[Cite as *Swint v. Auld*, 2009-Ohio-6799.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

JORDAN PHILIP SWINT, by AVA WHITE, his mother and guardian, and next of friend,	:	APPEAL NO. C-080067 TRIAL NO. A-0705122
	:	*D E C I S I O N.*
Plaintiff-Appellee,	:	
vs.	:	
ANTENNIE D. AULD	:	
and/or	:	
JOHN DOE	:	
and	:	
THE VILLAGE OF GOLF MANOR,	:	
Defendants-Appellants.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Reversed and Cause Remanded.

Date of Judgment Entry on Appeal: December 24, 2009

Shawn M. Stepleton and *Frank E. Osborne*, for Appellee.

Wilson G. Weisenfelder, Jr., and *Rendigs, Fry, Kiely & Dennis, L.L.P.*, for Appellant.

Please note: This case has been removed from the accelerated calendar.

SYLVIA S. HENDON, Judge.

{¶1} We originally dismissed this appeal for lack of jurisdiction. But finding our decision in conflict with *Drew v. Laferty*,[1] we certified the conflict to the Ohio Supreme Court on the issue whether an order denying governmental immunity requires certification language under Civ.R. 54(B) to qualify as a final appealable order where the case involves multiple parties and claims. The Ohio Supreme Court answered that question in the negative[2] and remanded the case to us with the instruction that we address the merits of defendant-appellee Village of Golf Manor's sole assignment of error. For the following reasons, we reverse the judgment of the trial court.

{¶2} Plaintiff-appellant Jordan Swint sued the village of Golf Manor, alleging that Golf Manor police officer Matt Haverkamp had "willfully, wantonly, negligently and recklessly" failed to assist Swint during a dog attack. Swint claimed that Haverkamp, while responding to a 911 emergency call, had "positioned his police car in such a manner as to discourage and prevent bystanders" from helping him. Swint sought to hold Golf Manor vicariously liable for Haverkamp's actions. Golf Manor moved to dismiss Swint's claim under Civ.R. 12(B)(6), claiming governmental immunity. The trial court denied the motion. In one assignment of error, Golf Manor now contends that its motion should have been granted.

{¶3} We review the trial court's decision de novo.[3] To dismiss a complaint under Civ.R. 12(B)(6), it must appear beyond doubt that the plaintiff

[1] (June 1, 1999), 4th Dist. No. 98CA522.
[2] See *Sullivan v. Anderson Twp.*, 122 Ohio St.3d 83, 2009-Ohio-1971, 909 N.E.2d 88.
[3] *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶5.

can prove no set of facts warranting relief.[4] We must presume that all factual allegations in the complaint are true and construe all reasonable inferences in the plaintiff's favor.[5] Unsupported conclusions in a complaint, however, are not considered "admitted" and are insufficient to withstand a motion to dismiss.[6]

{¶4} Here, both parties agree that Golf Manor is entitled to immunity unless R.C. 2744.02(B)(1) applies.[7] R.C. 2744.02(B)(1) provides an exception to immunity where a governmental employee injures someone as a result of the "negligent operation of any motor vehicle." But because Haverkamp was responding to a 911 call, we must look to R.C. 2744.02(B)(1)(a) as the relevant statutory provision. Under R.C. 2744.02(B)(1)(a), Golf Manor is entitled to immunity unless Swint can demonstrate that Haverkamp had operated his police car in a willful and wanton manner.[8]

{¶5} Even if we assume that parking the police car constituted the "operation" of a motor vehicle, Swint pleaded no facts to support a conclusion that Haverkamp had been willful and wanton in operating his car. "Willful" conduct "implies an intentional deviation from a clear duty or from a definite rule of conduct, a deliberate purpose not to discharge some duty necessary to safety, or purposely doing wrongful acts with knowledge or appreciation of the likelihood of resulting injury."[9] "Wanton" conduct is the failure to exercise any care whatsoever towards those to whom a duty is owed if the failure to exercise

[4] *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192, 532 N.E.2d 753.
[5] Id.; *State ex rel. Findlay Publishing Co. v. Schroeder*, 76 Ohio St.3d 580, 581, 1996-Ohio-391, 669 N.E.2d 835.
[6] *Mitchell*, supra; *Schulman v. Cleveland* (1972), 30 Ohio St.2d 196, 198, 283 N.E.2d 175.
[7] See, also, R.C. 2744.02(A)(1).
[8] *York v. Ohio State Highway Patrol* (1991), 60 Ohio St.3d 143, 144, 573 N.E.2d 1063.
[9] *Tighe v. Diamond* (1948), 149 Ohio St. 520, 526-527, 80 N.E.2d 122; see, also, *Peoples v. Willoughby* (1990), 70 Ohio App.3d 848, 851-852, 592 N.E.2d 901.

care occurs when there is a great probability of harm.[10] Swint's complaint alleged only that Haverkamp had parked in a way that had "discouraged bystander assistance." Construing the facts and all reasonable inferences in a light most favorable to Swint, we hold that Swint failed to plead facts demonstrating willful and wanton conduct.

{¶6} Swint's sole assignment of error is therefore overruled. We reverse the trial court's judgment denying Golf Manor's Civ.R. 12(B)(6) motion to dismiss and remand this case for the entry of an order of dismissal consistent with this decision.

Judgment reversed and cause remanded.

CUNNINGHAM and **DINKELACKER, JJ.,** concur.

Please Note:

The court has recorded its own entry on the date of the release of this decision.

[10]*Hawkins v. Ivy* (1977), 50 Ohio St.2d 114, 117-118, 363 N.E.2d 367; see, also, *Tighe*, supra; *Matkovich v. Penn Central Transp. Co.* (1982), 69 Ohio St.2d 210, 431 N.E.2d 652.