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## MUNICIPAL TORT LIABILITY—"QUASI JUDICIAL" ACTS

Plaintiff, in an action against a municipality for false imprisonment, alleged that he was arrested by a municipal police officer pursuant to a warrant known to be void by the arresting officer and the municipal court clerk who acted falsely in issuing the warrant. *Held*: because the acts alleged were "quasi judicial" in nature, the municipality was not liable under the doctrine of respondeat superior. *Middleton v. City of Fort Walton Beach*, 113 So.2d 431 (Fla. App. 1959).

The courts uniformly agree that the tortious conduct of a public officer committed in the exercise of a "judicial" or "quasi judicial"<sup>1</sup> function shall not render either the officer or his municipal employer liable.<sup>2</sup> The judiciary of superior and inferior courts are generally accorded immunity from civil liability arising from judicial acts and duties performed within the scope of the court's jurisdiction.<sup>3</sup> In many instances, such protection is also granted to justices of the peace.<sup>4</sup> The courts have extended similar immunity beyond the confines of purely judicial forums by characterizing as "quasi judicial" the acts and duties of public officials who, though not members of the judiciary, are permitted or required by law to exercise their discretion in factual situations ordinarily arising as a common incident to their basically non-judicial office.<sup>5</sup> The immunity of these officials has been upheld even though their tortious acts may have been colored by malicious intent.<sup>6</sup> Florida subscribes to this general rule of immunity as evidenced by the holding in *Hargrove v. Town of Cocoa Beach*<sup>7</sup> wherein the Florida Supreme Court imposed liability on municipal corporations for the torts of their employees and officers except where the act was done pursuant to a legislative, quasi legislative, judicial, or quasi judicial function.<sup>8</sup>

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1. Since the principal case concerns itself only with "quasi-judicial" functions, the scope of this inquiry shall be similarly restricted.

2. 18 Mc QUILLIN, MUNICIPAL CORPORATIONS § 53.33 (3d ed. 1950); see, e.g., *Rehmann v. City of Des Moines*, 204 Iowa 798, 215 N.W. 957 (1927). See generally Annot., 13 A.L.R. 1333 (1921).

3. See PROSSER, TORTS § 109 (2d ed. 1955); Annot., 13 A.L.R. 1344, 1360 (1921); e.g., *Smith v. Mosier*, 148 F. Supp. 638 (W.D. Mich. 1957); *Johnson v. State Board of Morticians*, 288 S.W.2d 214 (Tex. Civ. App. 1956).

4. See *Minor v. Seliga*, 168 Ohio St. 1, 150 N.E.2d 852 (1958); *Weil v. Geier*, 61 Wis. 414, 21 N.W. 246 (1884); Annot., 13 A.L.R. 1344 (1921); Annot., 173 A.L.R. 802 (1948).

5. 67 C.J.S. *Officers* § 127(a) (1950); see *Nebraska Mid-State Reclamation Dist. v. Hall County*, 152 Neb. 410, 41 N.W.2d 397 (1950); *Adolph v. Elastic Stop Nut Corp. of America*, 18 N.J. Super. 543, 87 A.2d 736 (1952); *People ex rel. Schau v. McWilliams*, 185 N.Y. 92, 77 N.E. 785 (1906); *State v. Leyse*, 60 S.D. 384, 244 N.W. 529 (1932).

6. PROSSER, TORTS § 109 at 781 (2d ed. 1955); see, e.g., *Prentice v. Bertken*, 50 Cal.App.2d 492, 123 P.2d 96 (1942). *But see Hipp v. Farrell*, 169 N.C. 551, 86 S.E. 570 (1915).

7. 96 So.2d 130 (Fla. 1957). (Hereafter referred to in text as "Hargrove".)

8. *Id.* at 133; see Note, 71 HARV. L. REV. 744 (1958).

Certain basic elements are common to the holdings of those cases wherein the official was held to be acting in a quasi judicial capacity. *First*, the element of *discretion* must be present; the use of discretion by the officer must be of a type permitted or required by statute.<sup>9</sup> Where the officer's performance is closely restricted by statute to strict adherence to set tasks and methods in such a way as to preclude any need for discretion, the function is not considered quasi judicial in character.<sup>10</sup> This requirement is illustrated by a typical case wherein it was decided that a State Board of Medical Examiners, in examining applicants for licenses to practice medicine, by exercising discretion, was acting in a quasi judicial function.<sup>11</sup>

The element of discretion gives rise to the *second* element necessary to the personality of a quasi judicial function: the act must be *within the authorized jurisdiction* of the office as provided by statute.<sup>12</sup> Therefore, a justice of the peace has been held liable for issuing an arrest warrant when he had personal knowledge that no crime was committed.<sup>13</sup> In *Hoppe v. Klapperich*,<sup>14</sup> a municipal court judge was held to have acted wholly without his jurisdiction and in a non-judicial capacity when he issued a warrant of arrest without a proper complaint.

In the instant case,<sup>15</sup> the circuit court dismissed the complaint for failure to state a cause of action.<sup>16</sup> The court's discussion of the applicability

9. E.g., *Bryant v. Bryant*, 40 Ariz. 519, 14P.2d 712 (1932); *Board of Comm'rs of Atoka County v. Cypert*, 65 Okl. 168, 166 Pac. 195 (1917); 50 C.J.S. *Judicial* 562 (1947).

10. E.g., *State ex rel. Allen v. Rose*, 123 Fla. 544, 167 So. 21 (1936); *First Nat'l Bank v. Filer*, 107 Fla. 526, 145 So. 204 (1933); *Poyner v. Gilmore*, 171 Miss. 859, 158 So. 922 (1935); 67 C.J.S. *Officers* § 112 (1950); *David, Tort Liability of Public Officers*, 12 So. CAL. L. REV. 127 (1939).

11. *Raaf v. State Board of Medical Examiners*, 11 Idaho 707, 84 Pac. 33 (1906); *accord*, *Appeal of Fredericks*, 285 Mich. 262, 280 N.W. 464 (1938); *Nash v. Brooks*, 276 N.Y. 75, 11 N.E.2d 545 (1937).

12. *Bricton v. Woodrough*, 164 F.2d 107 (8th Cir. 1947); *Broom v. Douglass*, 175 Ala. 268, 57 So. 860 (1912); *Curnow v. Kessler*, 110 Mich. 10, 67 N.W. 982 (1896); *Hoppe v. Klapperich*, 224 Minn. 224, 28 N.W.2d 780 (1947); *State v. Leyse*, 60 S.D. 384, 244 N.W. 529 (1932); *Annot.*, 13 A.L.R. 1344, 1360 (1921); *Annot.*, 173 A.L.R. 802, 803 (1948).

13. *Kaptur v. Kaptur*, 50 Ohio App. 91, 197 N.E. 496 (1934).

14. 224 Minn. 224, 28 N.W.2d 780 (1947).

15. *Middleton v. City of Fort Walton Beach*, 113 So.2d 431 (Fla. App. 1959).

16. In the instant case, the plaintiff alleged in his complaint that: he was arrested by a municipal police officer pursuant to a warrant which, though regular on its face, was void and known to be such by the arresting officer; the complaining witness whose purported affidavit was the basis for its issuance did not in fact appear before or sign the affidavit in the presence of the clerk of the municipal court as indicated by his jurat to the affidavit; the clerk had personal knowledge of facts which he knew would result in acquittal of the offense charged; that in executing the jurat to the affidavit and issuing the warrant the clerk of the municipal court acted falsely and maliciously; that upon trial of the alleged offense the validity of the affidavit was challenged and the irregularities admitted by the complaining witness and the clerk, whereupon the warrant was quashed and plaintiff discharged; the defendant city, acting through its agents, thereby caused plaintiff to be unlawfully and maliciously deprived of his liberty.

of *Hargrove* to intentional torts was ambiguous.<sup>17</sup> However, this issue was rendered moot by its characterization of the alleged acts as quasi judicial in nature. The court took cognizance of the self-imposed quasi judicial exception which was enunciated in the *Hargrove* case. It should be noted that the same authority advanced by *Hargrove* in support of the quasi judicial exception was similarly advanced in the instant case as authority for the court's "quasi judicial characterization." This authority consists of two cases, only one of which, *Akin v. City of Miami*,<sup>18</sup> was concerned with quasi judicial functions.<sup>19</sup> There, the acts of a municipal licensing official, because of the requisite use of discretion, were considered to be quasi judicial. Ignoring the factual distinguishability of the *Akin* case from the instant one, the court without any further reasons or explanations flatly announced that, "The acts involved in the case on appeal are quasi judicial in character."<sup>20</sup>

While a multitude of cases generally characterize the duties of court clerks as "ministerial,"<sup>21</sup> there is authority to the effect that the taking of an affidavit in a criminal proceeding is a "judicial" duty.<sup>22</sup> Conceding the latter view, it would appear that the clerk in the instant case was functioning in a judicial, or at least a quasi judicial capacity since he was authorized by statute to take the affidavit.<sup>23</sup> Admitting arguendo the

17. Plaintiff contended that the rationale of the *Hargrove* case compelled the extension of the doctrine of respondeat superior to municipal corporations so as to render them liable for the intentional torts of their employees, agents and officers. The court seemed to refuse plaintiff's contention in rather vague terms. It is of further interest to note that the language used in the present case may conceivably lend itself to an inference that the court refused to interpret the rationale of the *Hargrove* case as justifying an extension of liability to cover the intentional tort as well as the negligent tort. The court referred to the *Hargrove* holding as expressly limiting the liability of a municipality to the negligent tort only. However, such an inference does not appear valid in light of the *same* court's opinion one year ago in *Ragans v. Jacksonville*, 106 So.2d 860 (Fla. App. 1958), wherein the members of that appellate court voiced their belief that municipal tort liability, in view of the *Hargrove* rationale, cannot be validly restricted to suits arising out of negligence.

18. 65 So.2d 54 (Fla. 1953). See generally Annot., 55 A.L.R. 430 (1928) (discussing the revocation of license permits as a quasi judicial function).

19. The other case was *Elrod v. City of Daytona Beach*, 132 Fla. 24, 180 So. 378 (1938).

20. The principal case involved malicious, intentional acts perpetrated by a police officer and a court clerk which resulted in direct personal injury, as opposed to the *Akin* case which concerned the act of a licensing official in the proper exercise of his discretion and within his jurisdiction as a quasi judicial officer, without any element of malice or personal injury.

21. 14 C.J.S. *Clerks of Courts* § 35 (1939); e.g., *United States v. Bell*, 127 Fed. 1002 (C.C.E.D.Pa. 1904); *Ex parte Harte*, 240 Ala. 642, 200 So. 783 (1941); *Pan Am. World Airways, Inc. v. Gregory*, 96 So.2d 669 (Fla. App. 1957).

22. 4 ANDERSON, *WHARTON'S CRIMINAL LAW AND PROCEDURE* § 1590 (1957); accord, 119551 OP. ATT'Y GEN. 055-228 (Fla. 1955).

23. FLA. STAT. § 168.04 (1957): "The clerk may administer an oath to and take affidavits of any person charging another with an offense by breach of an ordinance, and may issue a warrant to the marshal to have the accused person arrested and brought before the mayor for trial." (Emphasis added.) (However, the Municipal Charter of Fort Walton Beach, as stated in Fla. Laws 1953, ch. 29092, § 61(b), gives the municipal judge the power to administer oaths and issue arrest warrants upon proper affidavits, and requires the warrant to be attested by the clerk. No mention is made of any authority to be vested in the clerk to issue such warrants by himself.)

fulfillment of the first element, it would appear that the clerk, by falsely executing his jurat to an improper affidavit and issuing a warrant on the basis of that affidavit, acted wholly *without his jurisdiction*, thereby negating the "quasi judicial" immunity.<sup>24</sup> Yet despite these blatant irregularities committed by the clerk in the present case, he was still held to be acting in the exercise of a "quasi judicial function" and recovery from his municipal employer was forbidden.<sup>25</sup> Applying the same prerequisite elements to the acts of the police officer, it is exceedingly difficult to find justification for the holding that the municipal police officer was engaged in a quasi judicial function when he served the void warrant.<sup>26</sup> His act completely lacked any display of discretion or personal judgment,<sup>27</sup> since he was expressly directed to arrest a particular person, based upon the explicit mandates of the municipality<sup>28</sup> and the state.<sup>29</sup>

By arbitrarily employing the term "quasi judicial," the court has extended the specified exceptions of the *Hargrove* rule to include public officers who were never expected or intended to enjoy "quasi judicial immunity."

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24. See Annot., 13 A.L.R. 1334, 1360 (1921); "In order to bring the act of a judicial officer within the rule granting immunity for acts done in a judicial capacity, it is essential that the officer shall have issued the warrant on a sufficient affidavit or complaint properly verified. . . ."

25. It should be noted that a judgment by the court declaring one count in the complaint to be insufficient for failure to state a cause of action would not preclude recovery on the basis of other counts also alleged in the complaint. FLA. R. CIV. P. 1.8 (g).

26. "The general distinction between ministerial and judicial acts seems to be that, where the duty to be performed is described by law with such certainty that nothing is left to the exercise of discretion or judgment, the act is ministerial, but where it requires discretion or judgment to determine whether the duty to act exists or not, it is judicial. In other words, the necessity of the exercise of judgment or discretion is generally held to be the distinguishing test. Judged by this test, the service of a summons is ministerial and not judicial in its nature, for the law plainly describes the duty to be performed, and the officer is given no discretion as to his right or duty to perform it." *Bryant v. Bryant*, 40 Ariz. 519, 14 P.2d 712 (1932). "Arrest under a warrant . . . is considered a 'ministerial act'." PROSSER, TORTS § 25 (2d ed. 1955).

27. Authorities cited note 9 *supra*.

28. Referring to the "order" of the court directing the officer to arrest the accused person.

29. See ADKINS, FLORIDA CRIMINAL LAW AND PROCEDURE ANNOTATED 257-275 (1954).