

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

GEORGE DICKERSON and JULIE)
POWERS,)
Plaintiffs,)

v.)

C.A. No. N10C-08-221 PLA

WILLIAM PHILLIPS, RHONDA)
ABRAHAM, LEAH BETTS,)
CLIFFORD M. NEWLANDS,)
NORMAN LESTER, and THE)
TOWN OF MILTON,)
DELAWARE,)
Defendants.)

**ON DEFENDANTS' MOTION FOR PARTIAL JUDGMENT ON THE
PLEADINGS
GRANTED**

Submitted: April 2, 2012

Decided: June 13, 2012

This 13th day of June, 2012, it appears to the Court that:

1. Before the Court is a motion for partial judgment on the pleadings asserting that the plaintiffs are barred by Delaware's County and Municipal Tort Claims Act ("Tort Claims Act" or "Act")¹ from pursuing their claims for defamation of character and intentional infliction of emotional distress against the Town of Milton, Delaware ("Milton") and various Milton employees. Specifically,

¹ 10 *Del. C.* §§ 4010-4013.

the Court must determine whether Plaintiffs' allegations that they developed diabetes as a result of the stress and anxiety associated with the alleged defamation satisfies the "bodily injury" exception to the immunity bar under the Tort Claims Act. For the reasons set forth below, the motion for judgment on the pleadings is hereby GRANTED.

2. The facts as set forth in the Complaint read like the plot of a televised drama. In July 2008, Defendant William Phillips ("Phillips"), the Chief of Police of Milton, reported to Defendants Rhonda Abraham ("Abraham") and Leah Betts ("Betts") that he had seen Plaintiffs George Dickerson ("Dickerson") and Julie Powers ("Powers"), who were then town employees, in a compromising position in Dickerson's office.² At the time Phillips made these allegations, Betts was the Vice Mayor of Milton and Abraham was an elected member of the Town Council of Milton. Abraham and Betts investigated Phillips' allegations and concluded that they were untrue. On August 6, 2009, however, Phillips repeated the same allegations about Dickerson and Phillips at a public hearing. Abraham and Betts, who attended the hearing, made no effort to correct the record.

² Specifically, Phillips reported that he had seen Dickerson and Powers in Dickerson's office with "Dickerson lying on his back in his reclining chair and his secretary [Powers] on top of him with his shirt undone," or words to that effect. Compl. at ¶ 7.

3. Plaintiffs subsequently filed three lawsuits in this Court, which were consolidated on October 17, 2011. The first Complaint seeks to recover economic damages from all named Defendants for slander, aiding and abetting, and conspiracy. Plaintiffs also seek to recover damages from Milton under the theory of *respondeat superior*. Plaintiffs allege that they suffered harm to their reputations, embarrassment, public humiliation, mental anguish, and emotional distress as a result of Phillips' slanderous accusations. Moreover, Plaintiffs assert that Phillips made his statements, both to Betts and Abraham in 2008 and at the public hearing in 2009, "with actual and constitutional malice."³ Similarly, Plaintiffs allege that Abraham and Betts "intentionally stood mute" when Phillips repeated his accusations at the public hearing in 2009 "in an effort to further harm Dickerson and Powers and their reputations."⁴

4. Defendants have now filed a motion for judgment on the pleadings pursuant to Superior Court Civil Rule 12(c).⁵ Defendants argue that the Tort Claims Act requires dismissal of the Complaint as a matter of law because all of the defendants are immune from suit under the statute. A motion for judgment on the pleadings admits, for the purpose of the motion, the allegations of the opposing

³ Compl. at ¶¶ 7, 9.

⁴ Compl. at ¶ 10.

⁵ Super. Ct. Civ. R. 12(c) provides, "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings."

party's pleadings but contends that they are insufficient as a matter of law.⁶ The motion presents a question of law and cannot be granted where the pleading raises any material issue of fact.⁷ It is the plaintiff's burden to establish the existence of a genuine issue of material fact.⁸

5. At issue here is whether the plaintiffs' claims fall within the exception to the Tort Claims Act permitting plaintiffs to hold municipal employees personally liable for certain acts inflicting bodily injury. The Tort Claims Act provides that "all governmental entities and their employees shall be immune from suit on any and all tort claims seeking recovery of damages."⁹ However, an "employee may be personally liable for acts or omissions causing property damage, bodily injury or death in instances in which the governmental entity is immune under this section, but only for those acts which were not within the scope of employment or which were performed with wanton negligence or willful and malicious intent."¹⁰ Section 4012 of the Tort Claims Act provides for municipal

⁶ *Fagnani v. Integrity Fin. Co.*, 167 A.2d 67, 75 (Del. Super. 1960).

⁷ *Id.*

⁸ *Slovin v. Gauger*, 193 A.2d 452, 454 (Del. Super. 1963), *aff'd*, 200 A.2d 565 (Del. 1964).

⁹ 10 *Del. C.* §4011(a).

¹⁰ 10 *Del. C.* §4011(c).

liability for negligent acts causing property damage, bodily injury, or death in specific circumstances, none of which are applicable to this case.¹¹

6. As Defendants correctly note in their brief, the Tort Claims Act applies to all of the defendants in this case.¹² The only issue argued by Plaintiffs is whether the exception described in section 4011(c) applies.¹³ By its terms, the 4011(c) exception only applies to personal liability for municipal government employees. As such, Defendants conclude, the Tort Claim Act bars Plaintiffs' claims against Milton. Defendants argue that Plaintiffs' attempt to apply the exception under section 4011(c) fails because Plaintiffs have not pleaded property damage, death, or bodily injury and point out that emotional distress and related injuries do not constitute "bodily injury" as defined by the Tort Claims Act under Delaware law.¹⁴

7. Plaintiffs contend that this case falls within the exception described in section 4011(c) because they have alleged that Phillips, Betts, and Abraham acted

¹¹ See 10 Del. C. §4012 (providing that a governmental entity may be held liable for negligent acts or omissions causing property damage, bodily injury or death in connection with the entity's ownership or operation of a motor vehicle or equipment, the entity's construction or maintenance of certain public buildings, or in the sudden and accidental discharge of certain toxic substances).

¹² 10 Del. C. §4010(1); see also *Davis v. Town of Georgetown*, 2001 WL 985098 (Del. Super. Aug. 22, 2001) (holding that the term "employee" includes elected or appointed officials).

¹³ 10 Del. C. §4011(c); *Carr v. Town of Dewey Beach*, 730 F.Supp. 591, 601 (D.Del. 1990).

¹⁴ See, e.g., *Sekscinski v. Harris*, 2006 WL 509541, at *3 (Del. Super. Jan. 18, 2006) (granting motion to dismiss filed by defendant police officer on grounds that police officer was immune from liability under the Tort Claims Act).

in their personal capacities and with malicious intent both in uttering the false statements and in allowing those statements to become part of the public record. Furthermore, Plaintiffs argue that the mental anguish inflicted by Phillips, Betts, and Abraham resulted in actual physical injury. Plaintiffs allege that the stress resulting from the defamation exacerbated Dickerson's diabetes and has led to the development of diabetic retinopathy and macular edema. Similarly, Plaintiffs allege that Powers has developed type 2 diabetes as a result of the stress and anxiety caused by the defamatory statements.

8. For the reasons identified by the defendants, the Tort Claims Act bars Plaintiffs' claims. The Act bars claims against the Town of Milton and its employees acting in an official capacity unless an exception delineated in section 4012 applies.¹⁵ Because the pleadings reflect that no such exception applies to this case, the Court finds that Plaintiffs' claims with regard to Milton are barred.

9. As to Plaintiffs' claims against Phillips, Betts, and Abrahams acting in their individual capacities, the Court also finds that the exception under section 4011(c) does not apply. It is well-established that allegations of emotional distress

¹⁵ See *Alexander v. Town of Cheswold*, 2007 WL 1849089, at *4 (Del. Super. Jun. 27, 2007) (granting summary judgment to town on plaintiff's defamation claim because the claim is barred by the Tort Claims Act).

do not amount to bodily injury for purposes of the Tort Claims Act.¹⁶ Plaintiffs' attempt to bring their claim within the 4011(c) exception by asserting that the emotional distress resulting from plaintiffs' defamatory statements was so severe as to cause an exacerbation of diabetes in Dickerson's case and the development of type 2 diabetes in Powers' case fails. As a procedural matter, Plaintiffs failed to assert their stress-related ailments in any of the pleadings and only assert them now in response to this motion for judgment on the pleadings. Plaintiffs' invitation to the Court to convert this motion for judgment on the pleadings into a motion for summary judgment pursuant to Superior Court Civil Rule 56 to consider their claims of stress-related diabetes is unavailing, however, as the interrogatory answers supplied by Plaintiffs do not change the fact that the facts as pled in the Complaint are inadequate to evade the immunity bar imposed by the Tort Claims Act. Moreover, even assuming that Plaintiffs' allegations of stress-induced diabetes had been properly pled, their claims would not meet the requirement of pleading "bodily injury" necessary to avoid the immunity bar under section 4011(c). Plaintiffs' allegations that their stress and anxiety caused by the defamation of character resulted in diabetic complications are too attenuated, and too far-fetched, to form a plausible claim that Defendants caused bodily injury to

¹⁶ *Davis v. Town of Georgetown*, 2001 WL 985098, at *9 (Del. Super. Aug. 22, 2001) (holding that the Tort Claims Act barred the plaintiff's emotional distress claims against various employees of the Town of Georgetown); *see also Sekscinski*, 2006 WL 509541, at *3.

Plaintiffs by an intentional act. Accordingly, the Court finds that the Tort Claims Act bars Plaintiffs' claims for defamation and intentional infliction of emotional distress against all Defendants as a matter of law.

10. For all of the reasons set forth above, Defendants' motion for judgment on the pleadings is GRANTED.

IT IS SO ORDERED.

/s/ Peggy L. Ableman _____

Peggy L. Ableman, Judge

Original to Prothonotary
cc: All counsel