

NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA



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March 24, 2026

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RE: *Agyapomma Awuah vs. Michelle Harris, et al.*, Case No. CL-2023-9897
consolidated with CL-2023-12126, CL-2025-9353 and CL-2025-10823

Dear Counsel:

This matter comes on the plea of sovereign immunity by the Virginia Department of Transportation (“VDOT”), and VDOT employees Shannon, Nichols, Suliman, Howington, Klink, Dodson, Burton, Attar, Torres, Harrison, and Vu (“the VDOT employees”).¹ These defendants elected to submit their plea in bar asserting sovereign immunity on the pleadings without taking evidence; thus, the allegations in the Plaintiff’s complaint are deemed to be true, including all reasonable inferences flowing from the facts pled in the complaint. See Massenburg v. City of Petersburg, 298 Va. 212, 216 (2019).

I. The General Facts

On August 24, 2021, Plaintiff Awuah was proceeding westbound on Monument Drive in Fairfax County. (Third Amended Complaint (“Third Am. Compl.”) at ¶ 8). Defendant Harris was proceeding southbound on Fields Brigade Road which intersects with Monument Drive at “the intersection.” (Third Am. Compl. at ¶ 10). Westbound Monument Drive was at that time a divided roadway with two lanes of travel in each direction, with a grass median that alternately became a left turn lane at intersections. (Third Am. Compl. at ¶ 9). Approaching Fields Brigade Road, Monument Drive widened to four lanes: a left turn lane, two center “through” lanes, and a right turn lane that approached and ended at Fields Brigade Road. Id. The lane markings at and near the intersection were worn and obliterated, causing Awuah to drift to the right when approaching the intersection. (Third Am. Compl. at ¶ 20).

Harris stopped at a stop sign at the intersection but due to overgrown shrubs, unauthorized signage, and other vegetation within the sightlines of the intersection, Harris edged forward into the crosswalk and then into the right turn lane of Monument Drive while simultaneously swiveling her head multiple times in an attempt to see both right and left, before finally entering the intersection. (Third Am. Compl. at ¶¶ 15, 17). By so doing, Harris pulled her car into Awuah’s path on Monument Drive, causing a collision that rendered Awuah quadriplegic. (Third Am. Compl. at ¶ 22).

For years prior to the accident, VDOT determined that the condition of the intersection was “very poor.” (Third Am. Compl. at ¶ 24). VDOT recognizes both Monument Drive and Fields Brigade Road as “secondary roads” that the Commonwealth and VDOT had a responsibility to maintain. (Third Am. Compl. at ¶ 26-27). The Commonwealth and VDOT’s duties of maintaining these secondary roads included

¹ With respect to Defendants VDOT, Shannon, and Nichols, the relevant facts are contained in the Third Amended Complaint in case number CL-2023-9897. With respect to individual defendant Vu, the relevant facts are contained in the Complaint (“Compl.”) in case number CL-2025-9353. With respect to the remaining individual defendants, the relevant facts are contained in the Second Amended Complaint (“Sec. Am. Compl.”) in case number CL-2023-12126.

repainting the faded lane markings on Monument Drive and removing any obstructions from the area adjacent to the road. (Third Am. Compl. at ¶¶ 28-29). The evidence in the Complaints taken as true establishes that the intersection was hazardous because visual obstructions prevented drivers from seeing traffic coming across the intersection, and the faded lane markings led traffic on Monument Drive to veer dangerously close to the cars carefully creeping forward past the visual obstructions as they attempted to enter at the intersection from Fields Brigade Road.

VDOT was on notice about this hazardous scenario from citizen complaints, prior traffic collisions, and the observations of its employees. (Third Am. Compl. at ¶¶ 34). A road condition video was made about eight months before the accident showing faded lane markings and overgrown vegetation impacting the sight lines at the intersection. (Sec. Am. Compl. at ¶¶ 97). Prior to the accident, VDOT inspected the intersection for obscured sight lines, and no action was taken to cut the overgrown vegetation at the intersection. (Third Am. Compl. at ¶¶ 35). VDOT also did nothing to remedy the faded lane markings. Accordingly, Awuah alleges that VDOT and several of the Commonwealth's employees are liable for her injuries for reasons including negligence, gross negligence, and maintaining a nuisance.

II. Additional allegations as to the VDOT employee defendants

A. *Shannon and Nichols*

Defendants Shannon and Nichols were at all relevant times VDOT Residency Maintenance Administrators. (Third Am. Compl. at ¶¶ 3-6). Along with the Commonwealth, Shannon and Nichols had a duty to maintain secondary roads in compliance with the standards outlined in various manuals, policies, codes, ordinances, and regulations. (Third Am. Compl. at ¶¶ 31-32). Plaintiff alleges Shannon and Nichols were negligent because they failed to maintain, or supervise the maintenance of, the sight lines at the intersection and the faded lane markings on Monument Drive. (Third Am. Compl. at ¶¶ 42(a)). Additionally, Shannon and Nichols did not take any remedial action after receiving citizen complaints regarding the dangerous conditions from the overgrown foliage or vegetation at the intersection. (Third Am. Compl. at ¶¶ 42(b)). Shannon and Nichols failed to properly train and supervise employees to ensure that proper action was taken in response to citizen complaints. Shannon and Nichols also failed to notify third-parties that were responsible for clearing obstructions blocking the view of drivers attempting to enter the intersection.

B. *Suliman*

Suliman was the Director of VDOT's Traffic Operations for northern Virginia. (Sec. Am. Compl. at ¶¶ 3). Other than his job title, the Second Amended Complaint contains no other specific allegations as to Defendant Suliman.

C. Howington (VDOT Crew Supervisor for repairs)

Howington is a VDOT Crew Supervisor and Maintenance Operator working in the area that includes the intersection, with duties including maintenance and repairs as assigned including sign repairs at the intersection. (Sec. Am. Compl. at ¶¶ 5, 6, 80). His job also required him to observe the roadways for dangerous conditions while driving to and from assigned tasks. (Sec. Am. Compl. at ¶81). Howington visited the intersection on a maintenance assignment nine days prior to the accident to repair a sign. (Sec. Am. Compl. at ¶ 80, 82). During that visit, Howington should have seen the overgrown vegetation obstructing the sight lines at the intersection. (Sec. Am. Compl. at ¶ 83). Despite visiting the intersection multiple times, Howington failed to observe the safety and maintenance issues with the overgrown vegetation and obstructed sight lines, or alternatively, Howington observed and ignored these hazards. (Sec. Am. Compl. at ¶ 85). Howington never reported any maintenance issue related to overgrown vegetation, obstructed sight lines, or faded lane markings at the intersection. (Sec. Am. Compl. at ¶ 86-88).

D. Dodson

Dodson was the Maintenance Supervisor for the area including the intersection. (Sec. Am. Compl. at ¶¶ 11, 58). Dodson's duties included riding the roads to look for potential safety hazards and maintenance issues, as well as supervision over the upkeep and maintenance at the intersection. (Sec. Am. Compl. at ¶¶ 12, 59). Dodson drove through the intersection at least once per month for observation of potential safety and maintenance issues and routinely ignored the overgrown vegetation and obstructed sight lines at the intersection. (Sec. Am. Compl. at ¶¶ 60, 64). Dodson excluded driving and observing on Fields Brigade Road because he mistakenly believed that Fields Brigade Road was not subject to VDOT acceptance for maintenance. (Sec. Am. Compl. at ¶ 62).

E. Burton

At all relevant times, Burton was VDOT Area Land Use Manager for Permits. (Sec. Am. Compl. at ¶ 15). Burton's duties included determining VDOT's jurisdiction over roadways and intersections for the purpose of ensuring that VDOT was properly informed about which roads it was required to maintain. (Sec. Am. Compl. at ¶16).

F. Attar

Attar was VDOT's Northern Virginia Infrastructure Manager for Maintenance. (Sec. Am. Compl. at ¶ 17). Attar had access to information about the dangerous condition of the intersection prior to the crash. (Sec. Am. Compl. at ¶ 17).

G. Harrison

Defendant Harrison was assigned by VDOT to respond to citizen complaints regarding any hazardous conditions at the intersection. (Sec. Am. Compl. at ¶ 19). Harrison was assigned work orders concerning the hazardous conditions through his position within NRO Traffic Engineering. (Sec. Am. Compl. at ¶ 19).

On June 27, 2020, Harrison was assigned to a citizen complaint that noted that there was “a huge blind spot from the trees” at the intersection and that “5 bad accidents” had occurred at the intersection. (Sec. Am. Compl. at ¶¶ 42, 44). After receiving this complaint, Harrison forwarded it only to Defendant Torres, who worked within a traffic engineering department that had no responsibility for maintenance. (Sec. Am. Compl. at ¶¶ 44, 45). Harrison did not notify the maintenance department or any other VDOT department about the dangerous conditions at the intersection and took no further action. (Sec. Am. Compl. at ¶ 46-47).

Defendant Harrison received another citizen complaint regarding the intersection, which noted that “two recent crashes involving a fatality” had occurred on Monument Drive and requested a safety intervention at the nearby intersection. (Sec. Am. Compl. at ¶ 55). VDOT allegedly did not notify or request the maintenance department’s intervention to review the conditions at the intersection. (Sec. Am. Compl. at ¶ 56).

H. Torres

Torres was assigned work orders concerning the hazardous conditions through his position within NRO Traffic Engineering. (Sec. Am. Compl. at ¶ 18). Defendant Harrison assigned Defendant Torres to respond to citizen complaints regarding hazardous conditions at the intersection. (Sec. Am. Compl. at ¶ 18). Defendant Torres was assigned a citizen complaint dated December 16, 2020, that noted “the visibility down the road [from the intersection] is minimal due to trees.” (Sec. Am. Compl. at ¶ 50). Torres did not notify the maintenance department or any other VDOT department in response to the citizen complaint. (Sec. Am. Compl. at ¶ 52(b)). No VDOT personnel visited the Intersection in relation to the 2020 citizen complaints; but, if they did visit the intersection, VDOT did not take any action to rectify the maintenance issues. (Sec. Am. Compl. at ¶ 52(d)).

I. Vu

Defendant Vu is the VDOT Signals Operation Manager. (Compl. at ¶ 2). Vu had possession and or access to the January 21, 2021, video of the intersection, showing overgrowth that impacted the sight lines. (Compl. at ¶¶ 2, 28). Plaintiffs allege that Vu had a duty to maintain the intersection including controlling vegetation to prevent it from obstructing sightlines at the intersection. (Compl. at ¶¶ 19-20). Defendant Vu performed an inspection of the intersection and was on notice from citizen complaints, which Vu ignored, that Monument Drive was unsafe due to faded lane markings and obstructed sight lines.

(Compl. at ¶¶ 22, 26, 34). Vu failed to notice the overgrown vegetation and obscured sight lines, or noticed but failed to report it. (Compl. at ¶ 27). Vu took no action to remedy the safety hazards at the intersection even though remedying those hazards did not require budgetary determinations or discretion; for example Vu had access to third party contractors who were on call but neglected to direct the contractors to remove the overgrown vegetation. (Compl. ¶¶ 29-33, 39).

J. *Klink*

Defendant Klink was the Maintenance Superintendent for the Clifton Area, which included the intersection. (Sec. Am. Compl. at ¶ 68). Klink had a duty to ride the roads and look for potential safety hazards; pursuant to that duty, Klink drove through the intersection at least once per month. (Sec. Am. Compl. at ¶¶ 69-70). Klink ignored the overgrown vegetation blocking sight lines at the intersection, and never reported faded lane markings despite at least six work orders listing problems with the intersection. (Sec. Am. Compl. at ¶¶ 71-73). Klink received all work orders for maintenance. (Sec. Am. Compl. at ¶ 74). He visited the intersection and observed it² on or about July 9, 2019, in response to citizen complaint about overgrown trees on a bike trail near Fields Brigade Rd. (Sec. Am. Compl. at ¶ 76). Klink should have noticed the faded lane markings and obstructed sightlines at the intersection, but either did not, or observed it and took no action because he believed it was the responsibility of Fairfax County. (Sec. Am. Compl. at ¶¶ 77-78).

III. Analysis

At common law, “the Commonwealth and its agencies are immune from liability for the tortious acts of their agents, employees, and servants absent express statutory or constitutional provisions waiving immunity.” Maddox v. Commonwealth, 267 Va. 657, 661 (2004). However, the Virginia Tort Claims Act (“VTCA”) expressly waives the Commonwealth’s immunity for:

damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee while acting within the scope of his employment under circumstances where the Commonwealth ..., if a private person, would be liable to the claimant for such damage, loss, injury or death.

Va. Code § 8.01-195.3.

² This allegation is contradicted by Sec. Am. Compl. ¶ 74 which alleges that Klink never visited the intersection for the purpose of reviewing safety hazards present there. However, the Court is obligated to take the Complaints in the light most favorable to the Plaintiff and so credits the allegation that Klink did in fact visit and observe the intersection as stated in Sec. Am. Compl. ¶¶ 76-78.

The VTCA includes exceptions to the Commonwealth's waiver of immunity. One such exception is for "any claim based upon an act or omission of the General Assembly or district commission of any transportation district, or any member or staff thereof acting in his official capacity, or to the legislative function of any agency subject to the provisions of this article." Va. Code § 8.01-195.3(2). "In other words, the provisions of Code § 8.01-195.3(2) preserve the Commonwealth's immunity from liability in tort for any act or omission in the exercise of the legislative function of an agency of the Commonwealth." Maddox, 267 Va. at 661. Waiver of sovereign immunity must be expressly and explicitly stated in the statute and cannot be implied from statutory language. See Id.

In this case, the Commonwealth and its employees assert that that they enjoy sovereign immunity because the conduct at issue was a legislative function. However, the analysis regarding the Commonwealth and its employees is not identical. Therefore, this Court must address each in turn.

A. VDOT

It is settled that for the Commonwealth the applicability of sovereign immunity "does not turn on the theory of tort liability asserted." Maddox, 267 Va. at 662-63.³ Rather, the question as to whether the Commonwealth is engaged in a legislative function that is exempt from the VTCA is answered by examining whether "the decision-making process by the...state agency entails the exercise of discretion." Id. at 663.

In Maddox, a child was injured by an allegedly defective sidewalk design. Id. at 660. Our Supreme Court affirmed the Commonwealth's plea of sovereign immunity, explaining that the design of a street or sidewalk is a legislative function because "the decision-making process by the...state agency entails the exercise of discretion," in part because "it required the agency to determine whether public funds should be expended to install ... particular safety features." Id. at 663. Maddox, however, left open the question of whether the Commonwealth's failure to maintain a way, as opposed to an error in design, exposes the Commonwealth to liability. See id. ("Maddox did not allege that the sidewalk's construction had deviated from the Project's plans or that the sidewalk had fallen into a state of disrepair.").

Our appellate courts have attempted to clarify the contours of this doctrine over the years since Maddox. In Cline v. Commonwealth, the Plaintiff brought suit against the Commonwealth for its alleged failure to remove a tree that injured him after the tree fell into a roadway. 2016 Va. Unpub. LEXIS 20 at *1 (unpublished Order). Cline asserted that the Commonwealth had assumed a duty to remediate dangerous conditions existing in its right of way next to the road. Id. at 2. Cline further alleged that, in the course of removing trees

³ This contrasts with the employees, who cannot enjoy sovereign immunity for acts of gross negligence or intentional wrongdoing. See note 4, *supra*.

in the right of way, the employee “noticed the tree and the dangerous condition presented by it but mistakenly believed that the tree was not located in the Commonwealth’s right of way and chose not to have it removed.” Id. at *6. Citing Maddox, our Supreme Court reversed the trial court’s grant of a plea of sovereign immunity, holding that “the decision not to remove the tree did not require the Commonwealth to determine whether public funds should be expended and, therefore, did not involve the exercise of a legislative function.” Id. at *5.

In Commonwealth v. Muwahhid, the plaintiff asserted a tort claim against the Department of Corrections, asserting that it improperly restricted her visitation with her husband and subjected her to unjustified indignities including multiple full-body strip and cavity searches. 77 Va. App. 821, 825-26 (2023). The Court of Appeals reviewed Maddox and concluded that the trial court properly rejected the Commonwealth’s plea of sovereign immunity because “Muwahhid alleged negligence not in the way VADOC employees adopted policy but instead in how they executed those policies, including their failure to follow existing policy and procedures.” Id. at 835. Muwahhid elaborated that “unlike the design of a sidewalk, the correction officers’ alleged actions did not involve discretionary policy decisions such as determining whether public funds should be expended. The execution of policies and procedures is not a legislative function.” Id. at 835-36.

In the present case, the Commonwealth and its employees rely primarily on Canter v. Commonwealth, 82 Va. App. 593 (2024). In Canter, the Plaintiff truck driver was injured when his tractor trailer passed through a pool of standing water in the left-most lane of Interstate 81, causing his vehicle to overturn and the plaintiff to be injured. Id. at 598. Like Awuah, Canter alleged that VDOT had notice of the hazard for years prior to the accident, and that there were reports of multiple accidents at this location for several years. Id. at 598-99. One difference, however, is that in Canter VDOT took some action: instead of repairing the road, VDOT placed orange and white barrels by the median to demarcate the area where water was known to pool. Id. at 599.

Canter considered these facts in the context of the legislative-immunity exception to the VTCA. Id. at 608-11. Canter noted that, with respect to municipalities “the *planning, designing, laying out, and construction of streets and roads* has been held to be a governmental function, while the *routine maintenance of existing streets* has been held to be proprietary, subjecting a city to liability for its failure to maintain its streets in good repair and in safe condition for travel, free from dangerous defects or obstructions.” Id. at 605 (emphasis in original). However, Canter distinguished *routine maintenance* from the “legislative” decision of whether to install devices to improve highway safety such as “traffic lights, blinking lights, warning signals, roadway markings, railings, barriers, guardrails, curbing, and like devices [that] are all designed to control and regulate traffic and to insure its orderly and safe flow on the streets.” Id. at 606. Canter explained that “[a] determination of the need for such devices and the decision to install or not to install them calls for the exercise of discretion....In the exercise of this discretion and in making a judgment, the city

is performing a governmental function. Id. (quoting Freeman v. City of Norfolk, 221 Va. 57, 60 (1980)).

After considering the line of cases discussed in this opinion, Canter held that “the VTCA and the corresponding caselaw *permit[s]* the Commonwealth and its ‘agents, employees and representatives’... to enjoy sovereign immunity for claims asserting gross negligence for failing to maintain the Interstate Highway System in Virginia.”⁴ Id. at 608 (emphasis added). Canter explained that the General Assembly “has enacted specific ‘legislative authority’ empowering the Commonwealth to maintain both the interstate and state highway systems in Virginia and that the performance of such maintenance constitutes a ‘legislative function.’” Because of this statutory authority, “the Commonwealth’s decision-making process” concerning how and which sections of

⁴ This Court is of course bound by published decisions of the Court of Appeals and naturally regards the decisions of that Court with the greatest respect and deference. However, upon careful consideration of the arguments of counsel in this case, this Court is compelled by the fundamental principles of stare decisis to regard as non-binding dicta the portion of Canter holding that the Commonwealth’s agents, employees and representatives enjoy sovereign immunity for claims of gross negligence for failure to maintain the Interstate highway system in Virginia. See Brown v. Kirkpatrick, 78 Va. App. 1, 10-11 (2023) (“Dicta cannot ‘serve as a source of binding authority in American jurisprudence. Dicta in a prior decision generally refers to that portion of an opinion ‘not essential’ to the disposition in the case.”) (quoting Newman v. Newman, 42 Va. App. 557, 566 (2004) (en banc)).

First, it does not appear that there were any individual defendants in Canter, and so any holding regarding the immunity enjoyed by employees of the Commonwealth was “not essential” to the resolution of the issue presented in that case. Id. Second, it has long been established by precedents of the Virginia Supreme Court – which, to this Court’s knowledge, have never been overruled – that sovereign immunity does not extend to acts of gross negligence or intentional misconduct of state employees. See James v. Jane, 221 Va. 43, 53 (1980) (Holding that sovereign immunity protects against only simple negligence and that “[a] state employee who acts wantonly, or in a culpable or grossly negligent manner, is not protected. And neither is the employee who acts beyond the scope of his employment, who exceeds his authority and discretion, and who acts individually.”); Messina v. Burden, 228 Va. 301, 310-11 (1984); Lentz v. Morris, 236 Va. 78, 82 (1988) (explaining that in Messina, “we held that a State supervisory employee who was charged with simple negligence while acting within the scope of his employment was immune, there being no charge of gross negligence or intentional misconduct.”); McBride v. Bennett, 288 Va. 450, 459 (2014) (applying James v. Jane factors to determine whether state employee was entitled to sovereign immunity); Sentara Med. Grp. v. Klena, ___ Va. ___, 2026 Va. LEXIS 14 at *14-15 (“an agent or employee of an immune entity only is entitled to the protections of immunity if he, or she, or it can establish that entitlement under our prior cases.”).

highway, both state and Interstate, are to be maintained and which should not in any given year entails the exercise of discretion...including determining whether public funds should be expended per these authorizing provisions.”⁵ Id. at 608-09. Canter expressly distinguished Muwahhid in part because the General Assembly had provided no statutory authority for the policies that Department of Corrections employees had violated in that case. Id. at 609-10.

Canter concluded that the allegation of gross negligence for placing barrels in the median rather than undertaking repairs or a more extensive warning related to a legislative function because VDOT’s “determination of the need for such devices” to serve as “warning signals or roadway markings” has been previously found to constitute an “exercise of discretion.” Id. at 610.

In this case Awuah makes two basic sets of allegations against the Commonwealth and its employees. First, Awuah asserts that the Commonwealth (and the VDOT employees) failed to remove vegetation on the corners of the intersection that obstructed Harris’s view of oncoming traffic, proximately causing the collision between Awuah and Harris.⁶ Second, Awuah asserts that the Commonwealth failed to properly maintain the intersection’s roadway by failing to repaint faded lane markings. All of these allegations relate to maintenance of a highway. However, the analysis of them is not identical.

Canter establishes that the VTCA “permits” the Commonwealth to enjoy sovereign immunity for its maintenance of the roads, but Canter does not say the Commonwealth *always* enjoys such immunity. 82 Va. App. at 608. On one hand, Awuah presents a case of complete failure to address an ongoing and known safety problem. On the other hand, Canter was about the Commonwealth exercising its legislative function by choosing a solution to a known safety problem, even if that solution proved woefully inadequate. Awuah argues that this distinction is critical because by doing nothing, VDOT could not have been exercising a legislative function. This Court finds this distinction unavailing because like the legislative decision to act, or not act, or “the failure to exercise the power or...its improper exercise” is also legislative in nature. Maddox, 267 Va. at 664 (quoting Jones v. City of Williamsburg, 97 Va. 722, 725 (1900)).

⁵ The General Assembly has enacted a similar law with respect to the secondary highway system at issue in Awuah’s case. See Va. Code § 33.2-326. Thus, the rationale of Canter applies with equal force to Awuah’s case.

⁶ Whether the obstructions were in the roadway or on the sidewalk is immaterial because “[a] sidewalk such as the one at issue is, by definition, part of a street.” Maddox, 267 Va. at 662 (quoting McCrowell v. City of Bristol, 89 Va. 652, 662 (1893) (“It is true that a sidewalk along a public street is part of the street.”)).

Consistent with the cases discussed above, this Court finds a different distinction dispositive: whether the complained-of neglect could have been cured without the expenditure of the government's funds. The record is silent concerning the cost to VDOT of repainting the intersection and it is reasonably inferable from the facts stated in the Complaints that such repainting would involve a decision by VDOT to expend public funds. Therefore, pursuant to Maddox and Canter, VDOT enjoys sovereign immunity as to the repainting allegations. See, e.g., Maddox 267 Va. at 663-64; Canter, 82 Va. App. at 610-11.

On the other hand, the facts show that it would have cost VDOT nothing to use their on-call third party contractors to remove the vegetation obstructing sightlines at the intersection. (Compl. ¶¶ 29-33, 39). The Complaints establish that VDOT had a duty to remove the vegetation but did not; indeed, the Complaints establish a factual scenario nearly indistinguishable from Cline insofar as at least two VDOT employee defendants in this case, Klink and Dodson, mistakenly believed that the offending vegetation was not on a roadway maintained by VDOT. (Sec. Am. Compl. at ¶¶ 62, 77-78). Therefore, with respect to the vegetation issue, Cline's holding dictates that the Commonwealth does not enjoy sovereign immunity for its failure to clear the vegetation that obstructed sightlines at the intersection. See Cline, 2016 Va. Unpub. LEXIS 20 at *6.

For these reasons, VDOT's plea in bar of sovereign immunity must be sustained in part as to the allegations of failure to repaint the lanes of the intersection and denied in part as to the allegation that VDOT failed to clear vegetation that obstructed the lines of sight at the intersection.

B. The VDOT employees

"Government can function only through its servants, and certain of those servants must enjoy the same immunity in the performance of their discretionary duties as the government enjoys." First Virginia Bank-Colonial v. Baker, 225 Va. 72, 79 (1983) (quoting James, 221 Va. at 53). However, "it is proper that a distinction be made between the state, whose immunity is absolute unless waived, and the employees and officials of the state, whose immunity is qualified, depending on the function they perform and the manner of performance." James, 221 Va. at 53. Having found that the Commonwealth does not enjoy sovereign immunity regarding the failure to remove vegetation that blocked sightlines at the intersection, the VDOT employees also cannot enjoy sovereign immunity.

Having found that the Commonwealth enjoys sovereign immunity in this case as to the allegation of failing to repaint the lanes at the intersection, the VDOT employee defendants may also enjoy sovereign immunity regarding that allegation (within the limits discussed at footnote 4, *infra*). To determine whether state employees enjoy derivative sovereign immunity, "[t]he factors to be considered include: (1) the nature of the function the employee performs; (2) the extent of the governmental entity's interest and involvement in the function; (3) the degree of control and direction exercised by the governmental entity

over the employee; and (4) whether the alleged wrongful act involved the exercise of judgment and discretion.” Lentz, 236 Va. at 82. These are commonly known as the James v. Jane factors.

“Pursuant to James v. Jane and its progeny, the Court is required to conduct an individualized analysis for each employee to determine whether those employees actually do enjoy sovereign immunity. Because this matter arises on a plea in bar, the individual defendants bear the burden of proof on this issue.” Sentara Med Group v. Klena, ___ Va. ___, 2026 Va. LEXIS 14 at *19. “No single all-inclusive rule can be enunciated or applied in determining the entitlement to sovereign immunity.” Id. at *17. “[T]he determination requires a review of all the facts and circumstances and rarely will a single factor or circumstance prove dispositive.” Id. at *18.

In Klena, our Supreme Court held that factors nearly identical to the James v. Jane factors must be applied when a trial court is confronted with a plea of sovereign immunity by a corporate subsidiary of a municipal corporation. Id. at *18-19. The corporate defendant in Klena – like the Commonwealth employee defendants here – elected to meet their evidentiary burden on the plea in bar by relying solely on the Plaintiff’s complaint. Id. at *18. After examining the Complaint, Klena noted that in a prior similar case the trial judge had conducted a multi-day evidentiary hearing to obtain the evidence necessary to resolve the James v. Jane analysis. Id. at *16. Klena found that the complaint contained only limited information about the relationship between the various entities, their operations, and the degree of control exercised by the government agency over the corporation. Id. at *18-19. The Supreme Court concluded:

It is possible that sufficient facts and circumstances exist to establish that CRMG generally is entitled to share in the Authority’s immunity; however, the record before us does not reveal those facts and circumstances. Because CRMG elected not to put on evidence and relied on the allegations of Sentara’s complaint, we do not have sufficient information to determine whether CRMG is entitled to immunity in this case....In the absence of such evidence, it is impossible for any court to determine whether or not CRMG is immune from Sentara’s claim against it. Because CRMG bore the burden of proving its entitlement to immunity the circuit court erred in sustaining CRMG’s plea of sovereign immunity.

Id.

Upon examination of the extremely limited information available about each of the VDOT employee defendants contained in Awuah’s Complaints, the plea in bar of the VDOT employees asserting sovereign immunity in this case must be overruled because none of the employee defendants met their burden of proof under James v. Jane.

IV. Conclusion

For the reasons stated, the Court will enter an Order sustaining with prejudice VDOT's plea in bar of sovereign immunity as to the lane repainting allegation, overruling VDOT's plea in bar of sovereign immunity as to the allegations that VDOT failed to remove vegetation, and overruling the VDOT employees' plea in bar of sovereign immunity in its entirety.

Sincerely,

A black rectangular redaction box covering the signature of Patrick M. Blanch.

Patrick M. Blanch
2026.03.24 13:21:15-04'00'

Patrick M. Blanch
Judge, Circuit Court of Fairfax County