Youngblood v. Gwinnett Rockdale Newton Community Service Board: The Sovereign Immunity of State Agencies Under the Georgia Constitution and the Georgia Tort Claims Act*

In *Youngblood v. Gwinnett Rockdale Newton Community Service Board*,[1] the Georgia Supreme Court held unconstitutional a statutory section that extended sovereign immunity "as provided for counties"[2] to community service boards, which are statutorily created, multicounty, public bodies that receive public funds to contract with third-party mental health providers on behalf of mentally disabled citizens.[3] The court held the statute impermissibly expanded the sovereign immunity of the state and its departments and agencies under the state constitution and the Georgia Tort Claims Act (GTCA).[4]

I. FACTUAL BACKGROUND

Margie Youngblood's daughter, Patricia, is mentally disabled and is not capable of caring for herself. In 1995, Margie placed Patricia in a residential home funded by the Gwinnett Rockdale Newton Community Service Board (GRNCSB).[5] Community service boards are statutorily formulated "public agenc[ies] created to govern publicly funded programs for the purpose of providing disability services not provided by other public or private providers."[6] The boards coordinate public monies on a multicounty level to "provide mental health, mental retardation, substance abuse, and other disability services."[7] The purpose of these

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1. 273 Ga. 715, 545 S.E.2d 875 (2001).
2. O.C.G.A. § 37-2-11.1(c)(1) (2001).
3. *See id.* §§ 37-2-1(a) to (c); 37-2-6(a); 37-2-11(a).
4. *Youngblood*, 273 Ga. at 717, 545 S.E.2d at 877.
5. *Id.* at 715, 545 S.E.2d at 876.
6. *Id.*
7. *Id.* at 716, 545 S.E.2d at 877.

boards is to centralize the referral of mental health patients to local, regional, and state health care providers in order to foster a greater "continuity of care."[8]

Marie Youngblood placed Patricia in a residential home operated by Barbara and Charles Vaughn, who were under contract with GRNCSB.[9] GRNCSB employees in Patricia's workplace reported she had been injured in March 1996. After an investigation, the GRNCSB employees discovered the Vaughns were beating Patricia, and she was removed from the Vaughns' care.[10] Acting as the guardian of Patricia's property, Margie Youngblood filed suit against GRNCSB and the Vaughns alleging negligence and breach of contract. GRNCSB moved for summary judgment. The trial court granted summary judgment holding GRNCSB was protected by sovereign immunity under Official Code of Georgia Annotated (O.C.G.A.) section 37-2-11.1(c)(1) for any negligence claim. The trial court also held Youngblood's breach of contract action was barred because no written contract existed between her and GRNCSB.[11] The Georgia Supreme Court granted certiorari[12] to consider the constitutionality of O.C.G.A. section 37-2-11.1(c)(1)'s grant of sovereign immunity to community service boards.[13] The statute provides that "community service boards shall be public bodies, but shall not be considered agencies of the state or any specific county or municipality. Such community service boards are public agencies in their own right and shall have the same immunity as provided for counties."[14]

The court held the legislature's grant of the same immunity as counties to community service boards was unconstitutional because community service boards like GRNCSB are agencies or departments of the state whose sovereign immunity may only be waived in a tort claims act "or an act . . . which specifically provides that sovereign immunity is waived and the extent of such waiver."[15]

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8. *Id.* (quoting O.C.G.A. § 37-2-1(c)).

9. The Vaughns performed these services under the auspices of their corporation, Personal Care Solutions, Inc., which was a named defendant in Youngblood's original suit but was not a party on appeal. *Id.* at 715 n.1, 545 S.E.2d at 876 n.1. The Vaughns were also not parties to the appeal. *Id.*

10. *Id.* The Vaughns were convicted of criminal battery for beating Patricia. *Id.* at 715, 545 S.E.2d at 876.

11. *Id.*

12. The Georgia Supreme Court has exclusive appellate jurisdiction over "all cases in which the constitutionality of a law . . . shall be drawn in question." GA. CONST. art. VI, § 6, para. 2.

13. 273 Ga. at 715-16, 545 S.E.2d at 876.

14. O.C.G.A. § 37-2-11.1(c)(1).

15. 273 Ga. at 716, 545 S.E.2d at 877.

II. LEGAL BACKGROUND

The Georgia Supreme Court has considered the proper scope of the sovereign immunity of the state and its agencies and departments on many occasions and in many contexts. In doing so, the court has been guided not only by constitutional and statutory language but also by the long common-law heritage of sovereign immunity and its development as a constitutional doctrine in Georgia. Before examining more recent developments, this historical context is worthy of review.

The common-law doctrine of sovereign immunity originates from the medieval English theory that "the King can do no wrong."[16] Georgia adopted sovereign immunity in 1784 when it passed a reception statute for all of the common law of England in force prior to May 14, 1776.[17] The doctrine was first given constitutional status in 1975 when the supreme court, based on a 1974 constitutional amendment reserving the sovereign immunity of the state, held it lacked authority to abrogate or modify the state's immunity because that power rested solely with the General Assembly.[18] Even though the reservation of immunity in the 1974 amendment only referred to "the state," the supreme court held that this included state agencies and counties.[19] Courts gave a similar construction to the word "state" in the very first constitutional waiver of sovereign immunity—a waiver to the extent of any liability insurance coverage—which was enacted in 1983.[20]

In 1991 Georgia amended the state constitution to repeal the insurance waiver and reserve the sovereign immunity of "the state and all of its departments and agencies."[21] Under this framework, the state's sovereign immunity is automatically waived for any action *ex*

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16. Edwin M. Borchard, *Government Liability in Tort*, 34 YALE L.J. 1, 2 (1924).

17. Crowder v. Dep't of State Parks, 228 Ga. 436, 439, 185 S.E.2d 908, 911 (1971). Georgia adopted all of the common law "'except where modified by statutes.'" *Id.* at 439, 185 S.E.2d at 911 (quoting Harris v. Powers, 129 Ga. 74, 74, 58 S.E. 1038, 1038 (1907)); *see also* R. Perry Sentell, Jr., *Local Government Tort Liability: The Summer of '92*, 9 GA. ST. U. L. REV. 405, 406 (1993) (explaining the origins of Georgia's common-law doctrine of sovereign immunity in the context of local government).

18. Sheley v. Bd. of Pub. Educ. for Savannah, 233 Ga. 487, 487-88, 212 S.E.2d 627, 627-28 (1975). The court based its holding on an amendment to the state constitution proposed by the 1973 General Assembly and ratified in 1974, which may be found at 1973 Ga. Laws 1489-90. 233 Ga. at 487, 212 S.E.2d at 627-28. The amendment permitted the General Assembly to establish a special court for claims against the state, its agencies, or political subdivisions. *Id.*, 212 S.E.2d at 628. The amendment stated that it was not a waiver of the state's sovereign immunity, which it expressly reserved. *Id.* at 488, 212 S.E.2d at 628.

19. Nelson v. Spalding County, 249 Ga. 334, 335, 290 S.E.2d 915, 918 (1982).

20. Toombs County v. O'Neal, 254 Ga. 390, 391, 330 S.E.2d 95, 97 (1985).

21. GA. CONST. art. I, § 2, para. 9(e).

contractu and may be waived specifically by the General Assembly for tort claims.[22] In 1992 the General Assembly exercised its constitutional authority to do so and passed the GTCA,[23] which, with certain exceptions and limitations, waives the state's sovereign immunity for the "torts of state officers and employees while acting within the scope of their official duties or employment."[24]

Within this context, the supreme court has frequently been called on to determine the scope of the phrase "the state and its departments or agencies" in the 1991 amendment. The court's jurisprudence in this area demonstrates no unified method for resolving the issue. Taken together, the cases demonstrate three basic approaches: (1) a narrow construction that distinguishes the state and its political subdivisions from mere instrumentalities; (2) a broad construction founded on plain meaning and legislative history; and (3) deference to the General Assembly's authority to create political subdivisions and extend immunity to them as the Assembly sees fit.[25]

In the 1994 case of *Thomas v. Hospital Authority of Clarke County*,[26] the court applied a narrow construction of the term "state" in the 1991 amendment when it held that hospital authorities qualified neither as the state nor as departments or agencies of the state and were not entitled to the defense of sovereign immunity.[27] The court distinguished the state and its political subdivisions from "instrumentalities created by the state to carry out various functions."[28] Because it was a distinct corporate entity and lacked the inherent powers of a political subdivision, the hospital authority was not a part of the state or the county even though it had been created by Clarke County pursuant to state law.[29] The court held that the nature of the hospital authority's function was irrelevant because it was a mere instrumentality of the county, but the hospital authority was not an instrumentality in the way

22. GA. CONST. art. I, § 2, paras. 9(a), (c), (e).

23. O.C.G.A. §§ 50-21-20 to -37 (1998 & Supp. 2001).

24. *Id.* § 50-21-23 (1998).

25. *See, e.g.*, Thomas v. Hosp. Auth. of Clarke County, 264 Ga. 40, 41, 440 S.E.2d 195, 196 (1994) (holding that a county hospital authority was not a department or agency of the state entitled to sovereign immunity); Miller v. Ga. Ports Auth., 266 Ga. 586, 586, 470 S.E.2d 426, 427 (1996) (holding that the ports authority was a department or agency of the state entitled to sovereign immunity); Henderman v. Walton County Water & Sewerage Auth., 271 Ga. 192, 193, 515 S.E.2d 617, 618 (1999) (upholding a statutory grant of the same immunity as Walton County to its water authority). *See* discussion *infra* Parts II, III, IV.

26. 264 Ga. 40, 440 S.E.2d 195 (1994).

27. *Id.* at 41, 440 S.E.2d at 196.

28. *Id.*

29. *Id.* at 41-42, 440 S.E.2d at 196.

that a department or agency would be because it was a separate corporate entity.[30]

Justifying its conclusion on policy grounds, the court analyzed the functions of the hospital authority and concluded that they were not the type of functions that warranted the protection of sovereign immunity.[31] The court identified the historical purpose of sovereign immunity as allowing the business of government to occur without being hindered by lawsuits and noted that the doctrine was properly limited in its application to governmental functions only.[32] The hospital authority's functions were not governmental, according to the court, because they were functions ordinarily performed by private hospitals in the business sector.[33] The court also observed that if an instrumentality of government enters the marketplace, it should have the same liabilities of doing business as a private corporation, and those who transact business with the instrumentality should have the same legal protections they would have in dealing with a private entity.[34]

Finally, the court, in deciding whether the hospital authority qualified for sovereign immunity, balanced the interests of injured parties against the interests of taxpayers.[35] The court found no impact on taxpayers as a result of imposing liability on the hospital authority because "[a] hospital authority is a business corporation authorized and able . . . to provide itself with insurance and of satisfying judgments against it without affecting the stability of the state treasury."[36] As a result, the court held that the interest in compensating injured parties clearly outweighed any potential impact on the taxpayers.[37]

Just two years later, however, in *Miller v. Georgia Ports Authority*,[38] the court significantly departed from this analysis and applied a broader construction when it looked to the plain language and legislative history of the 1991 constitutional amendment and determined that the Georgia Ports Authority was entitled to sovereign immunity as a state agency.[39] The court framed its analysis by reciting that "the cardinal rule of construction is to ascertain the legislative intent, 'keeping in view at all

30. *Id.* at 42, 440 S.E.2d at 196.
31. *Id.* at 42-43, 440 S.E.2d at 196-97.
32. *Id.* at 42, 440 S.E.2d at 197.
33. *Id.* at 43, 440 S.E.2d at 197.
34. *Id.*
35. *Id.* at 43-44, 440 S.E.2d at 197.
36. *Id.* at 44, 440 S.E.2d at 198.
37. *Id.*
38. 266 Ga. 586, 470 S.E.2d 426 (1996).
39. *Id.* at 586, 470 S.E.2d at 427.

times the old law, the evil, and the remedy.'"[40] Looking first to the plain meaning of the phrase "state or its departments and agencies," the court canvassed multiple dictionaries and concluded that "agency" meant a department or administrative unit of government.[41] The court then examined the act that created the Georgia Ports Authority,[42] which specifically referred to the authority as the state ports authority and gave it the responsibility to "develop, improve, and maintain the harbors and seaports of the state."[43] Because the Georgia Ports Authority was the administrative unit in charge of the state's docks, the court held it was a state agency within the plain meaning of that term.[44]

After deciding the case on plain meaning alone, the court justified the interpretation as consistent with the legislative intent of both the 1991 constitutional amendment and the GTCA.[45] According to the court, the 1991 amendment, viewed in the context of the GTCA, was intended to redefine the limited waiver of sovereign immunity in two ways: "(1) it replaced the insurance waiver with the tort claims waiver; and (2) it limited the tort claims waiver to state government entities."[46] The court observed that any ambiguity about the intended meaning of the term "state" in the 1991 amendment was resolved in the GTCA, which defined both state and state government entity to include "'offices, agencies, *authorities*, departments, commissions, boards, divisions, *instrumentalities*, or institutions.'"[47] The ports authority, the court held, was an authority or instrumentality that was meant to have limited sovereign immunity as provided in the 1991 amendment and the GTCA.[48]

The court, Justice Fletcher delivering the majority opinion, then made two seemingly conflicting statements. First, the court stated that previous cases distinguishing instrumentalities of the state from state agencies were "not dispositive since both instrumentalities and agencies are included in the [GTCA's] definition of the state."[49] The court then stated without explanation that the decision that the ports authority was a state agency entitled to sovereign immunity was consistent with the

40. *Id.* at 587, 470 S.E.2d at 427 (quoting O.C.G.A. § 1-3-1(a) (2000)).
41. *Id.*
42. 1945 Ga. Laws 464.
43. 266 Ga. at 587, 470 S.E.2d at 427.
44. *Id.*
45. *Id.*
46. *Id.* at 588, 470 S.E.2d at 428.
47. *Id.* at 588 n.12, 470 S.E.2d at 428 n.12 (quoting O.C.G.A. §§ 50-21-22(5), (6) (1998)) (emphasis added).
48. *Id.* at 589, 470 S.E.2d at 428.
49. *Id.* at 588, 470 S.E.2d at 428.

court's decision in *Thomas* that Clarke County's hospital authority was not a state agency.[50]

Despite the majority's statement to the contrary, the seeming discord between this decision and *Thomas* prompted Justices Carley and Sears to dissent. The dissent pointed out that, while claiming otherwise, the majority had departed from both the holding and the reasoning of *Thomas*.[51] Applying the rationale of *Thomas*, the ports authority could not qualify as a state agency because it was a "mere creature of the state."[52] Going back to the policy considerations the court in *Thomas* used to justify its result, the dissent argued that extending sovereign immunity to the ports authority was not necessary to protect taxpayers or safeguard the business of government from harassing lawsuits.[53] Finally, the dissent argued that the GTCA could not be used as a guide to interpret the 1991 amendment because the GTCA is just the statutory waiver of immunity for tort claims and is not intended to determine the scope of immunity afforded by the constitution.[54]

This issue was revisited in two 1999 cases. First, in *Henderman v. Walton County Water & Sewerage Authority*,[55] the court ruled on the sovereign immunity of an authority but avoided the interpretational quagmire of *Thomas* and *Miller* through judicial deference to the legislature.[56] The General Assembly created the Walton County Water & Sewerage Authority with legislation that explicitly stated it was a political subdivision of Georgia and gave it "'the same immunity and exemption from liability for torts and negligence as Walton County.'"[57] The court upheld the immunity of the authority reasoning that the legislature had the authority to create a political subdivision and extend immunity to that subdivision.[58]

The same approach of deference to the legislature in specific extensions of sovereign immunity to public entities was followed by the court of appeals in *Washington v. Department of Human Resources*[59] when it affirmed the immunity of a community service board under O.C.G.A.

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50. *Id.* at 588-89 n.17, 470 S.E.2d at 428 n.17.
51. *Id.* at 589, 470 S.E.2d at 429 (Carley, J., dissenting).
52. *Id.* (citing *Thomas*, 264 Ga. 40, 440 S.E.2d 195).
53. *Id.* at 590, 470 S.E.2d at 429 (Carley, J., dissenting).
54. *Id.*
55. 271 Ga. 192, 515 S.E.2d 617 (1999).
56. *Id.* at 193, 515 S.E.2d at 618.
57. *Id.* (quoting 1972 Ga. Laws 3623, 3636).
58. *Id.* (citing Bowen v. Columbus, 256 Ga. 462, 464, 349 S.E.2d 740, 742 (1986) (holding that the General Assembly had power to extend sovereign immunity to aspects of local government)).
59. 241 Ga. App. 319, 526 S.E.2d 354 (1999).

section 37-2-11.1(c)(1).[60] The court observed that the statute granted community service boards the same immunity as counties, but did not explore the precise nature of that immunity, except to note that the GTCA does not waive the tort immunity of a county.[61] In upholding the boards' immunity, the court recognized that the 1991 amendment provided that sovereign immunity from tort liability could be waived by legislation specifically stating that immunity is waived and the extent of the waiver.[62]

III. COURT'S RATIONALE

In *Youngblood v. Gwinnett Rockdale Newton Community Service Board*, the supreme court was once again faced with the question of how to properly construe the constitution's reservation of sovereign immunity to the state and its departments or agencies. Despite the contrary statement in O.C.G.A. section 37-2-11.1(c)(1), the court held community service boards were state agencies entitled to sovereign immunity under the 1991 amendment and the GTCA.[63] The precise issue before the court was whether O.C.G.A. section 37-2-11.1(c)(1) unconstitutionally expanded the sovereign immunity of the state under the 1991 amendment by extending the same immunity as counties to community service boards.[64] As a threshold question, the court determined whether community service boards were departments or agencies of the state.[65]

Using the same analysis as in *Miller*, the court explained that the 1991 amendment, viewed in the context of the GTCA, extended sovereign immunity to "the State of Georgia, its offices, agencies, authorities, departments, commissions, *boards*, divisions, instrumentalities, and institutions."[66] Just as the court in *Miller*[67] looked to the legislation creating the ports authority, the court here looked to the legislation creating community service boards and the public purpose they were meant to serve in order to determine whether community service boards fell within the plain meaning of that list of entities.[68] Canvassing the

60. *Id.* at 320-21, 526 S.E.2d at 356.

61. *Id.* at 320, 526 S.E.2d at 356 (citing Woodard v. Laurens County, 265 Ga. 404, 405, 456 S.E.2d 581, 582 (1995) (the waiver of sovereign immunity in the GTCA does not extend to a county); O.C.G.A. § 50-21-22(5) (1998) (the definition of state under the GTCA specifically excludes counties)).

62. *Id.*

63. 273 Ga. at 716, 545 S.E.2d at 877.

64. *Id.* at 715, 545 S.E.2d at 876.

65. *Id.* at 716, 545 S.E.2d at 876.

66. *Id.*, 545 S.E.2d at 877 (citing O.C.G.A. §§ 50-21-22(5), (6)) (emphasis added).

67. 266 Ga. at 587, 470 S.E.2d at 427.

68. 273 Ga. at 716, 545 S.E.2d at 877.

statutes governing the boards, the court determined they were meant to provide a public service by "providing mental health care and services to the disabled citizens of this State."[69] The court noted that the General Assembly designated community service boards as "public agencies," which governed publicly funded mental health and other disability services and operated on a multicounty level.[70] The court further noted that community service boards had the character of state agencies because they were administered according to the rules and regulations of the State Department of Human Resources, they were required to comply with state personnel policies, their employees were covered under the State Merit System, their property was considered public and not subject to state and local taxes, and they were insured by the Georgia Department of Administrative Services.[71] Based on the stated purpose of community service boards and this information about their general character, the court held they were state agencies under the 1991 amendment.[72]

Because community service boards were state agencies under the 1991 amendment, the court concluded that O.C.G.A. section 37-2-11.1(c)(1) unconstitutionally expanded the sovereign immunity of the state.[73] The court held that under the constitution, as amended in 1991, the sovereign immunity of the state or state agencies could only be waived in a state tort claims act or "an act of the [l]egislature which specifically provides that sovereign immunity is waived and the extent of such waiver."[74] Noting that the General Assembly had acted "[p]ursuant to this constitutional mandate" in passing the GTCA, the court focused on the defining terms of the GTCA and concluded that it was meant to apply to "*all* State agencies and departments."[75] By its express terms the GTCA does not waive the sovereign immunity of counties, but the 1991 amendment's reservation of sovereign immunity to the state and its departments or agencies does include counties.[76] As a result, counties have immunity under the constitution that is not waived by the GTCA; thus counties are afforded more immunity than state departments or agencies.[77] The court concluded that community service

69. *Id.*
70. *Id.; see also* O.C.G.A. §§ 37-2-1(a), 1(c), 6(a), 11(a) (2001).
71. 273 Ga. at 716 n.2, 545 S.E.2d at 877 n.2.
72. *Id.* at 716, 545 S.E.2d at 877.
73. *Id.* at 716-17, 545 S.E.2d at 877.
74. *Id.* (citing GA. CONST. art. I, § 2, para. 9(d), (e)).
75. *Id.* at 717, 545 S.E.2d at 877 (citing O.C.G.A. §§ 50-21-22(5), (6) (1998)).
76. O.C.G.A. § 50-21-22(5) (specifically excluding counties from the definition of the state in the GTCA); Gilbert v. Richardson, 264 Ga. 744, 747, 452 S.E.2d 476, 479 (1994).
77. *Gilbert*, 264 Ga. at 747, 452 S.E.2d at 479; O.C.G.A. § 50-21-22(5).

boards are state agencies, and thus they are not afforded the expanded immunity of a county.[78] Therefore, the court struck down the grant of expanded immunity to community service boards in O.C.G.A. section 37-2-11.1(c)(1) because such an expansion is beyond the scope of the 1991 amendment and the GTCA.[79]

The court's conclusions regarding the constitutionality of O.C.G.A. section 37-2-11.1(c)(1) did not change the outcome of the case on the tort issue because an analysis of the immunity of community service boards under the GTCA, which the court held was required by the constitution, still barred Youngblood's negligence claim.[80] The community service board's immunity was not waived under the GTCA because the underlying tort giving rise to Youngblood's claim was a battery, and the GTCA expressly excludes any liability on the part of the state for injuries resulting from a battery.[81]

Turning to Youngblood's claim that she was a third-party beneficiary of the written contract between GRNCSB and the Vaughns, a contract that identified Patricia Youngblood as the recipient of "personal support and residential services," the court held the community service board's immunity was waived.[82] As a result, the court reversed the trial court on the breach of contract claim and remanded the case for further action.[83]

Justice Carley, who dissented in *Miller*, filed a special concurrence in which he agreed with the court's result but refused to join the holding that O.C.G.A. section 37-2-11.1(c)(1) violated the constitution.[84] Justice Carley first pointed out that the 1991 amendment to the state constitution did not make the GTCA an exclusive tort waiver, but permitted immunity to be waived by any act of the legislature that specifically provided immunity was waived and the extent of the waiver.[85] O.C.G.A. section 37-2-11.1(c)(1), the concurrence pointed out, met this

78. 273 Ga. at 712, 545 S.E.2d at 877.

79. *Id.*

80. *Id.*, 545 S.E.2d at 877-78.

81. *Id.* The court expressly rejected Youngblood's argument that the battery exclusion in the GTCA did not apply because the battery had been committed by a third party rather than a state employee. *Id.* The court held the GTCA's battery exclusion is intended to prevent liability on the part of the state if the underlying cause of the injury is a battery, regardless of who commits the battery. *Id.* (citing Georgia Military Coll. v. Santamorena, 237 Ga. App. 58, 514 S.E.2d 82 (1999); Dep't of Human Res. v. Hutchinson, 217 Ga. App. 70, 456 S.E.2d 642 (1995)).

82. *Id.* at 718, 545 S.E.2d at 878 (citing GA. CONST. art. I, § 2, para. 9(c)).

83. *Id.*

84. *Id.* (Carley, J., concurring specially).

85. GA. CONST. art. I, § 2, para. 9(e).

requirement because it very specifically provided that community service boards have the same immunity as counties.[86] The concurrence also stated that the decision in *Henderman* just two years previous should have controlled the issue because there the court specifically held the General Assembly had the authority to extend the same immunity as a county to a political subdivision.[87]

IV. IMPLICATIONS

From the 1994 decision in *Thomas* to the present day, the Georgia Supreme Court has employed several different and seemingly inconsistent methods of determining the scope of the constitution's reservation of sovereign immunity to the state and its departments or agencies. As a result, the impact the *Youngblood* decision will have on the determination of similar issues in the future is unclear. Despite this difficulty, *Youngblood*, which follows the reasoning of *Miller*,[88] will likely be regarded as the established framework for deciding whether a particular governmental entity is entitled to sovereign immunity as an agency or department of the state. None of the justices dissented in *Youngblood*, and even Justice Carley, who dissented fiercely in *Miller*, concurred with the majority's analysis of the issue in *Youngblood*.[89]

One problem the court failed to address, both in *Miller* and in *Youngblood*, is the problem of the conflicting precedents in this area and the piecemeal jurisprudence they produce. In *Miller*, the court did not overrule or even attempt to distinguish *Thomas*; instead the court stated it was announcing a decision consistent with *Thomas*.[90] On the surface, the statement is contradictory because *Thomas* held an authority was not an agency or department of the state[91] while *Miller* said an authority was a state agency.[92] The distinction between the two holdings, which the court in *Miller* alludes to, is that *Thomas* involved a county hospital authority while *Miller* involved the state port

86. *Youngblood*, 273 Ga. at 718, 545 S.E.2d at 878 (Carley, J., concurring specially).
87. *Id.* at 719, 545 S.E.2d at 878-79 (Carley, J., concurring specially) (citing *Henderman*, 271 Ga. 192, 515 S.E.2d 617).
88. 266 Ga. at 587-88, 470 S.E.2d at 427-28.
89. 273 Ga. at 718, 545 S.E.2d at 878.
90. 266 Ga. at 589 n.17, 470 S.E.2d at 428 n.17.
91. 264 Ga. at 42, 440 S.E.2d at 196.
92. 266 Ga. at 587, 470 S.E.2d at 427.

authority.[93] The significance of that distinction is that counties, county hospital authorities, and other local government entities are specifically excluded from the definition of the state in the GTCA.[94]

Unfortunately, this distinction is both confusing and fallacious. As the dissent in *Miller* points out, the GTCA's definition of the state determines the extent of the statutory waiver of sovereign immunity, but that definition should not be used to interpret the scope of the constitutional reservation of sovereign immunity because the immunity reserved was intended to be broader than the extent of the waiver.[95] Nothing illustrates the distinction between the scope of the constitutional reservation of immunity and the scope of the waiver in the GTCA more clearly than the insistence of the Georgia Supreme Court, based on a long line of precedent interpreting the language used in the 1991 amendment but predating its enactment, that counties are agencies or departments of the state for the purpose of the constitutional reservation of sovereign immunity.[96] Yet this inequality of treatment[97] between the state and its counties under the constitution and the GTCA caused the court in *Youngblood* to invalidate O.C.G.A. section 37-2-11.1(c)(1) because it gave a state agency the same immunity as a county, thus expanding rather than waiving sovereign immunity.[98]

The majority in *Youngblood* also failed to overrule or distinguish the court's earlier ruling in *Henderman* that the General Assembly had the authority to create a political subdivision and grant that subdivision the same immunity as a county.[99] The court should take the next available opportunity to clarify its precedents in this area. Otherwise, the state will be faced with a fragmented and piecemeal jurisprudence—different holdings for hospital authorities, ports authorities, and water authorities with no consistent reasoning among those holdings. Such piecemeal jurisprudence will create confusion and uncertainty that will hinder the

93. *Id.* at 589, 470 S.E.2d at 428. *Compare Thomas*, 264 Ga. at 41-42, 440 S.E.2d at 196, *with Miller*, 266 Ga. at 586, 470 S.E.2d at 427.

94. O.C.G.A. § 50-21-22(5) (1998).

95. 266 Ga. at 590, 470 S.E.2d at 429.

96. *Woodard*, 265 Ga. at 405-06, 456 S.E.2d at 582-83; *Gilbert*, 264 Ga. at 746-47, 452 S.E.2d at 478-79; *Toombs*, 254 Ga. at 391, 330 S.E.2d at 97; *Nelson*, 249 Ga. at 334-35, 290 S.E.2d at 917-18.

97. The court addressed the inequality of treatment between the state and its counties for immunity purposes and held that, despite harsh results for plaintiffs, this unequal treatment does not violate the due process or equal protection clauses of either the state or the federal constitutions. *Woodard*, 265 Ga. at 406, 456 S.E.2d at 583.

98. 273 Ga. at 716-17, 545 S.E.2d at 877.

99. *Henderman*, 271 Ga. at 193, 515 S.E.2d at 618.

very business of government that sovereign immunity was meant to protect.

Another consequence of *Youngblood* is the reaffirmation of *Miller* and a clear departure from the policy-based reasoning of *Thomas*. While *Youngblood* and *Miller* may offer a clearer bright-line test for deciding what is and what is not a state agency or department, the policy based reasoning of the court in *Thomas*[100] does a better job of accomplishing the purpose of sovereign immunity while avoiding harsh and unfair results to injured persons. By restricting the application of sovereign immunity to those entities whose exposure to liability would endanger the public fisc or bring the workings of state government to a grinding halt, the court would avoid harsh results and further the government's interest in seeing injured parties compensated.[101]

While the holding in *Youngblood* may appear to preserve a plaintiff's ability to seek compensation as a third-party beneficiary of the contract between the community service board and the third-party health care provider,[102] this ability is significantly limited where it exists at all. First, the facts of the appellate record in *Youngblood* do not appear to establish that the GRNCSB breached its contract with the Vaughns, which identified Youngblood as a GRNCSB consumer who was to receive support services.[103] The facts indicate the Vaughns breached the contract by beating Patricia rather than caring for her, but nothing indicates GRNCSB breached any contractual obligation intended for Youngblood's benefit.[104] A plaintiff like Patricia can only recover as a third-party beneficiary against a party to a contract who actually breached an obligation specifically intended for her benefit.[105] Second, the damages recoverable for a breach of contract are limited to those flowing naturally and proximately from the breach, which generally

100. 264 Ga. at 42-44, 440 S.E.2d at 196-98.

101. *Id.* at 42-44, 440 S.E.2d at 197-98; *see also* Borchard, *supra* note 16, at 3.

102. 273 Ga. at 718, 545 S.E.2d at 878.

103. *Id.* at 715, 545 S.E.2d at 876.

104. *Id.*

105. O.C.G.A. § 9-2-20(b) (1982); Gardner & White Consulting Servs. v. Ray, 222 Ga. App. 464, 466, 474 S.E.2d 663, 665 (1996).

disallows consequential damages,[106] and punitive damages are not recoverable on a mere breach of contract.[107]

Despite these limitations, in *Satilla Community Service Board v. Satilla Health Services*,[108] a recipient of mental health services from a community service board relied on the decision in *Youngblood* and is pursuing a third-party beneficiary contract claim against the community service board.[109] This case involves a mental patient with a history of violent behavior named Patricia Fields who was referred by the Satilla Community Service Board (SCSB) to Satilla Health Services (SHS) for treatment.[110] SCSB breached its contract with SHS by failing to provide vital information about Fields's past history of violence and her criminal past to the SHS physician treating her.[111] As a result of this breach, SHS erroneously released Fields, and she stabbed and killed a woman named Marie Rowell the very next day.[112] SCSB is now a third-party defendant in a claim by Rowell's surviving family against Fields and SHS.[113] While the decision of the court of appeals allowed the suit to go forward, this was merely an interlocutory appeal on a summary judgment motion and did not resolve the issue of the damages allowable if the community service board is ultimately held liable.[114]

The potential for a very harsh result exists in this case because the application of sovereign immunity under the GTCA and the state

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106. "Damages recoverable for a breach of contract are such as arise naturally and according to the usual course of things from such breach and such as the parties contemplated, when the contract was made, as the probable result of its breach." O.C.G.A. § 13-6-2 (1982) (codifying the ancient rule of Hadley v. Baxendale, 156 Eng. Rep. 145, 151 (Ex. 1854)). The proximate cause requirement for recovery of damages on a contract is more stringent than the requirement in tort because "the probable and natural consequences of the breach must have been foreseeable at the time the contract was entered into." Nat'l Hills Shopping Ctr. v. Ins. Co. of N. Am., 308 F. Supp. 248, 251 (S.D. Ga. 1970). Remote or consequential damages are generally not recoverable in a breach of contract action. *See* Crawford & Assocs. v. Groves-Keen, Inc., 127 Ga. App. 646, 650, 194 S.E.2d 499, 502 (1972); *but see* Bill Parker & Assocs. v. Rahr, 216 Ga. App. 838, 841, 456 S.E.2d 221, 224 (1995) (general and special tort damages may be recovered in a breach of contract action if they are not too remote or consequential).

107. Bennett v. Associated Food Stores, 118 Ga. App. 711, 716, 165 S.E.2d 581, 585 (1968).

108. 251 Ga. App. 881, 555 S.E.2d 188 (2001), *petition for cert. filed.*

109. *Id.* at 882, 555 S.E.2d at 191.

110. *Id.* at 883-84, 555 S.E.2d at 192.

111. *Id.* at 883, 885, 555 S.E.2d at 192-93.

112. *Id.* at 882, 555 S.E.2d at 191.

113. *Id.* at 883-84, 555 S.E.2d at 192.

114. *Id.* at 881-82, 555 S.E.2d at 190-91.

constitution prevents any tort claim,[115] and the limited damages recoverable for breach of contract are likely to be inadequate to compensate for the wrongful death claim or to indemnify SHS if it is held liable. While Rowell's surviving family may ultimately recover against SHS, the real culprit, SCSB, is shielded by sovereign immunity.[116] *Satilla* demonstrates how the public policy concerns that so dominated the court's thinking in *Thomas* are totally disregarded in *Youngblood* and its progeny.[117] Instead of balancing the interests of injured plaintiffs against the governmental interests at stake in order to determine the breadth of the constitutional reservation of sovereign immunity, the court has resorted to a mechanistic statutory interpretation scheme that prevents tort recovery and forces plaintiffs to pursue the hollow hope of a contract claim.

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115. Here, just as in *Youngblood*, the battery exclusion in the GTCA prevents any tort liability. 273 Ga. at 717, 545 S.E.2d at 877-78.

116. *Satilla*, 251 Ga. App. at 882, 555 S.E.2d at 191.

117. *Compare id.* at 882-83, 555 S.E.2d at 191-93 *with Thomas*, 264 Ga. at 42-44, 440 S.E.2d at 196-98.

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