

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jean Coulter, :
Appellant :
v. :
Rochelle Graham and County of : No. 2421 C.D. 2010
Butler Children and Youth Agency : Submitted: May 13, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: June 14, 2011

Jean Coulter (Ms. Coulter) appeals *pro se* from an order of the Court of Common Pleas of Butler County (trial court) granting the preliminary objections filed by Butler County Children and Youth Services (CYS) and caseworker Rochelle Graham (Ms. Graham) and dismissing Ms. Coulter's fourth amended complaint because the defendants are entitled to immunity under the act commonly known as the Political Subdivision Tort Claims Act (Act), 42 Pa. C.S. §§8541-8550. Finding no error in the trial court's opinion, we affirm.

Ms. Coulter filed her initial complaint against CYS and Ms. Graham (together, Defendants) on August 12, 2009. She has since amended the complaint four times, most recently on February 2, 2010. According to the fourth amended

complaint, Ms. Coulter is the natural mother of A.C., a child in foster placement through and supervised by CYS. Ms. Graham is a caseworker for CYS and was assigned to the case of A.C. During A.C.'s dependency proceedings, Ms. Coulter submitted a motion to the juvenile court in Butler County requesting a court order stating that she was permitted to write to A.C.

In February 2009, CYS scheduled an appointment for A.C. with "Dr. Wolfe," a psychologist with whom A.C. had previously been in treatment, for an evaluation related to her dependency case. Ms. Graham accompanied A.C. to this evaluation and allegedly told Dr. Wolfe, in the presence of A.C., that "there has been a recent motion filed seeking permission for the mother to communicate with [A.C.] via letter," and that "[A.C.]'s mother has always had access to writing to her, but has only attempted to communicate with her by letter a handful of times." (Complaint ¶¶ C, D). The Complaint alleges that these statements are false, that Ms. Coulter's motion clearly states she was being denied correspondence with A.C., that she in fact wrote her daughter more than six hundred letters, but the letters were "being held in safe-keeping until their delivery to [A.C.] can be assured." (Complaint ¶ E). The Complaint also alleges that Ms. Coulter gave several letters to her brother to deliver to A.C., but instead he turned them over to CYS. CYS's attorney allegedly determined the letters were not appropriate to deliver to A.C. because they referenced pending litigation. The Complaint alleges that A.C. asked about her mother's letters but was told they were "'too bad' for her to see." (Complaint ¶ I). Ms. Coulter attempted to recover the letters, but CYS has yet to produce them. According to the Complaint, A.C. expressed a desire to write to her mother but when she did so, CYS failed to deliver the letter to Ms. Coulter.

The Complaint states, “It is believed that the Defendants have been acting in this manner, in an attempt at effecting [sic] both the report being prepared by Dr. Wolfe, and the sentiments and testimony of the Child, and thus affect the outcome of the upcoming hearings before the Court.” (Complaint ¶ M). The Complaint lists thirteen potential claims, most of which are not recognized causes of action. The claims which are recognized are the intentional torts of abuse of process, intentional infliction of emotional distress, and slander per se. The Complaint seeks ten million dollars in compensatory damages and punitive damages. Defendants filed preliminary objections in the nature of a demurrer alleging that they are entitled to immunity under the Act; the Complaint fails to state a claim upon which relief may be granted; the slander claim is barred because the allegedly slanderous statement is true, privileged, and not capable of defamatory meaning; and punitive damages cannot be imposed upon either Defendant.

Following oral argument, the trial court granted Defendants’ preliminary objections and dismissed the fourth amended complaint. The trial court noted that pursuant to the Act, governmental agencies may not be held liable for the intentional torts of their employees and the Complaint did not contain sufficient allegations to support any of the exceptions to the Act. Therefore, the trial court held that CYS was entitled to immunity. With respect to Ms. Graham, the trial court held that the Complaint failed to allege sufficiently specific facts to support the claim that Ms. Graham’s actions “constituted a crime, actual fraud, actual malice or willful misconduct.” 42 Pa. C.S. §8550. Therefore, the trial court

held that Ms. Graham was also entitled to immunity under the Act and the Complaint was dismissed. This appeal followed.¹

Ms. Coulter's main argument on appeal is that the trial court erred in granting Defendants' preliminary objections because Ms. Graham's actions as alleged in the Complaint constitute actual malice, actual fraud, willful misconduct, and/or a crime and, therefore, Defendants are not entitled to immunity under the Act. We disagree.

Section 8541 of the Act states that unless otherwise provided, "no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person." 42 Pa. C.S. §8541. The exceptions to governmental immunity for a local agency are limited to negligent acts by the agency or its employees which involve one of the following: the control of a motor vehicle; the care, custody or control of personal property; the care, custody or control of real property; trees, traffic controls and street lighting; utility service facilities; streets; sidewalks; or the care, custody or control of animals. 42 Pa. C.S. §8542. With respect to individual employees, the Act states that an employee of a local agency who is acting within his official duties is granted the same immunity afforded that local agency. 42 Pa. C.S. §8545. However, this immunity is abrogated, with respect to

¹ Our scope of review of a trial court order granting preliminary objections is limited to whether the trial court committed an error of law or abused its discretion. *Palmer v. Bartosh*, 959 A.2d 508, 512 n.2 (Pa. Cmwlth. 2008). A demurrer can only be sustained where the law states with certainty that no recovery is possible under the facts alleged. *Weaver v. Franklin County*, 918 A.2d 194, 199 n.6 (Pa. Cmwlth. 2007). We must accept as true all well-pled allegations and material facts averred in the complaint, as well as any inferences reasonably deduced therefrom, and doubts should be resolved in favor of overruling the demurrer. *Id.*

individual employees only, if it is judicially determined that the employee's act "constituted a crime, actual fraud, actual malice or willful misconduct." 42 Pa. C.S. §8550. *See also R.H.S. v. Allegheny County Department of Human Services*, 936 A.2d 1218, 1230 (Pa. Cmwlth. 2008); *Robbins v. Cumberland County Children and Youth Services*, 802 A.2d 1239, 1252 (Pa. Cmwlth. 2002).

It is undisputed that CYS is a local agency pursuant to the Act and that Ms. Coulter has not plead facts supporting any of the exceptions to immunity for local agencies listed in Section 8542. In fact, the only claims Ms. Coulter has made are for the alleged intentional torts committed by Ms. Graham. As the trial court correctly pointed out, Pennsylvania courts have repeatedly held that governmental agencies may not be held liable for the intentional torts of their employees. *Wakshul v. City of Philadelphia*, 998 F. Supp. 585 (E.D. Pa. 1998); *Palmer v. Bartosh*, 959 A.2d 508 (Pa. Cmwlth. 2008); *Brown v. Blaine*, 833 A.2d 1166 (Pa. Cmwlth. 2003). "[W]hile there is statutory abrogation of immunity of individual employees for intentional torts, it does not remove the immunity of the local agency." *Weaver v. Franklin County*, 918 A.2d 194, 200 (Pa. Cmwlth. 2007). Therefore, the trial court correctly granted Defendants' preliminary objections relating to CYS because the agency is entitled to immunity under the Act.

With respect to Ms. Graham, the Act states that an individual employee of a local agency is liable "only to the same extent as his employing local agency and subject to the limitations imposed by this subchapter." 42 Pa. C.S. §8545. Because CYS is entitled to immunity, Ms. Graham is generally immune under Section 8545. In order to be liable, Ms. Graham must fit the exception to immunity found in Section 8550 of the Act, meaning her actions must

constitute “a crime, actual fraud, actual malice or willful misconduct.” 42 Pa. C.S. §8550. However, we agree with the trial court that the fourth amended complaint fails to allege sufficiently specific facts to support any of these claims. Willful misconduct, for purposes of Section 8550 of the Act, is synonymous with “intentional tort” and requires that a plaintiff establish that the actor “desired to bring about the result that followed, or at least that he was aware that it was substantially certain to ensue.” *R.H.S.*, 936 A.2d at 1230 (quoting *Evans v. Philadelphia Transportation Co.*, 418 Pa. 567, 574, 212 A.2d 440, 443 (1965)). The allegations in the complaint do not aver that Ms. Graham acted with the requisite specific intent to injure Ms. Coulter. Also, the complaint fails to allege that Ms. Graham’s actions constitute a specific crime, let alone facts to support the requirements of such a crime. Finally, there are no allegations in the complaint regarding the requisite intent required for fraud or malice. As the trial court noted, this Court has repeatedly stated that “mere conclusory allegations in the pleadings without supporting factual allegations are not sufficient.” *Dorfman v. Pennsylvania Social Services Union*, 752 A.2d 933, 936 (Pa. Cmwlth. 2000). The general, conclusory allegations that Ms. Graham told an evaluator that Ms. Coulter only wrote to her daughter a handful of times; that CYS failed to give Ms. Graham a letter her daughter wrote to her; and that Ms. Graham and CYS attempted to affect the outcome of other litigation are insufficient to support a claim of a crime, actual fraud, actual malice or willful misconduct.

As we have previously stated, “[t]he expressed legislative intent to insulate the Commonwealth and its political subdivisions from liability requires courts to interpret the exceptions to governmental immunity narrowly against injured plaintiffs.” *Thomas v. City of Philadelphia*, 668 A.2d 292, 297 (Pa. Cmwlth. 1995) (citing *Mascaro v. Youth Study Center*, 514 Pa. 351, 523 A.2d 1118

(1987)). Because Ms. Coulter’s fourth amended complaint failed to allege specific facts to support any exceptions to the Act, the trial court did not err in granting Defendants’ preliminary objections.

Finally, Ms. Coulter argues that the trial court abused its discretion by dismissing her complaint without providing her the opportunity to amend the complaint and cure the defects. Ms. Coulter argues that dismissal was premature because further discovery is necessary. It is true that amendment of a complaint should be freely allowed and claims should not be jeopardized by minor defects in the pleading. *Lutz v. Springettsbury Township*, 667 A.2d 251, 254 (Pa. Cmwlth. 1995). However, it is also well established that leave to amend will be withheld when “the prima facie elements of the claim cannot be established and that the complaint’s defects are so substantial that amendment is not likely to cure them.” *Id.* Ms. Coulter is already on her fourth amended complaint. After all of these amendments, she is still unable to aver sufficient facts and overcome the issue of immunity. Because a fifth amendment would be futile, Ms. Coulter’s argument is without merit.

Accordingly, the order of the trial court is affirmed.

DAN PELLEGRINI, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jean Coulter, :
Appellant :
v. :
Rochelle Graham and County of :
Butler Children and Youth Agency : No. 2421 C.D. 2010

ORDER

AND NOW, this 14th day of June, 2011, the order of the Court of Common Pleas of Butler County, dated June 30, 2010, at No. AD 09-11582, is hereby affirmed.

DAN PELLEGRINI, Judge