DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2007

DALLAS RAY BALDWIN,
Appellant,

v.

CITY OF FORT LAUDERDALE, a political subdivision of the State of Florida,
Appellee.

No. 4D06-2862

[July 11, 2007]

STEVENSON, J.

Dallas Ray Baldwin was arrested by City of Fort Lauderdale police officers following a sting operation. Later, Baldwin sued the City of Fort Lauderdale, alleging he sustained injuries (1) when police severely beat him after he was arrested and handcuffed and (2) when police failed to use an available seat belt to secure him and "through continuous rapid stopping and accelerating" caused him to be "hurled" around the van during transport to jail. The trial court entered final summary judgment in favor of the City on sovereign immunity grounds. We reverse.

Section 768.28(9)(a), Florida Statutes, provides, in relevant part, that the State and its subdivisions shall not be liable for "the acts or omissions of an officer, employee, or agent . . . committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." Because the case was before the trial court on motion for summary judgment, the City was entitled to judgment in its favor if the only conclusion that could be reached by a reasonable jury was that the police acted in bad faith, with a malicious purpose, or in wanton and willful disregard of human rights, safety, and property. *See Willingham v. City of Orlando*, 929 So. 2d 43, 48 (Fla. 5th DCA 2006). We do not believe this was the case here.

With respect to Baldwin's attempt to impose liability upon the City for the alleged beating, we believe the matter is appropriate for resolution by a jury. In the City's answer to the complaint, it claimed the force that was used was reasonable. Moreover, it claimed that the law enforcement

officers involved in the arrest disputed in their depositions that they used excessive and unreasonable force, or acted in bad faith, with a malicious purpose, or in wanton and willful disregard of Baldwin's rights, safety, and property. Therefore, if the jury had the opportunity to hear all of the testimony and facts presented, it might conclude that the law enforcement officers in fact acted reasonably under the circumstances, or it may find the law enforcement officers used excessive force, but not to a degree that constituted bad faith, a malicious purpose, or wanton and willful disregard of human rights, safety, and property. Additionally, the jury may conclude under proper instruction that the conduct of the law enforcement officers did in fact constitute bad faith, with a malicious purpose, which was wanton and willful, and therefore find the City was not liable. Any one of these three scenarios could be a reasonable conclusion arrived at by the jury. *See McGhee v. Volusia County*, 679 So. 2d 729 (Fla. 1996); *Carestio v. Sch. Bd. of Broward County*, 866 So. 2d 754 (Fla. 4th DCA 2004).

As for Baldwin's claim regarding his transport to the jail, the complaint does not allege that police deliberately or intentionally drove in a manner so as to inflict injury upon Baldwin or that the actions of the officers were taken in bad faith or with a malicious purpose, and the evidence offered in support of the City's motion for summary judgment did not conclusively establish such facts.

Reversed and Remanded.

HAZOURI, J., concurs.
MAY, J., dissents with opinion.

MAY, J., dissenting.

I respectfully dissent. The specific allegations in the plaintiff's complaint and the plaintiff's own deposition testimony revealed facts of such an egregious nature that, in my view, they insulate the City from liability under the statutory immunity provided by section 768.28(9)(a), Florida Statutes (2001).[1]

The plaintiff's complaint alleged that City of Fort Lauderdale police officers committed a battery on the plaintiff by use of

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[1] It is important to note that the plaintiff did not file suit against the individual officers.

> excessive force by severely and brutally kicking and beating the Plaintiff in and about his head, body, and extremities as to cause grievous bodily harm and permanent injury. Further, during the transport from the scene of Plaintiff's arrest, he was subjected to further use of excessive force by City of Fort Lauderdale police officers by their conduct in not placing the available seat belt on the Plaintiff to secure him and despite his existing injuries, and thereafter engaging in a course of conduct by subjecting Plaintiff to be hurled around the transport van through continuous rapid stopping and accelerating of the transport vehicle.

The plaintiff testified that he was hit from the "side or from behind." Once inside the truck and while handcuffed, "some officers came in the truck and started kicking me, stared [sic] hitting me . . . and just continually kicking me in the head . . . ." He was kicked at least twenty times. According to his testimony, when the van began to move, the officers drove in such a manner to cause the plaintiff to be slammed into the walls of the van continuously.

Section 768.28(9)(a), Florida Statutes (2001) provides:

> The state or its subdivision shall not be liable in tort for the acts or omissions of an officer, employee or agent committed while acting outside the course and scope of her or his employment **or committed in bad faith or with malicious purpose or in any manner exhibiting wanton and wilful disregard of human rights, safety, or property.**

(Emphasis added). Here, the only allegations were that the officers severely and brutally beat and kicked the plaintiff while handcuffed and then intentionally drove the vehicle in a manner to cause additional injury to the plaintiff.

The plaintiff chose to proceed against the City only. The plaintiff chose to plead only one count alleging the City was vicariously liable for the severe and brutal treatment of the plaintiff by its officers. The plaintiff chose to proceed on allegations of behavior, supported by the plaintiff's own testimony, that in my view fall within the description of "wanton and wilful disregard of human rights, safety, or property." This is the level of conduct for which the legislature provided the City with immunity under section 768.28(9)(a), Florida Statutes (2001).

There were no alternative allegations of simple negligence on the part of the officers. Had there been an alternative count for simple negligence, then I would agree with the majority that there were genuine issues of material fact precluding summary judgment. However, under these facts taken in the light most favorable to the plaintiff and the allegations in his complaint, the trial court was correct in entering a summary judgment for the City. I would affirm.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Richard D. Eade, Judge; L.T. Case No. 05-4921 05.

Charles G. White of Charles G. White, P.A., Miami, for appellant.

Alain E. Boileau and Dieter K. Gunther of Adorno & Yoss LLP, Fort Lauderdale, for appellee.

Not final until disposition of timely filed motion for rehearing.