**[Cite as *Rosenbrook v. Lucas Cty. Bd. of Commrs.*, 2012-Ohio-6247.]**

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

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| Frank and Pauline Rosenbrook | Court of Appeals No. L-11-1272 |
| Appellees | Trial Court No. CI0201102558 |
| v. | |
| Board of Lucas County Commissioners, et al. | **DECISION AND JUDGMENT** |
| Appellant | Decided: December 31, 2012 |

* * * * *

Guy T. Barone, for appellees.

Julia R. Bates, Lucas County Prosecuting Attorney, and
Maureen O. Atkins, Assistant Prosecuting Attorney, for appellant.

* * * * *

**YARBROUGH, J.**

## I. Introduction

**{¶ 1}** Appellant, the Board of Lucas County Commissioners, appeals the judgment of the Lucas County Court of Common Pleas, denying its motion for judgment on the pleadings. We affirm.

## A. Facts and Procedural Background

**{¶ 2}** On January 6, 2010, appellee, Pauline Rosenbrook, tripped and fell on a floor mat at the Lucas County Courthouse. As a result of the fall, Rosenbrook sustained significant injuries, including a fractured shoulder. Rosenbrook, along with her husband, Frank Rosenbrook, filed suit against appellant, Board of Lucas County Commissioners, on March 30, 2011, seeking compensatory and punitive damages.

**{¶ 3}** In her complaint, Rosenbrook alleged that appellant owned and/or leased the rug that caused the fall. Further, Rosenbrook alleged that appellant, through its agents and employees, negligently failed to conduct adequate and frequent inspections of the premises, and failed to warn her of certain "hazardous conditions." She alleged that appellant's failure to inspect and maintain the premises proximately caused her injuries. In addition, Rosenbrook alleged that appellant acted with "willful and wanton disregard for the safety of others," and with "heedless indifference to, or disregard for others, by failing to inspect, warn and correct the hazardous condition."

**{¶ 4}** Appellant filed its answer on May 25, 2011, in which it generally denied all of Rosenbrook's allegations, and asserted numerous affirmative defenses, including failure to state a claim upon which relief can be granted and statutory immunity. Thereafter, appellant filed a Civ.R. 12(C) motion for judgment on the pleadings.

**{¶ 5}** In its motion for judgment on the pleadings, appellant argued that the principles of absolute, qualified, and sovereign immunity precluded Rosenbrook's cause of action. Appellant asserted that Rosenbrook's complaint failed to allege an applicable

exception to immunity. Thus, appellant argued that Rosenbrook's claims must fail as a matter of law.

**{¶ 6}** The trial court disagreed. The court acknowledged that Rosenbrook's complaint did not include the word "defect" as specified in R.C. 2744.02(B)(4). However, in applying the Civ.R. 8(F) mandate that all pleadings are to be construed to do substantial justice, the court determined that Rosenbrook's use of the phrase "hazardous condition" was sufficient to overcome a motion for judgment on the pleadings. Accordingly, the trial court denied appellant's motion for judgment on the pleadings. Appellant's timely appeal followed.

### B. Assignment of Error

**{¶ 7}** In its sole assignment of error, appellant asserts: "The trial court erred in failing to grant motion for judgment on the pleadings filed by Appellants pursuant to Ohio Rev. Code 2744.02 as Appellees' Complaint did not allege any facts that would strip Appellant of its statutorily imposed governmental immunity."

## II. Standard of Review

**{¶ 8}** A trial court reviews a Civ.R. 12(C) motion for judgment on the pleadings using the same standard of review as a Civ.R. 12(B)(6) motion for failure to state a claim upon which relief may be granted. *McMullian v. Borean*, 6th Dist. Nos. OT-05-037, 040, 2006-Ohio-3867, ¶ 7.

**{¶ 9}** A Civ.R. 12(C) motion essentially tests the sufficiency of the complaint as written. Review is limited to the face of the complaint and the court may not consider

any matters beyond the complaint. In order to dismiss a complaint pursuant to Civ.R. 12(C), "it must appear beyond doubt that [appellee] can prove no set of facts warranting relief, after all factual allegations of the complaint are presumed true and all reasonable inferences are made in [appellee's] favor." *State ex rel. Fuqua v. Alexander*, 79 Ohio St.3d. 206, 207, 680 N.E.2d 985 (1997).

**{¶ 10}** On appeal, we apply a de novo standard of review to a trial court's determination of a motion for judgment on the pleadings. *McMullian* at ¶ 8. As with the trial court, we are constrained in our examination to the four corners of the complaint. Thus, we focus our analysis accordingly.

## III. Analysis

**{¶ 11}** In its sole assignment of error, appellant argues that the trial court erred in denying its motion for judgment on the pleadings. Citing R.C. 2744.02, appellant argues that Rosenbrook did not allege any facts that would strip appellant of its statutorily imposed governmental immunity.

**{¶ 12}** As stated by the Ohio Supreme Court, a "three-tiered analysis" is used to determine whether a political subdivision is immune from liability. *Elston v. Howland Local Schools*, 113 Ohio St.3d 314, 2007-Ohio-2070, 865 N.E.2d 845, ¶ 10. Under the first tier, we examine whether the general grant of immunity provided by R.C. 2744.02(A) applies. *Id.* If it does, the second tier requires us to determine whether immunity has been abrogated by the exceptions set forth in R.C. 2744.02(B). *Id.* at ¶ 11. If an exception applies, the third tier involves a determination of whether the political

subdivision is able to successfully assert one of the defenses listed in R.C. 2744.03, thereby reinstating its immunity. *Id.* at ¶ 12.

**{¶ 13}** Here, Rosenbrook does not dispute that appellant qualifies for immunity under R.C. 2744.02(A). Instead, Rosenbrook argues that R.C. 2744.02(B)(4) is applicable to this case, and operates as an exception to appellant's immunity.

**{¶ 14}** R.C. 2744.02(B)(4) provides:

> Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property that is caused by the negligence of their employees and that occurs within or on the grounds of, *and is due to physical defects* within or on the grounds of, buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses, but not including jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code. (Emphasis added.)

**{¶ 15}** On its face, this exception would appear to apply to the case sub judice, since the injury occurred at the Lucas County Courthouse, a public building expressly made applicable under the statute. However, appellant argues that the complaint lacks any allegation that Rosenbrook's injuries resulted from a physical defect. Rosenbrook responds by pointing to her allegations in the complaint that appellant failed to warn her

of hazardous conditions, failed to maintain the premises in a safe manner, and failed to conduct inspections of the premises.

**{¶ 16}** Indeed, our review of the complaint confirms that the word "defect" is never mentioned. Instead, Rosenbrook relies on her use of the phrase "hazardous condition" as a satisfactory substitute. While we recognize that Rosenbrook could have been more precise in her choice of words, we conclude that the language in Rosenbrook's complaint is sufficient to survive a motion for judgment on the pleadings.

**{¶ 17}** Our conclusion is supported by Civ.R. 8(F), which states: "All pleadings shall be so construed as to do substantial justice." Ohio courts have interpreted this provision to mean that "pleadings must be construed liberally to serve the substantial merits of the action." *Dicks v. U.S. Health Corp. of Southern Ohio*, 4th Dist. No. 95 CA 2350, 1996 WL 263239, *7 (May 10, 1996), citing *MacDonald v. Bernard*, 1 Ohio St.3d 85, 438 N.E.2d 410 (1982).

**{¶ 18}** At least one other court has applied Civ.R. 8(F) to prevent dismissal of an action in which a political subdivision seeks immunity under R.C. Chapter 2744. In *Stipanovich v. Applin*, 74 Ohio App.3d 506, 599 N.E.2d 711 (8th Dist.1991), the plaintiff filed suit against the city of Cleveland, alleging that the city created a nuisance when it "fail[ed] to maintain proper traffic pattern controls and suitable timing of the traffic signal so as to maintain safe crossings for pedestrians and driving lanes for automobiles." *Id.* at 509. The trial court granted the city's motion for summary judgment, finding that

the city was immune under R.C. 2744.02(A). *Id.* at 508. The Eighth District Court of Appeals reversed, stating:

> Even though the appellant's complaint should clearly allege the statutory language of the nuisance exception, embodied in R.C. 2744.02(B)(3), * * * we are not inclined to foreclose the appellant from her potential cause of action because of the manner in which the complaint is drafted. This is true especially when the Civil Rules grant the discretion to construe pleadings to do substantial justice. *Id.* at 510.

**{¶ 19}** We agree with the court in *Applin* that a plaintiff's cause of action should not be foreclosed merely because she used wording in her complaint that differs from the exact statutory language. After reviewing the complaint in its entirety and construing it liberally to serve the substantial merits of the action, we cannot say the trial court erred by denying appellant's motion for judgment on the pleadings. Accordingly, appellant's sole assignment of error is not well-taken.

## IV. Conclusion

**{¶ 20}** Having found appellant's assignment of error not well-taken, we hereby affirm the judgment of the Lucas County Court of Common Pleas. Costs are assessed to appellant in accordance with App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, P.J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE