

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

RONALD BOULDEN

Plaintiff,

v.

C.A. No. 04C-10-031-CLS

KATHLEEN L. TURNER,
TERRY LEE TURNER, CAROL
HOLLY-WINTER, CHERYL LYNN
JONES, MELISSA ANNE YENIOS
AND PLT. BENJAMIN W.
FELDMANN

Defendants.

Upon Consideration of Defendant Benjamin W. Feldmann's Motion to Dismiss
GRANTED.

Leo John Ramunno, Esquire, Wilmington, Delaware, Attorney for Plaintiff.

Megan Sanfrancesco, Esquire, New Castle County Law Department, New Castle,
Delaware, Attorney for Officer Benjamin Feldmann.

Michael A. Pedicone, Esquire, Wilmington, Delaware, Attorney for Defendants
Holly-Winter and Yenios.

Robert K. Pearce, Esquire, Wilmington, Delaware, Attorney for Defendants
Kathleen L. Turner and Terry Lee Turner.

SCOTT, J.

Introduction

On November 15, 2004, Officer Benjamin Feldmann (“Feldmann”) filed a Motion to Dismiss the Complaint or, in the alternative, sought a more definite statement of the claims contained therein. Defendants, Kathleen L. Turner, Terry Lee Turner, Carol Holly-Winter, and Melissa Anne Yenios, also filed a Motion to Join Feldmann’s Motion to Dismiss. The Court heard argument on this matter on January 21, 2005. At that time, the Court granted Defendants’ Motion for a More Definite Statement and ordered Plaintiff Ronald Boulden (“Boulden”) to file an Amended Complaint by February 11, 2005. The Court reserved decision on the issue of immunity under the County and Municipal Tort Claims Act until review of the Amended Complaint. Boulden filed his Amended Complaint on February 14, 2005. On March 3, 2005, Feldmann filed the present Motion to Dismiss. Feldman asserts that the state tort claims alleged in the Amended Complaint must be dismissed because they are barred by the County and Municipal Tort Claims Act. In addition, he alleges that the constitutional claims must be dismissed for failure to state a claim upon which relief can be granted. After reviewing the Amended Complaint and the Motion to Dismiss, this Court **GRANTS** Feldmann’s Motion to Dismiss because he is immune from suit under the Tort Claims Act.

Facts

On October 6, 2002, Plaintiff Boulden was arrested by Feldmann at his residence at 117 W. Franklin Drive, New Castle, Delaware. He was arrested on

five counts of Aggravated Menacing, and five counts of Possession of a Firearm During the Commission of a Felony. The charges were filed by Kathleen L. Turner, Terry Lee Turner, Carol Holly-Winter, Cheryl Lynn Jones, Melissa Anne Yenios (“Defendants”). Feldmann was the arresting officer.

Upon arrest, Boulden was arraigned at Justice of the Peace 11 and committed to Gander Hill Prison on \$30,000 secured bail. Subsequently, Boulden hired an attorney to represent him on the charges. The cost of the representation was \$5,000. A criminal jury trial was held on these charges on May 28, 2003 in the Superior Court, New Castle County. At the end of the State’s case, Judge Babiarz dismissed all of the charges against Boulden.

Boulden contends, among other things, that he has expended thousands of dollars to make bail on the charges, obtain legal representation, and moved out of his neighborhood because of the no contact order issued against him during his arrest. He also alleges that he has suffered from attacks on his good character.

Standard of Review

Delaware has clear standards for granting a Rule 12(b)(6) Motion to Dismiss. The Court must accept all well-pled allegations as true.¹ The Court must then apply a broad sufficiency test: whether a plaintiff may recover under any “reasonable conceivable set of circumstances susceptible of proof under the

¹ *Spence v. Funk*, 396 A.2d 967, 968 (Del. Supr. 1978).

complaint.”² Dismissal will not be granted if the complaint “gives general notice as to the nature of the claim asserted against the defendant.”³ Further, a complaint “will not be dismissed unless it is clearly without merit, which may be either a matter of law or fact.”⁴ “Vagueness or lack of detail,” standing alone, is insufficient to dismiss a claim.⁵ If there is a basis upon which the plaintiff may recover, the motion is denied.⁶

Discussion

A. The Tort Claims Act

Feldmann’s Motion to Dismiss is **GRANTED** because he is immune from suit under the Tort Claims Act. The County and Municipal Tort Claims Act, 10 *Del. C.* §4011, states “[e]xcept as otherwise expressly provided by statute, all governmental entities and their employees shall be immune from suit on any and all tort claims seeking recovery of damages.”⁷ Ten *Del. C.* § 4011(b) lists six examples of claims in which governmental entities are entitled to immunity.

Ten *Del. C.* §4011(b)(3) appears to apply directly to this case. It provides that a governmental entity shall not be liable for any damage claim that results from “[t]he performance or failure to exercise or perform a discretionary function

² *Id.*

³ *Diamond State Tel. Co. v. University of Delaware*, 269 A.2d 52, 58 (Del. Supr. 1970).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*, see also *Spence v. Funk*, 396 A.2d at 968.

⁷ 10 *Del. C.* 4011 (a)

or duty, whether or not the discretion be abused and whether or not the statute, charter, ordinance, order, resolution, regulation or resolve under which the discretionary function or duty is performed is valid or invalid.”⁸

In his amended complaint, Boulden alleges that Feldmann acted with willful and malicious intent in falsely reporting the facts as told to him in order to obtain a probable cause warrant. It is Boulden’s contention that Feldmann is not immune from suit because 10 *Del. C.* § 4011(c) allows governmental employees to be held personally liable for certain acts. Ten *Del. C.* § 4011(c) states:

[a]n employee may be personally liable for acts and omissions causing property damage, bodily injury or death in instance in which the governmental entity is immune under this section, but only for those acts which were not within the scope of employment or which were performed with wanton negligence or willful and malicious intent.

In order to prevail under § 4011(c) then, a plaintiff must have suffered property damage, bodily injury, or death.

It appears to this Court that any and all causes of action against Officer Feldmann are brought against him as a police officer, and not in his personal capacity. Feldmann was performing his function as an officer when he went to Franklin Drive to investigate the allegations that Boulden was aiming a gun at his neighbors. In arresting Plaintiff and reporting the allegations to the issuing

⁸ There are three statutory exceptions to the Tort Claims Act. Ten *Del. C.* § 4012 states that a governmental entity is liable for its negligence (1) in its ownership, maintenance or use of any motor vehicle; (2) in the construction, operation or maintenance of any public building; and (3) in the sudden and accidental discharge of pollutants. None of these exceptions apply to the facts of this case as plead.

magistrate, Feldmann was acting under the guise of 10 *Del. C.* 4011(b)(3). He is therefore immune from suit.⁹

Moreover, this Court disagrees with Boulden that § 4011(c) is applicable in this case. Boulden did not suffer property damage, bodily injury or death.

Accordingly, this Court need not look to whether Feldmann acted with willful or malicious intent. This Court finds that Feldmann's action fall within the provisions of the Tort Claims Act. Therefore, he cannot be sued and his Motion to Dismiss is **GRANTED.**

IT IS SO ORDERED.

Dated: October 12, 2005

Calvin L. Scott, Jr., J.

⁹ See also *Samuels v. Hall*, 2004 WL 1635529 (D. Del 2004)(holding that Police Officer was immune from liability under the Tort Claims Act after he struck Plaintiff while attempting to arrest him because the Officer was acting within the scope of his employment and without malicious intent at the time.); *Walls v. Rees*, 569 A.2d 1161 (Del. Supr. 1990)(holding that Police Officer was immune from suit under the Tort Claims Act after he impounded Plaintiff's car and sent a letter asking for impounding fees because he was acting within the scope of his duties when he sent the letter and he acted without wanton negligence.).