

[Cite as *Williams v. Cuyahoga Metro. Hous. Auth.*, 2009-Ohio-6644.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92964

TONYA A. WILLIAMS

PLAINTIFF-APPELLEE

vs.

**CUYAHOGA METROPOLITAN
HOUSING AUTHORITY**

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-680637

BEFORE: Gallagher, P.J., McMonagle, J., and Jones, J.

RELEASED: December 17, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

SEAN C. GALLAGHER, P.J.:

{¶ 1} Appellant, Cuyahoga Metropolitan Housing Authority (“CMHA”), appeals the decision of the Cuyahoga County Court of Common Pleas that denied its motion for judgment on the pleadings. For the reasons stated herein, we affirm the decision of the trial court.

{¶ 2} Appellee, Tonya A. Williams, filed a complaint against CMHA on December 30, 2008. She alleges in the complaint that on January 2, 2007, she was an invitee of a tenant at Crestview Apartments, which is a CMHA apartment complex. She claims that she suffered an injury when a pool table in the recreation room suddenly, and without notice, collapsed onto her leg. She further alleges that CMHA was negligent in constructing, maintaining, and repairing the recreation room equipment, that the defective pool table was a physical defect within the grounds of CMHA’s property, that CMHA had actual or constructive knowledge that the pool table was not reasonably safe for use, and that CMHA had a duty to warn tenants and their guests of the danger but failed to warn them. Thus, she asserts that CMHA is not exempt from immunity and is subject to liability pursuant to R.C. 2744.02(B)(4). Upon these allegations, Williams’s complaint raises claims for common law negligence and a violation of Ohio’s Landlord-Tenant Act.

{¶ 3} CMHA filed an answer denying the substantive allegations set forth in the complaint and setting forth various defenses. Thereafter, CMHA filed a

motion for judgment on the pleadings, arguing that it was entitled to immunity pursuant to R.C. 2744.02(A)(1) and that the complaint failed to allege any facts sufficient to avoid such immunity. The trial court denied CMHA's motion.

{¶ 4} CMHA filed this appeal, raising three assignments of error for our review. CMHA's first assignment of error provides as follows: "The trial court committed error prejudicial to defendant [CMHA] by denying CMHA's motion for judgment on the pleadings, in which CMHA asserted its entitlement to immunity pursuant to R.C. 2744.01, et seq."

{¶ 5} We review a ruling on a motion for judgment on the pleadings de novo. *Coleman v. Beachwood*, Cuyahoga App. No. 92399, 2009-Ohio-5560. Motions for judgment on the pleadings are governed by Civ.R. 12(C), which states: "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." "In order to be entitled to a dismissal under Civ.R. 12(C), it must appear beyond doubt that [the nonmovant] can prove no set of facts warranting the requested relief, after construing all material factual allegations in the complaint and all reasonable inferences therefrom in [the nonmovant's] favor." *State ex rel. Toledo v. Lucas Cty. Bd. of Elections*, 95 Ohio St.3d 73, 74, 2002-Ohio-1383, 765 N.E.2d 854.

{¶ 6} The Ohio Supreme Court has outlined a three-tier analysis for determining whether a political subdivision is entitled to immunity under R.C. Chapter 2744. "The first tier is the general rule that a political subdivision is immune from liability incurred in performing either a governmental function or

proprietary function. R.C. 2744.02(A)(1). However, that immunity is not absolute. R.C. 2744.02(B). The second tier of the analysis requires a court to determine whether any of the five exceptions to immunity listed in R.C. 2744.02(B) apply to expose the political subdivision to liability. * * * If any of the exceptions to immunity in R.C. 2744.02(B) do apply and no defense in that section protects the political subdivision from liability, then the third tier of the analysis requires a court to determine whether any of the defenses in R.C. 2744.03 apply, thereby providing the political subdivision a defense against liability.” (Citations omitted.) *Colbert v. Cleveland*, 99 Ohio St.3d 215, 216, 2003-Ohio-3319, 790 N.E.2d 781.

{¶ 7} Under the first tier of the analysis, the parties do not dispute that CMHA is a political subdivision to which the general rule of immunity under R.C. 2744.02(A)(1) applies. See R.C. 3735.50; *Moore v. Lorain Metro. Hous. Auth.*, 121 Ohio St.3d 455, 457, 2009-Ohio-1250, 905 N.E.2d 606. Also, the Ohio Supreme Court has recognized that the operation of a public housing authority is a “governmental function.” *Id.* at 459.

{¶ 8} We next must consider whether Williams set forth sufficient allegations to establish that a statutory exception to immunity may apply. Williams’s complaint is premised on the exception set forth in R.C. 2744.02(B)(4), which states that “[e]xcept as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property that is caused by the negligence of their employees and that occurs

within or on the grounds of, and is *due to physical defects within or on the grounds of, buildings* that are used in connection with the performance of a governmental function * * *.” (Emphasis added.)

{¶ 9} In *Moore*, supra, the Ohio Supreme Court concluded that units of public housing are buildings “used in connection with the performance of a governmental function.” *Id.* at 460. As such, “a public housing authority may be liable for injuries caused by its employees’ negligence due to a physical defect within one of its buildings.” *Bozeman v. Cleveland Metro. Hous. Auth.*, Cuyahoga App. Nos. 92435 and 92436, 2009-Ohio-5491.

{¶ 10} CMHA argues that the complaint contains conclusory assertions and fails to allege sufficient facts to establish the applicability of this exception.¹ We find no merit to CMHA’s argument and find no basis for imposing a heightened pleading requirement as suggested by CMHA. See *Rogers v. Akron School Sys.*, Summit App. No. 23416, 2008-Ohio-2962 (declining to find a heightened

¹ We are unpersuaded by CMHA’s reliance on this court’s decisions in *Hodge v. Cleveland* (Oct. 22, 1998), Cuyahoga App. No. 72283, and *Thomas v. Byrd-Bennett*, Cuyahoga App. No. 79930, 2001-Ohio-4160, to support the granting of its motion to dismiss. In *Hodge*, supra, the plaintiff asserted a claim against the City, alleging that a volunteer employee had committed a series of intentional malicious criminal acts against her. In that case, the complaint did not allege any operative facts whatsoever concerning the employee. *Id.* Likewise, *Thomas*, supra, involved an alleged physical assault by a school employee for which no operative facts were alleged concerning the time, type, manner, or substance of the complaint. Thus, we found that the plaintiff failed to demonstrate that an exception to statutory immunity applied. Here, allegations were made concerning the circumstances of Williams’s injury, CMHA’s negligence, and CMHA’s duties and responsibilities. Unlike *Hodge* and *Thomas*, in this case sufficient allegations were made to demonstrate a statutory exception that would give rise to a claim of liability against CMHA.

pleading requirement upon a plaintiff when bringing suit against an employee of a political subdivision).

{¶ 11} Because “Ohio is a notice-pleading state, Ohio law does not ordinarily require a plaintiff to plead operative facts with particularity.” *Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 2002-Ohio-2480, 768 N.E.2d 1136. Civ.R. 8(A)(1) only requires a complaint to include a “short and plain statement of the claim showing that the party is entitled to relief.” As recognized by the Ohio Supreme Court: “Under [the Ohio Rules of Civil Procedure], a plaintiff is not required to prove his or her case at the pleading stage. Very often, the evidence necessary for a plaintiff to prevail is not obtained until the plaintiff is able to discover materials in the defendant’s possession. If the plaintiff were required to prove his or her case in the complaint, many valid claims would be dismissed because of the plaintiff’s lack of access to relevant evidence. Consequently, as long as there is a set of facts, consistent with the plaintiff’s complaint, which would allow the plaintiff to recover, the court may not grant a defendant’s motion to dismiss.” *York v. Ohio State Hwy. Patrol* (1991), 60 Ohio St.3d 143, 145, 573 N.E.2d 1063.

{¶ 12} In this case, Williams’s complaint provided sufficient notice of her claim. Williams alleges that she sustained an injury when a pool table in the recreation room of a CMHA housing building fell on her. She further alleges that her injury was caused by CMHA’s negligence in constructing, maintaining, and repairing the recreation room equipment, and that her injury resulted from a

physical defect within the grounds of a CMHA building used in connection with the performance of a governmental function. Additionally, Williams alleges that CMHA had knowledge of the defective pool table and failed to warn of the defect despite a duty to warn. These allegations are sufficient under the notice pleading requirements of Civ.R. 8(A) to state a cause of action against CMHA.

{¶ 13} We recognize that this case presents an issue as to whether a defective pool table may constitute a “physical defect” under R.C. 2744.02(B)(4). This court has previously recognized that the statute makes no distinction between the alleged causes of injury. See *Godfrey v. Cleveland* (Aug. 3, 2000), Cuyahoga App. No. 75754 (involving an unsecured picnic-style table in a visiting area); see, also, *Bozeman*, supra (declining to grant judgment on the pleadings despite issue of whether the presence of lead paint constitutes a “physical defect”). Therefore, we conclude that CMHA has not demonstrated that the plaintiff can prove no set of facts that would entitle Williams to recover from it on her claims.

{¶ 14} Finally, under the third tier of the analysis, CMHA did not set forth any defenses against liability in its motion for judgment on the pleadings, and we find no basis for requiring a plaintiff to plead specific facts to counteract a possible defense. See *Rogers*, supra.

{¶ 15} Accordingly, we overrule CMHA’s first assignment of error.

{¶ 16} CMHA’s second assignment of error provides as follows: “The trial court committed error prejudicial to defendant CMHA by denying its motion for

judgment on the pleadings, in which CMHA asserted its particularized entitlement to immunity pursuant to the specific grants of immunity set forth in R.C. 2744.01(C)(2)(q), and 2744.01(C)(2)(u)(ii).”

{¶ 17} CMHA argues that it is entitled to a specific grant of immunity by application of R.C. 2744.01(C)(2)(q) for urban renewal projects and the elimination of slum conditions, or R.C. 2744.01(C)(2)(u)(ii) for indoor recreation facilities. CMHA essentially argues that if its actions fall under a specific governmental function listed under R.C. 2744.01(C)(2), then it is not subject to the generalized exceptions to immunity under R.C. 2744.02(B). We are not persuaded by this argument.

{¶ 18} R.C. 2744.01(C)(2) lists specific functions that constitute a “governmental function.” As provided under R.C. 2744.02(A)(1), political subdivisions are generally immune from liability in connection with a proprietary or governmental function, subject to exceptions provided under R.C. 2744.02(B). No provision is made that would exempt from these exceptions the governmental functions listed under R.C. 2744.01(C)(2).

{¶ 19} In *Moore*, 121 Ohio St.3d at 457, the Ohio Supreme Court recognized that “R.C. 2744.01(C) provides two routes to determine whether a given function is governmental. First, the statute refers to the list in R.C. 2744.01(C)(2) of ‘specified’ functions that the General Assembly has expressly deemed governmental. In the alternative, a function is governmental if it meets one of the three independent standards, enumerated in R.C. 2744.01(C)(1)(a)

through (c).” The court recognized that a metropolitan housing authority “performs a specified ‘governmental function’ under R.C. 2744.01(C)(2)(q)” for “[u]rban renewal projects and the elimination of slum conditions.” After further analysis, the court found “the operation of a public housing authority is a governmental function under R.C. 2744.01(C)(2). We therefore need not analyze the three independent standards enumerated in R.C. 2744.01(C)(1)(a) through (c).” The court then proceeded to consider whether any of the statutory exceptions to political subdivision immunity applied under R.C. 2744.02(B). *Id.*

{¶ 20} Consistent with *Moore*, *supra*, this court must still analyze whether one of the exceptions to immunity listed in R.C. 2744.02(B) applies. See, also, *Carter v. Cleveland*, 83 Ohio St.3d 24, 1998-Ohio-421, 697 N.E.2d 610 (agreeing that even if an activity is defined as a governmental function, it is still subject to the statutory exceptions). Thus, we find that CMHA is not entitled to a blanket grant of immunity. Because dismissal is not warranted on this basis, CMHA’s second assignment of error is overruled.

{¶ 21} CMHA’s third assignment of error provides as follows: “In determining CMHA’s motion for judgment on the pleadings, the trial court abused its decisional discretion by disregarding its obligations (i) to honor and apply the express statutory provision contained in Chapter 2744 and on-point precedents from the Supreme Court of Ohio and this Eighth District Court of Appeals and (ii) to decide the immunity issue presented to it in conformity

with those statutes and precedents; which abuses of discretion prejudiced CMHA.”

{¶ 22} Initially, we must reiterate that our review of a ruling on a motion for judgment on the pleadings is de novo. Under our application of Ohio law, we have determined that the motion for judgment on the pleadings should be denied. Therefore, we find no merit to CMHA’s third assignment of error.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, PRESIDING JUDGE

CHRISTINE T. MCMONAGLE, J., and
LARRY A. JONES, J., CONCUR