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Municipal Corporations: Liability for Intentional Torts and Punitive Damages

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been adopted by three states,[25] provides one solution to the problem.[26] It enables a police officer to stop any person whom he has reasonable grounds to suspect is committing, has committed, or is about to commit a crime and demand of him his name, address, what he is doing, and where he is going. If the person does not satisfactorily explain his actions, the officer can detain him for further investigation. The detention is not an arrest and no record of it is made by the police. The maximum detention period is two hours and the person must be released or arrested and charged with a crime at the end of the detention period. The constitutionality of the Uniform Arrest Act has been upheld by the highest courts of two states.[27] It presents a straightforward attack on the law enforcement problem, and does not subject a person to being arrested and possibly convicted for violating an excessively broad and vague vagrancy-type statute or ordinance.

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MUNICIPAL CORPORATIONS: LIABILITY FOR INTENTIONAL TORTS AND PUNITIVE DAMAGES

City of Miami v. Simpson, 172 So. 2d 435 (Fla. 1965)

Fisher v. City of Miami, 172 So. 2d 455 (Fla. 1965)

In *City of Miami v. Simpson*,[1] plaintiff sued the city of Miami claiming compensatory and punitive damages for an alleged intentional assault by city police officers. The Third District Court of Appeal reversed a summary judgment that had been entered in the city's favor.[2] On appeal the Florida Supreme Court HELD, Florida municipalities are liable for intentional torts committed by municipal employees within the scope of their employment. Justice Caldwell dissenting.[3]

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25. DEL. CODE ANN., tit. 11, §1902 (1953); N.H. REV. STAT. ANN. §594:2 (1955); R.I. GEN. LAWS ANN. §12-7-1 (1956).

26. See Note, *Use of Vagrancy-Type Laws for Arrest and Detention of Suspicious Persons*, 59 YALE L.J. 1351 (1950).

27. Cannon v. State, 53 Del. 284, 168 A.2d 108 (1961); Kavanagh v. Stenhouse, 174 A.2d 560 (R.I.), *appeal dismissed*, 368 U.S. 516 (1961).

1. 172 So. 2d 435 (Fla. 1965).

2. Simpson v. City of Miami, 155 So. 2d 829 (3d D.C.A. Fla. 1963).

3. City of Miami v. Simpson, 172 So. 2d 435 (Fla. 1965) (Caldwell, J., dissenting).

In *Fisher v. City of Miami*,[4] a companion case on similar facts, plaintiff appealed from a Third District Court of Appeal decision holding that punitive damages could not be recovered from a municipality for intentional torts.[5] The Florida Supreme Court HELD, absent a legislative pronouncement to the contrary, municipalities are not liable for punitive damages when sued for an intentional tort committed by an employee in the scope of his duties.

In these two decisions the Florida Supreme Court clarified its opinion in *Hargrove v. Town of Cocoa Beach*,[6] an opinion that had given rise to divergent views in the district courts of appeal.[7] In *Hargrove* the court permitted a wrongful death action against the municipality of Cocoa Beach when plaintiff's husband, a prisoner in the city jail, died from smoke suffocation as a consequence of alleged negligence of city employees. The *Hargrove* decision eliminated the elusive distinctions between proprietary and governmental functions and applied the doctrine of *respondeat superior* in resolving problems of municipal tort liability. The *Hargrove* court seemed unconcerned whether the torts were intentional or unintentional, stating that it would be a fundamental injustice to hold a municipality liable for a police officer's negligent driving[8] but immune if the officer gets out of his automobile and wrongfully assaults a citizen.[9] But the court also used other language indicating that the decision was limited to negligent torts.[10] As a result, confusion arose in the district courts of appeal as to whether municipalities should be held liable for intentional as well as negligent torts.

Although no district court since *Hargrove* has clearly based its decision denying liability in a tort action on the ground that the tort was an intentional one, implications to that effect can be found in *Middleton v. City of Fort Walton Beach*[11] (first district) and *Gordon v. City of Belle Glade*[12] (second district). Thus when the majority

4. 172 So. 2d 455 (Fla. 1965).

5. Fisher v. City of Miami, 160 So. 2d 57 (3d D.C.A. Fla. 1964).

6. 96 So. 2d 130 (Fla. 1957). For further background material see Price & Smith, *Municipal Tort Liability: A Continuing Enigma*, 6 U. FLA. L. REV. 330 (1953) and Note, 16 U. FLA. L. REV. 90 (1963).

7. *Compare* Middleton v. City of Fort Walton Beach, 113 So. 2d 431 (1st D.C.A. Fla. 1959), *with* City of Miami v. Albro, 120 So. 2d 23 (3d D.C.A. Fla. 1960), *and* Gordon v. City of Belle Glade, 132 So. 2d 449 (2d D.C.A. Fla. 1961).

8. City of Avon Park v. Giddens, 158 Fla. 130, 27 So. 2d 825 (1946).

9. City of Miami v. Bethel, 65 So. 2d 34 (Fla. 1953).

10. "[W]hen an individual suffers a direct, personal injury proximately caused by the negligence of a municipal employee. . . ." Hargrove v. Town of Cocoa Beach, 96 So. 2d 130, 133 (Fla. 1957).

11. 113 So. 2d 431 (1st D.C.A. Fla. 1959).

12. 132 So. 2d 449 (2d D.C.A. Fla. 1961).

of the Third District Court of Appeal held in *Simpson*[13] that intentional torts were included in the *Hargrove* doctrine, it was probable that the decision would be deemed in conflict with the other district courts.

Beside the intentional-unintentional confusion, the district courts have had to grapple with exceptions to municipal liability delineated by the Florida Supreme Court in *Hargrove* and other cases. These exceptions to municipal liability were for legislative, quasi-legislative and judicial, quasi-judicial acts committed by municipal employees. The court's example of legislative, quasi-legislative immunity was *Elrod v. City of Daytona Beach*[14] in which an attempt was made to hold the city liable for damages resulting from the enforcement of an unconstitutional ordinance. *Akin v. City of Miami*[15] was used as an example of judicial, quasi-judicial immunity; in *Akin* a landowner attempted to recover damages from the city of Miami for refusal to grant a building permit. These exceptions seem designed to protect the municipality and its employees in the reasonable exercise of discretionary powers. Since *Hargrove* the district courts have found new examples of judicial and legislative functions. The First District Court in *Middleton v. City of Fort Walton Beach*[16] deemed an alleged malicious arrest to be a quasi-judicial corporate function of a municipal employee and hence an exception to *Hargrove*. The Third District Court in *Steinhardt v. Town of North Bay Village*[17] deemed alleged negligence by a fire department in failing to extinguish a fire to be an exercise by municipal officials of legislative or quasi-legislative powers. Although certiorari was denied, *Steinhardt* is at most a tenuous example of legislative functions.

To complicate further the interpretation of *Hargrove*, the Second District Court of Appeal in *Gordon v. City of Belle Glade*[18] decided that the *Hargrove* court, although it had approved the dissents in *City of Miami v. Bethel*[19] and *Williams v. City of Green Cove Springs*,[20] had not specifically overruled those cases. *Bethel* involved the "working over" by Miami policemen of a person suspected of playing dice and *Williams* involved a wrongful death action against the city of Green Cove Springs for failing to remove plaintiff's decedent from a burning jail. Both cases were dismissed, because of

13. Simpson v. City of Miami, 155 So. 2d 829 (Fla. 1963).
14. 132 Fla. 24, 180 So. 378 (1938).
15. 65 So. 2d 54 (Fla. 1953).
16. 113 So. 2d 431 (1st D.C.A. Fla. 1959).
17. 132 So. 2d 764 (3d D.C.A. Fla. 1961), *petition for cert. dismissed*, 141 So. 2d 737 (Fla. 1962).
18. 132 So. 2d 449 (2d D.C.A. Fla. 1961).
19. 65 So. 2d 34 (Fla. 1953) (dissenting opinion).
20. 65 So. 2d 56 (Fla. 1953) (dissenting opinion).

municipal immunity, with dissents calling for a reexamination of Florida's municipal tort law. Although reaching its decision on another point, the district court in *Gordon*, a case on virtually the same facts as *Bethel*, failed to recognize that the supreme court intended to adopt the dissenter's reasoning. Thus the district courts were confused as to the supreme court's intent in *Hargrove*, a confusion that was beginning to produce conflicting decisions.

The supreme court in *Simpson* emphasizes that *Hargrove* was constructed on the foundation of *respondeat superior* stating that there is no reason to restrict the *respondeat superior* concept to negligent torts. Approving once again the dissent in *City of Miami v. Bethel*,[21] where the dissenters would have held the city liable for an intentional tort, the court states that *Simpson* is not an extension of the *Hargrove* doctrine but is simply a "logical judicial antiphon to the concept there announced."[22] The court says that the city is liable only when the act is done by the servant within the real or apparent scope of the master's business and that this is a question for determination by a jury. Thus the rules in determining tort liability applicable to private corporations would also be applicable to municipal corporations.

In *Fisher*, plaintiff relied on *Hargrove* and dicta in the 1940 case of *City of Miami v. McCorkle*[23] which implied that a municipality might be liable for punitive damages. The court further clarifies *Hargrove* by stating that in *McCorkle* only the individual's right to compensation for a wrong done was approved, not the right to punitive damages. Citing other jurisdictions and basic policy reasons, the court refuses to permit punitive damages against a municipality. The basic concept behind this decision is that punishment and deterrence are the primary reasons for punitive damages, and to grant these would be to penalize the taxpayers who not only had no part in the commission of the tort, but who are expected to benefit from the public example that the punishment makes of the wrongdoer. Also, Florida has a rule that permits evidence of the wealth of a tortfeasor as a measure of the amount of punitive damages that should be awarded — the theory being the wealthier the wrongdoer, the greater the award. Because of its taxing power a municipality has unlimited wealth, which would not afford a proper guide in determining the amount of the punitive award. On the other hand, if evidence of the city's wealth is prohibited, there would be no guide for the jury in determining what would punish the municipality. Municipal employees could be held liable for punitive damages in their individual

21. 65 So. 2d 34 (Fla. 1953) (dissenting opinion).
22. City of Miami v. Simpson, 172 So. 2d 435, 437 (Fla. 1965).
23. 145 Fla. 109, 199 So. 575 (1940).