

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kelli Combs Meerhoff, individually	:	
and as Administratrix of the Estate	:	
of Carly K. Combs,	:	
Appellants	:	
	:	
v.	:	No. 467 C.D. 2010
	:	
County of Erie, Erie County Coroner's	:	Argued: April 4, 2011
Office, Lyell Cook, Coroner and	:	
Robert Glenn, Deputy Coroner	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: May 4, 2011

Kelli Combs Meerhoff (Plaintiff) appeals an order of the Court of Common Pleas of Erie County (trial court) sustaining preliminary objections in the nature of demurrers raised by the County of Erie, Erie County Coroner’s Office, Lyell Cook (Coroner) and Robert Glenn (Deputy Coroner) (collectively, Defendants). Plaintiff contends the trial court erred in concluding Defendants were entitled to immunity under the statute commonly known as the Political Subdivision Tort Claims Act (Tort Claims Act).¹

Plaintiff asks this Court to reinstate her complaint and its claims for abuse of a corpse and for intentional and negligent infliction of emotional distress

¹ 42 Pa. C.S. §§8541-42.

arising from alleged violations of the provisions of The County Code commonly referred to as the Coroner's Act (Coroner's Act).² Plaintiff seeks damages for emotional distress caused to her by the averred mistreatment of her deceased daughter's (Decedent) corpse. Plaintiff also seeks damages on behalf of Decedent's estate for damage to the corpse.

We affirm in part and reverse in part. In particular, we affirm as to the negligence claims against all Defendants, the intentional tort claims against local agency Defendants, and claims by the estate. We reverse only as to the intentional tort claims by Plaintiff in her individual capacity against the Coroner and Deputy Coroner.

I. Background

In April, 2009, Decedent's boyfriend found her unresponsive at 5:30 a.m. in her apartment in Erie, Pennsylvania. An ambulance service took her to a nearby hospital where she was pronounced dead. She was 21 years old.

The Coroner was not able to determine the Decedent's cause of death. Section 1238 of the Coroner's Act, 16 P.S. §1238, provides in part that "If, upon investigation, the coroner shall be unable to determine the cause and manner of death, he shall perform or order an autopsy on the body." Nevertheless, the Coroner decided not to perform an autopsy.³ The Coroner released Decedent's

² Act of August 9, 1955, P.L. 323, as amended, 16 P.S. §§1231-60.

³ In addition, Section 1237 of the Coroner's Act requires the coroner to "investigate the facts and circumstances concerning deaths which appear to have happened within the county ... for the purpose of determining whether or not an autopsy should be conducted or an inquest **(Footnote continued on next page...)**

body to her family. Decedent's family donated some of her organs, and the body was embalmed and buried.

Later, the Coroner exhumed the body and conducted an autopsy. The Coroner was still unable to determine the cause of death.

In November, 2009, Plaintiff filed a civil complaint with the trial court seeking monetary damages against Defendants. Plaintiff's complaint states three counts in which she seeks unliquidated damages. In Count I, titled "Abuse of Corpse," Plaintiff avers the Defendants intentionally and wantonly mistreated Decedent's corpse.

Plaintiff contends in Count II, titled "Intentional Infliction of Emotional Distress," that Defendants, acting outside the scope of their

(continued...)

thereof should be had" in cases of:

(1) sudden deaths not caused by readily recognizable disease, or wherein the cause of death cannot be properly certified by a physician on the basis of prior (recent) medical attendance;

(2) deaths occurring under suspicious circumstances, including those where alcohol, drugs or other toxic substances may have had a direct bearing on the outcome;

* * * *

(4) any death in which trauma, chemical injury, drug overdose or reaction to drugs or medication or medical treatment was a primary or secondary, direct or indirect, contributory, aggravating or precipitating cause of death

....

16 P.S. §1237(a)(1)-(2), (4).

employment, “intentionally and wantonly mishandled the [Decedent’s death] and mistreated her corpse by failing to perform a timely autopsy as required by the Coroner’s Act leading to her tissues being donated, her body embalmed and interred in the cemetery, only to be publicly exhumed for an autopsy 43 days later” Complaint at ¶26, Reproduced Record (R.R.) at 7a. Plaintiff states the Coroner acted in bad faith by presuming Decedent’s death was due to a drug overdose. Id. at ¶29, R.R. at 8a. Plaintiff posits the Coroner inappropriately formed this presumption “based solely on [Decedent’s appearance] in that she had multiple tattoos and body piercings” Id. at ¶28, R.R. at 8a. Plaintiff avers the Coroner focused on this factor instead of considering “the sudden nature of her death, [the] lack of recent medical treatment, negative or inconclusive blood, urine or fluid tests or information gathered from witnesses.” Id. Lastly, Plaintiff avers the Coroner issued “false and misleading statements to the public regarding the cause of [Decedent’s death].” Complaint at ¶27, R.R. at 7a. In particular, Plaintiff avers the Coroner intimated to news sources that Decedent’s death was the result of a drug overdose.

In Count III, titled “Negligent Infliction of Emotional Distress,” Plaintiff avers the Defendants, acting within their scope of employment, were negligent in fulfilling their duties under the Coroner’s Act. The gravamen of this claim is that the Coroner failed to conduct a proper investigation and failed to conduct a timely autopsy. Additionally, Plaintiff avers the Coroner erred in releasing Decedent’s body “for tissue donations, embalment, and burial before ascertaining the cause of death.” Complaint at ¶34(c), R.R. at 9a.

The Defendants filed the following preliminary objections:

1. The Complaint fails to state a claim against defendant ‘Erie County Coroner’s Office’, as it is not a legal entity subject to suit.

2. All claims asserted by [P]laintiff as [administratrix] of the decedent’s estate should be dismissed for failure to state a claim since all harm alleged in the complaint arose from emotional distress caused to living persons following decedent’s death.

3. The Complaint fails to state any claims against defendant County of Erie, as is apparent on the face of the Complaint that it is immune from liability under the ... Tort Claims Act.

4. Count III of plaintiffs’ Complaint as to individual defendants Lyell Cook and Robert Glenn should be dismissed for failure to state a claim, as those individual defendants enjoy official immunity for the conduct described in that Count pursuant to the ... Tort Claims Act.

Preliminary Objections at ¶¶1-4, R.R. at 11a-12a. The Defendants did not challenge specificity, they did not challenge sufficiency of the pleading of intentional, wanton, willful, outrageous or reckless conduct, they did not challenge sufficiency of pleading conduct outside the scope of employment, and they did not challenge whether violations of the Coroner’s Act support a private cause of action.

After argument, the trial court sustained the preliminary objections and dismissed the complaint in its entirety. The trial court explained that because “the Plaintiff ... failed to provide any legal argument that would place the actions in this case in an exception to the Sovereign Immunities Act the Court must

GRANT the Preliminary Objections and Dismiss the action against the Defendants.” Trial Ct. Order, 2/26/2010. The trial court indicated it was guided by Kearney v. City of Philadelphia, 616 A.2d 72 (Pa. Cmwlth. 1992) (in action against City of Philadelphia for intentional infliction of emotional distress for conduct of medical examiner, Court affirmed judgment on the pleadings based on governmental immunity).

Plaintiff appealed. In her concise statement of matters complained of on appeal (Concise Statement), Plaintiff primarily challenged the trial court’s application of immunity, and she identified two themes to her challenge. First, she highlighted her pleading of violations of the Coroner’s Act. She asserted that in violating that statute the Coroner acted either negligently or so intentionally as to be outside his official duties. “This failure to follow protocol led to the public Abuse of [Decedent’s] Corpse and severe emotional distress to the parents, and should require payment of civil damages.” Concise Statement at 2, R.R. at 54a. Plaintiff argued the Kearney case did not involve the Coroner’s Act; therefore, it was not applicable in this case.

Plaintiff identified her second theme as “Public Abuse of Corpse.” Plaintiff asserted she set forth facts to establish that Decedent’s corpse was abused, as addressed in the Restatement of Torts (First) §868 (1939). In addition, she stated:

The Plaintiff is ... entitled to an award of damages under [the] personal property exception to immunity under 42 Pa. C.S.A. §8542(b)(2). A jury should be given the opportunity to determine the amount of “property damage” done to [Decedent] as a result of the public abuse her body was put through by the

Defendants. Therefore the personal property claim should move forward to a jury trial.”

Concise Statement at 2, R.R. at 54a. In support of the personal property exception to immunity, Plaintiff cited two common pleas cases: Geiges v. Rosko, 49 Pa. D&C 3d 61 (Pa. Com. Pl. Bucks 1987) (Kelton, J.) (suit against coroner, not against local agency, for negligent mishandling of body; governmental immunity discussed), and Buel v. Mirchandani, 16 Pa. D&C 4th 129 (Pa. Com. Pl. Philadelphia 1992) (Mirarchi, J.) (suit against medical examiner, not against local agency, for intentional mishandling of body; governmental immunity discussed).

Subsequently, the trial court issued an opinion. The court explained that consistent with Kearney Defendants are shielded from civil liability by the Tort Claims Act. The trial court held that the public abuse of the corpse claims were rejected in Kearney, Hackett v. United Airlines, 528 A.2d 971 (Pa. Super. 1987), appeal denied, 518 Pa. 649, 544 A.2d 961 (1988) (suit for negligent infliction of emotional distress for mishandling of body; immunity not at issue) and Ray v. Pennsylvania State Police. 354 A.2d 140 (Pa. Cmwlth. 1995), appeal denied, 544 Pa. 260, 676 A.2d 194 (1996) (suit against Commonwealth agency and employees for mishandling of body; sovereign immunity applied).

The trial court acknowledged that the common pleas court in Geiges took a different approach, more consistent with Plaintiff’s position, but the trial court declined to apply that common pleas case because it was not binding authority. The trial court noted the United States District Court for the Eastern District of Pennsylvania declined to apply Geiges in light of the existing precedential authority. See Whitson v. City of Philadelphia, 2008 WL 4739532

(E.D.Pa. 2008) (Buckwalter, SDJ). Accordingly, the trial court concluded it properly dismissed the case.

The trial court observed Plaintiff failed to produce any controlling authority to counter Kearney. Additionally, Plaintiff failed to provide any authority supporting her claim under the Coroner's Act.

II. Arguments

Plaintiff argues the trial court erred in following Kearney and concluding immunity shields the Coroner from any civil liability. Plaintiff contends the trial court erred in not following the Pennsylvania Supreme Court's opinion in Papieves v. Lawrence, 437 Pa. 373, 263 A.2d 118 (1970) (claim for intentional infliction of emotional distress for intentional mishandling of body recognized; immunity not at issue). Plaintiff also relies on the common pleas cases of Geiges and Buel. Plaintiff argues that these cases establish that a decedent's body constitutes personal property and authorize the relief she seeks here.

Plaintiff further argues that Kearney is distinguishable because it did not involve the Coroner's Act. Plaintiff notes that she made extensive averments of how the Defendants violated the Coroner's Act. Plaintiff contends the Coroner's failure to perform his statutorily mandated responsibilities led to the public abuse of the body, and severe distress to her mother, "and should require payment of civil damages to both [the Plaintiff and decedent's estate]. A violation of the [Coroner's] Act must have a remedy." Plaintiff's Br. at 8.

Defendants contend Kearney is binding authority that precludes

Plaintiff's claims on the basis of immunity.

III. Discussion

A. Generally

Our standard of review of an order sustaining preliminary objections in the nature of demurrers is to determine whether the law states with certainty that no recovery is possible. Sontag v. Ward, 789 A.2d 778 (Pa. Cmwlth. 2001). In making this review, we must accept as true all well-pled allegations of material fact set forth in the complaint and all inferences that can be deduced from them. Id. We need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinions. Id.

Immunity from suit is an affirmative defense that must be raised as new matter in a responsive pleading. R.H.S. v. Allegheny County Department of Human Services, Office of Mental Health, 936 A.2d 1218, 1227 (Pa. Cmwlth. 2007). Courts allow defendants to raise immunity by preliminary objection where the defense is clearly applicable and where the plaintiff does not object. Id. Both conditions exist here.

A county is a local agency covered by governmental immunity. Simko v. County of Allegheny, 869 A.2d 571 (Pa. Cmwlth. 2005). In order for liability to be imposed on a local agency, three conditions must be met. 42 Pa. C.S. §8542(a). First, the damages must be recoverable under common law or a statute creating a cause of action if the injury were caused by a person not having available a defense under 42 Pa. C.S. §8541. Second, the injury must have been caused by the negligent acts of the local agency or an employee of the local agency acting within the scope of his or her office or duties. Finally, the negligent action must fall

within one of the exceptions to governmental immunity set forth in 42 Pa. C.S. §8542(b). Simko. A plaintiff has the burden of demonstrating that all three conditions have been met. Id.

B. Intentional Torts

1. Local Agencies

In Kearney, the plaintiff's claims for emotional distress against the City of Philadelphia caused by the alleged intentional conduct of the medical examiner were dismissed after the pleadings were closed. In affirming the grant of judgment on the pleadings to the local agency, this Court relied on governmental immunity.

Similarly, Kearney supports the trial court's decision as it applies to the local agency Defendants, County of Erie and its Coroner's Office. Moreover, Kearney involved factual averments consistent with those made by Plaintiff here. That the plaintiff in Kearney did not also plead legal conclusions involving violation of the Coroner's Act is not a sufficient basis to ignore that controlling decision. This is especially true because the Coroner's Act does not contain a provision granting a private right of action upon alleged violation. See Chadwick v. Dauphin County Office of the Coroner, 905 A.2d 600 (Pa. Cmwlth. 2006) (Coroner's Act does not create a private right of action in persons who believe the coroner has not done an adequate investigation).

Plaintiff argues that a violation of the Coroner's Act must have a remedy. It does. Although there is no private right of action for alleged violation

of the Coroner’s Act, Section 411 of The County Code,⁴ 16 P.S. §411, enables prosecution for a county officer’s neglect or refusal to perform duties. Thus, the local district attorney may in his or her discretion seek criminal sanctions against those violating the Coroner’s Act.

Plaintiff also contends that the local agency Defendants are not immune from claims for “property damage” caused to Decedent’s body. Plaintiff relies on the Supreme Court’s decision in Papieves, which recognized a claim for intentional infliction of emotional distress under Restatement of Torts (First) §868 based on intentional abuse of a corpse, and she relies on the exception to governmental immunity for care, custody or control of personal property set forth at 42 Pa. C.S. §8542(b)(2).⁵ This contention is not sustainable, for several reasons.

While our Supreme Court in Papieves recognized abuse of a corpse as a type of claim for intentional infliction of emotional distress to next-of-kin, it did

⁴ Section 411 of the Act of August 9, 1955, P.L. 323.

⁵ This exception provides:

(b) Acts which may impose liability.--The following acts by a local agency or any of its employees may result in the imposition of liability on a local agency:

* * *

(2) Care, custody or control of personal property.--The care, custody or control of personal property of others in the possession or control of the local agency. The only losses for which damages shall be recoverable under this paragraph are those property losses suffered with respect to the personal property in the possession or control of the local agency.

42 Pa. C.S. §8542(b)(2) (emphasis added).

not recognize a claim for “property damage” to the corpse. Further, insofar as the “property damage” here occurred well after death, the manner by which such a postmortem claim passes to Decedent’s estate is unclear, and Plaintiff fails to explain her theory. Moreover, the claim in Papieves was made against a private party, not against a local agency cloaked with immunity. For these reasons, Papieves does not support the result Plaintiff seeks here.

2. Employees

The foregoing discussion notwithstanding, this Court’s holding in Kearney does not support the trial court’s decision as to the Coroner and Deputy Coroner. In Kearney the medical examiner was not a named defendant.

It is clear that governmental immunity does not shield local agency employees, such as the Coroner and Deputy Coroner,⁶ from acts which constitute a crime, actual fraud, actual malice or willful misconduct. 42 Pa. C.S. §§8542 (a)(2), 8550; Lancie v. Giles, 572 A.2d 827 (Pa. Cmwlth. 1990) (trial court properly applied Section 8550 to allow claims against police officer for intentional

⁶ 42 Pa. C.S. §8501 (Definitions) provides in pertinent part, with emphasis added:

“Employee.” Any person who is acting or who has acted on behalf of a government unit whether on a permanent or temporary basis, whether compensated or not and whether within or without the territorial boundaries of the government unit, including any volunteer fireman and any elected or appointed officer, member of a governing body or other person designated to act for the government unit. Independent contractors under contract to the government unit and their employees and agents and persons performing tasks over which the government unit has no legal right of control are not employees of the government unit.

infliction of emotional distress, while properly applying immunity to various negligence claims). Therefore, neither Kearney nor the Tort Claims Act provisions for governmental immunity supports an immunity-based dismissal of intentional tort claims against the Coroner and Deputy Coroner at this stage. Whether these claims are otherwise sufficiently stated or ultimately can be proven are not matters we can decide at this time.

C. Negligence

As to Plaintiff's claim for negligent infliction of emotional distress, no error on the part of the trial court is evident. In Kearney this Court held that the personal property exception to governmental immunity did not allow a claim for negligent infliction of emotional distress to continue against a local agency. The Court observed that under the language of that exception to immunity, the "only losses for which damages shall be recoverable ... are those property losses suffered with respect to the personal property in the possession or control of the local agency." 42 Pa. C.S. §8542 (b)(2). Thus, regardless of whether the body of the decedent was personal property of the plaintiff relative, the damages sought were for the plaintiff's personal injuries rather than for "property damage" to the decedent's body. To the extent that common pleas courts ruled otherwise, we discern no value in their analyses.

Here, in Count III Plaintiff seeks recovery for her personal injuries, emotional distress, as a result of the alleged negligent conduct of the local agency and its employees. However, as in Kearney the personal property exception to

governmental immunity does not extend to such a claim. Therefore, immunity prevails.

It is worth observing that the result is consistent with the holding of various courts which refused to extend the Supreme Court's holding in Papieves to infliction of emotional distress based on negligent conduct toward a corpse. Hackett (suit for negligent infliction of emotional distress for mishandling of body); Ray (suit against Commonwealth agency and employees for mishandling of body; sovereign immunity applied); Kearney. Thus, Pennsylvania courts only recognize emotional distress claims arising out of intentional, outrageous mishandling of a body.

Defendants also raised official immunity to support their preliminary objections to Count III.⁷ This issue, however, was not developed before the trial court, and the trial court did not address it in its opinion. Also, the issue was not addressed by the parties in the current appeal. Accordingly, it is waived for purposes of disposing of the preliminary objections.

⁷ See 42 Pa. C.S. §8546; see also Durham v. McElynn, 565 Pa. 163, 772 A.2d 68 (2001) (immunity for high public officials with policy-making functions applied to assistant district attorneys).

III. Conclusion

In sum, the trial court correctly sustained governmental immunity-based preliminary objections to Count III (negligent infliction of emotional distress), to all claims for intentional torts against the County of Erie and its Coroner's Office, and to claims by the estate. These rulings are affirmed. Nevertheless, the respected trial court erred when it sustained governmental immunity-based preliminary objections to claims for intentional torts against the Coroner and Deputy Coroner. These rulings are reversed, and the case is returned to the trial court for the completion of pleadings and other appropriate proceedings.

ROBERT SIMPSON, Judge

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Robert Glenn, Deputy Coroner :

ORDER

AND NOW, this 4th day of May, 2011, the order of the Court of Common Pleas of Erie County is **AFFIRMED** in part and **REVERSED** in part, in accordance with the attached opinion. Jurisdiction is relinquished.

ROBERT SIMPSON, Judge