IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Stephania Z. Rue, Appellant	:	
v.	:	
Washington Township Volunteer Fire Company, also known as, Washington Township Volunteer Fire Department, also known as The Washington Township Volunteer Fire Department, also known as Washington Township Volunteer Fire Department Number One Beneficial & Relief Association, also known as Washington Township Volunteer Fire Department Beneficial & Relief Association and John Doe or John Does, being Certain individuals now or previously Officers, directors, board members, fire chiefs, or any other persons in charge of Washington Township Volunteer Fire Company a/k/a Washington Township Volunteer Fire Department a/k/a The Washington Township Fire Department	:	No. 1461 C.D. 2009 Argued: April 19, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY FILED: June 29, 2010

Stephania Z. Rue (Rue) appeals from an order of the Court of Common Pleas of Fayette County (common pleas court) that entered summary judgment in favor of the Washington Township Volunteer Fire Company (Fire Company).

On February 1, 2008, Rue filed a complaint against the Fire Company and alleged:

> 4. On or about October 10, 2005, Mrs. Rue attended the regular Monday night Bingo game hosted by the . . . Fire Company at the Washington Township Fire Hall (hereinafter "Fire Hall") . . . . This Bingo game was a fundraiser for the Fire Company. Therefore, at all material times . . . Mrs. Rue was a business invitee of the . . . Fire Company.
> . . . .
> 6. The Fire Company regularly employed young people, generally believed to be under the age of 18, to assist at the Fire Department's Bingo games in various ways, including but not limited to selling "tip boards". . . "tear off games"/games of chance . . . taking food and drink orders and serving food and drinks at the Bingo players' tables . . . . The Fire Company received pecuniary benefit from the work of these young employees or quasi-employees, in that the sale of these items raised revenues exclusively for the Fire Company.
> . . . .
> 9. As Mrs. Rue approached the door passage, she saw a young female Bingo worker . . . who was standing in the doorway, leaning with her back against the door frame and talking to another person. As Mrs. Rue crossed through the threshold of the double doors, this young lady abruptly moved rapidly and directly into Mrs. Rue's path, blocking her passage, and then tripping Mrs. Rue, causing Mrs. Rue to fall forward and land face-first on the floor and into the front foyer area. (emphasis added).
> . . . .
> 14. While Mrs. Rue was sitting on the chair in the foyer, a gentleman whose name is Tom, and with whom Mrs. Rue was acquainted through attending Bingo games at the Fire Hall in the past, at Mrs. Rue's request, went to her car . . . to retrieve a cane and bring it to her . . . .
> . . . .
> 19. . . . Mrs. Rue was examined on Friday by Dr. Pressman, who immediately secured x-rays and

> diagnosed a subcapital left hip fracture. He immediately scheduled Mrs. Rue for hip repair surgery the following Monday, October 17, 2005.
>
> 20. On . . . Monday, October 17, 2005, Mrs. Rue underwent surgery at Monongahela Valley Hospital for repair of her left hip, which required insertion of three metallic screws . . . .
>
> . . . .
>
> 30. As a result of the negligence of the unnamed girl, for which the . . . Fire Company is vicariously liable, the Plaintiff [Rue] has suffered extensive damages . . . . (emphasis added).
>
> . . . .
>
> 36. The . . . Fire Company failed to exercise reasonable care to control the unnamed girl as its servant/agent/employee while acting outside the scope of her employment, thus creating an unreasonable risk of bodily harm to the Plaintiff [Rue] . . . .
>
> 37. The Defendant Fire Company's negligent supervision and control of the unnamed girl as its employee/servant/agent was the direct and proximate cause of the Plaintiff's [Rue's] injuries. (emphasis added).

Complaint, February 1, 2008, Paragraphs 4, 6, 9, 14, 19-20, 30, and 36-37 at 2-5, 8-9, 14, and 15; Reproduced Record (R.R.) at 33-36, 39-40, and 45-46.

The Fire Department responded and averred in new matter:

> Count I
>
> 30. it is denied that defendants were negligent in any manner whatsoever . . . .
>
> . . . .
>
> New Matter
>
> 39. Defendants affirmatively plead as a defense their immunity from liability for any damages on account of any injury to person or property pursuant to the terms of

> the Political Subdivision Tort Claims Act . . . . (emphasis added).
>
> 40. The defendants affirmatively plead the limitation on damages which are recoverable by plaintiff in the present action, if any, pursuant to §8549 and §8553 of the Political Subdivision Tort Claims Act . . . . (emphasis added).
>
> 41. Plaintiff's Complaint fails to state a cause of action against these defendants upon which relief can be granted.
>
> . . . .
>
> 43. Plaintiff's Complaint fails to state a cause of action in that she refers to individuals as John Doe or John Does without specifically identifying these individuals or their relationship with the named defendants, if any.

Answer and New Matter, April 3, 2008, Paragraphs 30, 39-41, and 43 at 3-5; R.R. at 54, 46, and 55.[1]

Rue replied to the Fire Department's new matter and asserted:

> 39. Plaintiff denies that Defendants are immune from liability for damages on account of any injury to person or property pursuant to the terms of the Political Subdivision Tort Claims Act . . . . Plaintiff avers that Defendants are liable to Plaintiff per 42 Pa. C.S. §8542(b)(3) based upon Defendants' [sic] negligent care, custody and control of Defendant's fire hall, which is and was at the time of Mrs. Rue's fall at issue real property in the possession of the Defendant Washington Volunteer Fire Company (hereafter "Defendant Fire Company.") . . . . (emphasis added).
>
> 40. Plaintiff denies that Plaintiff is limited in the amount of damages she can recover pursuant to 42 Pa. C.S. §8549 and §8553 . . . . (emphasis added).

[1] Rue has misidentified the pages in her R.R.

Plaintiff's Reply to New Matter, June 2, 2008, Paragraphs 39 and 40 at 1-2; R.R. at 71-72.

The Fire Company moved for summary judgment and asserted:

> 9. As a local agency under the PSTCA, the defendant Fire Company is entitled to immunity unless the alleged negligent act falls under one of the eight exceptions . . . 42 Pa. C.S. §8542(b)(1)(2)(3)(4)(5)(6)(7) and (8). (emphasis added).
>
> 10. The allegations contained in plaintiff's Complaint (Negligence, Vicarious Liability and Negligent Supervision or Control) do not fall under any of the enumerated exceptions to immunity under the PSTCA. (emphasis added).
>
> 11. In response to the defendants' New Matter raising immunity under the PSTCA, plaintiff responded by claiming that plaintiff's case fell under the real estate exception arguing that failure to properly supervise the unnamed teenage volunteer constituted negligent care, custody or control of defendants' real estate.
>
> 12. The appellate courts in Pennsylvania have held that failure to control the actions of others on governmental property constitutes a claim of negligent supervision rather than one arising from the care, custody or control of real estate . . . . (emphasis added).
>
> . . . .
>
> 14. Where there is no defect in the real property or any negligence by the Fire Company in its care, custody or control of real property, plaintiff's cause of action does not fall within the real estate exception.

Motion for Summary Judgment, April 23, 2009, Paragraphs 9-12 and 14 at 3-4; R.R. at 90-91.

Rue responded to the Fire Department's motion for summary judgment:

> 9. Paragraph 9 of Defendants' Motion for Summary Judgment is denied as stated. It is denied that the defendant fire company has established that it is a local agency under the Political Subdivision Tort Claims Act. (emphasis added).
>
> . . . .
>
> **WHEREFORE** Plaintiff requests that Defendants' Motion for Summary Judgment be dismissed on the ground that Defendants are not entitled to immunity pursuant to the Political Subdivision Tort Claims Act or in the alternative Plaintiff's Complaint falls within the care, custody and control of real estate exception to the Political Subdivision Tort Claims Act. (emphasis added).

Plaintiff's Response to Defendants' Motion for Summary Judgment, June 8, 2009, at 2-3; R.R. at 144-45.

The common pleas court entered summary judgment and concluded that the Fire Company was a "local agency" and that it was "entitled to governmental immunity pursuant to Section 8541 . . . [and] that the real property exception to governmental immunity is inapplicable to the case at bar." Opinion of the Common Pleas Court, August 11, 2009, at 5-6.

I. Whether The Common Pleas Court Erred As A Matter Of Law Or Abused Its Discretion When It Concluded That The Fire Company Was A "Local Agency"?

Initially, Rue contends[2] that the Fire Company failed to provide any specific proof that it is entitled to governmental immunity under the Act and that it

[2] This Court's review of a common pleas court's grant of summary judgment is limited to a determination of whether the common pleas court committed an error of law or abused its discretion. Metropolitan Edison Company v. Reading Area Water Authority, 937 A.2d 1173 (Pa.
(Footnote continued on next page…)

is a "local agency" of the Township. Rue asserts that the Fire Company does not dispute that the Township failed to enact an Ordinance that recognized the Fire Company as the official fire department of the Township.

Section 8501 of the Judicial Code (Judicial Code)[3], 42 Pa. C.S. § 8501, defines the term "local agency" as "[a] government unit other than the Commonwealth government . . . [t]he term includes, but is not limited to, an intermediate unit; municipalities cooperating in the exercise or performance of governmental functions, powers or responsibilities under 53 Pa. C.S. Ch. 23 Subch. A (relating to intergovernmental corporation) . . . ." (emphasis added).

Section 102 of the Judicial Code, 42 Pa. C.S. § 102, defines the term "government agency" as "[a]ny Commonwealth agency or any political subdivision or municipal or local authority, or any officer or agency of the unified judicial system."

(continued…)

Cmwlth. 2007). The standard of review of a grant of summary judgment requires the evidence to be viewed in a light most favorable to the nonmoving party. All doubts as to the existence of a genuine issue of material fact must be resolved against the nonmoving party. Garcia v. Community Legal Service Group, 524 A.2d 980, 985 (Pa. Super. 1987). Summary judgment is only proper where there is no genuine issue as to any material fact and it is clear that the moving party is entitled to a judgment as a matter of law. Kincel v. Department of Transportation, 867 A.2d 758, 761 n.7 (Pa. Cmwlth. 2005).

[3] This Court notes that the "Political Subdivision Tort Claims Act" was formerly the official title of the Act of November 26, 1978, P.L. 1399, as amended, formerly 53 P.S. §§ 5311.1101-5311.803, repealed by the Act of October 5, 1980, P.L. 693. Therefore, this Court shall refer to the PSTCA as the Judicial Code.

Last, Section 1991 of the Statutory Construction Act, 1 Pa. C.S. § 1991, defines the term "local authority" as "a municipal authority or any other body corporate and politic created by one or more political subdivisions pursuant to statute."

In Flood v. Silfies, 933 A.2d 1072 (Pa. Cmwlth. 2007), this Court reiterated the history and criteria necessary to establish whether a volunteer fire department is a "local agency":

> In Wilson v. Dravosburg Volunteer Fire Department No. 1, 101 Pa.Cmwlth. 284, 516 A.2d 100 (1986), this Court unequivocally interpreted the term "local agency" under the PSTCA [Code] to include volunteer fire companies as a government unit entitled to immunity. In so doing, we recognized that volunteer fire companies, in the performance of public firefighting duties, exist as an entity acting on behalf of local government units. Wilson. This conclusion was supported by the historical, structural relationship existing between volunteer fire companies and the municipalities and the citizenry they serve. Wilson.
>
> This Court reached a similar result in Weaver v. Union City Volunteer Fire Department, 102 Pa.Cmwlth. 298, 518 A.2d 7 (1986), wherein we considered whether a volunteer fire company was immune from liability under the PSTCA [Code] for damages to property that arose as a result of firefighting training exercises. We concluded that Union City volunteer fire company was entitled to immunity under the PSTCA [Code] because its firefighting training exercise was within the scope of its public firefighting duties.
>
> In Guinn v. Alburtis Fire Company, 531 Pa. 500, 502, 614 A.2d 218, 219 n. 2 (1992), our Supreme Court similarly stated that "a volunteer fire company created pursuant to relevant law and recognized as the official

> fire company for a political subdivision is a local agency." In Guinn, the Supreme Court expanded the immunity further than this Court had in Weaver, when it stated that volunteer fire companies are entitled to governmental immunity even when they are not engaged in fire-fighting activities. The Supreme Court concluded in Guinn that a volunteer fire company was entitled to governmental immunity for serving alcohol to an individual who was visibly intoxicated and thereafter was struck and injured by a motor vehicle when he was walking home.
> . . . .
> . . . [This Court concluded that] [v]olunteer fire companies enjoy a unique status, and are afforded immunity if they meet the test set forth in Guinn.[4]

Id. at 1074-75 and 1078. (emphasis added).

In Kniaz v. Benton Borough, 642 A.2d 551 (Pa. Cmwlth. 1994), one of the issues before this Court was whether the Benton Volunteer Fire Company, Inc. (Fire Company) met the two-prong test enunciated in Guinn and established that it was a "local agency." This Court stated:

> Local agency immunity under the PSTCA [Code] applies only to volunteer fire companies that 1) have been created pursuant to relevant law and 2) that are legally recognized as the official fire company for a political subdivision. Kniaz's acknowledge in their complaint that the Fire Company is a nonprofit corporation duly organized and existing under the laws of Pennsylvania. Thus, there is no dispute that the Fire Company has established the first prong of the Guinn requirements.
>
> Turning to the second prong of the Guinn requirements, we disagree with the . . . argument that the Fire Company has failed to demonstrate with sufficient documentary

[4] In Guinn, the Pennsylvania Supreme Court noted that the status of Alburtis Fire Company as a volunteer fire company was not challenged.

> evidence that the Fire Company is the official fire company of the Borough. In support of its motion, the Fire Company submitted the testimonial affidavits of Fire Company personnel as well as the following supporting documentary evidence: the Company's Articles of Incorporation, which were approved by the Court of Common Pleas on May 5, 1939 and identify the company as "The Benton Volunteer Fire Company," a nonprofit organization; a 1985 Borough ordinance expanding the list of Fire Company duties that are covered by Workers' Compensation; and a 1992 Joint Fire and Ambulance Protection Agreement between the Fire Company, the Borough, and neighboring townships.
>
> In his affidavit, Ronald Robbins, current President of the Fire Company, averred that the Fire Company is officially accorded the status of a volunteer fire company by the Borough. . . . [T]he Fire Company has its principal offices in the Benton Municipal Building. Additionally, it is undisputed that the Fire Company annually holds its picnic on Borough property. Although the Joint Fire and Ambulance Protection Agreement and the Borough ordinance post-date the accident, we find that these documents indicate a continuing recognition of the Fire Company as the official fire company of the Borough. We conclude that the foregoing evidence adequately supports Mr. Robbins' averment that the Fire Company is recognized as the official fire company of the Borough.

Id. at 554 (emphasis added).

Pursuant to Guinn and Kniaz, the Fire Company met the first prong of the Guinn requirement, that it was a nonprofit corporation "duly organized and existing under the laws of Pennsylvania."[5] Kniaz, 642 A.2d at 554. However, the

[5] The Fire Company introduced the following: 1) the Fire Company's Articles of Incorporation, approved by the common pleas court on June 30, 1931, which identify the Fire Company as the Washington Township Volunteer Fire Department Number One, Beneficial and

(Footnote continued on next page…)

Fire Company failed to satisfy the second prong of the Guinn requirement that it was the official fire department of the Township. Before the common pleas court, counsel for the Fire Company merely offered to supplement the record with the following:

> I have not approached the Township, but that is certainly something that I would be more than willing to do. I do know that I can get an Affidavit stating any of the facts that I've related to the Court as far as the Township paying for the Worker's [sic] Comp Insurance. They pay for liability insurance for four of the fire department vehicles. And there is a one percent of their gross taxes that they recover that they give as a stipend to the fire department. (emphasis added).

Oral Argument/Summary Judgment Proceedings, June 25, 2009, at 7 and 12; R.R. at 197 and 202.

Here, without the above-mentioned documentary evidence, there was insufficient evidence of record to establish that the Fire Company was the official volunteer fire department of the Township. Because there was a genuine issue of material fact concerning whether the Fire Company was a local agency entitled to

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Relief Association (Charter of Washington Township Volunteer Fire Department Number One, Beneficial and Relief Association, June 30, 1931, at 1-4; R.R. at 159-62); 2) the Fire Company's Articles of Incorporation that it is a domestic nonprofit corporation as recognized by the Commonwealth of Pennsylvania and recorded on September 26, 1994 (Articles of Incorporation-Domestic Nonprofit Corporation, September 26, 1994, at 1; R.R. at 164); and 3) a deed conveying a parcel of land situated in Washington Township to the Fire Company from the Township and recorded on May 4, 1943 (Indenture, April 26, 1943, at 1-2; R.R. at 169-70). However, unlike Kniaz, the Township failed to submit any evidence that would establish the Township pays for insurance, workers' compensation, and one percent of "gross taxes" to the Fire Company.

governmental immunity, the common pleas court erred when it entered summary judgment in favor of the Fire Company.

Accordingly, this Court is constrained to reverse the entry of summary judgment and remand to the common pleas court for further proceedings.[6]

BERNARD L. McGINLEY, Judge

[6] This Court notes that had the Fire Company introduced the appropriate evidence to corroborate the representations that it made at argument before the common pleas court either by testimony or the introduction of a subsequent resolution or ordinance that reflected a continuation of the relationship between the Township and the Fire Company, there would be no doubt the Fire Company was a local agency. See Kniaz.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Stephania Z. Rue, :
Appellant :
:
v. :
:
Washington Township Volunteer Fire :
Company, also known as, Washington :
Township Volunteer Fire Department, :
also known as The Washington :
Township Volunteer Fire :
Department, also known as Washington :
Township Volunteer Fire Department :
Number One Beneficial & Relief :
Association, also known as Washington :
Township Volunteer Fire Department :
Beneficial & Relief Association and :
John Doe or John Does, being Certain :
individuals now or previously Officers, :
directors, board members, fire chiefs, or :
any other persons in charge of :
Washington Township Volunteer Fire :
Company a/k/a Washington Township :
Volunteer Fire Department a/k/a The : No. 1461 C.D. 2009
Washington Township Fire Department :

O R D E R

AND NOW, this 29th day of June, 2010, the order of the Court of Common Pleas of Fayette County in the above-captioned matter is reversed and remanded for further proceedings consistent with this opinion.

Jurisdiction relinquished.

____

BERNARD L. McGINLEY, Judge