

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
SHELBY COUNTY

CHRISTINE HUGHES,

PLAINTIFF-APPELLANT,

CASE NO. 17-14-25

v.

JOHN R. LENHART, ET AL.,

OPINION

DEFENDANTS-APPELLEES.

**Appeal from Shelby County Common Pleas Court
Trial Court No. 14-CV000038**

Judgment Reversed and Case Remanded

Date of Decision: March 16, 2015

APPEARANCES:

Scott A. Kelly for Appellant

William Lang for Appellee

WILLAMOWSKI, J.

{¶1} Plaintiff-appellant Christine Hughes (“Hughes”) brings this appeal from the judgment of the Court of Common Pleas of Shelby County granting the motion to dismiss filed by defendant-appellees Shelby County Sheriff John R. Lenhart (“Lenhart”) and Shelby County Deputy Sheriff Patrick Goldschmidt (“Goldschmidt”) (collectively known as “Appellees”). For the reasons set forth below, the judgment is reversed and the cause is remanded for further proceedings consistent with this opinion.

{¶2} On February 21, 2014, Hughes filed a complaint for defamation, false light, and intentional infliction of emotional distress against Appellees. Doc. 1. The complaint alleged that Lenhart, in his capacity as Sheriff of Shelby County, had held a press conference regarding a crackdown on welfare fraud with Hughes’ photograph prominently displayed behind him. *Id.* at 2. The department had allegedly also provided to the media a photo of Hughes inferring that she was connected to the criminal use of sex, drugs, and alcohol for the purposes of committing welfare fraud. *Id.* The press conference was widely distributed and was placed upon the Sheriff Department’s Facebook page. *Id.* Hughes, who was a registered nurse and part owner of a local business and who had no felony criminal history, learned of the use of her photo through a friend on January 24, 2014, and after a Google search found numerous articles linking her image to the

welfare fraud case. *Id.* Hughes then contacted the Sheriff's Department. *Id.* at 2 and 3. On January 25, 2014, a deputy with the department responded to her concerns and apologized for the misuse of her photograph. *Id.* at 3. The deputy allegedly determined that a woman with the same name was the one connected with the case, but that Hughes' photograph was the one submitted to the media. *Id.* Hughes then began to receive messages and posts from others regarding her connection to the case. *Id.* Hughes alleged that Lenhart and Goldschmidt had disseminated her photograph to the media as well as their own facebook page and indicated that she was involved with the welfare fraud case. *Id.* Hughes alleged that she had to defend herself and that multiple responses indicated that people believed the information disseminated by the Sheriff's Department. *Id.* at 4. The Sheriff's Department issued a retraction on January 25, 2014, however the retraction merely indicated that the Department had "provided the wrong mug shot or otherwise photograph of a convicted felon or individual charged with a criminal act", thus implying that Hughes was nonetheless still either a convicted felon or charged with a different criminal act. *Id.* Based upon the alleged defamatory statements, Hughes claimed to have suffered economic and personal loss to her career and reputation. *Id.*

{¶3} The first cause of action alleged that the defendants had committed defamation by falsely claiming that Hughes had been convicted of fraudulently

securing dental services. The complaint alleges that this action was either intentional or reckless. The second cause of action alleged that the defendants had recklessly portrayed her in a false light by associating her photograph with criminal activity. Hughes also alleged that the defendants had intentionally caused her severe emotional distress.

{¶4} On March 6, 2014, Appellees filed a motion to dismiss. Doc. 9. The motion was based upon Appellee’s presumptive governmental immunity. Hughes filed a response to the motion on March 20, 2014. Doc. 10. On August 5, 2014, the trial court granted the motion to dismiss. Doc. 15. Hughes filed her notice of appeal from this judgment on August 29, 2014. Doc. 26. On appeal, Hughes raises the following assignment or error.

The court erred in granting [appellee’s motion to dismiss [Hughes’] cause of action for defamation, false light, and intentional infliction of emotional distress without properly determining whether [Appellees’] actions were wanton, willful, or reckless misconduct within the context of governmental immunity and liability pursuant to [R.C. 2744.03(A)(6)].

{¶5} The sole assignment of error addresses the appropriateness of the trial court’s granting of the motion to dismiss. In Ohio, a complaint need only set forth a “short and plain statement of the claim showing that the party is entitled to relief.” Civ.R. 8(A). Ohio does not mandate that every fact be set forth in a complaint, just facts sufficient to put the defendant on notice. An order granting a motion to dismiss for failure to state a claim upon which relief may be granted is

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reviewed de novo. *Doe v. Bath Local School Dist.*, 3d Dist. Allen No. 1-14-12, 2014-Ohio-4992, ¶ 4. In reviewing the motion, the court must accept all factual allegations in the complaint as true. *Id.* All inferences must be resolved in favor of the non-moving party. *Id.*

{¶6} Appellees filed the motion to dismiss on the grounds that they were presumptively protected from suit by government immunity. There is no question that the Shelby County Sheriff's Department is a political subdivision pursuant to R.C. 2744.01(F). The statute also provides that governmental functions include the operation of a police department. R.C. 2744.01(C). Appellees claim that Hughes cannot bring her claims because they do not fall under the exceptions set forth in R.C. 2744.02. However, a review of R.C. 2744.02 indicates that it does not apply in this case. R.C. 2744.02 provides that political subdivisions have immunity and sets forth the exceptions to that immunity in the cases of negligence. R.C. 2744.02(B). This statute does not address actions that are alleged to be done by employees of governmental subdivisions in a reckless, wanton, willful, or malicious manner. Those acts are governed by R.C. 2744.03. To follow the logic of Appellees, a citizen could never bring suit against a political subdivision for any reason other than the limited negligence claims allowed by R.C. 2744.02(B). That is not the intent of the statute and would make the exceptions to governmental immunity for employees and political subdivisions as set forth in R.C. 2744.03

meaningless. The statutes must be read together and made to work in a manner that complies with the intent of the legislature and with public policy. Since Hughes was claiming that the actions of Appellees were reckless and intentional, they are governed by the exceptions to employee immunity set forth in R.C. 2744.03, not those of R.C. 2744.02. Additionally, R.C. 2744.02 only applies to governmental political subdivisions, not to employees of those subdivisions. *Gilbert v. Cleveland*, 8th Dist. Cuyahoga No. 99708, 2013-Ohio-5252. Hughes brought suit against the employees for their individual actions.

{¶7} The defenses of governmental subdivisions and its employees are set forth in R.C. 2744.03. Generally, governmental subdivisions and its employees are immune from all liability unless one of the exceptions listed in the statute applies. R.C. 2744.03(A). Appellees' liability was alleged to stem from an exception to immunity found in R.C. 2744.03(A)(6). Absent one of these exceptions, employees of government subdivisions have immunity from all civil suits based upon their actions in the scope of their employment.

In addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division or sections 3314.07 and 3746.24 of the Revised Code, the employee is immune from liability unless one of the following applies:

(a) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities.

(b) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;

(c) Civil liability is expressly imposed upon the employee by a section of the Revised Code. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon an employee, because that section provides for a criminal penalty, because of a general authorization in that section that an employee may sue and be sued, or because the section uses the term "shall" in a provision pertaining to an employee.

R.C. 2744.03(A)(6). The complaint does not allege that there is a section of the revised code that expressly imposes liability upon Appellees and none is clear from the face of the complaint. Thus, section (c) does not apply. Likewise, updating the public regarding criminal activity in the area is not "manifestly outside the scope of the employee's employment or official responsibilities." Thus, section (a) also does not apply. This leaves only section (b).

{¶8} Hughes argues that the use of her picture in relation to a criminal story in which she was not a party falls under section (b)'s exception to immunity. A review of the complaint, viewed in a light most favorable to Hughes, could indicate that Appellees acted with malicious purpose, in bad faith, or in a wanton or reckless manner. The complaint states that the Sheriff's Department showed the image on January 24 and had apologized and removed the photo on January 25. The Department explained that the real offender was a woman with the same name and that they had mistakenly used the wrong photo. However, the retraction

still indicated that Hughes was either a convicted felon or had been charged with a criminal act. The complaint states that Hughes has never been convicted nor charged with a criminal felony. Based solely upon what is stated in the complaint, Hughes has alleged facts sufficient to give notice of the offenses and to raise the exceptions to governmental immunity found in R.C. 2744.03(A)(6)(b). The allegations in the complaint allege that the conduct was either intentional or reckless, which would be an exception to the statutory immunity of the named defendants. Thus, the trial court erred in finding that no claim for relief had been stated when the complaint alleges facts sufficient to set forth claims and to raise the exceptions to governmental immunity by Appellees. The assignment of error is sustained.

{¶9} Having found prejudicial error in the particulars assigned and argued, the judgment of the Court of Common Pleas of Shelby County is reversed and the matter is remanded for further proceedings.

***Judgment Reversed and
Cause Remanded***

SHAW and PRESTON, J.J., concur.

/jlr