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NO. COA01-1370

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2002

JAMES T. JEFFERSON, Administrator
Of the estate of DORIS JEFFERSON
AND JAMES T. JEFFERSON, individually,
Plaintiffs,

v.

Vance County
No. 01 CVS 177

COUNTY OF VANCE,
Defendant

Appeal by plaintiffs from order entered 18 July 2001 by Judge Stafford G. Bullock in Vance County Superior Court. Heard in the Court of Appeals 21 August 2002.

Rogers and Rogers, Lawyers, by Bobby W. Rogers, for plaintiff.

Bailey & Dixon, LLP, by Gary S. Parsons and Warren T. Savage, for defendant.

BRYANT, Judge.

Plaintiffs filed an action against defendant County of Vance on 28 February 2001, alleging 911's negligent failure to dispatch law enforcement assistance. Defendant filed a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief could be granted. This matter came for hearing at the 16 July 2001 term of Vance County Superior Court with the Honorable Stafford G. Bullock presiding. By order entered 18 July 2001, the trial court granted defendant's Rule 12(b)(6) motion to dismiss. Plaintiffs gave

notice of appeal on 15 August 2001.

Facts

On 29 June 1997, James and Jendine Wimbush were visiting with James and Doris Jefferson. Sometime during the course of that day, James Wimbush began to violently fight his wife Jendine. Doris called Vance County's 911 emergency system for help. A 911 operator informed Doris that law enforcement would be immediately dispatched. Subsequently, James Jefferson phoned 911 because law enforcement had not arrived following Doris's call for help. A 911 operator informed James Jefferson that law enforcement was on the way.

Sometime after James Jefferson called 911, James Wimbush shot him and killed both Jendine and Doris. Law enforcement had not arrived between the time James Jefferson called 911 and the time of the shooting incidents.

Standard of review

To determine whether a complaint is sufficient to survive a Rule 12(b)(6) motion to dismiss, the court must ascertain "'whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory.'" *Shell Island Homeowners Ass'n, Inc. v. Tomlinson*, 134 N.C. App. 217, 225, 517 S.E.2d 406, 413 (1999) (citation omitted). "'A complaint may be dismissed pursuant to Rule 12(b)(6) if no law exists to support the claim made, if sufficient facts to make out a good claim are absent, or if facts are disclosed which will necessarily defeat the claim.'"

Id. (citation omitted).

Under North Carolina's public duty doctrine, "a municipality and its agents act for the benefit of the public, and therefore, there is no liability for the failure to furnish police protection to specific individuals." *Braswell v. Braswell*, 330 N.C. 363, 370, 410 S.E.2d 897, 901 (1991). Law enforcement resources are limited, and our courts have refused to judicially impose the burden of liability for failure to prevent every criminal act. 330 N.C. at 370-71, 410 S.E.2d at 901. In applying the public duty doctrine, our Supreme Court has declined to expand its protection to agencies other than local law enforcement departments exercising their duty to protect the public. *Wood v. Guilford Cty.*, 355 N.C. 161, 166-67, 558 S.E.2d 490, 495 (2002); *see, e.g., Lovelace v. City of Shelby*, 351 N.C. 458, 526 S.E.2d 652, *reh'g denied*, 352 N.C. 157, 544 S.E.2d 225 (2000).

Our courts have recognized two exceptions to the public duty doctrine. First, where there is a special relationship between the injured party and law enforcement. Second, when a law enforcement officer promises protection to an individual, the protection is not forthcoming, and the individual's reliance on the promise is causally related to his injury. *Braswell*, 330 N.C. at 371, 410 S.E.2d at 902; *see Little v. Atkinson*, 136 N.C. App. 430, 524 S.E.2d 378, *review denied*, 351 N.C. 474, 543 S.E.2d 492 (2000), *Hedrick v. Rains*, 121 N.C. App. 466, 466 S.E.2d 281, *aff'd*, 344 N.C. 729, 477 S.E.2d 171 (1996), *Clark v. Red Bird Cab Co.*, 114

N.C. App. 400, 442 S.E.2d 75 (1994). Plaintiffs admit that there are no facts alleged that would indicate that a special relationship existed between plaintiffs and law enforcement. In addition, we note that plaintiffs did not allege that law enforcement made a promise that protection was forthcoming. Therefore, neither exception as articulated above applies to this case.

Plaintiffs allege that since defendant's 911 operators, not a police officer, failed to dispatch assistance in a timely manner, the public duty doctrine does not apply. We disagree.

In their complaint, plaintiffs alleged that defendant operates a 911 emergency system, and did so on the day and at the times complained of. They alleged that the 911 operators were employees of the defendant. They alleged that on the day and at the times complained of, the 911 operators were acting within the course and scope of their employment with defendant. They alleged that on the day and at the times complained of, plaintiffs called 911, and were assured by the 911 operators that law enforcement assistance was forthcoming. They alleged that the 911 operators failed to dispatch law enforcement; and this failure constituted negligent behavior, imputed to the defendant.

As clearly stated in *Braswell*, "a municipality *and its agents* act for the benefit of the public, and therefore, there is no liability for the failure to furnish police protection to specific individuals." *Braswell*, 330 N.C. at 370, 410 S.E.2d at 901 (emphasis added). In plaintiffs' complaint, they alleged that the

911 operators were the employees of defendant. Moreover, they alleged that the 911 operators were acting within the course and scope of their responsibilities on the day and at the times complained of. By performing within the course and scope of their employment with defendant, the 911 operators, in essence, functioned as agents acting on the behalf of the defendant. Accordingly, there is no appreciable difference between suing the defendant (the principal) based on its direct alleged negligent act of failing to dispatch law enforcement, or suing the defendant based on its 911 operators' (the agent) alleged negligence in this regard. We hold that the trial court did not err in granting defendant's Rule 12(b)(6) motion to dismiss. Therefore, plaintiffs' assignment of error is overruled and the trial court's order is affirmed.

AFFIRMED.

Judges McGEE and McCULLOUGH concur.

Report per Rule 30(e).