[Cite as *Kravetz v. Streetsboro Bd. of Edn.*, 2012-Ohio-1455.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

JENNIFER KRAVETZ,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2011-P-0025**
- vs -	:	
STREETSBORO BOARD OF EDUCATION, et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2010 CV 746.

Judgment: Affirmed.

Leonard F. Carr, *L. Bryan Carr*, and *William A. Watson*, Carr, Feneli & Carbone Co., L.P.A., 1392 S.O.M. Center Road, Mayfield Heights, OH 44124 (For Plaintiff-Appellee).

Matthew J. Markling and *Patrick Vrobel*, McGown & Markling Co., L.P.A., 1894 North Cleveland-Massillon Road, Akron, OH 44333 (For Defendants-Appellants).

TIMOTHY P. CANNON, P.J.

{¶1} Appellants, Streetsboro Board of Education, Streetsboro City School District, Linda T. Keller, and James Estille, appeal the judgment of the Portage County Court of Common Pleas denying their motion for judgment on the pleadings, pursuant to Civ.R. 12(C). For the following reasons, we affirm.

{¶2} In May 2010, appellee, Jennifer Kravetz, filed a complaint against appellants alleging nine causes of action, to wit: intentional infliction of emotional

distress, defamation, slander per se, libel, breach of contract, civil conspiracy, wrongful termination, abuse of process, and negligent infliction of emotional distress. The allegations stemmed from accusations of appellee's "inappropriate conduct against/toward students."

{¶3} The complaint alleged that appellants were legally and contractually obligated to conduct an investigation regarding the allegations and "keep all facts and information confidential." After accepting the resignation of appellee, a public school board meeting was held, and in violation of their "legal and contractual obligation, the [appellants] copied and provided for public consumption and dissemination * * * documents regarding [appellee], the * * * allegations against [appellee] and the discipline of [appellee]." Appellee also asserts that appellants provided the newspaper with letters sent to appellee, although the investigation was ongoing. Consequently, the newspaper published an article that announced appellee's name and described, in detail, the allegations made against appellee. As a result of appellants' actions, appellee asserts that she was ostracized and forced to relocate outside the state.

{¶4} Appellants filed an answer. Appellants then filed a motion for judgment on the pleadings, pursuant to Civ.R. 12(C), arguing, inter alia, that Keller and Estille were named in appellee's complaint in their official capacities only and, thus, are not the real parties in interest; that Streetsboro Board of Education ("Board") and Streetsboro City School District ("Streetsboro") are immune under R.C. Chapter 2744.02; and, if Keller and Estille were named in their individual capacities, they enjoy immunity, as no exceptions apply under R.C. 2744.03(A)(6).

{¶5} The trial court denied appellants' motion for judgment on the pleadings. Appellants filed a timely notice of appeal and assert the following assignments of error:

{¶6} [1.] The Portage County Court of Common Pleas erred in failing to determine that Defendants-Appellants Linda T. Keller and James Estille have been sued in their official capacities only.

{¶7} [2.] The Portage County Court of Common Pleas erred in failing to determine that R.C. 2744.09(B) does not apply to the present matter.

{¶8} [3.] The Portage County Court of Common Pleas erred in denying Defendants-Appellants Streetsboro Board of Education and Streetsboro City School District the benefits of statutory immunity under R.C. Chapter 2744.

{¶9} [4.] To the extent they have been named in their individual capacities, the Portage County Court of Common Pleas erred in denying Defendants-Appellants Linda T. Keller and James Estille the benefits of statutory immunity under R.C. Chapter 2744.

{¶10} At the outset, we note that appellants' appeal relates to appellee's intentional tort claims for intentional infliction of emotional distress, defamation, slander per se, libel, civil conspiracy, and abuse of process, as well as appellee's claim for negligent infliction of emotional distress. Further, appellants requested a stay pending the outcome of the Ohio Supreme Court's decision in *Sampson v. Cuyahoga Metro. Hous. Auth.*, 2012-Ohio-570, indicating that the decision of the Supreme Court would likely determine many of the issues on appeal. This court, however, denied such

motion, which has since become moot, and therefore, we address appellants' appeal on the merits.

{¶11} While the instant appeal was pending, the Ohio Supreme Court released its decision in *Sampson*, *supra*. The *Sampson* Court was asked to determine whether "R.C. 2744.09(B), an exception to political-subdivision immunity from tort liability, applies in a civil action for damages filed by an employee who alleged that his political-subdivision employer committed an intentional tort against him and engaged in negligent conduct." The Ohio Supreme Court determined that R.C. 2744.09(B) may apply in such a circumstance.

Standard of Review

{¶12} 'Because Civ.R. 12(C) motions test the legal basis for the claims asserted in a complaint, our standard of review is de novo. In ruling on the motion, a court is permitted to consider both the complaint and the answer as well as any material incorporated by reference or attached as exhibits to those pleadings. In so doing, the court must construe the material allegations in the complaint, with all reasonable inferences drawn therefrom, as true and in favor of the non-moving party. A court granting the motion must find that the plaintiff can prove no set of facts in support of the claims that would entitle him or her to relief.' *JTO, Inc. v. State Auto Mut. Ins. Co*., 194 Ohio App.3d 319, 2011-Ohio-1452, ¶11 (11th Dist.), quoting *Frazier v. Kent*, 11th Dist. Nos. 2004-P-0077 and 2004-P-0096, 2005-Ohio-5413, ¶14.

{¶13} Civ.R. 12(C) motions are specifically for resolving questions of law. *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570 (1996).

{¶14} In *Ganzhorn v. R & T Fence Co.*, this court stated:

> **{¶15}** The distinction in this analysis is clear: while we construe all of the allegations as true in the complaint, and we may *consider* the responses and affirmative defenses raised in the answer, those are not entitled to any inferences. In other words, the assertion of an affirmative defense does not place a burden on the non-moving party to affirmatively demonstrate or plead the absence of, or any exception to, immunity. 11th Dist. No. 2010-P-0059, 2011-Ohio-6851, ¶13.

R.C. Chapter 2744

{¶16} Generally, political subdivisions are immune from civil liability. R.C. 2744.02(A). However, if one of the exceptions outlined in R.C. 2744.02(B) is applicable, a political subdivision may be subject to civil liability. An employee of a political subdivision, while being entitled to a general grant of immunity, may also be held civilly liable if one of the circumstances outlined in R.C. 2744.03(A)(6) applies.

Political Subdivision Employee Immunity

{¶17} Immunity is extended to claims against individual employees of political subdivisions. Instead of employing R.C. 2744.02, a court must utilize R.C. 2744.03(A)(6) for claims against individual employees. Under R.C. 2744.03(A)(6), an employee of a political subdivision is immune from liability unless: (1) the employee's acts or omissions are manifestly outside the scope of the employee's employment or

official responsibilities; (2) the employee's acts or omissions were malicious, in bad faith, or wanton or reckless; or (3) liability is expressly imposed on the employee by a section of the Revised Code.

{¶18} In her brief, appellee contends that Keller and Estille were sued both as individuals and as employees of the political subdivision. Appellants, however, assert that Keller and Estille have been sued only in their official capacities as employees of a political subdivision, as all acts alleged by appellee against them arose exclusively from the exercise of their official duties and responsibilities as Treasurer and Superintendent.

{¶19} In *Lambert v. Clancy*, the Ohio Supreme Court discussed political subdivision immunity under R.C. 2744.02 and individual employee immunity under R.C. 2744.03(A)(6). 125 Ohio St.3d 231, 2010-Ohio-1483. The Court was asked to "determine the appropriate R.C. Chapter 2744 political-subdivision-immunity analysis to apply to a lawsuit in which the named defendant holds an elected office within a political subdivision." *Id*. at ¶1.

{¶20} In *Lambert*, the identity of Ms. Lambert was stolen allegedly by using her personal information from the Hamilton County Clerk of Courts office. Ms. Lambert filed a complaint against "Greg Hartmann, Hamilton County, Ohio Clerk of Courts." *Id*. at ¶6. The trial court dismissed Ms. Lambert's complaint pursuant to Civ.R. 12(B)(6) and (C), without opinion, and the court of appeals reversed stating that Ms. Lambert's claims were not barred by the Political Subdivision Tort Liability Act, R.C. Chapter 2744, under the provisions applicable to employees of political subdivisions. As stated by the Supreme Court, "the appellate court * * * appears to have assumed that the complaint

was brought against Hartmann individually, as an employee of the clerk of courts' office" and, consequently, applied the analysis under R.C. 2744.03(A)(6). *Id*. at ¶14.

{¶21} The Ohio Supreme Court reversed the judgment of the appellate court, holding:

> **{¶22}** [B]ecause the allegations contained in the complaint are directed against the office of the political subdivision, the officeholder was sued in his official capacity rather than in his individual or personal capacity. We also conclude that the three-tiered political-subdivision-immunity analysis set forth in R.C. 2744.02, and not the employee-immunity provision of R.C. 2744.03(A)(6), is to be applied in such a circumstance. *Id*. at ¶22.

{¶23} The *Lambert* Court noted that the complaint does not add the "words 'personally,' 'individually,' 'an employee of the Hamilton County Clerk of Courts,' or anything similar to denote that Mr. Hartmann was being sued in his individual capacity as a county employee as opposed to being sued in his official capacity as the clerk of courts." *Id*. at ¶15. Further, the Ohio Supreme Court stated that "the allegations in the state-filed complaint pertain to the policies and practices of the clerk of courts' office and not to actions taken by Hartmann personally." *Id*. at ¶17.

{¶24} In her complaint, appellee asserts a claim against Keller and Estille both in their official and individual capacities. The complaint states that "Keller and Estille are individuals employed by the Board of Education and/or School District in the capacity of Superintendent and Interim Treasurer respectively. Defendants Keller and Estille are sued in their individual capacities and in their official capacities due to their conduct as

described herein." Additionally, the caption of the complaint named Keller and Estille individually and not in any representative capacity. Moreover, the allegations in the complaint, when taken as true and in favor of the non-moving party, must be construed to assert claims against Estille and Keller in their individual capacities.

{¶25} In their brief, appellants argue that even if this court determines Keller and Estille are named in their individual capacities, they are afforded immunity, as none of the exceptions enumerated in R.C. 2744.03(A)(6)(a)-(c) are applicable under the allegations pled.

> **{¶26}** As a general matter, whether an employee is entitled to R.C. 2744.03(A)(6) immunity is ordinarily a question of law. However, 'whether an individual acted manifestly outside the scope of employment,' and whether the employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner generally are questions of fact. *Long v. Village of Hanging Rock*, 4th Dist. No. 09CA30, 2011-Ohio-5137, ¶17.

{¶27} In order to grant a motion for judgment on the pleadings on the issue of immunity under R.C. 2744.03(A)(6), the record must be "devoid of evidence tending to show that the political subdivision employee acted wantonly or recklessly." *Irving v. Austin*, 138 Ohio App.3d 552, 556 (6th Dist.2000).

{¶28} Appellee's complaint alleges that both Keller and Estille, although having a duty to keep all facts of the investigation confidential, copied documents and then made them available to the public at a school board meeting. The documents related both to the allegations against appellee and her discipline. Additionally, the complaint alleges

that Keller and Estille spoke of these allegations during open session at the school board meeting and then sent copies of letters to the newspaper concerning the allegations against appellee, in spite of the ongoing investigation. Construing the allegations of appellee's complaint as true and all reasonable inferences to be drawn therefrom in a light most favorable to appellee, we find that since Keller and Estille were named in their individual capacities, there may be facts pertaining to these allegations that could entitle appellee to recover from them individually. If there are affirmative defenses to all or part of these allegations that would eliminate personal liability for Keller and Estille, those affirmative defenses must be established through the discovery process. They will not be assumed for purposes of analyzing whether a Civ.R. 12(C) dismissal is appropriate. *See Ganzhorn*, *supra*.

{¶29} Appellants' first and fourth assignments of error are without merit.

Political Subdivision Immunity

{¶30} R.C. Chapter 2744 provides a three-step test to determine whether a political subdivision enjoys immunity. First, R.C. 2744.02(A) provides broad immunity to political subdivisions: "'political subdivisions are not liable generally for injury or death to persons in connection with a township's performance of a governmental or proprietary function.'" *Cosimi v. Koski Constr. Co*., 11th Dist. No. 2008-A-0075, 2009-Ohio-5892, ¶64, quoting *Howard v. Miami Twp. Fire Div.*, 119 Ohio St.3d, 2008-Ohio-2792. Second, exceptions to immunity are listed in R.C. 2744.02(B). Third, where one of the exceptions enumerated in R.C. 2744.02(B) is applicable, "a political subdivision or its employee can then 'revive' the defense of immunity by demonstrating the applicability of

one of the defenses found in R.C. 2744.03." (Citation omitted.) *Walker v. Jefferson Cty. Bd. of Commrs*., 7th Dist. No. 02JE14, 2003-Ohio-3490, ¶22.

{¶31} Section 2744.09(B) provides that Chapter 2744 "does not apply to, and shall not be construed to apply to * * * [c]ivil actions by an employee * * * against his political subdivision relative to any matter that arises out of the employment relationship between the employee and the political subdivision[.]" Thus, if the provisions in R.C. 2744.09(B) apply, then R.C. 2744, including the immunity provisions in R.C. 2744.02, do not apply to this matter.

{¶32} Section R.C. 2744.09(B) removes immunity only as to the political subdivision and does not remove immunity from the employees of political subdivisions. *Zumwalde v. Madeira & Indian Joint Fire Dist.*, 128 Ohio St.3d 492, 2011-Ohio-1603, syllabus. Consequently, the following discussion is only relevant to appellee's claims against the Board and Streetsboro. Appellants argue that the trial court is required to examine R.C. 2744.09(B) before proceeding to any statutory analyses when a lawsuit involves a political subdivision employee. Appellants argue that intentional tort claims, by their very nature, do not arise out of the course and scope of employment, and therefore, R.C. 2744.09(B) is inapplicable to appellee's claims for intentional infliction of emotional distress, defamation, slander per se, libel, civil conspiracy, and abuse of process. Stated differently, appellants maintain that with respect to appellee's claims for intentional torts, the political subdivision is exempt from immunity under R.C. 2744.02. To support their position, appellants cite to numerous appellate court opinions as well as the Ohio Supreme Court's opinion in *Brady v. Safety-Kleen Corp.*, 61 Ohio St.3d 624 (1991). Further, appellants ask this court to resolve an "intra-district conflict"

citing to this court's opinions in *Fleming v. Ashtabula Area City School Bd. of Edn*., 11th Dist. No. 2006-A-0030, 2008-Ohio-1892 and *Sabulsky v. Trumbull Cty., Ohio*, 11th Dist. No. 2001-T-0084, 2002-Ohio-7275, ¶18. As discussed below, this court in *Fleming* has distinguished both the holding in *Brady* and this court's opinion in *Sabulsky*, *supra*.

{¶33} In *Fleming*, this court analyzed the relationship between R.C. 2744.09(B) and intentional tort claims. In determining whether the alleged intentional torts arose out of the employment relationship between Fleming and the Ashtabula County Board of Education, this court stated:

> **{¶34}** Several courts, including the Eighth Appellate District, have held that:
>
> **{¶35}** '"An employer's intentional tort against an employee does not arise out of the employment relationship, but occurs outside the scope of employment. *Brady v. Safety-Kleen Corp.* (1991), 61 Ohio St.3d 624, 576 N.E.2d 722, paragraph one of the syllabus."' *Chase v. Brooklyn City School Dist.*, 141 Ohio App.3d 9, 19, 749 N.E.2d 798 (2001), quoting *Ventura v. City of Independence* (May 7, 1998), 8th Dist. No. 72526, 1998 Ohio App. LEXIS 2093, *22. (Secondary citations omitted.) This court has also applied the *Brady* holding to an immunity case under R.C. 2744.09. *Sabulsky v. Trumbull Cty., Ohio*, 11th Dist. No. 2001-T-0084, 2002-Ohio-7275, ¶18.
>
> **{¶36}** In *Brady v. Safety-Kleen Corp.*, a truck driver sought damages for an intentional tort allegedly committed by his employer. *Brady v. Safety-Kleen Corp.*, 61 Ohio St.3d at 625. The Supreme Court of

Ohio held that intentional torts necessarily occur outside of the employment relationship; therefore, such actions were not subject to the Workers' Compensation Act. 61 Ohio St.3d at 635. It is important to note that the effect of the *Brady* holding was to permit common-law, intentional-tort lawsuits by employees, in that such lawsuits were not preempted by the Workers' Compensation Act. Id.

{¶37} Fleming notes there are several cases that cite to R.C. 2744.09(B) and hold that employers do not receive immunity from intentional tort actions brought against political subdivision employees if the alleged torts arose out of the employees' employment relationship. See *Patrolman "X" v. Toledo* (1999), 132 Ohio App.3d 374, 725 N.E.2d 291; *Davis v. Cleveland*, 8th Dist. No. 83665, 2004-Ohio-6621, at ¶34; and *Marcum v. Rice* (July 20, 1999), 10th Dist. No. 98AP-717, 98AP-717, 98AP-718, 98AP-719, & 98AP-721, 1999 Ohio App. LEXIS 3365, at *16-22.

{¶38} In many instances, the *Brady* holding is readily applicable to an immunity case under R.C. 2744.09(B). For example, if a political subdivision employee initiates a lawsuit for battery against his or her employer alleging that a supervisor inappropriately touched him or her, such conduct would clearly be outside of the employment relationship. This is because once the supervisor made the decision to engage in the inappropriate behavior, he was acting

> independently from the interests of the employer and was no longer acting in the course and scope of his employment. *However, we do not believe that the Brady holding acts as a per se bar to any intentional tort claim by a political subdivision employee against his or her employer*. *If the conduct forming the basis of the intentional tort arose out of the employment relationship, the employer does not have the benefit of immunity pursuant to the plain language of R.C. 2744.09(B)*. (Emphasis added.) *Fleming*, *supra*, ¶37-41.

{¶39} In *Sampson v. Cuyahoga Metro. Hous. Auth.*, 2012-Ohio-570, the Ohio Supreme Court rejected the same argument made by appellant's herein. That is, that an intentional tort claim is not a "'matter' that 'arises out of the employment relationship,' because an employer's action in committing an intentional tort against an employee in the workplace necessarily occurs outside the employment relationship and cannot arise from it." *Id*. at ¶12.

{¶40} The Ohio Supreme Court rejected this argument in *Sampson*, *supra*, and adopted reasoning similar to this court's in *Fleming*, *supra*. *Id*. at ¶23. The *Sampson* Court also recognized the distinction between political subdivision immunity and workers' compensation immunity, noting the underlying policy with respect to each immunity. *Id*. at ¶14. Further, the *Sampson* Court recognized the plain meaning of the language as written and held that when "an employee of a political subdivision brings a civil action against the political subdivision alleging an intentional tort, that civil action may qualify as a 'matter that arises out of the employment relationship' within the meaning of R.C. 2744.09(B)." *Id*. at paragraph one of the syllabus.

{¶41} Again, construing the allegations of appellee's complaint as true and all reasonable inferences to be drawn therefrom in a light most favorable to appellee, we find that, based on appellee's complaint, there are facts that could be construed to indicate the alleged intentional torts occurred during the course and scope of the employment relationship under R.C. 2744.09(B).

{¶42} Appellants also argue that appellee's claim for negligent infliction of emotional distress did not arise out of the employment relationship, and thus, such claim is not exempt from immunity under R.C. 2744.09(B). However, the full extent of the underlying facts in support of this cause of action is not clear. The request here is for a Civ.R. 12(C) dismissal. The facts must be construed in a light most favorable to the non-moving party. It is, therefore, premature to hold there are facts that clearly establish this claim did not arise out of the employment relationship. Additionally, this court has refused to adopt a heightened pleading standard which would require a plaintiff to assert how or why the political subdivision is *not* immune from suit. *Ganzhorn*, *supra*, at ¶24. Effectively, adoption of such a standard would require a plaintiff to anticipate affirmative defenses and exceptions at the inception of the litigation. *Id*.

{¶43} Based on our above reasoning, we find that the trial court properly denied appellants' motion for judgment on the pleadings under Civ.R. 12(C).

{¶44} Appellants' second assignment of error is without merit.

{¶45} Under the third assignment of error, appellants maintain that the trial court erred in denying the Board and Streetsboro the benefits of statutory immunity under R.C. Chapter 2744. Appellants contend that the Board and Streetsboro are entitled to

the general grant of statutory immunity under R.C. 2744.02(A)(1) and, further, that none of the exceptions to statutory immunity under R.C. 2744.02(B)(1)-(5) apply. Appellants argue that even if this court finds that one of the exceptions to immunity is applicable, the Board and Streetsboro are entitled to have immunity revived by the provisions outlined in R.C. 2744.03(A)(1), (A)(2), (A)(3), and (A)(5).

{¶46} As discussed above, we found that when considering the allegations of the complaint in a light most favorable to appellee, there are facts that could be construed to indicate that the alleged torts occurred during the course and scope of the employment relationship under R.C. 2744.09(B), and therefore, the analysis under R.C. 2744.02 is inapplicable. Under our standard of review, this court cannot make this factual determination. If, however, during the discovery process it is concluded that the alleged conduct did not arise during the course and scope of employment, the Board and Streetsboro may receive the benefits of statutory immunity under R.C. 2744.02(A)(1).

{¶47} Appellants' third assignment of error is without merit.

{¶48} Based on the opinion of this court, the judgment of the Portage County Court of Common Pleas is hereby affirmed.

MARY JANE TRAPP, J., concurs,

DIANE V. GRENDELL, J., concurs with a Concurring Opinion.

_____

DIANE V. GRENDELL, J., concurs with a Concurring Opinion.

{¶49} I agree with the majority's decision to affirm the trial court's judgment denying the appellants' motion for judgment on the pleadings. I write separately to expand upon and clarify the law as to two issues.

{¶50} First, I agree that Keller and Estille are being sued in their individual capacities, such that this court must apply the immunity analysis under R.C. 2744.03(A)(6). It is necessary, however, to expand upon this court's rationale for making such a determination, as there are additional relevant cases supporting this conclusion.

{¶51} In *Coleman v. Portage Cty. Engineer*, 191 Ohio App.3d 32, 2010-Ohio-6255, 944 N.E.2d 756 (11th Dist.), this court reached the opposite result of the present matter and found that the three-tiered political subdivision immunity analysis in R.C. 2744.02 must be applied because the defendant was being sued in his official capacity instead of in his individual capacity. *Id.* at ¶ 16. In that case, unlike the present matter, the party was sued in his official capacity, with the allegations directed specifically "against the office of the Portage County Engineer." *Id*. In addition, in that case, the caption named the "Portage County Engineer" as the party being sued, not the individual. Such is not the case in the present matter.

{¶52} Also, in *Curry v. Blanchester*, 12th Dist. Nos. CA2009-08-010 and CA2009-08-012, 2010-Ohio-3368, the court was faced with a similar situation to the present case, since the complaint stated both that the defendant was being sued "in his official capacity as [m]ayor," but also that he was being sued "individually." *Id.* at ¶ 22. The court found that upon reviewing the complaint, the acts asserted in the intentional

tort claims were against the mayor "in his individual capacity as an employee of a political subdivision, rather than in his official capacity as an officeholder of the political subdivision," and noted that the allegations in the complaint related to actions taken by the mayor individually, not pursuant to the "policies and practices of the mayor's office." *Id.* Similarly, there were no allegations in this case that the actions taken were pursuant to any established policies of the Streetsboro Board of Education or the School District. Therefore, based on the full review of the case law relevant to the present matter, it is proper to hold that Keller and Estille were sued in their individual capacities.

{¶53} Second, it is important to emphasize that, in the past, there has been a conflict between the appellate districts as to whether an intentional tort falls under the scope of the employment relationship for the purposes of applying immunity under R.C. 2744. The Ohio Supreme Court recently ruled that when an employee brings a civil action in intentional tort against a subdivision, that action "may qualify" as a matter arising out of the employment relationship. *Sampson v. Cuyahoga Metro. Hous. Auth.*, ___ Ohio St.3d ___, 2012-Ohio-570, paragraph one of the syllabus. This ruling eliminated any hard and fast rule that intentional torts always fall outside of the scope of employment for the purposes of the immunity exception in R.C. 2744.09(B). Therefore, since it is possible to find, based on the allegations made in the complaint, that the intentional torts in this case arose out of the employment relationship, the present matter could not be dismissed at this stage of the proceedings.

{¶54} For the reasons stated herein, I concur with the decision to affirm the trial court's judgment, denying the appellants' motion for judgment on the pleadings.