# *October 2020*
# *MPT-1 Library*

*Klein v. State of Franklin*

## Excerpts from Franklin Tort Claims Act

### § 41-1. Legislative declaration

It is the public policy of Franklin that state and local governmental entities and public employees shall only be liable within the limitations of the Tort Claims Act.

…

### § 41-4. Granting immunity from tort liability; authorizing exceptions

Any state and local governmental entity and any public employee acting within the scope of employment are granted immunity from liability for any tort except as waived by §§ 41-5 through 41-15.

…

### § 41-6. Liability; buildings, public parks

The immunity granted pursuant to Section 41-4 is waived when bodily injury, wrongful death, or property damage is caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any building or public park.

…

### § 41-16. Notice of claims

(a) Every person who claims damages from the State or any local governmental body under the Tort Claims Act shall present to the Risk Management Division for claims against the State, to the mayor of a municipality for claims against the municipality, to the superintendent of a school district for claims against the school district, to the county clerk of a county for claims against the county, or to the administrative head of any other local governmental body for claims against such local governmental body, within 90 calendar days after an occurrence giving rise to a claim for which immunity has been waived under the Tort Claims Act, a written notice stating the time, place, and circumstances of the loss or injury.

(b) No suit or action for which immunity has been waived under the Tort Claims Act shall be maintained and no court shall have jurisdiction to consider any suit or action against the State or any local governmental body unless notice has been given as required by this section, or unless the governmental entity had actual notice of the occurrence.

**Rodriguez v. Town of Cottonwood**
Franklin Court of Appeal (2018)

The plaintiffs appeal from a summary judgment entered in favor of the Town of Cottonwood. We review to determine whether the Franklin Tort Claims Act waives sovereign immunity when a child is injured on a playground during a summer day camp conducted by a municipality.

The plaintiffs enrolled their five-year-old son, Jack, and his sister in the Town of Cottonwood's summer day camp program. The operation of the program, which was held at Blue Mound Park, called for an active on-site supervisor and three additional employees. At the time Jack was injured, neither the on-site supervisor nor any other person performing her function was present. In fact, there were only two employees with the children at the park.

On August 4, 2016, camp had ended for the day and the children were gathered at the playground waiting for their parents to pick them up. The two employees present with the children were inattentive. Jack followed other children up a slide rather than using the steps and was injured when he fell from the top as he attempted to turn around. Jack's father, Robert Rodriguez, arrived immediately after the accident and took his son to the hospital. Jack suffers from nerve damage caused by his fall from the slide.

The district court entered summary judgment in favor of the Town, finding that § 41-6 of the Tort Claims Act did not waive sovereign immunity for the Town's failure to exercise ordinary care in the supervision of children who participated in its summer day camp program. The court rejected the plaintiffs' argument that the absence of adequate supervision was a dangerous "condition" of the playground for which sovereign immunity had been waived. This appeal followed.

The issue on appeal turns on the waiver language of § 41-6, "caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any building or public park." This language has been interpreted to refer only to "operation" or "maintenance" that results in a condition creating a risk of harm. In *Arthur v. Custer County* (Fr. Ct. App. 2008), we found that § 41-6 did not waive immunity for negligent performance of an employee's duties unless negligent performance of those duties resulted in a dangerous or defective condition in a public building or public park. The claim cannot be based solely on

negligent supervision. While negligent supervision is a tort at common law, it is not one of the torts for which immunity is waived by § 41-6 of the Act.

The plaintiffs allege that the Town's negligence in permitting the day camp to operate with inadequate staffing constituted an unsafe condition. In support, the plaintiffs assert that Franklin courts have found the following to be unsafe, dangerous, or defective conditions: failure to properly install windows so that they would not fall out, *Williams v. Central School District* (Fr. Sup. Ct. 2008); the negligent maintenance of electrical systems on school property that was so defective it led to a fire, *Schleft v. Board of Education of Terry* (Fr. Sup. Ct. 2010); the failure to keep residents safe from roaming dogs on the common grounds of a county housing project, *Farrington v. Valley County* (Fr. Sup. Ct. 2015); and the failure to rectify a prison layout that inhibited inmate surveillance, limiting the guards' ability to monitor prisoners to prevent attacks on a prisoner, *Callaway v. Franklin Dep't of Corrections* (Fr. Ct. App. 2011). Thus, the plaintiffs argue, the absence of supervision at the day camp constituted an "unsafe, dangerous, or defective *condition*" for which governmental immunity had been waived.

All cases cited by the plaintiffs concern instances of negligent conduct that created unsafe conditions. In the case at bar, however, the playground was a safe area for children, and the slide was safely built and in sound condition. Rather, it was the negligent supervision of the campers by the camp employees and not the condition of the premises that resulted in Jack's injury. Therefore, sovereign immunity had not been waived under § 41-6, and summary judgment in favor of the Town on the plaintiffs' tort claim was appropriate.

Affirmed.

**Farrington v. Valley County**
Franklin Supreme Court (2015)

This case concerns the waiver of immunity under § 41-6 of the Franklin Tort Claims Act. At issue is whether the "maintenance of any building" includes keeping the grounds of a public housing project safe from unreasonable risk of harm to its residents and invitees. The trial court dismissed all named defendants under the immunity granted by the Tort Claims Act, and the court of appeal affirmed. In this appeal, Farrington requests that we review only the dismissal of the cause of action against defendant Valley County Housing Authority, the governmental agency authorized by Valley County to operate County-owned and publicly funded housing within the County.

The facts are as follows. On October 23, 2013, three-year-old Daniel Farrington was severely bitten by a dog roaming the grounds of the Valley Vista Housing Project, a residential complex owned by Valley County and operated by the Valley County Housing Authority. Daniel was in the care of his aunt, a resident of Valley Vista.

Heather Farrington, Daniel's mother, sued the defendants on Daniel's behalf for their alleged failure to keep the premises of Valley Vista safe and for their alleged failure to enforce the County's animal-control ordinances. The trial court dismissed the complaint against all defendants for failure to state a claim upon which relief could be granted (commonly known as Rule 12(B)(6)). The court of appeal affirmed, holding that the applicable statute, § 41-6, did not contemplate that the "maintenance of any building" included keeping the grounds safe from roaming dogs or requiring enforcement of animal-control ordinances. Without any specific regard to animal-control statutes, we find that § 41-6 does contemplate waiver of immunity where, due to the alleged negligence of public employees, an injury arises from an unsafe, dangerous, or defective condition on property owned and operated by the government. For that reason, we reverse.

The complaint alleges that the Housing Authority was aware or should have been aware of the continuing problem of roaming dogs and the resulting danger this condition posed for the common areas of Valley Vista, which the Housing Authority had the duty to maintain in a safe condition.

The Housing Authority claims that it is immune from suit pursuant to the Franklin Tort Claims Act and that dismissal under Rule 12(B)(6) is proper. It argues that the Act does not apply to grounds, only to buildings and parks. It also contends that there was no waiver of immunity

under § 41-6 because the failure to control loose dogs bears no relationship to the maintenance of a public building or park and that the child's injuries were not caused by a defect in a public building or park. Moreover, the Housing Authority maintains that Daniel's injury did not arise from a defective condition existing upon the land of the housing project.

A plain reading of § 41-6 convinces us that the Franklin Legislature intended to ensure the safety of the general public by imposing on public employees a duty to exercise reasonable care in maintaining premises owned and operated by governmental entities. The legislature included both buildings and parks within the waiver provision ("while acting within the scope of their duties in the operation or maintenance of any building or public park"). Thus, we discern no intent to exclude from that waiver liability for injuries arising from defective or dangerous conditions on the property surrounding a public building. We therefore conclude that the Tort Claims Act waives immunity for unsafe conditions in buildings *or on the grounds surrounding the buildings*. The common grounds upon which the County-owned and -operated Valley Vista Housing Project is situated fall within the definition of "building" under § 41-6.

This case rests upon whether dogs roaming the common grounds of a government-operated residential complex could represent an unsafe condition. Given the potential safety risks to Valley Vista residents and invitees, we find that under these circumstances, loose-running dogs could represent an unsafe condition upon the land.

The complaint alleges that the Housing Authority knew of the unsafe condition represented by dogs running loose within the project. As landlord, the Housing Authority has a duty to safely maintain those areas expressly reserved for the use in common of the tenants. Whether the Housing Authority exercised reasonable care in maintaining the common grounds of Valley Vista under the circumstances would depend on what it knew or should have known about loose dogs in the common areas, whether those dogs should have been foreseen as a threat to the safety of the residents and invitees, and the means available to the Housing Authority to control the presence of those dogs. We hold that the complaint sufficiently alleges facts that state a claim upon which relief could be granted.

Reversed and remanded.

**Beck v. City of Poplar**
Franklin Supreme Court (2013)

Matthew Beck sued the City of Poplar to recover damages for personal injuries received in a car accident. The district court granted summary judgment to the City on the ground that Beck had failed to comply with the notice requirement of the Tort Claims Act § 41-16. The court of appeal reversed. On appeal we consider whether the City traffic department's receipt of an accident report in this case is "actual notice" under the Act.

The court of appeal reasoned that if the City traffic department is the governmental agency responsible for overseeing the safety of intersections, then notice of the occurrence to that department in the form of the accident report constitutes actual notice to the City. The court's holding and instructions were based on our statement in *Ferguson* that subsection 41-16(b) means that "the *particular agency that caused the alleged harm* must have actual notice before written notice is not required." *Ferguson v. State of Franklin* (Fr. Sup. Ct. 2010) (emphasis added).

Subsection 41-16(a) clearly states the legislature's intent that the governmental entity that is the subject of a claim must be given *written notice* of the alleged tort. Subsection 41-16(b) creates an exception to this requirement where the governmental entity allegedly at fault had *actual notice* of the tort. The purpose of subsections 41-16(a) and (b) is "to ensure that the agency allegedly at fault is notified that *it may be subject to a lawsuit.*" *Id.* (emphasis added).

Under some circumstances, a police or other report could serve as actual notice under § 41-16(b). But that occurs only where the report contains information that puts the governmental entity allegedly at fault on notice that *there is a claim against it.* The statute contemplates that the governmental entity must be given notice of a likelihood that litigation may ensue, in order to reasonably alert it to the necessity of investigating the merits of a potential claim against it.

In *Solomon v. State of Franklin* (Fr. Sup. Ct. 2012), we held that notice, whether given under § 41-16(a) or by actual notice, must be given within 90 calendar days of the occurrence. In *Solomon*, the plaintiff provided actual notice. In that case, in a phone call with an official of the State Parks Commission made within 90 calendar days of the decedents' deaths, the plaintiff described the facts related to the decedents' deaths and told the official that he had hired a lawyer to start legal proceedings against the State.

We have reviewed the report pertaining to the accident involving Matthew Beck. The report listed only the date, time, and location of the accident, identifying information about Mr.

Beck and the city driver, and the fact that Beck suffered minor injury. There is nothing in the report that could be construed as informing or notifying the City traffic department that it may be subject to a lawsuit. Nor is there evidence that the City was notified in any other manner that legal proceedings would be initiated.

The court of appeal is reversed, and the trial court's grant of summary judgment in favor of the City is upheld.