MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Brent A. Taylor,
Appellant-Plaintiff

v.

The Allen County Board of Commissioners,
Gregory Fumarolo, and William Lebrato,
Appellees-Defendants

March 22, 2024

Court of Appeals Case No.
23A-CT-131

Appeal from the DeKalb Superior Court

The Honorable Monte L. Brown, Judge

Trial Court Cause No.
17D02-2207-CT-35

Memorandum Decision by Judge Weissmann
Judges Mathias and Tavitas concur.

Weissmann, Judge.

[1] Brent Taylor sued two public defenders and the local county board of commissioners alleging that he received ineffective representation at his trial and suffered various damages because of it. The defendants all asserted that they possess governmental immunity from Taylor's lawsuit. The trial court agreed, and we affirm.

Facts

[2] Taylor sued the public defenders for allegedly "breaching [their] duty" to him by committing errors at his trial that, in turn, caused a litany of damages like emotional distress, legal expenses, and mental pain and suffering. Board App. Vol. II, pp. 39-40. Taylor contended that the local county board of commissioners also was liable because it did not provide for "an adequate number of court appointed attorneys." *Id.* at 40.

[3] Although each faced essentially the same claims against it, the public defenders moved for a judgment on the pleadings while the board of commissioners moved to dismiss under Indiana Trial Rule 12(b)(6). In a detailed order, the trial court agreed with both theories and issued a judgment on the pleadings in favor of the public defenders and dismissed Taylor's complaint against the board of commissioners.

Discussion and Decision

[4] This case boils down to one question: whether the appellees possess governmental immunity. However, because the public defenders and the board of commissioners approach the question differently, we address their arguments separately.

I. The Public Defenders Are Immune

[5] As their first response to Taylor's complaint, the public defenders moved for judgment on the pleadings under Indiana Trial Rule 12(C). Under this rule, "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." T.R. 12(C). This motion "attacks the legal sufficiency of the pleadings." *Capalla v. Best*, 198 N.E.3d 26, 31 (Ind. Ct. App. 2022). A judgment on the pleadings is proper only when there are no genuine issues of material fact and the pleadings clearly establish that the non-moving party "cannot in any way succeed." *Id.* We review the trial court's judgment de novo. *Id.*

[6] The Indiana Tort Claims Act provides immunity from tort lawsuits to a government employee "act[ing] within the scope of the employee's employment." Ind. Code § 34-13-3-5(b). Taylor complains solely about the quality of the representation he received and decisions made by the broader Public Defenders Office. The representation of criminal defendants and decisions relating to such representation are plainly within the scope of

employment for public defenders. Thus, the public defenders are immune from tort liability so long as they qualify as a government employee.

[7] The relevant definition of "employee" here is "a person presently or formerly acting on behalf of a governmental entity, whether temporarily or permanently or with or without compensation." Ind. Code § 34-6-2-38(a). It is well-settled that public defenders meet this definition. *See, e.g.*, *Wright v. Elston*, 701 N.E.2d 1227, 1232-34 (Ind. Ct. App. 1998).

[8] Accordingly, because Taylor's complaint alleged no claims against the public defenders from which they are not immune, we affirm the judgment on the pleadings in their favor.

II. The Board of Commissioners Is Immune

[9] The board of commissioners moved to dismiss Taylor's suit for "[f]ailure to state a claim upon which relief can be granted" under Trial Rule 12(B)(6). T.R.(B)(6). "A motion to dismiss under Rule 12(B)(6) 'tests the legal sufficiency of the plaintiff's claim, not the facts supporting it.'" *Bellwether Props., LLC v. Duke Energy Ind., Inc.*, 87 N.E.3d 462, 466 (Ind. 2017) (quoting *Thornton v. State*, 43 N.E.3d 585, 587 (Ind. 2015)). We review the trial court's judgment here de novo. *Lockhart v. State*, 38 N.E.3d 215, 217 (Ind. Ct. App. 2015).

[10] "A governmental entity" is not liable for "the performance of a discretionary function." Ind. Code § 34-13-3-3(7). "Whether an act is discretionary 'is a question of law for the court's determination.'" *City of Beech Grove v. Beloat*, 50 N.E.3d 135, 138 (Ind. 2016) (quoting *Peavler v. Bd. of Comm'rs of Monroe Cnty.*,

528 N.E.2d 40, 46 (Ind. 1988)). The entity seeking immunity bears the burden to establish that "the challenged act or omission was a policy decision made by consciously balancing risks and benefits." *Id.* The commissioners argue Taylor's claim—that the commissioners failed to devote sufficient resources to court appointed attorneys—presents a classic example of a discretionary function. We agree.

[11] Our Supreme Court has adopted the "planning/operational test" to determine whether a government function is discretionary. *Peavler*, 528 N.E.2d at 46. Under that test, functions categorized as "planning" warrant immunity. *Id.* As recently described by the Court, the test "is designed to insulate [from liability] only those significant policy and political decisions which cannot be assessed by customary tort standards." *Beloat*, 50 N.E.3d at 138. At bottom, "[t]he ultimate consideration is whether the action is one that was intended to be immune, and the court should look to the purposes of immunity to determine whether those purposes would be furthered by extending immunity to the act in question." *Id.*

[12] The purposes of governmental immunity are furthered here by finding the board of commissioners immune. As the board points out, decisions about funding and the allocation of resources are quintessential discretionary functions of government. *See id.* (describing planning activities as those "which involve[] formulation of basic policy decisions characterized by official judgment or discretion in weighing alternatives and choosing public policy"). Yet Taylor cites a recent decision of this Court, *State v. Alvarez*, and argues that the board is guilty of "negligent passivity" in its handling of court appointed

attorneys and thus does not deserve immunity. 150 N.E.3d 206, 215 (Ind. Ct. App. 2020). This argument misses the mark.

[13] *Alvarez* involved a claim that the government failed to warn citizens of possible lead exposure. This Court rejected the government's immunity claim because "the complaint [did] not allege any conscious balancing of risks and benefits" or that the government "engaged in a decision-making process." *Id.* at 214-15. Instead, the complaint argued the government engaged in "negligent passivity." *Id.* at 215. But here, the complaint explicitly accused the board of commissioners of a planning mistake by failing "to properly manage" the public defender's office. Board App. Vol. II, p. 74. Because Taylor's complaint boils down to a claim that the board should have devoted more resources to the public defenders office—a discretionary function—the board is immune from Taylor's suit.

[14] In sum, we find that all appellees are immune from Taylor's claims and affirm the trial court's order.[1]

Mathias, J., and Tavitas, J., concur.

APPELLANT PRO SE

Brent A. Taylor
Michigan City, Indiana

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[1] Because the case is resolved on the issue of immunity, we do not reach the alternative argument that Taylor failed to provide adequate notice of his complaint. *See* Ind. Code § 34-13-3-8.

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