

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Evans	:	
and Frank Havelka,	:	
	:	
Appellants	:	
	:	
v.	:	
	:	
City of Pittsburgh	:	
as a Municipal Corporation	:	No. 1344 C.D. 2010
and Detective John E. Mihalcin	:	Submitted: February 25, 2011

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM

FILED: April 13, 2011

Carol Evans and Frank Havelka (collectively, Appellants) appeal the order of the Court of Common Pleas of Allegheny County (common pleas court) which sustained the preliminary objection of the City of Pittsburgh and Detective John E. Mihalcin (Det. Mihalcin), (collectively, Appellees) and dismissed with prejudice the complaint and amended complaint of the Appellants.

On January 13, 2010, the Appellants filed a complaint and alleged:

(5) The afternoon of November 26, 2007, Plaintiffs Evans and Havelka went to check on a house located at 1009 Beechland Street, Pittsburgh, Pa. 15207. The house is owned by Plaintiff Carol Evans and it was in the process of having a new bathroom and kitchen installed. Upon arrival, they noticed there was evidence that someone had tried to enter the front door by breaking a piece of glass in the door but the attempt was not accomplished. The Plaintiffs then went to the side door on the right side of the house and noticed that the whole door had been broken completely out and it was in pieces on the floor.

(6) The Plaintiffs feared that someone might still be in the home and called 911 and waited for an Officer to arrive. Officer Barr arrived a short time later then he and Plaintiff Evans entered the home together. The house was in a ransacked condition . . . and the door to one of Plaintiff Evans['] bedrooms which Plaintiff [Evans] kept locked had been broken into as well.

(7) While standing in the hallway to the bedroom, Plaintiff noticed that a [sic] all of her jewelry boxes were empty and Plaintiff Havelka was missing men's jewelry and proof coins, in all over 30 items of jewelry were missing, most of which were family heirlooms. Two sterling silver boxes containing flatware were lying empty on the floor. Other missing items included: outdoor [sic] lawn tools belonging to Plaintiff Havelka; a new TV set still boxed; Christmas presents in the form of liquor gift baskets. . . .

(8) Officer Barr and Plaintiff Evans noticed a chair filled with coats, dresses, suits, etc. that the burglars left behind as if they planned to come back or had gotten interrupted. Officer Barr concluded that it was impossible to determine all the items that were missing without taking an inventory of our losses. Officer Barr left in 10 minutes and told us that Burglary Squad would be contacting us to take fingerprints and pictures and for us to take an inventory to give to the Burglary Squad or drop it off at the Police Station. We waited and no one called and no one came that day.

(9) The Defendant, Detective John E. Mihalcin, called Plaintiffs 3 days later on November 29, 2007 at 6:46 PM and began to take an inventory over the phone of just the jewelry that was missing and that conversation took about 20 to 25 minutes or so because he asked Plaintiffs to be descriptive because Detective Mihalcin intended to file a pawn shop report.

(10) The Defendant, Detective John E. Mihalcin called Plaintiffs back the same evening and asked Plaintiff Evans if she knew of a female Police Officer by the name of 'Kim' who lived on Beechland Street and Plaintiff

Evans said 'I do not think that I do, because there are two Beechland Streets.'

(11) Plaintiffs were trying to take inventory without touching anything when Plaintiffs found items left behind by, Plaintiffs assume, the burglars. There was a screw driver and several small tools along with two notes signed by a man who once worked on said property over five years earlier. Plaintiffs called Defendant, Detective [sic] Mihalcin immediately and left this information with another party who said he would get the information. Defendant [sic] Mihalcin called back the next day and that is when Defendant Mihalcin's behavior began to get very bizarre especially when Plaintiffs inquired why no one had come by to investigate and take fingerprints.

(12) In the next few days, Detective John E. Mihalcin's behavior began to get very bizarre and abusive as I will set forth as follows:

(a) When Plaintiffs asked Defendant if they could place a Notice in the newspaper offering a reward for information about the burglary at 1009 Beechland Street, or a sign on the lawn, Defendant said 'No, I don't allow you to do that and there will be consequences from me if you do so.'

(b) Defendant Mihalcin said 'I am going to do nothing about your Burglary because some of my Police Officer friends do not like you.'

(c) Defendant Mihalcin said, 'I warn you, do not go over my heard.' [sic]

13. Within 2 days, the side door of 1009 Beechland St. was kicked in again. Plaintiff has had a problem with a Pittsburgh Police Officer abusing her before.

Complaint, January 13, 2010, Paragraph Nos. 5-13 at 2-4; Reproduced Record (R.R.) at 18a-20a.

The Appellants alleged that Det. Mihalcin abused his power as a police officer when he did not perform his duty to investigate the burglary and to try to recover the personal property, that Det. Mihalcin was negligent performing his mandatory duty to protect the Appellants, that Det. Mihalcin conspired against the Appellants to deprive them of their rights, that Det. Mihalcin made intimidating threats to the Appellants, and that Det. Mihalcin obstructed justice by not pursuing the investigation of the burglary.

On February 2, 2010, the Appellees preliminarily objected in the nature of a demurrer and alleged that the Appellants failed to assert a cause of action upon which relief could be granted:

6. Plaintiffs [Appellants] have failed as a matter of law to assert a cause of action upon which relief may be granted in light of the Political Subdivision Tort Claims Act. . . .

7. The City of Pittsburgh is generally immune from suit pursuant to the Political Subdivision Tort Claims Act. . . .

8. The Tort Claims Act provides that no local agency shall be held liable for any damages on account of any injury to a person or property caused by an act of a local agency or an employee thereof, or any other persons. . . .

9. Liability arises only if the conduct of a municipality or its employee is an act of negligence which fits into one of a few narrow exceptions enumerated in the Tort Claims Act. . . .

10. An employee of a local agency is entitled to the same immunity as his employing local agency. . . .

. . . .

17. Plaintiffs [Appellants] do not assert that their claims fall within any of the Tort Claims Act's enumerated exceptions.

18. A specific review of each of the Counts reveals that none of the enumerated exceptions to immunity apply.

Joint Preliminary Objections, February 2, 2010, Paragraph Nos. 6-10 and 17-18 at 1-3; R.R. at 28a-30a.

On March 4, 2010, the Appellants filed an amended complaint and alleged that a day or two after the burglary a woman telephoned the Appellants and identified herself as a partner of Det. Mihalcin. When the Appellants told the woman that they were going to put an advertisement in the paper and a sign in the yard seeking information, the woman became hostile and advised them not to do so. In the amended complaint, the Appellants further alleged:

14. . . . Plaintiff, Ms. Evans went to another Pgh. Police Station and asked why the man whose name was Mr. Donald Bauer was not arrested at [sic] for breaking in and hiding inside her home. The Pgh. Police officer said he should have been arrested for burglary. Mr. Bauer was later arrested and that is when the Police Officers who had not arrested Mr. Bauer began to call Plaintiff, Ms. Evans saying they were not happy that she had gone over their heads and told her if she did not drop the charges on Mr. Bauer they would find a way to have her arrested because Mr. Bauer had friends that were Police Officers looking out for him. Plaintiff, Ms. Evans who was never in trouble with the law before thought the threats were fake. Plaintiff, Ms. Evans was arrested on a false felony charge created by several Pgh. Police Officers, Donald Bauer and his friends. Plaintiff, Ms. Evans went to court and was found 'Not Guilty.'

Amended Complaint, March 4, 2010, Paragraph 14 at 5; R.R. at 51a.

On March 5, 2010, after hearing oral argument, the common pleas court sustained the preliminary objection and dismissed with prejudice the complaint and the amended complaint. On March 18, 2010, the Appellants petitioned for reconsideration which the common pleas court denied on April 8, 2010.

On appeal to this Court, the Appellants contend that the common pleas court improperly granted the preliminary objection when the Appellants alleged sufficient facts to overcome the standard and that the common pleas court erred when it dismissed the Appellants' complaint on the basis of the act frequently referred to as the Political Subdivision Tort Claims Act, 42 Pa.C.S. §§8541-8542 or immunity.¹

The Honorable Alan Hertzberg ably disposed of these issues in his comprehensive opinion. Therefore, this Court shall affirm this issue on the basis of that opinion. Carol Evans and Frank Havelka v. City of Pittsburgh as a Municipal Corporation and Detective John E. Mihalcin (GD 09-22073, Filed June 8, 2010).²

¹ This Court's review is limited to a determination of whether on the facts alleged the law states with certainty that no recovery is possible. Hawks by Hawks v. Livermore, 629 A.2d 270, 271 n. 3 (Pa. Cmwlth. 1993). This Court must accept as true all well pled allegations and material facts averred in the complaint as well as inferences reasonably deducible therefrom and any doubt should be resolved in favor of overruling the demurrer. Id.

² The Appellants also assert that the common pleas court erred when it denied their motion for reconsideration. This issue is also ably addressed in the common pleas court's opinion. The Appellants assert that they could prove the facts as alleged. That is not the standard of review when reviewing an order that sustained a preliminary objection and resulted in a dismissal of the action.

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PER CURIAM

ORDER

AND NOW, this 13th day of April, 2011, the order of the Court of Common Pleas of Allegheny County in the above-captioned matter is affirmed.