

[Cite as *Walsh v. Mayfield*, 2009-Ohio-2377.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92309

KENNETH J. WALSH

PLAINTIFF-APPELLANT

VS.

VILLAGE OF MAYFIELD

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-645236

BEFORE: Gallagher, P.J., Stewart, J., and Boyle, J.

RELEASED: May 21, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

SEAN C. GALLAGHER, P.J.:

{¶1} Appellant, Kenneth J. Walsh, appeals the dismissal of his pro se complaint against the village of Mayfield (“Village”) pursuant Civil Rule 12(B)(6). For the reasons outlined below, we affirm.

{¶2} On May 17, 2001, Walsh obtained a building permit to build a new home in the Village. On November 7, 2005, the Village filed three charges against Walsh in Lyndhurst Municipal Court, relating to the home construction. Walsh was charged with a violation of Village of Mayfield Ordinance No. 1127.45A2, involving “Minimum Standards”; a violation of Village of Mayfield Ordinance No. 1353.07, involving “Exterior Property Errors”; and a violation of Village of Mayfield Ordinance No. 1321.03, a “Permit Violation” for not completing the construction on a new dwelling within one year of obtaining the permit. As part of a plea agreement, Walsh pled no contest to the third violation, which involved his failure to complete the work within one year of securing the building permit, on October 5, 2006, and he was sentenced to \$250 and costs. The remaining two charges were subsequently dismissed by the court on December 21, 2006.

{¶3} Walsh then filed a complaint in common pleas court on December 21, 2007. The complaint alleged four causes of action, including (1) intentional infliction of emotional distress; (2) a procedural due process claim under 42 U.S.C. §1983; (3) malicious prosecution; and (4) abuse of process. The Village

had the case removed to federal court. Eventually, the federal court dismissed the procedural due process claim under 42 U.S.C. §1983, because of the statute of limitations. The federal court declined to assert supplemental jurisdiction over the remaining state claims and remanded the case back to the original trial court.

{¶4} Upon remand to the trial court, the Village filed a motion to dismiss the complaint and Walsh filed a brief in opposition. The trial court granted the Village's motion to dismiss on September 30, 2008, specifically finding that the acts raised in Walsh's complaint were "governmental" in nature pursuant to R.C. 2744.01C(2)(p) and R.C. 2744.01C(2)(i). The court expressly found that the Village was immune and that the Village's conduct in not providing notice prior to charging was not so outrageous, extreme, or beyond the possible bounds of decency to provide a cause of action for abuse of process, malicious prosecution, or intentional infliction of emotional distress.

{¶5} Walsh filed his notice of appeal on October 27, 2008, raising two assignments of error, which state the following:

{¶6} "The trial court erred in finding that the Appellee's acts were governmental in nature."

{¶7} "The trial court erred in finding the Appellee is immune from liability with respect to R.C. 2744.01."

{¶8} An appellate court reviews a Civ.R. 12(B)(6) motion to dismiss under a de novo standard. *Mackey v. Luskin*, Cuyahoga App. No. 88874, 2007-Ohio-5844. In order for a trial court to dismiss a complaint under Civ.R. 12(B)(6) for failure to state a claim upon which relief may be granted, it must appear beyond doubt that the plaintiff can prove no set of facts in support of his or her claim that would entitle the plaintiff to relief. *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 493, 2006-Ohio-2625, 849 N.E.2d 268. Also, a reviewing court accepts as true all material allegations of the complaint and makes all reasonable inferences in favor of the plaintiffs. *Maitland v. Ford Motor Co.*, 103 Ohio St.3d 463, 465, 2004-Ohio-5717, 816 N.E.2d 1061.

{¶9} As an initial matter, we note that Walsh's brief fails to cite any legal authority in support of his assigned errors and we could disregard both assigned errors pursuant to App.R. 12(A)(2). Nevertheless, we will address these assigned errors to the extent that Walsh argued them in his brief.

{¶10} Essentially Walsh contends that his complaint for intentional infliction of emotional distress, malicious prosecution, and abuse of process should not have been dismissed. Walsh argues that immunity does not apply in this case because the Village did not act within the scope of the law when it charged him with several building code violations. Again, Walsh cites no law to support his contentions.

{¶11} As the Ohio Supreme Court has held, under R.C. 2744.02, political subdivisions are immune from intentional torts. *Wilson v. Stark Cty. Dept. of Human Services*, 70 Ohio St.3d 450, 1994-Ohio-394, 639 N.E.2d 105. Since the Village is a political subdivision under R.C. 2744.01(F), it is immune from Walsh's claims of malicious prosecution, intentional infliction of emotional distress, and abuse of process because they are intentional torts.

{¶12} Only if an exception applies will a subdivision be stripped of its immunity. The exceptions are enumerated in R.C. 2744.02(B)(1-5). None of these exceptions apply in this case. Walsh's claims do not involve a motor vehicle, or negligent performance of a proprietary function, or the condition of streets or highways, nor do Walsh's claims involve an injury due to a physical defect on the grounds of a public building. Finally, there is no express imposition of liability by statute. As a result, the Village is immune. Accordingly, Walsh's two assignments of error are overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, PRESIDING JUDGE

MELODY J. STEWART, J., and
MARY J. BOYLE, J., CONCUR