IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 22, 2015 Session

JENNIFER PARROTT v. LAWRENCE COUNTY ANIMAL WELFARE LEAGUE, INC., ET AL.

Appeal from the Circuit Court for Lawrence County
No. 02CC237410 Jim T. Hamilton, Judge

No. M2014-01241-COA-R3-CV – Filed June 25, 2015

The owner of approximately forty dogs filed a complaint against an animal welfare league for improperly removing the dogs from her property. She later added Lawrence County as a defendant. Lawrence County filed a motion to dismiss the owner's complaint on the basis of governmental immunity. The trial court granted the county's motion, and the owner appealed. Tennessee law requires that pleadings alleging negligence by a governmental entity overtly state that the tort was committed by an employee or employees of the governmental entity within the scope of his/her or their employment. The dog owner failed to include this assertion in any of her pleadings. As a result, we affirm the trial court's judgment granting the county's motion to dismiss the dog owner's claims against it.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the court, in which RICHARD H. DINKINS and W. NEAL MCBRAYER, JJ., joined.

Casey A. Long, Franklin, Tennessee, for the appellant, Jennifer Parrott.

El Shon D. Richmond, Nashville, Tennessee, for the appellee, Lawrence County, Tennessee.

MEMORANDUM OPINION[1]

FACTUAL AND PROCEDURAL BACKGROUND

Jennifer Parrott was the owner of about forty dogs on February 20, 2010, when individuals from the Lawrence County Animal Welfare League (the "AWL"), including Jessica Smith, and the Lawrence County Sheriff's Department appeared at her residence. Ms. Parrott was informed that a complaint of animal abuse had been called in and they were there to investigate the complaint. Ms. Parrott was asked to sign a form that she alleges was misrepresented to her. According to Ms. Parrott, she was told the form was a release that would permit a veterinarian to examine the dogs. Instead, however, the form transferred ownership of the dogs from Ms. Parrott to the AWL. The dogs were removed from Ms. Parrott's residence on February 20, but the AWL did not have enough space to house all of the dogs. Lawrence County operated a temporary jail facility, and the County agreed to house the dogs at the temporary jail.

Shortly after her dogs were removed, Ms. Parrott filed a complaint seeking injunctive and other relief against the AWL and Ms. Smith (together, the "Defendants").[2] The trial court granted Ms. Parrott a temporary restraining order that precluded the Defendants from disposing of or releasing to any third party any of Ms. Parrott's dogs. The parties later agreed to keep the restraining order in effect until either the conclusion of the matter or another agreement was reached.

At the end of March 2010, Ms. Parrott moved for an expedited hearing to terminate the restraining order and return the dogs to her care. Ms. Parrott explained in her motion that the Defendants had violated the restraining order by transferring some of her dogs to third parties and that at least one of the dogs had died while in the Defendants' custody. The trial court entered an order on April 6, 2010, requiring the Defendants to "account for and return in its original state any and all animals or property removed from the property of the Plaintiff on or about February 20th, 2010. . . ."

---

[1]Rule 10 of the Tennessee Rules of the Court of Appeals provides that:

> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

[2]Ms. Parrott's complaint included charges of trespass, conversion, slander, and intentional misrepresentation against the Defendants. Ms. Parrott sought compensatory and punitive damages.

The Defendants filed an answer to Ms. Parrott's complaint in May 2010, along with a counterclaim and third-party complaint. They named Lawrence County as a third-party defendant. According to the Defendants, the majority of the dogs remained in the custody of Lawrence County from the time they were removed from Ms. Parrott's property until they were returned. The Defendants alleged that any wrongful acts Ms. Parrott complained of "were as a result of acts of [sic] omissions committed by the cross-defendant, Lawrence County," and that Lawrence County should be liable for any damages awarded to Ms. Parrott.

Ms. Parrott then amended her complaint in August 2010 to add Lawrence County as a defendant, and she filed a second amended complaint the following month. In her amended complaints, Ms. Parrott asserted Lawrence County was liable for the same intentional torts she already asserted against the Defendants. In paragraph 5 (of both amended complaints), Ms. Parrott asserted:

> The Plaintiff's cause of action arises in tort under and by virtue of the laws of the State of Tennessee for the injuries suffered by the Plaintiff through the acts or omissions of the Defendants. . . .

Under the heading "Causation," Ms. Parrott alleged: "As a direct and proximate result of the negligent, reckless, and intentional acts or omissions of the Defendants, the Plaintiff has sustained damages and losses." Under the heading "Injuries and Damages," Ms. Parrott claimed she was entitled to compensatory and punitive damages "[a]s a further direct and proximate result of the negligence, recklessness, and intentional acts or omissions of the Defendants."

Lawrence County filed a motion to dismiss the Defendants' and Ms. Parrott's claims against it. In an order filed May 4, 2011, the trial court granted Lawrence County's motion as to claims Ms. Parrott made against it but denied the motion as to claims made by the Defendants. The court wrote:

> Lawrence County, by motion, brief, and oral argument, now contends it should be dismissed from this case on the basis that it has governmental immunity for all of the intentional torts alleged by Parrott in her complaints as amended; and the Court hereby grants Lawrence County's motion to dismiss it as a direct defendant as alleged in Parrott's complaint, as amended, but the Court hereby denies dismissal of Lawrence County in its capacity as a third-party defendant for its alleged negligence under Paragraph 26 of the third-party complaints filed by AWL and Smith against Lawrence County. In other words, if AWL and Smith have any liability to Parrott for failure to return all

> animals, Lawrence County may in turn be responsible to AWL and Smith for any acts or omissions of Lawrence County employees in transporting, housing, or caring for the animals.

A jury trial was held on March 6 and 7, 2014, and Ms. Parrott was awarded a total of $20,000 in damages. The jury found the AWL was liable to Ms. Parrott for trespass and conversion and awarded her $10,000: $5,000 for mental suffering and $5,000 for the loss in value of her dogs. The jury found Ms. Smith was liable to Ms. Parrott for slander and awarded Ms. Parrott $10,000 for her mental suffering. [3]

Ms. Parrott appeals the trial court's dismissal of her claims against Lawrence County. Ms. Parrott concedes Lawrence County is immune from her claims of intentional torts, *see* Tenn. Code Ann. § 29-20-205, but she alleges she stated a claim for negligence that should not have been dismissed. No other issue is raised on appeal, and neither the AWL nor Ms. Smith is a party to this appeal.

ANALYSIS

The trial court found the facts Ms. Parrott set forth in her amended complaint were insufficient to state a cause of action for negligence against Lawrence County. This issue involves a question of law. *Harman v. Univ. of Tenn.*, 353 S.W.3d 734, 736 (Tenn. 2011); *Timmins v. Lindsey*, 310 S.W.3d 834, 839 (Tenn. Ct. App. 2009). Accordingly, we review the trial court's judgment de novo, according it no presumption of correctness. *Harman*, 353 S.W.3d at 736-37; *Timmins*, 310 S.W.3d at 839.

Tennessee Rule of Civil Procedure 8.01 requires a pleading that sets forth a claim for relief to contain "(1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks." Tennessee follows a "liberal notice pleading standard," which means that the main purpose of the pleadings is to provide notice to the opposing party and to the court of the issues presented. *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011); *Abshure v. Methodist Healthcare-Memphis Hosps.*, 325 S.W.3d 98, 103 (Tenn. 2010). A complaint '"need not contain detailed allegations of all the facts giving rise to the claim,' but it 'must contain sufficient factual allegations to articulate a claim for relief.'" *Webb*, 346 S.W.3d at 427 (quoting *Abshure*, 325 S.W.3d at 103-04). As our Supreme Court has described this requirement,

---

[3] The jury also found the AWL was liable for slander and for misrepresentation of the contents of a release form; and that Ms. Smith was liable for trespass and conversion as well as misrepresentation. The jury did not award Ms. Parrott damages for these additional claims.

> While a complaint in a tort action need not contain in minute detail the facts that give rise to the claim, *it must contain direct allegations on every material point* necessary to sustain a recovery on any legal theory, even though it may not be the theory suggested . . . by the pleader, *or contain allegations from which an inference may fairly be drawn that evidence on these material points will be introduced at trial.*

Id. (emphasis in original) (quoting *Leach v. Taylor*, 124 S.W.3d 87, 92 (Tenn. 2004)).

When a complaint fails to comply with the requirements of Rule 8.01 of the Tennessee Rules of Civil Procedure, it is subject to dismissal pursuant to a motion to dismiss for failure to state a claim for which relief can be granted. *See* Tenn. R. Civ. P. 12.02(6). A court has no duty to create a claim for a plaintiff that is not properly set out in his or her complaint, and an appellate court should affirm a trial court's judgment granting a motion to dismiss "when it appears that the plaintiff can prove no set of facts in support of a claim that will entitle him or her to relief." *Moses v. Dirghangi, MD.*, 430 S.W.3d 371, 376 (Tenn. Ct. App. 2013).

Ms. Parrott contends her amended complaints sufficiently state a claim for negligence against Lawrence County. She relies on the following paragraph that was included in both her amended complaint as well as her second amended complaint:

> As a direct and proximate result of the negligent, reckless, and intentional acts or omissions of the Defendants, the Plaintiff has sustained damages and losses.

According to the Tennessee Governmental Tort Liability Act ("TGTLA"), codified at Tenn. Code Ann. §§ 29-20-101 *et seq.*, "Immunity from suit of all governmental entities is removed for injury proximately caused by a negligent act or omission of any employee within the scope of his employment . . . ." Tenn. Code Ann. § 29-20-205. Tennessee Code Annotated section 29-20-201(c) requires that "[w]hen immunity is removed by this chapter any claim for damages must be brought in strict compliance with the terms of this chapter." The Court of Appeals has interpreted these provisions as follows:

> A complaint against a governmental entity for tort must overtly allege that the tort was committed by an employee or employees of the governmental entity within the scope of his or their employment. A complaint which does not so state does not state a claim for which relief can be granted because the action is not alleged to be within the class of cases excepted by the statute from governmental immunity.

Gentry v. Cookeville Gen. Hosp., 734 S.W.2d 337, 339 (Tenn. Ct. App. 1987); *accord Largin v. Williamson Cnty. Animal Control Shelter/Ctr.*, M2005-01255-COA-R3-CV, 2006 WL 2619973, at *3 (Tenn. Ct. App. Sept. 12, 2006); *Cityview at Riverwalk, LLC v. Knoxville Cmty. Dev. Corp.*, No. 3:11-CV-050, 2011 WL 5358716, at *2 (E.D. Tenn. Nov. 4, 2011).

In neither of her amended complaints did Ms. Parrot allege that any particular employee of Lawrence County was negligent while acting within the scope of his or her employment. Because of her failure to include the necessary pleadings in her complaint, Ms. Parrott has not complied with the requirements of the TGTLA, as they have been interpreted by the courts. Consequently, the trial court did not err in determining that Ms. Parrott failed to state a claim for negligence against Lawrence County.[4]

CONCLUSION

The trial court's judgment is affirmed. Costs of appeal are assessed against the appellant, Jennifer Parrott, for which execution shall issue, if necessary.

____
ANDY D. BENNETT, JUDGE

[4]Ms. Parrott also contends her claim for negligence does not materially differ from the Defendants' negligence claim against Lawrence County, and that the trial court should not have dismissed her claim while allowing the Defendants' claim to stand. Lawrence County did not contest the trial court's denial of its motion to dismiss the Defendants' claim, however, and that issue is therefore not before this court on appeal. We note that the Defendants voluntarily dismissed their negligence claim against Lawrence County following the trial.