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NO. COA12-591
NORTH CAROLINA COURT OF APPEALS

Filed: 4 December 2012

JENNIFER ELISABETH MARTIN,
Plaintiff-Appellant,

v.

Wake County
No. 11-CVS-015808

SUSAN RAYE MOREAU,
In her individual capacity, and
GREGORY NOAL GENTIEU, In his
individual capacity,
Defendants-Appellees.

Appeal by Plaintiff from order entered 15 March 2012 by Judge Paul G. Gessner in Superior Court, Wake County. Heard in the Court of Appeals 9 October 2012.

The Jernigan Law Firm, by Leonard T. Jernigan, Jr. and Leila A. Early, for Plaintiff-Appellant.

Attorney General Roy Cooper, by Special Deputy Attorney General Hal F. Askins and Assistant Attorney General Tammera S. Hill, for Defendants-Appellees.

McGEE, Judge.

Jennifer Elisabeth Martin (Plaintiff) filed a complaint against Susan Raye Moreau (Officer Moreau) and Gregory Noal Gentieu (Officer Gentieu) (collectively Defendants) on 12 October 2011. In her complaint, Plaintiff alleged a cause of

action for willful and wanton negligence. Officer Moreau filed an answer and motions to dismiss on 15 November 2011. Officer Gentieu filed an answer and motions to dismiss on 14 November 2011. Defendants asserted, *inter alia*, that Plaintiff's complaint should be dismissed because Defendants were entitled to sovereign immunity and public official immunity. The trial court, in an order entered 15 March 2012, granted Defendants' motions to dismiss on the grounds of sovereign immunity and public official immunity. Plaintiff appeals.

I. Factual Allegations

Plaintiff's complaint set forth the following general allegations. In 2008, at age thirty-three, Plaintiff was enrolled as a cadet at the North Carolina State Highway Patrol Basic School (the school) in Raleigh. Defendants were troopers with the North Carolina State Highway Patrol and were staff instructors at the school, responsible for physical fitness training.

Plaintiff first enrolled at the school in 2007, but was forced to resign on 23 May 2007 due to "bilateral stress fractures in her dorsal tibia and a left Achilles tendon strain." Plaintiff again applied to the school on 30 November 2007 and was deemed "physically fit for duty" on 3 March 2008.

Plaintiff was accepted as a cadet by the school on 26 March 2008 and began the 29-week training program on 16 April 2008.

In her complaint, Plaintiff set forth the following description of the school:

The instructors at the . . . School - like [Officers] Moreau and Gentieu - had "tough guy/anti-female attitudes." They created a paramilitary boot camp training environment which was designed to eliminate any cadets who displayed weakness and [to] discourage the reporting of injuries. The instructors all had the mentality that a cadet was not hurt unless he or she was gushing blood or had a bone sticking out.

Plaintiff alleged that, during the first two months of the training program, she sustained several injuries that required medical attention. Plaintiff's injuries included pain below her right knee, pain in her left foot, and a right ankle sprain. Later, while running sprints, Plaintiff felt pain in her right hip/groin area and was diagnosed by the school's medical staff as having a ruptured hamstring or groin strain. As a result of Plaintiff's injury which, at the time, was thought to be a groin strain, her physical fitness training was modified. X-rays later revealed that Plaintiff had a pelvic fracture.

Plaintiff alleged that the modifications to her training program were communicated to the school instructors, including Defendants. Plaintiff further alleged that Defendants violated

their instructor training and "criticized and humiliated Plaintiff for reporting her injuries and receiving medical treatment." Plaintiff also alleged that Defendants referred to her as "'Princess Martin' and called her a wimp, a complainer, and a liar with no integrity, who was trying to avoid physical training by reporting her injuries."

During a training exercise on the evening of 15 October 2008, Plaintiff fell "on her left side, injuring her left arm and hip." When Plaintiff fell, she "experienced substantial pain in her left arm and thought that she had broken it." Plaintiff did not receive medical treatment that evening, but instead took ibuprofen and placed ice on her arm and hip. Plaintiff alleged that the instructor who witnessed her fall informed Defendants of Plaintiff's injuries and, during the night of 15 October 2008, Defendants observed Plaintiff placing ice on her injuries. Plaintiff's complaint further alleged that Plaintiff "suffered an incomplete non-displaced stress fracture of the femoral neck bone on her left hip as a result of the fall" on 15 October 2008.

Plaintiff and other cadets went to the gym for further training on 16 October 2008. Plaintiff alleged that Officer Moreau, despite knowing about Plaintiff's injury, and without inquiring about Plaintiff's ability to run, ordered Plaintiff to

run on a treadmill for thirty minutes. Plaintiff was unable to run for the entire time and began to walk after experiencing pain in her hip. When Officer Moreau saw Plaintiff walking, she ordered Plaintiff to begin running again. Plaintiff complied and "experienced intense pain and cracking in her left hip." Officer Moreau continued to order Plaintiff to run and Plaintiff attempted to comply. Eventually, Plaintiff's left leg "buckled underneath her and she had to hold onto the arms of the treadmill in order to keep from falling."

Officer Moreau then ordered Plaintiff to perform crunches on the floor and leg lifts. Plaintiff attempted to comply but was unable to do the leg lifts without supporting her left leg. Officer Moreau "became disgusted with [Plaintiff] and told her to return to the dorm and get in the showers." Officer Moreau then left the weight room, "leaving Plaintiff on the ground."

Plaintiff attempted to get off the floor to return to her dorm, but she was unable to walk. Plaintiff made her way out to the parking lot by "hopping on one leg, crawling, and sliding on handrails." When Plaintiff reached the parking lot, Officer Moreau was "standing across the parking lot watching Plaintiff slide down a handrail while crying uncontrollably." Officer Moreau yelled to Plaintiff: "What part of get in the showers don't you understand!" Plaintiff asked another cadet to help

her and the other cadet replied that Officer Moreau "had ordered [the cadet] not to provide any assistance to Plaintiff."

Officer Gentieu was notified of Plaintiff's situation and approached Plaintiff. Officer Gentieu yelled at Plaintiff to "get her ass off the ground" and not dirty his parking lot. Officer Gentieu continued to verbally abuse Plaintiff and eventually ordered cadets to retrieve a wheelchair in which to place Plaintiff. Plaintiff alleged that, while the cadets were lifting Plaintiff into the wheelchair, "she again screamed in pain and felt the bone in her left hip separate."

Officer Gentieu ordered one of the cadets to wheel Plaintiff into her dorm room. The lights were not on in Plaintiff's dorm room and Officer Gentieu told one of the cadets that: "If [Plaintiff] can't get her lazy ass up out of the chair, she can sit in the dark." Officer Moreau also came into Plaintiff's room and told Plaintiff that she "was faking an injury and would not receive workers' comp." Defendants left Plaintiff in her dorm room in the dark "for nearly an hour while everyone else ate breakfast." Plaintiff was later taken to the medical office where she was found to have "suffered a severe injury to her left hip."

II. Defendants' Motions to Dismiss

Plaintiff filed her complaint on 12 October 2011, and alleged willful and wanton negligence on the part of Defendants in their individual capacities. In Defendants' answers, each set forth several motions to dismiss, including motions to dismiss on the grounds of sovereign immunity and public official immunity. Defendants argued that they were entitled to immunity because all of the actions alleged in Plaintiff's complaint were undertaken in the course of Defendants' official duties as training officers at the school.

The trial court's order granting Defendants' motions to dismiss included the following language:

As to Sovereign Immunity and Public Official Immunity, at all times [Defendants] were public officers and were acting within the scope of their duties as North Carolina State Highway Patrol Troopers assigned as instructors at the . . . school. The conduct alleged in the complaint does not arise to the level of bad faith, willful, wanton, corrupt, malicious or recklessly indifferent, and they are afforded sovereign immunity for claims against them in their individual capacities.

III. Issues on Appeal

Plaintiff raises on appeal the issues of: (1) whether the trial court erred by granting Defendants' motions to dismiss on the grounds of sovereign immunity because Defendants were being sued in their individual capacities; and (2) whether the trial court erred in granting Defendants' motions to dismiss on the

grounds of public official immunity because Defendants acted with malice.

IV. Standard of Review

"[T]his Court has held the defense of sovereign immunity is a matter of personal jurisdiction that falls under Rule 12(b)(2) of the North Carolina Rules of Civil Procedure." *Abbott v. N.C. Bd. of Nursing*, 177 N.C. App. 45, 50, 627 S.E.2d 482, 485 (2006) (citation omitted). "The standard of review to be applied by the trial court in deciding a motion under Rule 12(b)(2) is that '[t]he allegations of the complaint must disclose jurisdiction although the particulars of jurisdiction need not be alleged.'" *Id.* at 50, 627 S.E.2d at 485-86 (citations omitted).

V. Analysis

Plaintiff argues that sovereign immunity is inapplicable as a defense for Defendants because Plaintiff filed this action against Defendants in their individual capacity. "Sovereign immunity is '[a] government's immunity from being sued in its own courts without its consent.'" *Cox v. Roach*, ___ N.C. App. ___, ___, 723 S.E.2d 340, 344-45 (2012) (citations omitted). "Sovereign immunity does shield public employees from most activities undertaken in their official capacities because those employees are seen as agents of the State, but such immunity only extends so far." *White v. Trew*, ___ N.C. App. ___, ___,

720 S.E.2d 713, 717 (2011). "Public employees 'remain personally liable for any actions which may have been corrupt, malicious or perpetrated outside and beyond the scope of official duties.'" *Id.* (citation omitted). "A public employee who acts in this way is no longer acting as an agent of the State and, therefore, is no longer protected by sovereign immunity. He may be sued for such conduct in his individual capacity." *Id.* (citation omitted).

"The crucial question for determining whether a defendant is sued in an individual or official capacity is the nature of the relief sought, not the nature of the act or omission alleged. If the plaintiff seeks an injunction requiring the defendant to take an action involving the exercise of a governmental power, the defendant is named in an official capacity."

Id. (quotations and citations omitted). However, "'[i]f money damages are sought, the court must ascertain whether the complaint indicates that the damages are sought from the government or from the pocket of the individual defendant.'" *Id.* (citation omitted). When the damages are sought from the government, "'it is an official-capacity claim[.]'" *Id.* (citation omitted). When the damages are sought from the individual defendant, "'it is an individual-capacity claim[.]'" *Id.* (citation omitted).

In the present case, Plaintiff's complaint clearly stated in the caption that Defendants were being sued in their individual capacities. Further, throughout Plaintiff's complaint, including the prayer for relief, Plaintiff sought money damages from Defendants in their individual capacities. Thus, we hold Plaintiff's claims are "individual-capacity claim[s]." *Id.* Therefore, Defendants are entitled to "immunity for actions constituting mere negligence, . . . but may be subject to liability for actions which are corrupt, malicious or outside the scope of [their] official duties." *Epps v. Duke University*, 116 N.C. App. 305, 309, 447 S.E.2d 444, 447 (1994). "A defendant acts with malice when he wantonly does that which a man of reasonable intelligence would know to be contrary to his duty and which he intends to be prejudicial or injurious to another." *Green v. Kearney*, 203 N.C. App. 260, 273, 690 S.E.2d 755, 765 (2010) (citation omitted). "'An act is wanton when it is done of wicked purpose, or when done needlessly, manifesting a reckless indifference to the rights of others.'" *Id.* (citations omitted). "[A] conclusory allegation that a public official acted willfully and wantonly should not be sufficient, by itself, to withstand a Rule 12(b)(6) motion to dismiss. The facts alleged in the complaint must support such a conclusion." *Id.* at 273-74, 690 S.E.2d at 765 (citation omitted).

Plaintiff contends that she "has met the requirements of a claim for gross negligence or malice by pleading facts on each element of negligence (duty, causation, proximate cause, damages) as well as wanton conduct[.]" Plaintiff argues that "there are allegations that Defendants[] engaged in willful and wanton acts of negligence that were a direct and proximate cause of [Plaintiff's] personal injuries." Plaintiff does not indicate what those willful and wanton acts were and cites only to the pages in the record containing her complaint.

Plaintiff also argues that "[a]s to both Defendants[], numerous factual allegations exist in the complaint regarding malice, and they are summarized in Paragraphs 147-151 [of Plaintiff's complaint]." Paragraphs 147-151 of Plaintiff's complaint are as follows:

147. As Plaintiff's instructors, Defendants Moreau and Gentieu owed Plaintiff the duty to follow the training that they had received as North Carolina certified physical fitness instructors and first responders in order to not subject Plaintiff to physical injury or unnecessary pain and discomfort.

148. On October 16, 2008, Officer Moreau intentionally failed to carry out her duties as a certified physical fitness instructor and first responder, and consciously or recklessly disregarded the rights and safety of Plaintiff in one or more of the following ways:

a. By subjecting Plaintiff to injury

and intense and prolonged pain while using the treadmill and completing leg lifts in the weight room;

b. By failing to ask Plaintiff about her physical ability to use the treadmill or complete leg lifts despite knowing that Plaintiff had been injured in a fall on October 15 and was in obvious pain and discomfort;

c. By failing to obtain emergency medical assistance for Plaintiff after she knew, or reasonably should have known, that Plaintiff had injured her left hip and was experiencing severe and debilitating pain;

d. By refusing to provide Plaintiff or to allow Cadet Valasquez to provide Plaintiff with assistance after she had suffered an injury in the weight room;

e. By abandoning Plaintiff, without medical assistance, for nearly an hour after she knew, or reasonably should have known, that Plaintiff had suffered a severe injury to her left hip;

f. By criticizing and humiliating Plaintiff for suffering an injury during physical fitness training; and,

g. In such other ways as may be shown by the evidence.

149. Officer Moreau engaged in willful and wanton acts of negligence causing Plaintiff to suffer personal injuries.

150. On October 16, 2008, Officer Gentieu intentionally failed to carry out his duties as a certified physical fitness instructor and first responder, and consciously or recklessly disregarded the rights and safety of Plaintiff in one or more of the following

ways:

a. By failing to obtain emergency medical assistance for Plaintiff after he knew, or reasonably should have known, that Plaintiff had injured her left hip and was experiencing severe and debilitating pain;

b. By ordering the cadets to lift Plaintiff off the ground and onto her feet after observing Plaintiff on the ground, unable to move, and in extreme pain;

c. By ordering the cadets to lift Plaintiff off the ground and into a wheelchair after observing Plaintiff scream in pain with an obvious injury to her left hip when initially moved;

d. By failing to ensure that Plaintiff was properly placed in the wheelchair without pressure on her injured left hip;

e. By abandoning Plaintiff, without medical assistance, for nearly an hour after he knew that Plaintiff had suffered a severe injury to her left hip;

f. By criticizing and humiliating Plaintiff for suffering an injury during physical fitness training; and,

g. In such other ways as may be shown by the evidence.

151. Officer Gentieu engaged in willful and wanton acts of negligence causing Plaintiff to suffer personal injuries.

Thus, Plaintiff's complaint contains clear allegations that Defendants engaged in willful and wanton negligence by observing

her injured condition, "abandoning [her] without medical assistance for nearly an hour[,] " and other actions. However, "[a] conclusory allegation that a public official acted willfully and wantonly should not be sufficient, by itself, to withstand a Rule 12(b)(6) motion to dismiss. The facts alleged in the complaint must support such a conclusion.'" *Green*, 203 N.C. App. at 273-74, 690 S.E.2d at 765 (citation omitted). Thus, we must determine whether the facts alleged in Plaintiff's complaint support a conclusion that Defendants acted with malice, thereby exceeding the scope of their duties.

"A defendant acts with malice when he wantonly does that which a man of reasonable intelligence would know to be contrary to his duty and which he intends to be prejudicial or injurious to another.'" *Id.* at 273, 690 S.E.2d at 765 (citation omitted). "An act is wanton when it is done of wicked purpose, or when done needlessly, manifesting a reckless indifference to the rights of others.'" *Id.* (citations omitted). We are cognizant that Defendants are instructors in a militaristic atmosphere designed specifically to create a hostile environment. The scope of Defendants' duties in training state trooper cadets therefore certainly encompasses some level of antagonism and rough treatment, insofar as those attitudes serve to produce better officers out of the state trooper program. However, we

find that Plaintiff's complaint sufficiently alleged Defendants exceeded the scope of their duties in that Plaintiff alleged she suffered a severe and obvious injury, of which Defendants were aware, and yet Defendants ordered Plaintiff to continue exercising and then abandoned her without medical treatment for almost an hour. Allowing a cadet at the school to sustain a serious injury to the point of being unable to complete training could be interpreted as "contrary to [Defendants'] dut[ies] and . . . intend[ed] to be . . . injurious to [Plaintiff]." *Id.*

"The standard of review to be applied by the trial court in deciding a motion under Rule 12(b)(2) is that '[t]he allegations of the complaint must disclose jurisdiction although the particulars of jurisdiction need not be alleged.'" *Abbott*, 177 N.C. App. at 50, 627 S.E.2d at 485 (citations omitted). We hold that Plaintiff's complaint contains allegations which, if proven, would undermine Defendants' claim to sovereign immunity. The determination of whether Defendants did, in fact, exceed the scope of their duty is not before this Court; rather, that should be determined by the trial court in subsequent proceedings, or by a jury. However, in the present case, we hold that Plaintiff's complaint was sufficient to survive Defendants' motions to dismiss on the grounds of sovereign and

public official immunity. We therefore reverse the trial court's order and remand for further proceedings.

Reversed and remanded.

Judges STEPHENS and THIGPEN, JR. concur.

Report per Rule 30(e).