

The Appeals Court Applies Section 10(i) Narrowly Under the Tort Claims Act

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In a case of first impression, the Appeals Court examined the breadth of a public employer's immunity under Section 10(i) of the Massachusetts Tort Claims Act [MTCA] for wrongful release of a detainee. In McCarthy v. City of Waltham, the plaintiff's decedent, James McCarthy, was placed under protective custody by City police after McCarthy's father called to report that he was distraught, under the influence and possibly suicidal. Another relative then placed two telephone calls to the police department while McCarthy was in custody, expressing a desire to be present when McCarthy was released so that she could ensure that McCarthy did not harm himself. The dispatchers taking the calls variously indicated to the caller that an officer would call her or have McCarthy call her upon his release. The police, did neither, and shortly after his release, McCarthy committed suicide. McCarthy's estate sued the City for negligence under the MTCA for failing to notify the family of his release.

After a jury found for the estate, the City moved for a directed verdict on the grounds that Sections 10(i) and 10(j) of the MTCA entitled the City to immunity. The trial court denied the motion and subsequently entered judgment for the plaintiff on a \$100,000 jury verdict. The City appealed and the Appeals Court reversed, agreeing with the City that Section 10(j) entitled it to immunity because McCarthy's self-destructive act was the "original cause" of the harm.

The McCarthy decision is also significant for its rejection, in dicta, of the City's claim to immunity under Section 10(i). Section 10(i) affords immunity for, "an[y] claim based upon the release...of... a... detainee...from the custody of a public employer...unless gross negligence is shown...." Mass. Gen. Laws ch. 258, § 10(i). The City had argued that it was immune from suit pursuant to Section 10(i) because the plaintiff's claim was based upon the decedent's release from custody. Rejecting the City's position, the Appeals Court observed:

Although it does not appear that any case has discussed whether [Section 10(i)] is applicable to a claim for injuries to the person released from custody, in addition to third parties who are injured by the person released, we conclude that the rulings of the motion and trial judges that excluded application of this form of immunity to the plaintiff's claim were not erroneous. In our view, the intent of the statute is to allow a form of remedy to those injured by the actions of the person released. This intention is inferred from the language...that creates an exception to immunity when "gross negligence is shown...."

Id. at 565.

The Court's narrow interpretation of Section 10(i) immunity (albeit in dicta) does not appear to be supported by the language of the statute. The Court is correct that Section 10(i) authorizes a cause of action for gross negligence to go forward. What is less clear is how the Court "infers" a limiting intent from that language, i.e., that Section 10(i) applies *only* to harm or injuries incurred by third parties. Indeed, the language used by the General Court is conspicuously broad, retaining immunity for "an[y] claim based upon" the release of a detainee. Mass. Gen. Laws ch. 258, § 10(i).

Although statutes waiving sovereign immunity must be strictly construed and immunity waived only to the extent expressed by the Legislature, it is true that such statutes still must be interpreted reasonably and in a manner that does not frustrate



the Legislature's intent. Todino v. Town of Wellfleet, 448 Mass. 234, 238 (2007). Even assuming, *arguendo*, that the Legislature drafted Section 10(i) with the intent of supplying a remedy for *gross* negligence to an innocent third party harmed by a detainee, it cannot be said that excusing the detainee from the preclusive effect of section 10(i) is necessary to further that intent. It must not be forgotten that, although McCarthy was a sympathetic case, Section 10(i) also applies to dangerous escapees and parolees. On the other hand, applying Section 10(i) to "any claim," third party or not, is true to the statutory language and achieves that same result, serving only to additionally deprive the actual detainee, parolee, escapee, etc., of a cause of action for ordinary negligence. Neither the statutory language nor public policy is offended by doing so.