3 direct service division chiefs. In addition, the Health Officer

referred to in Section 2-42 serves as the chief of the direct service division for public health services.

(c) Powers of the Department. The Department may:

(1) administer contracts for services;

(2) plan, develop and administer programs;

(3) advise the Council and the County Executive;

(4) collect data on the need for services and the effectiveness of programs;

(5) collect fees;

(6) enforce regulations;

(7) engage in programs in cooperation with agencies of the State, the County, other political subdivisions and with private groups;

(8) enter into agreements in order to carry out its duties.

(9) provide information;

(10) maintain vital and case records;

(11) provide consultation;

(12) provide services;

(13) provide training;

(14) operate laboratories;

(15) conduct studies and investigations; and

(16) carry out any other functions that are necessary to achieve the purposes of this Section.

(d) Duties of the Department.

(1) The Department provides comprehensive health and human services planning and program evaluation.

(2) The Department must carry out functions as authorized and directed by:

(A) the County Executive,

(B) the County Board of Health; and

(C) State and County laws and regulations.

(3) The Department provides staff support to the:

(A) Commission on Children and Youth;

(B) Commission on Aging;

(C) Community Action Committee;

(D) Commission on Child Care;

(E) Commission on People with Disabilities;

(F) Alcohol and Other Drug Abuse Advisory Council.

(G) Mental Health Advisory Council.

(H) Juvenile Court Committee;

(I) Commission on Health;

(J) Board of Social Services;

(K) Adult Public Guardianship Review Board; and

(L) Victim Services Advisory Board.

(e) Fees of services.

(1) The County Executive may set fees by regulation under method (3) for use of a service that the Department provides.

(2) The fee must not exceed the cost of the service provided.

(3) The Director may waive a fee if:

(A) the Director decides the waiver would promote the purposes of this Section; and

(B) the client cannot afford to pay the fee.