[Cite as *Churchill v. Hoffman*, 2014-Ohio-1987.]

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

Patricia Diane Churchill	Court of Appeals No. WD-13-082
Appellant	Trial Court No. 2013CV0385
v.	
Chad Hoffman	**DECISION AND JUDGMENT**
Appellee	Decided: May 9, 2014

* * * * *

Orville L. Reed, III, for appellant.

Byron S. Choka and Jennifer A. McHugh, for appellee.

* * * * *

JENSEN, J.

{¶ 1} This case is before the court as an accelerated appeal. Appellant, Patricia Diane Churchill, appeals the November 4, 2013 decision of the Wood County Court of Common Pleas granting summary judgment in favor of appellee, Chad Hoffman. For the reasons that follow, we affirm the trial court's decision.

I. BACKGROUND

{¶ 2} Hoffman is the Tax Administrator for the Village of Grand Rapids, Ohio. The village, which is located in Wood County, Ohio, requires all residents to file annual income tax returns regardless of whether they owe any taxes.

{¶ 3} Churchill resided in Grand Rapids with her then-husband, David Churchill, until 2002. She and David divorced and during the pendency of the divorce action, Churchill moved to Ashland County, Ohio. Their final decree of divorce, dated March 21, 2003, lists a Nova, Ohio address for Churchill. Churchill also changed her address with the U.S. postal service when she left Grand Rapids.

{¶ 4} After leaving Grand Rapids, Churchill ceased filing village tax returns. On September 21, 2010, Hoffman caused a criminal complaint to be filed against Churchill in Bowling Green Municipal Court under sections 890.12(a)(1) and 890.12(a)(3) of the village's tax ordinance for allegedly failing to file returns or pay taxes for tax years 2004-2009. The court attempted to serve Churchill with the criminal complaint at the Grand Rapids address she used to share with her ex-husband. Service was unsuccessful.

{¶ 5} Not having received notice that charges were filed against her, Churchill failed to appear for arraignment. The court issued a bench warrant for her arrest. On September 22, 2011, she was arrested after being stopped by police in Ontario, Ohio. She was handcuffed and taken to the Richland County, Ohio jail where she remained for approximately 22 hours until her step-father, Fred McClaflin, who resides in Nova, Ohio, was able to drive to Bowling Green, Ohio to post bond. Thereafter, Churchill's employer

contacted Hoffman and provided proof that she had been working there since 2003 and had not resided in Grand Rapids during those years. Hoffman testified at deposition that he forwarded this information to the village prosecutor, Albert Potter, and that he indicated to Churchill's employer that the complaint would be dismissed. Churchill claims that Hoffman told her employer that there was nothing he could do because the process had already begun. She claims that her stepfather also contacted Hoffman and was told the same thing.

{¶ 6} The criminal complaint was not immediately dismissed. Churchill hired a lawyer who ultimately obtained a dismissal in December, 2011. According to Churchill's attorney, Potter initially demanded that Churchill pay the costs of prosecution. He eventually relented and dismissed the charges without costs.

{¶ 7} On July 8, 2013, Churchill filed a civil complaint against Hoffman alleging false arrest, false imprisonment, malicious prosecution, and intentional infliction of emotional distress. The trial court granted summary judgment in favor of Hoffman, finding that he is immune from liability under R.C. 2744.03(A)(6). Churchill appeals that decision and assigns the following error for our review:

> The Trial Court Erred To The Prejudice Of Plaintiff By Granting Defendant's Motion For Summary Judgment And Determining That There Was No Genuine Issue Of Material Fact And That Defendant Was Entitled To Judgment As A Matter Of Law[.]

II. STANDARD OF REVIEW

{¶ 8} Appellate review of a summary judgment is de novo, *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996), employing the same standard as trial courts. *Lorain Natl. Bank v. Saratoga Apts.*, 61 Ohio App.3d 127, 129, 572 N.E.2d 198 (9th Dist.1989). The motion may be granted only when it is demonstrated:

> (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 67, 375 N.E.2d 46 (1978), Civ.R. 56(C).

{¶ 9} When seeking summary judgment, a party must specifically delineate the basis upon which the motion is brought, *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 526 N.E.2d 798 (1988), syllabus, and identify those portions of the record that demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996). When a properly supported motion for summary judgment is made, an adverse party may not rest on mere allegations or denials in the pleadings, but must respond with specific facts showing that there is a genuine issue of material fact. Civ.R. 56(E); *Riley v. Montgomery*, 11 Ohio St.3d 75, 79, 463 N.E.2d 1246 (1984). A

"material" fact is one which would affect the outcome of the suit under the applicable substantive law. *Russell v. Interim Personnel, Inc.*, 135 Ohio App.3d 301, 304, 733 N.E.2d 1186 (6th Dist.1999); *Needham v. Provident Bank*, 110 Ohio App.3d 817, 826, 675 N.E.2d 514 (8th Dist.1996), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 201 (1986).

III. LAW AND ANALYSIS

{¶ 10} This case requires us to determine whether Churchill provided evidence sufficient to create a genuine question issue of material fact as to whether Hoffman acted with malicious purpose, in bad faith, or in a wanton or reckless manner when he caused criminal charges to be filed against her. Unless Churchill can establish that Hoffman's conduct rose to one of these levels, he is immune from liability under Ohio's political subdivision immunity statutes.

{¶ 11} It is undisputed that Hoffman is an employee of a political subdivision, as defined under R.C. 2744.01(F). Where a person is an employee of a political subdivision, under R.C. 2744.03(A)(6), he or she will be immune from liability for "injury, death, or loss to person or property allegedly caused by any act or omission in connection with a governmental or proprietary function," except under limited circumstances. That statute provides:

> (6) 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.

{¶ 12} "R.C. 2744.03(A)(6) operates as a presumption of immunity." (Citation omitted.) *Jackson v. McDonald*, 144 Ohio App.3d 301, 308, 760 N.E.2d 24 (5th Dist.2001). Churchill does not dispute that Hoffman's actions were within the scope of his employment as tax administrator for the village. She does not argue that liability is expressly imposed under another section of the revised code. Her claims revolve around whether Hoffman acted "with malicious purpose, in bad faith, or in a wanton or reckless manner," under subsection (b).

{¶ 13} "Malicious purpose" is the "willful and intentional design to do injury, or the intention or desire to harm another, usually seriously, through * * * unlawful or unjustified" conduct. *Schoenfield v. Navarre*, 164 Ohio App.3d 571, 2005-Ohio-6407, 843 N.E.2d 234, ¶ 22 (6th Dist.), quoting *Cook v. Hubbard Exempted Village Bd. of Edn.*, 116 Ohio App.3d 564, 569, 688 N.E.2d 1058 (11th Dist.1996). "Bad faith" connotes a "dishonest purpose, moral obliquity, conscious wrongdoing, breach of a known duty

through some ulterior motive or ill will partaking of the nature of fraud." *Id.*, quoting *Jackson v. McDonald*, 144 Ohio App.3d 301, 309, 760 N.E.2d 24 (5th Dist.2001). "Wanton misconduct is the failure to exercise any care toward those to whom a duty of care is owed in circumstances in which there is great probability that harm will result." *Anderson v. Massillon*, 134 Ohio St.3d 380, 2012-Ohio-5711, 983 N.E.2d 266, ¶ 33, *reconsideration denied*, 133 Ohio St.3d 1511, 2012-Ohio-6209, 979 N.E.2d 1289. And "reckless conduct" is "characterized by the conscious disregard of or indifference to a known or obvious risk of harm to another that is unreasonable under the circumstances and is substantially greater than negligent conduct." *Id*. Generally, issues regarding malice, bad faith, and wanton or reckless behavior are questions presented to the jury. *Schoenfield* at ¶ 24.

{¶ 14} The parties conducted several depositions. Hoffman was deposed, as was Edward Robertson, an auditor with Central Collection Agency ("CCA"). They explained the procedure that resulted in the filing of the criminal complaint against Churchill.

{¶ 15} The village contracts with CCA, based in Cleveland, Ohio, to handle its income tax collection. CCA processes the tax returns, collects the tax money, maintains the tax records, and pursues any tax delinquencies. If a return is not filed by a village resident who has filed returns in the past, CCA sends a computerized notice to the taxpayer's last known address. Nothing more is done at that time. Every five or six years, however, the village requests a "delinquency program audit." When that occurs,

CCA researches the delinquencies from the prior years and sends additional notices to delinquent taxpayers. It holds administrative hearings, then submits to the village any unresolved delinquencies for further proceedings as determined by the village.

{¶ 16} CCA undertook a "delinquency program audit" in 2009 during which it reviewed its records for the previous six years. It determined that tax returns had not been filed by Churchill or her ex-husband for the years 2003 through 2008. Based on that review, CCA sent notices of these delinquencies to Churchill and her ex-husband at their last known Grand Rapids address in September 2009 and October 2009. Copies were sent to Hoffman. Neither of these notices was returned to CCA for failure of delivery. Neither CCA nor the village received a response from the Churchills to either of these notices, so CCA mailed an administrative order to Churchill and her ex-husband on November 4, 2009, requiring them to appear at the village offices on December 1, 2009 to address the delinquencies. Again, this mailing was not returned for any failure of delivery. Neither Churchill nor her ex-husband appeared at the scheduled hearing.

{¶ 17} CCA sent a final list of delinquent taxpayers to the village in 2010, which included both Churchill and her ex-husband's names. Upon receiving the list from CCA, Hoffman and his office prepared to take legal action against the delinquent taxpayers. Karen Rader, the administrative clerk and fiscal officer of the village, reviewed village water bills to determine whether those individuals still resided in Grand Rapids. She found that Mr. Churchill was still listed on the water bill for the Grand Rapids address where notices had been sent. In addition to this, Hoffman knew from his own

observation that the home was still occupied. Based on these pieces of information, Hoffman authorized the village prosecutor to prepare criminal complaints against Churchill, her ex-husband, and 14 other delinquent taxpayers who had failed to respond to the administrative hearing notice. Those complaints were filed in the Bowling Green Municipal Court on September 25, 2010.

{¶ 18} Service upon Churchill was attempted by the court by sending the criminal complaint by certified mail to Churchill's last known Grand Rapids address. The certified mail receipt was returned as non-deliverable, so the clerk made a second attempt at service by regular mail which, again, was returned as non-deliverable. Despite this failed service, the court issued a bench warrant on November 11, 2010, when Churchill failed to appear for her scheduled arraignment. Hoffman was not informed that service had failed or that the bench warrant was issued. Hoffman argues that under these facts, his conduct does not rise to a level that would deprive him of immunity under R.C. 2744.03(A)(6).

{¶ 19} Churchill contends, however, that 10 months before she was arrested, Hoffman was personally advised that she no longer resided in the village. She claims that attorney Mark Tolles, who represented her in her divorce action, was at the courthouse representing another delinquent taxpayer and while there, he noticed that Churchill was among those against whom complaints had been filed. He spoke with Hoffman and Potter and told them that Churchill had not resided in Grand Rapids since divorcing her

husband in 2002. In an affidavit attached to Churchill's opposition to Hoffman's summary judgment motion, Tolles averred that Hoffman and Potter responded to this information by stating that the charges against Churchill would be dismissed.

{¶ 20} Churchill claims that despite being confronted with this information, Hoffman took no action. Months passed and Churchill was eventually arrested, around the corner from where she worked. She was patted down on the side of the road. She was handcuffed, her purse was confiscated, she was required to shower at the jail and to don prison garb. Her family had to post bail, she missed work, and she was forced to hire an attorney. Only after her lawyer negotiated with the prosecutor did the village dismiss the complaint.

{¶ 21} Churchill argues (1) that Hoffman's failure to make reasonable attempts to verify her residency before filing charges, and (2) his failure to effectuate a dismissal of the charges when confronted with information from Tolles and from her employer, establish malicious purpose, bad faith, wantonness, or recklessness.

{¶ 22} We sympathize with Churchill's frustration and humiliation caused by the events giving rise to this case. But we cannot say that Hoffman's conduct rose to the level necessary to overcome the immunity afforded to him under R.C. 2744.03. First, none of the correspondence sent by CCA was returned as undeliverable, thus Hoffman had no reason to know that the address for Churchill was incorrect. Hoffman had no involvement in serving the criminal complaint, did not know that service was

unsuccessful, and bore no responsibility for the bench warrant being issued. Although Hoffman was present during the conversation that allegedly took place with Tolles, the prosecutor was handling the case at that point. And upon receiving verification from Churchill's employer that she had resided outside Grand Rapids since 2002, Hoffman forwarded that information to the prosecutor.

{¶ 23} We understand that Churchill claims that the attempts to verify her residency were insufficient. Churchill and her ex-husband had filed joint returns in the past. Rader checked only the water bill which was issued not to Churchill, but to her ex-husband. Rader noted that the "water [is] still in their name," apparently assuming (wrongly) that the Churchills were still married and residing together. While we agree that it was unreasonable to make this assumption instead of investigating further, we do not find the failure to conduct a more thorough investigation to rise to the level of malice, bad faith, wantonness, or recklessness. *Compare Stevens v. Cox*, 6th Dist. Wood App. No. WD-08-020, 2009-Ohio-391 and *Haas v. Stryker*, 6th Dist. Williams No. WM-12-004, 2013-Ohio-2476 (where plaintiffs brought claims under 42 U.S.C. 1983 against villages and tax administrators where tax administrators conducted *no* investigations before filing criminal complaints against the plaintiffs). Absent that degree of culpability, Hoffman is immune from liability under R.C. 2744.03. We, therefore, find Churchill's assignment of error not well-taken.

IV. CONCLUSION

{¶ 24} We find Churchill's assignment of error not well-taken and affirm the November 4, 2013 decision of the Wood County Court of Common Pleas. The costs of this appeal are assessed to Churchill pursuant to 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, J. _____
JUDGE

James D. Jensen, J.
CONCUR. _____
JUDGE