

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

ROBERT SCHUTTE

C.A. No. 28203

Appellant

v.

SUMMIT COUNTY SHERIFF'S OFFICE,
et al.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 2015 07 3633

Appellees

DECISION AND JOURNAL ENTRY

Dated: June 7, 2017

SCHAFFER, Presiding Judge.

{¶1} Plaintiff-Appellant, Robert Schutte, appeals the judgment of the Summit County Court of Common Pleas granting summary judgment in favor of Defendants-Appellants, Summit County Sheriff Steve Barry, Summit County Sheriff’s Deputy Robert DiSabato, and the Summit County Sheriff’s Department (collectively, “Defendants”), on his claims for malicious prosecution, selective prosecution, abuse of process, and wrongful termination. We reverse and remand to the trial court for further clarification.

I.

{¶2} Schutte owns several acres of property located off of Berna Road in Green, Ohio. Schutte’s property, however, does not abut Berna Road, but is accessible from Berna Road via a city-owned right-of-way known as Tim Drive. According to Schutte, a dispute developed between him and his adjoining neighbors concerning the use of this right-of-way. Schutte alleges that one of his neighbors performed substantial work to the right-of-way without first

obtaining a permit from the city. This caused the city's law director to send a letter to Schutte and his neighbors admonishing them for performing unsanctioned work on the city-owned right-of-way.

{¶3} Following his receipt of this letter, Schutte spent nearly two weeks spreading gravel on the right-of-way to allegedly make ingress and egress more accessible to his property. This action caused the city law director to file an incident report with the Summit County Sheriff's Office and Schutte was ultimately charged in the Barberton Municipal Court with one count of performing excavations without a permit in violation of Green Codified Ordinance 1022.01, a third-degree misdemeanor. Schutte alleges that he had authority from the city to spread the gravel on the right-of-way without a permit. Schutte also alleges that as a result of this criminal charge being brought against him, he was fired from his job with the Summit County Sheriff's Office. The criminal case against Schutte ultimately concluded with the prosecutor dismissing the matter without prejudice.

{¶4} On July 20, 2015, Schutte filed a complaint in the Summit County Court of Common Pleas alleging claims for malicious prosecution, selective prosecution, abuse of process, and wrongful discharge against Sheriff Steve Barry, individually and in his official capacity, Deputy Robert DiSabato, individually and in his official capacity, and the Summit County Sheriff's Office. Defendants filed an answer denying the allegations set forth in Schutte's complaint.

{¶5} Defendants thereafter filed a motion for judgment on the pleadings pursuant to Civ.R. 12(C), to which Schutte responded in opposition. In ruling on Defendants' Civ.R. 12(C) motion, the trial court dismissed Sheriff Barry and Deputy DiSabato from the lawsuit in their individual capacities, but permitted them to remain as defendants in their official capacities.

Moreover, to accommodate the parties, the trial court converted the balance of Schutte's Civ.R. 12(C) motion for judgment on the pleadings to a Civ.R. 56 motion for summary judgment and permitted the parties time to file supporting or opposition briefs with appropriate evidentiary materials. Consequently, Defendants filed a subsequent motion for summary judgment arguing that no genuine issue of material fact is in dispute and that they are entitled to judgment as a matter of law on each of Schutte's claims. Specifically, Defendants argue in their summary judgment motion that they are entitled to judgment as a matter of law on Schutte's malicious prosecution, selective prosecution, and abuse of process claims since they are entitled to sovereign immunity under to R.C. Chapter 2744. In the alternative, Defendants argue in their motion for summary judgment that Schutte cannot successfully prove his claims for selective prosecution, abuse of process, and wrongful termination. Schutte filed a brief in opposition to Defendants' motion for summary judgment, to which Defendants filed a reply brief in support of their motion for summary judgment. On March 30, 2016, the trial court granted summary judgment in favor of Defendants on all of Schutte's claims.

{¶6} Schutte filed this timely appeal and presents two assignments of error for this Court's review. To facilitate our analysis, we elect to address both assignments of error together.

II.

Assignment of Error I

The trial court erred by granting summary judgment on Schutte's claims for malicious prosecution, selective prosecution, and abuse of process.

Assignment of Error II

The trial court erred by granting summary judgment on Schutte's claim for wrongful termination.

{¶7} In his first and second assignments of error, Schutte argues that the trial court erred by granting summary judgment in favor of Defendants with respect to each of his causes of action.

{¶8} We review an award of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). Summary judgment is only appropriate where (1) no genuine issue of material fact exists; (2) the movant is entitled to judgment as a matter of law; and (3) the evidence can only produce a finding that is contrary to the non-moving party. Civ.R. 56(C). Before making such a contrary finding, however, a court must view the facts in the light most favorable to the non-moving party and must resolve any doubt in favor of the non-moving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-359 (1992).

{¶9} Summary judgment consists of a burden-shifting framework. To prevail on a motion for summary judgment, the party moving for summary judgment must first be able to point to evidentiary materials that demonstrate there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). Once a moving party satisfies its burden of supporting its motion for summary judgment with sufficient and acceptable evidence pursuant to Civ.R. 56(C), Civ.R. 56(E) provides that the non-moving party may not rest upon the mere allegations or denials of the moving party's pleadings. Rather, the non-moving party has a reciprocal burden of responding by setting forth specific facts, demonstrating that a "genuine triable issue" exists to be litigated for trial. *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 449 (1996).

{¶10} Here, Defendants advanced two arguments in their motion for summary judgment. First, Defendants asserted that they are immune from liability pursuant to the Political Subdivision Tort Liability Act. Second, Defendants asserted that no facts exist within the record

from which Schutte can successfully prove his claims for selective prosecution, abuse of process, or wrongful termination. Schutte filed a brief in opposition to Defendants' motion for summary judgment. The trial court thereafter summarily granted summary judgment in favor of Defendants on all of Schutte's claims.

{¶11} We conclude that we are unable to fully and appropriately review the trial court's decision in light of its brief judgment entry. Specifically, our review of the issue of whether the trial court properly granted summary judgment on all four counts of the complaint is hampered because we cannot discern the trial court's legal basis for awarding summary judgment. A review of the trial court's judgment entry demonstrates that the trial court cited to the Civ.R. 56 summary judgment standard before briefly concluding that "the Defendants are entitled to summary judgment as a matter of law as to all causes of action. There are no issues of material fact relevant to the issues before the Court that would prohibit the granting of summary judgment." The judgment entry is devoid of any other legal analysis or reasoning. "This Court has recognized that, '[if] a trial court's judgment is not sufficiently detailed, a reviewing court may be left in the unfortunate position of being unable to provide meaningful review.'" *Kokoski v. Kokoski*, 9th Dist. Lorain No. 12CA010202, 2013-Ohio-3567, ¶ 11, quoting *Zemla v. Zemla*, 9th Dist. Wayne No. 11CA0010, 2012-Ohio-2829, ¶ 19. Therefore, because we cannot discern the trial court's basis for the award of summary judgment in Defendants' favor on all four counts of the complaint, we reverse its judgment and remand the matter so that the trial court can create an entry sufficient to permit appellate review. *MSRK, L.L.C. v. Twinsburg*, 9th Dist. Summit No. 24949, 2012-Ohio-2608, ¶ 10, citing *First Resolution Invest. Corp. v. Davis*, 10th Dist. Franklin No. 05AP-328, 2005-Ohio-4976, ¶ 13 (reversing the trial court's judgment and remanding for

the trial court to create an entry sufficient to permit meaningful appellate review). This Court takes no position on the merits of Schutte's arguments at this time.

III.

{¶12} In light of the foregoing, we reverse the judgment of the Summit County Court of Common Pleas and remand this matter for proceedings consistent with this decision.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellees.

JULIE A. SCHAFER
FOR THE COURT

CARR, J.
CALLAHAN, J.

CONCUR.

APPEARANCES:

DONALD GALLICK, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and COLLEEN SIMS, Assistant Prosecuting Attorney, for Appellees.