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## 1997 Survey of Rhode Island Law: Cases: Civil Procedure/Tort/ Law

Robert E. Falvey

*Roger Williams University School of Law*

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**Civil Procedure/Tort/Law.** *Graff v. Motta*, 695 A.2d 486 (R.I. 1997). In tort actions against municipalities when sovereign immunity is waived, punitive damages are prohibited and considered against public policy and legislative intent. Plaintiffs may not receive multiple-damage recoveries for the same factual incident, even though claims are couched in multiple- and redundant-liability theories. The finding of liability of public officials does not equate to a per se finding of liability on a civil-rights claim under 42 U.S.C. § 1983.

In *Graff v. Motta*,<sup>1</sup> the Rhode Island Supreme Court was faced with the question whether a court may award a plaintiff punitive damages against a municipality when police officers, acting in their official capacity, are found liable on malicious prosecution, false arrest and false-prosecution claims.<sup>2</sup> If a plaintiff does prove liability on these claims, all arising from a single incident, then he may not recover in triple damages.<sup>3</sup> Further, once a finding of liability is made against public officials on state-law tort claims, no further recovery is possible under a 42 U.S.C. § 1983 civil-rights violation claim where the state claims are fully vindicated.<sup>4</sup>

#### FACTS AND TRAVEL

In the early morning hours of June 1, 1987, the plaintiff was operating his Harley Davidson motorcycle on West Shore Road in the Warwick, Rhode Island.<sup>5</sup> At that time, Charles Blackmar, Jr., a police officer employed by the Warwick Police Department, had been parked in a parking lot adjacent to that roadway monitoring traffic.<sup>6</sup> Officer Blackmar saw the plaintiff traveling at approximately fifty-five miles per hour in a designated thirty-five-mile-per-hour zone.<sup>7</sup> In addition, Officer Blackmar noticed that the motorcycle lacked an operable tail light in violation of Rhode Island

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1. 695 A.2d 486 (R.I. 1997).

2. *See id.* at 489-90.

3. *See id.* at 491-92.

4. *See id.* at 492-94.

5. *See id.* at 488.

6. *See id.*

7. *See id.*; *see also* R.I. Gen. Laws §§ 31-14-2, 31-14-4 (1956) (1994 Reenactment) (specifying speed limits).

law.<sup>8</sup> When the officer began to follow the motorcycle, the plaintiff accelerated to approximately seventy-five miles per hour despite the curving nature of the roadway. After Officer Blackmar had rounded the second of two curves, he discovered the plaintiff had lost control of the motorcycle, struck a car head on and was seriously injured.<sup>9</sup>

The plaintiff spent the following two months in Rhode Island Hospital recovering from his injuries.<sup>10</sup> The investigation of the accident was completed and filed since it was not then known whether Graff would survive.<sup>11</sup> The accident report and accompanying case file included a witness statement from the other driver involved, Officer Blackmar's report, a criminal complaint and a summons charging Graff with eluding a police officer.<sup>12</sup> The summons was left in the file. No further action on the case was taken for some sixteen months.<sup>13</sup>

Graff did recover from his injuries and in March of 1988 directed his attorney to introduce an act in the General Assembly which would permit him to recover up to \$500,000 in a civil suit he was then contemplating against the city of Warwick.<sup>14</sup> Rhode Island law limited any potential recovery against a public entity to \$100,000.<sup>15</sup> The introduction of the bill did not go unobserved. Chief of Police Wesley Blanchard was alerted to its introduction and directed his then-prosecution officer Captain DeFeo to examine the Graff file and determine its current status.<sup>16</sup> Captain DeFeo determined that the record supported the probable cause necessary to charge Graff with eluding a police officer and thereafter obtained a warrant for Graff's arrest.<sup>17</sup> Police acted upon this warrant and on October 1, 1988 Graff was arrested.<sup>18</sup> While in custody at Warwick police headquarters, Officer Blackmar alleg-

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8. See *Graff*, 695 A.2d at 488; see also R.I. Gen. Laws § 31-24-7 (1956) (1994 Reenactment) (requiring tail lamps).

9. See *Graff*, 695 A.2d at 488.

10. See *id.*

11. See *id.*

12. See *id.* at 488-89; see also R.I. Gen. Laws §§ 31-27-4 (1956) (1994 Reenactment), 31-27-4.1 (1997).

13. See *Graff*, 695 A.2d at 489.

14. See *id.* at 489.

15. See *id.* at 488; see also R.I. Gen. Laws § 9-31-2 (1956) (1994 Reenactment).

16. See *Graff*, 695 A.2d at 488-89.

17. See *id.* at 489.

18. See *id.*

edly approached Graff and told him that he should "make it easy on [himself] and drop it."<sup>19</sup> Graff perceived this as an allusion to the pending civil suit stemming from the pursuit.<sup>20</sup> The charge of eluding a police officer was subsequently dismissed in the district court because of the failure to issue the summons in a timely manner. The core issue of Graff's guilt in that matter was never determined.<sup>21</sup>

The suit which Graff eventually filed in the Rhode Island Superior Court was not based on the original collision damages claim, but rather malicious prosecution, false arrest and false imprisonment.<sup>22</sup> Graff contended that the arrest warrant was procured in retaliation for Graff's introduction of the special bill in contemplation of the civil suit for damages.<sup>23</sup> The case was heard before a jury in the superior court which found for the plaintiff and awarded him \$1,000 on each of the three counts, plus \$75,000 in punitive damages.<sup>24</sup> The jury denied Graff's 42 U.S.C. § 1983 claim for civil-rights violations.<sup>25</sup> The defendants appealed to the Rhode Island Supreme Court. Graff cross-appealed on his § 1983 claim and also for the failure of the judgment to mandate the joint and several liability of the defendants.<sup>26</sup>

### *Punitive Damages*

The jury in this action awarded the plaintiff \$75,000 in punitive damages and the city appealed.<sup>27</sup> The supreme court acknowledged that, although at common law the State and its political subdivisions were immune from suit under the doctrine of sovereign immunity, the State in 1970 waived immunity by the enactment of section 9-31-1 of the Rhode Island General Laws.<sup>28</sup>

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19. *Id.*

20. *See id.*

21. *See id.*

22. *See id.*

23. *See id.*

24. *See id.*

25. *See id.* at 487.

26. (1956) (1994 Reenactment) *See id.*

27. *See id.* at 489.

28. *See id.*; see also R.I. Gen. Laws § 9-31-1. Section 9-31-1 provides that: the state of Rhode Island and any political subdivision thereof, including all cities and towns, shall, subject to the period of limitations set forth in § 9-1-25, hereby be liable in all actions of tort in the same manner as a private individual or corporation; Provided, however, that any recovery in

The question before the court, however, was whether this grant of potential liability included the possibly severe sanction of punitive damages.<sup>29</sup> The court held that it did not.<sup>30</sup> The court looked to prior decisions construing this statute, *Andrade v. State*<sup>31</sup> and *In re Sherman*.<sup>32</sup> The court determined that the statute must be construed very narrowly, being cautious to avoid allowing liability and damages against a sovereign which the legislature neither considered nor consented to in promulgating the statute.<sup>33</sup>

In *Sherman* and *Andrade*, the court was concerned with awarding plaintiffs pre- and post-judgment interest against the State.<sup>34</sup> In denying the interest awards, the court reasoned that, although the General Assembly had allowed for the potential liability of political entities, it had not specifically addressed nor allowed the awarding of interest.<sup>35</sup> "We therefore presume that the legislature did not intend to deprive the State of any sovereign power 'unless the intent to do so is clearly expressed or arises by necessary implication from the statutory language.'"<sup>36</sup> Here, the court noted that the legislature had neither contemplated nor specifically addressed the awarding of interest penalties.<sup>37</sup> The court further reasoned that, likewise, the legislature would not have considered nor allowed the potentially catastrophic punitive-judgment awards which have become increasingly prevalent in modern-American jurisprudence.<sup>38</sup> Moreover, the court took notice of the tendency and likelihood that a sympathetic jury might take advantage of the considerable monetary resources of a municipality in awarding damages to an injured fellow citizen. Such large awards

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any such action shall not exceed the monetary limitations thereof set forth in the chapter.

*Id.*

29. *See id.* at 489.

30. *See id.*

31. 448 A.2d 1293 (R.I. 1982).

32. 565 A.2d 870 (R.I. 1989).

33. *See Graff*, 695 A.2d at 489.

34. *See id.* (citing *Andrade*, 448 A.2d 1293; *Sherman*, 565 A.2d 870).

35. *See id.*

36. *Id.* (citing *Sherman*, 565 A.2d at 872 (quoting *Andrade*, 448 A.2d 1295)).

37. *See id.* at 490.

38. *See id.*

to an individual, ultimately at taxpayer expense, were deemed to contravene the public policy of Rhode Island.<sup>39</sup>

### *Multiple Awards*

The jury found that Graff had sustained damages in the amount of \$1,000 for legal fees in defending the criminal charges and lost wages.<sup>40</sup> In their award, however, the jury allowed for \$1,000 on each of the three counts: malicious prosecution, false arrest and false imprisonment. The defendants appealed this duplicative award. The court agreed that Graff could not recover for all three counts when the evidence showed that he sustained only a single incident of damages.<sup>41</sup> Those damages were all of singular event. He only paid his lawyer once, and he only once lost several days from work. He cannot then, under Rhode Island law, recover three times for the same loss.<sup>42</sup>

### *42 U.S.C. § 1983 Claim*

In addition to the state-law tort claims for malicious prosecution, false arrest and false imprisonment, Graff also filed a 42 U.S.C. § 1983 claim for the deprivation of civil rights based on the same underlying actions.<sup>43</sup> The jury, after finding for Graff on his state-law claims, denied his civil-rights claim.<sup>44</sup> In his appeal, Graff contended that a finding of liability on the underlying state-law claims should have resulted in a per se finding of liability on his 42 U.S.C. § 1983 action. The court disagreed.<sup>45</sup>

The court determined that, although a 42 U.S.C. § 1983 claim can be pursued in either state or federal court, a subsequent recovery on the state-law tort precludes a second or duplicative recovery on the same federal claim. This result would not be possible, however, if the state recovery did not fully vindicate a constitutional violation.<sup>46</sup> Here, the finding of liability on the three state-law tort

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39. *See id.*

40. Graff's responses to the defendant's interrogatories showed that he paid \$1,050 in legal fees and lost \$577.92 in wages. *See id.* at 491 n.3.

41. *See id.* at 491.

42. *See id.* at 491-92.

43. *See id.* at 492.

44. *See id.*

45. *See id.*

46. *See id.* at 493-94.

claims fully satisfied Graff's losses.<sup>47</sup> Citing a Sixth Circuit case based on similar facts, the court determined that 42 U.S.C. § 1983 claims and state-law tort claims can be pursued simultaneously. However, two vindications of that claim are not permitted.<sup>48</sup>

In addition, the court determined that the 42 U.S.C. § 1983 claim against the city of Warwick could not be sustained unless and until Graff proved that the actions of its agent Captain DeFeo were taken in accordance with an overall policy or custom of the city of Warwick to deprive the citizens of that city of their constitutional rights.<sup>49</sup> As the evidence was completely lacking in this respect, the court denied Graff any such relief.<sup>50</sup>

#### CONCLUSION

The Rhode Island Supreme Court applied its precedents and those of the federal courts in determining that multiple and duplicative awards, via state tort actions and 42 U.S.C. § 1983 claims, should not be allowed. In addition, the court determined that it is the province and duty of the General Assembly, being duly entrusted with the purse strings of the general treasury, to determine whether punitive damages should be allowed when sovereign immunity has been waived. The alarming rise in the frequency and amounts of tort-liability awards, particularly against public entities and officials, bodes ill for the public in general who must bear the cost of these awards. These costs are manifested in terms of increased taxes and fees, and the subsequent lessening of state and municipal services as a result of decreased budgetary allotments to schools, public safety and other municipal services.

Robert E. Falvey

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47. *See id.* at 494.

48. *See id.* at 493 (quoting *Braley v. City of Pontiac*, 906 F.2d 220, 223 (6th Cir. 1990)).

49. *See id.* at 494.

50. *See id.*