

ANDRES ANTONIO, Plaintiff
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS
Civil Action No. 22-74
Trial Division of the High Court
Palau District
September 18, 1974

Action by government hospital employee for damages sustained in attack by deranged patient. The Trial Division of the High Court, Hefner, Associate Justice, held that discretionary acts and intentional torts provisions of the sovereign immunity statute did not apply and that the government was liable in negligence for failure to provide a safe place to work when it knew or had reason to know of the dangerous propensities of the patient.

1. Labor Relations—Safety—Government Employees

Government had a duty to provide its employee with a safe place to work, and breach of the duty was negligence.

2. Torts—Negligence—Proximate Cause

Attack by deranged patient on government hospital employee who sued the government was not an intervening act.

3. Labor Relations—Safety—Government Employees

Where deranged government hospital patient attacked hospital employee, the government was liable to employee in negligence for failure

to provide a safe place to work while allegedly knowing or having reason to know of the dangerous propensities of the patient, and the tort did not arise out of the assault and battery, but rather out of the government's failure of duty. (6 TTC § 252(2), (5))

4. Labor Relations—Safety—Government Employees

Where patient in government hospital attacked hospital employee, government was liable in negligence and was not covered by discretionary acts or intentional torts provisions of sovereign immunity statute. (6 TTC §§ 252(2), (5))

5. Statutes—Construction—Implied Repeal

Allegedly inconsistent Trust Territory Code sections relating to sovereign immunity would not, on the ground the third section was enacted after the first two sections, be construed so as to read those parts of the first two sections which were allegedly inconsistent with the third as being repealed by the third. (6 TTC §§ 251–253)

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HEFNER, *Associate Justice*

Plaintiff has filed a complaint against the Trust Territory Government and the Government has filed a motion to dismiss the complaint on the grounds that the suit is not permitted by virtue of 6 TTC 251–253, the so called sovereign immunity sections.

For the purposes of this motion, the court deems the allegations in plaintiff's complaint as true. *Valle v. Stengel*, 176 F.2d 697; Fed. Rules Civ. Prac. 8(f).

Plaintiff has alleged that during the course and scope of his employment as a nurse's aide at MacDonald Hospital, Koror, Palau, he was attacked and stabbed by a deranged patient. He further alleges that the Government, as operator of the hospital, knew or had reason to know that the patient had a propensity for violence but the Government failed to take adequate precautions and failed to provide

the plaintiff with a safe place to work. He claims damages resulting from the attack for his personal injuries and other losses.

The Government claims immunity from the suit on two grounds. Section 252(2) of Title 6 protects the Government from suits based upon discriminatory acts of the Government and subsection (5) of the same section provides the Government with immunity for intentional torts such as assault and battery, claimed to be the tort involved here.

Neither one of these grounds can be sustained and the Government's motion must fail.

Subsections (2) and (5) of Section 252, Title 6 are largely taken from 28 U.S.C. 1346(b), 2674 and 2680. The Federal Government has provided that it may be sued subject to various exceptions. 28 U.S.C. Sec. 1346. The discretionary exception has received much attention from the courts in attempting to draw the line between a discretionary act of the Government and an operational one, the latter act being one upon which suit may be brought. 28 U.S.C.A. Sec. 2680 Notes 13-38.

A review of these cases reveals a general trend that "discretionary" means basically a policy making decision while "operational" is the every day acts of carrying out or implementing the decision. Each case must be decided on its particular facts.

The decision to admit or not admit a patient to a Government hospital is a discretionary function or duty of the doctor or employee of the Government. *Costley v. United States*, 181 F.2d 723.

The question here is if the acts of the Government became operational after the admission of the patient. The Government asserts that since the decision to admit the deranged patient was discretionary, the claims for damage resulting from subsequent acts or actions of the patient are excepted by the immunity statute as the reason for the

patient being in the hospital emanates from a discretionary act and therefore since the source of authority of the patient's presence in the hospital was a policy decision, the operational functions have not been reached.

To follow this line of reasoning would provide a much greater basis for Governmental immunity than that envisioned by the Congress of Micronesia or by case law interpretations as what is the dividing line between discretionary and operational. The court finds the case of *Gibson v. United States*, 457 F.2d 1391 persuasive in this matter. In that case the plaintiff was an employee in a Jobs Corps Training Camp and while engaged in his duties was attacked and injured by a juvenile delinquent with a known addiction to narcotics. The complaint alleged a breach of duty by the United States because of a failure to exercise due care for the safety of the employee. The court held that the Government was not immune under the Federal Tort Claims Act. It determined that the intentional tort of assault and battery exception was not applicable as the tort arose out of or "had its roots in the Government's negligence".

It also found that the facts pleaded were sufficient to show negligence on the operational level.

[1] Section 252(5) of Title 6 of the Trust Territory Code is identical to 28 U.S.C. 2680(h). Plaintiff has pled a case of negligence by the Government in failing to provide plaintiff with a safe place to work, while allegedly knowing or having reason to know the dangerous propensities of the patient. The Government had a duty to provide a safe place for plaintiff to work. A breach of the duty is negligence. *Lillie v. Thompson*, 332 U.S. 459, 68 S.Ct. 140; *Harrison v. Missouri Pacific R. Co.*, 372 U.S. 248, 83 S.Ct. 690.

[2] The attack by the patient was not an intervening act and the tort did not arise out of the assault and battery. *Gibson v. United States, supra*.

In addition the courts have held the assault exception not applicable to cases where the assailant was a third party and not a Government employee. *Muniz v. United States*, 305 F.2d 285, affirmed *United States v. Muniz*, 374 U.S. 150, 83 S.Ct. 1850; *Rogers v. United States*, 397 F.2d 12.

[3, 4] Section 252(2) of Title 6 of the Trust Territory Code is almost identical to 28 U.S.C. 2680(a). It appears without question that the decision to admit or not admit the patient is a discretionary function and the duty of the Government employee. Once the decision to admit was made, the Government assumed the responsibility of taking care of the patient and if the patient has dangerous propensities, to take adequate precautions so that the plaintiff would not be injured. These precautions are clearly operational and not discretionary. A failure of the Government to perform this duty is negligence. Therefore, the Government's claim of immunity under 6 TTC 252(2) and (5) is denied.

The plaintiff has raised two additional objections to the Government's motion. First, it is claimed that since 6 TTC 253 was enacted into law after Sections 251 and 252, any inconsistent provisions found in the latter two sections are repealed by implication. Secondly, plaintiff asks this court to completely abolish the rule of sovereign immunity.

[5] The legislative history of Chapter 11 of Title 6 indicates that although Sections 251 and 252 were enacted before 253, the latter section was submitted to the Congress of Micronesia as a part and addition to the Chapter dealing with actions against the Trust Territory (letter of Deputy High Commissioner dated July 25, 1968 and letter of Attorney General dated July 31, 1968). Since the sections are largely drawn from the United States Code, an overriding intent as to basically follow the United States provisions.

There is no doubt, as plaintiff argues, that it would have clarified everything if Section 253 had wording making it subject to the exceptions outlined in Section 252, but this Court cannot accept the argument that Section 253 in effect repealed Section 252. 28 U.S.C. Sec. 2680 (the section similar to Section 252) provides that 28 U.S.C. 2674 (the section similar to Section 253) and 28 U.S.C. 1346(b) (the section similar to Section 251) are subject to the exceptions including intentional torts and discretionary acts. The Trust Territory Code must be read in the same light although Section 253 specifically does not refer to the other two sections. Consequently, it is held that Section 253 must be read in conjunction with Sections 251 and 252 and if certain exceptions apply to Section 253, they will provide governmental immunity in those cases.

Plaintiff has also argued that governmental immunity in any form should be abolished. He has noted that the Supreme Court in two states, Arizona and California, have done this by judicial decision; *Stone v. Arizona Highway Commission*, 93 Ariz. 384 and *Muskopf v. Corning Hospital District*, 55 Cal.2d 211.

A reading of those cases reveals that the courts engaged in nothing more than judicial legislation. If the Congress of Micronesia wishes to remove any exception to bringing suit against the Government, it can do so very simply by legislation. It is interesting to note that with the doctrine of sovereign immunity established by common law in 1958 in the Trust Territory (*Urrimech v. Trust Territory*, 1 T.T.R. 534), the Congress of Micronesia proceeded not to override the common law by legislation, but opened the litigation door about as wide as the United States Congress did in Title 28 of the U.S.C. The United States Supreme Court has had many opportunities to determine that the doctrine of governmental immunity violates the due process and equal protection provisions of the Constitution, but

has interpreted and upheld the doctrine in applying the United States Code. For examples see *Indian Towing Co. v. United States*, 350 U.S. 61, 76 S.Ct. 122; *Eastern Airline v. Union Trust Co.*, 350 U.S. 907; and cases cited in 54 Am. Jur. 634.

Therefore, the argument that the doctrine of governmental immunity should be abolished is rejected. If the Congress of Micronesia wishes to open the litigation door wider, it can do so, but not this Court.