

## SUPREME COURT OF APPEALS OF WEST VIRGINIA

# The West Virginia State Police, Department of Military Affairs and Public Safety v. J.H., a Minor, by and through His Parent and Next Friend, L.D.

The West Virginia State Police v. J.H. · No. No. 19-0741 · Decided March 26, 2021

### SUMMARY

The Supreme Court of Appeals of West Virginia held that an order deferring a ruling on a motion to dismiss based on qualified immunity is immediately appealable under the collateral order doctrine when the complaint does not adequately plead facts establishing liability and overcoming immunity. The court concluded that the circuit court improperly considered matters outside the pleadings without converting the motion to one for summary judgment and failed to properly assess qualified immunity. The court reversed the circuit court's order and remanded with directions to dismiss the vicarious-liability and negligent-training-and-supervision claims against the West Virginia State Police and for further proceedings.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                              |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                                                                                                                                                                    |
| WRITING FOR THE COURT | Chief Justice Jenkins; Justice Hutchison; Justice Wooton                                                                                                                                                                                                                                                                                                                                     |
| JURISDICTION          | West Virginia                                                                                                                                                                                                                                                                                                                                                                                |
| DECIDED               | March 26, 2021                                                                                                                                                                                                                                                                                                                                                                               |
| DOCKET                | No. 19-0741                                                                                                                                                                                                                                                                                                                                                                                  |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | The defendant state agency appealed an interlocutory circuit-court order denying its Rule 12(b)(6) motion to dismiss and deferring a ruling on qualified immunity pending discovery.                                                                                                                                                                                                         |
| STANDARD OF REVIEW    | The denial of a Rule 12(b)(6) motion is reviewed de novo. The complaint is construed in the light most favorable to the plaintiff and its allegations are taken as true, but heightened pleading applies when immunity is implicated. The ultimate determination of qualified immunity is a question of law unless there is a bona fide dispute concerning foundational or historical facts. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                                                                                               |

## **PARTIES**

The West Virginia State Police, Department of Military Affairs and Public Safety v. J.H., a Minor, by and through His Parent and Next Friend, L.D.

## **TOPICS**

qualified immunity

interlocutory appeal

motions to dismiss

appellate jurisdiction

government liability

## **PRACTICE AREAS**

civil procedure

appellate procedure

government liability

civil rights

torts

## **QUESTIONS PRESENTED**

1. Whether the Supreme Court of Appeals had interlocutory appellate jurisdiction over a circuit-court order deferring a qualified-immunity ruling pending discovery.
2. Whether the circuit court improperly considered a video outside the pleadings when ruling on the WVSP's Rule 12(b)(6) motion without converting the motion to summary judgment and allowing the parties a reasonable opportunity to present pertinent materials.
3. Whether the complaint adequately pleaded facts to overcome qualified immunity for the WVSP's vicarious-liability claim based on the Trooper Defendants' alleged conduct.
4. Whether the complaint adequately pleaded a clearly established statutory or constitutional violation, or fraudulent, malicious, or oppressive conduct, sufficient to overcome qualified immunity for the negligent training and supervision claim.

## **HOLDINGS**

1. Where a complaint fails to adequately plead specific facts that both support a reasonable inference of liability and defeat qualified immunity, a circuit court's order deferring its ruling on a qualified-immunity motion to dismiss is an interlocutory order immediately appealable under the collateral-order doctrine.
2. A circuit court errs by considering a video that was neither attached to nor incorporated into the complaint when deciding a Rule 12(b)(6) motion, unless the motion is converted to one for summary judgment and the parties are given a reasonable opportunity to present pertinent materials.
3. The WVSP was entitled to qualified immunity from J.H.'s vicarious-liability claim because the amended complaint did not plead sufficient specific facts showing that the Trooper Defendants violated a clearly established statutory or constitutional right or acted fraudulently, maliciously, or oppressively.
4. The WVSP was entitled to qualified immunity from the negligent training and supervision claim because the complaint did not identify a clearly established statutory or constitutional right or law violated by the WVSP's training or supervision, and did not allege that the WVSP acted fraudulently, maliciously, or oppressively.

## **KEY QUOTATIONS**

*“Where a complaint fails to adequately plead specific facts that (1) allow the court to draw the reasonable inference that the defendant is liable for the harm alleged, and (2) defeat a qualified immunity defense, then a circuit court’s order deferring its ruling on a motion to dismiss based upon an assertion of qualified immunity is an interlocutory ruling that is subject to immediate appeal under the collateral order doctrine.” (syllabus point 3)*

*“In the absence of an insurance contract waiving the defense, the doctrine of qualified or official immunity bars a claim of mere negligence against a State agency not within the purview of the West Virginia Governmental Tort Claims and Insurance Reform Act, W. Va. Code § 29-12A-1 et seq., and against an officer of that department acting within the scope of his or her employment, with respect to the discretionary judgments, decisions, and actions of the officer.” (syllabus point 6)*

*“Only matters contained in the pleading can be considered on a motion to dismiss under Rule 12(b) R.C.P., and if matters outside the pleading are presented to the court and are not excluded by it, the motion should be treated as one for summary judgment” (at 20)*

## FACTUAL BACKGROUND

J.H., a minor, alleged that West Virginia State Police Troopers and county sheriff's deputies, acting under color of law, brutally beat and hit him during an incident on November 19, 2018, in Berkeley County. He alleged that the WVSP was vicariously liable for the Troopers' conduct and was negligent in training and supervising them. The amended complaint provided few facts concerning the circumstances of the encounter, the alleged arrest, the force used, or the injuries sustained.

## PROCEDURAL HISTORY

J.H. filed an action arising from an alleged beating during an encounter with state police and county law-enforcement officers. The Circuit Court of Berkeley County denied the WVSP's motion to dismiss, including claims for vicarious liability and negligent training and supervision, and deferred ruling on qualified immunity. The Supreme Court of Appeals of West Virginia accepted the interlocutory appeal under the collateral-order doctrine, reversed, and remanded for dismissal of those claims against the WVSP.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The circuit court must enter an order dismissing the vicarious-liability and negligent-training-and-supervision claims against the WVSP and conduct further proceedings consistent with the opinion.

## CASES CITED

- James M.B. v. Carolyn M., 193 W. Va. 289, 456 S.E.2d 16 (1995)
- West Virginia Board of Education v. Marple, 236 W. Va. 654, 783 S.E.2d 75 (2015)
- Pearson v. Callahan, 555 U.S. 223, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009)

- *Backe v. LeBlanc*, 691 F.3d 645 (5th Cir. 2012)
- *Yoak v. Marshall University Board of Governors*, 223 W. Va. 55, 672 S.E.2d 191 (2008)
- *Helton v. Clements*, 787 F.2d 1016 (5th Cir. 1986)
- *Mitchell v. Forsyth*, 472 U.S. 511, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985)
- *Payne v. Britten*, 749 F.3d 697 (8th Cir. 2014)
- *Parton v. Ashcroft*, 16 F.3d 226 (8th Cir. 1994)
- *Ewing v. Board of Education of County of Summers*, 202 W. Va. 228, 503 S.E.2d 541 (1998)
- *Cantley v. Lincoln County Commission*, 221 W. Va. 468, 655 S.E.2d 490 (2007)
- *Riffle v. C.J. Hughes Construction Co.*, 226 W. Va. 581, 703 S.E.2d 552 (2010)
- *Forshey v. Jackson*, 222 W. Va. 743, 671 S.E.2d 748 (2008)
- *Harrison v. Davis*, 197 W. Va. 651, 478 S.E.2d 104 (1996)
- *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 461 S.E.2d 516 (1995)
- *West Virginia Regional Jail & Correctional Facility Authority v. A.B.*, 234 W. Va. 492, 766 S.E.2d 751 (2014)
- *State v. Chase Securities, Inc.*, 188 W. Va. 356, 424 S.E.2d 591 (1992)
- *Anderson v. Creighton*, 483 U.S. 635, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987)
- *Maston v. Wagner*, 236 W. Va. 488, 781 S.E.2d 936 (2015)
- *City of Saint Albans v. Botkins*, 228 W. Va. 393, 719 S.E.2d 863 (2011)
- *Graham v. Connor*, 490 U.S. 386, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989)
- *Funeral Services by Gregory, Inc. v. Bluefield Community Hospital*, 186 W. Va. 424, 413 S.E.2d 79 (1991)
- *Courtney v. Courtney*, 190 W. Va. 126, 437 S.E.2d 436 (1993)
- *D.C. v. Chinn*, 839 A.2d 701 (D.C. 2003)
- *City of Miami v. Sanders*, 672 So. 2d 46 (Fla. Dist. Ct. App. 1996)
- *Alley v. Bettencourt*, 730 N.E.2d 1067 (Ohio App. 3d Dist. 1999)
- *West Virginia Department of Education v. McGraw*, 239 W. Va. 192, 800 S.E.2d 230 (2017)
- *West Virginia Board of Education v. Croaff*, No. 16-0532, 2017 WL 2172009 (W. Va. May 17, 2017)
- *West Virginia Regional Jail & Correctional Facility Authority v. Estate of Grove*, 852 S.E.2d 773 (W. Va. 2020)
- *Doe v. Logan County Board of Education*, 242 W. Va. 45, 829 S.E.2d 45 (2019)
- *B.R. v. West Virginia Department of Health & Human Resources*, No. 17-0564, 2018 WL 2192480 (W. Va. May 14, 2018)