

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

Dennis Pernell

Court of Appeals No. L-09-1082

Appellant

Trial Court No. CI07-2714

v.

Andre Bills, etc., et al.

**DECISION AND JUDGMENT**

Appellee

Decided: December 11, 2009

\* \* \* \* \*

Adam W. Loukx, Acting Director of Law, and Jeffrey B. Charles, Chief of Litigation, City of Toledo Department of Law, for appellant.

Robert A. Woodley, for appellee.

\* \* \* \* \*

HANDWORK, P.J.

{¶ 1} Appellant, Dennis Pernell, appeals the Lucas County Court of Common Pleas' grant of summary judgment to appellee, Andrew Bills. For the following reasons, the judgment is affirmed.

{¶ 2} Dennis filed a two-count complaint against Bills, a Toledo Police officer, alleging that with intent and malice, Bills falsely arrested Dennis and unlawfully deprived him of his liberty. Dennis requested damages for "embarrassment, humiliation, loss of reputation, loss of freedom, and physical discomfort."

{¶ 3} The parties' motions on summary judgment established the following facts. Bills and a partner were parked in a commercial parking lot in a marked vehicle, "running" plates through a LEADS computer system. Pernell arrived and parked. Bills entered Pernell's license plate into the computer system, and the system indicated that the vehicle was stolen.

{¶ 4} Bills blocked Pernell's vehicle with his vehicle, approached the car, and instructed Pernell to exit the vehicle. Bills handcuffed Pernell and asked his partner to contact the Toledo Police Department to verify that the vehicle was stolen. After Pernell was in handcuffs, Bills told Pernell that he suspected the vehicle was stolen and asked for his identification. After Bills' partner verified that Pernell's vehicle was, in fact, not stolen, Bills released Pernell from the handcuffs. Their testimony differs as to whether Bills apologized.

{¶ 5} Bills testified that Pernell was handcuffed for approximately five minutes, because his partner confirmed that the vehicle was not stolen in "no time." Pernell testified that he was in handcuffs for more than five minutes, estimating that it was 15 to 30 minutes. In his testimony, Pernell admitted that Bills did not touch Pernell except to place the handcuffs on and take them off. Pernell admitted that he suffered no physical injury and sought no medical treatment.

{¶ 6} The trial court granted Bills' motion for summary judgment on grounds that Bills' actions were entitled to immunity pursuant to R.C. 2744 et seq. On appeal, Pernell assigns the following assignment of error for review:

{¶ 7} "The trial court erred [sic] by awarding summary judgment to appellee, since under the standards for summary judgment and the law, the handcuffing of appellant by appellee was not justified, and constituted an arrest, without probable cause, in violation of appellant's rights under the Fourth Amendment and Ohio law."

{¶ 8} In his brief, Pernell argues only that Bills exceeded the scope of a reasonable investigatory stop pursuant to *Terry v. Ohio* (1968), 392 U.S. 1; that Bills, in fact, arrested Pernell without probable cause; and that, therefore, Bills should be liable for Pernell's unspecified damages for the Fourth Amendment violation. In support, Pernell has supplied this court with an extended block quote from *State v. Davis*, 10th Dist. No. 08AP-102, 2008-Ohio-5756. *Davis* upheld the denial of a criminal defendant's motion to suppress, which challenged whether the arresting officer had probable cause to search his person.

{¶ 9} The standards for an unreasonable detention or arrest do not apply to these state law claims of civil liability. The claims and supporting facts do not fall within an exception to the statutory grant of governmental immunity. As an employee of the Toledo Police Department, Bills' actions, taken within the scope of his employment, are governmental functions which are generally immune from liability. R.C. 2744.03; *Walls v. Toledo*, 6th Dist. No. L-07-1324, 2008-Ohio-4274. Pernell did not plead the unconstitutionality of R.C. 2744.03 in his complaint, and he does not argue with reference to the immunity statute on appeal. *Cicco v. Stockmaster* (2000), 89, Ohio St.3d 95, syllabus.

{¶ 10} "The determination of whether immunity is available is a question of law that is properly decided by the court before trial. *Carpenter v. Scherer-Mountain Ins. Agency* (1999), 135 Ohio App.3d 316, 330. Accordingly, we review de novo a trial court's summary judgment decision on immunity grounds. *Id.*" *Frazier v. Clinton Cty. Sheriff's Office*, 12th Dist. No. CA2008-04-015, 2008-Ohio-6064, ¶ 27. Summary judgment is proper when there remains no genuine issue of material fact and, when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C).

{¶ 11} As an employee of a political subdivision, Bills is immune from liability pursuant to R.C. 2744.03(A)(6), which provides:

{¶ 12} "(6) In addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division or sections 3314.07 and 3746.24 of the Revised Code, the employee is immune from liability unless one of the following applies:

{¶ 13} "(a) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;

{¶ 14} "(b) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;

{¶ 15} "(c) Civil liability is expressly imposed upon the employee by a section of the Revised Code. Civil liability shall not be construed to exist under another section of

the Revised Code merely because that section imposes a responsibility or mandatory duty upon an employee, because that section provides for a criminal penalty, because of a general authorization in that section that an employee may sue and be sued, or because the section uses the term 'shall' in a provision pertaining to an employee."

{¶ 16} "By its terms, R.C. 2744.03(A)(6) operates as a presumption of immunity. Immunity will attach to the conduct of political subdivision employees so long as one of the exceptions does not apply." *Williams v. Franklin Cty. Bd. of Commrs.* (2001), 145 Ohio App.3d 530, 546. (Internal citation omitted.) Subsection (c) does not apply, as Pernell does not argue that liability may be imposed by virtue of a section of the Revised Code. Subsection (a) does not apply, as Bills' actions were within the scope of Bills' official employment and responsibilities as a police officer. Therefore, Bills is immune from liability unless his actions were performed "with malicious purpose, in bad faith, or in a wanton or reckless manner," pursuant to subsection (b). See *Frazier*, 2008-Ohio-6064, ¶ 35.

{¶ 17} In his motion opposing summary judgment and on appeal, Pernell does not argue that Bills' actions were performed in bad faith. *Frazier*, supra, analyzing similar claims, succinctly stated the applicable standards:

{¶ 18} "'Malice' is the willful and intentional design to do injury or the intention or desire to harm another, usually seriously, through conduct that is unlawful or unjustified. *Jackson v. Butler Cty. Bd. of Commrs.* (1991), 76 Ohio App.3d 448, 453-454; *Cook v. Cincinnati* (1995), 103 Ohio App.3d 80, 90. 'Bad faith' involves a dishonest purpose,

conscious wrongdoing, intent to mislead or deceive, or the breach of a known duty through some ulterior motive or ill will. *Jackson; Cook*. 'Wanton' misconduct is the failure to exercise any care whatsoever. *Fabrey v. McDonald Village Police Dept.* (1994), 70 Ohio St.3d 351, 353. Finally, 'reckless' misconduct refers to misconduct that causes an unreasonable risk of harm and is 'substantially greater than that which is necessary to make [the] conduct negligent.' *Thompson v. McNeil* (1990), 53 Ohio St.3d 102, 104-105." *Frazier*, 2008-Ohio-6064, ¶ 36.

{¶ 19} Reviewing the entire record in a light most favorable to Pernell, we find no evidence that Bills acted with malice, bad faith, or acted recklessly or wantonly. Bills handcuffed Pernell because he had information that the vehicle Pernell was driving was stolen. Bills averred that the computer system had never before given him incorrect information. Bills also averred that, within his experience, people suspected of car theft – a felony – often attempted to flee or resist arrest when being detained. Pernell acknowledges that as soon as Bills verified that his vehicle was, in fact, not stolen, Bills removed the handcuffs. In sum, to withstand a motion for summary judgment, Pernell had to show more than an unreasonable detention or an arrest without probable cause.

{¶ 20} The trial court properly found that no genuine issue of fact was raised as to whether Bills intended to harm Pernell, breached a duty with an ulterior motive or ill will or with dishonest purpose, or created an unnecessary risk of physical harm. Accordingly, the assignment of error raised on appeal is not well-taken.

{¶ 21} The judgment of the Lucas County Court of Common Pleas is affirmed.

Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

\_\_\_\_\_  
JUDGE

Mark L. Pietrykowski, J.

\_\_\_\_\_  
JUDGE

Arlene Singer, J.

CONCUR.

\_\_\_\_\_  
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.