[Cite as *Workman v. Cleveland Clinic*, 2010-Ohio-1756.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93509

CECIL RAY WORKMAN, ET AL.

PLAINTIFFS-APPELLANTS

vs.

CLEVELAND CLINIC FOUNDATION, ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-669691

BEFORE: Dyke, J., Gallagher, A.J., and Stewart, J.

RELEASED: April 22, 2010

JOURNALIZED:

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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. 2.2(A)(1).

ANN DYKE, J.:

{¶ 1} Plaintiffs Cecil Ray and Sveta Workman appeal from the order of the trial court that awarded summary judgment to defendants, the Cleveland Clinic Foundation ("Clinic"), a Clinic nurse, and two Clinic police officers in plaintiffs' action for defamation and other claims. For the reasons set forth below, we affirm.

{¶ 2} Plaintiffs filed this action on September 5, 2008,[1] asserting that on August 11, 2005, while attempting to get care for one of their minor sons, nurse Delmonte falsely accused Cecil Workman of striking his other minor son. According to plaintiffs, the nurse summoned the Clinic police who then arrested Cecil Workman for disorderly conduct, a charge that was later dismissed. Plaintiffs set forth claims for defamation, false imprisonment, malicious prosecution, false arrest, negligence, negligent infliction of emotional distress, and loss of consortium.

{¶ 3} Defendants denied liability and filed a motion for summary judgment. In their motion, defendants asserted that the nurse observed Cecil Workman strike one of his sons, and asked Workman to leave the room. He aggressively refused

[1] Plaintiffs originally filed this action on August 11, 2006, and voluntarily dismissed it on September 7, 2007.

to do so, and she then called the Clinic police. Workman was then informed that he was being arrested and turned Workman over to the Cleveland Police with the following statement from Clinic Police Officer Strayhan, offered in connection with a probable cause determination:

{¶ 4} "Defendant attempted to cause physical harm to family member. Defendant punched his 12 year old son, twice in the back."

{¶ 5} Defendants maintained that they are immune from liability pursuant to R.C. 2151.421, that plaintiffs sustained no damages, that the disorderly conduct charge was based upon probable cause, that Cecil Workman did not suffer severe emotional distress, and that the derivative claim for loss of consortium must likewise fail.

{¶ 6} In opposition, plaintiffs challenged the credibility of the nurse's testimony regarding the incident. Plaintiffs asserted that Cecil Workman did not strike his son and that, when asked to leave the room, was compliant. They further indicated that Cecil Workman spent 72 hours in jail, was charged with disorderly conduct, and that charges were ultimately dismissed. Plaintiffs argued that there is no immunity pursuant to R.C. 2151.421 because there is no evidence that the Clinic police officers are municipal peace officers. Plaintiffs additionally asserted that there was no probable cause to arrest Cecil Workman, and that he sustained both damages and humiliation as a result of this matter.

{¶ 7} The trial court granted defendants' motion for summary judgment, concluding that the claims were barred by R.C. 2151.421, and that the report to

Clinic police complied with the requirement that the report pertaining to abuse be made to the public children services agency or a municipal or county peace officer. Plaintiffs now appeal and assign two errors for our review.

{¶ 8} For their first assignment of error, plaintiffs contend that the trial court erred in affording defendants immunity pursuant to R.C. Chapter 2151.

{¶ 9} With regard to procedure, we note that an appellate court conducts a de novo review of a trial court's award of summary judgment. *Grafton v. Ohio Edison Co.,* 77 Ohio St.3d 102, 1996-Ohio-336, 671 N.E.2d 241. Pursuant to Civ.R. 56(C), summary judgment may not be granted unless it is determined that: (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made.

{¶ 10} Where a movant seeks summary judgment on the basis that the nonmoving party cannot prove its case, the movant bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 662 N.E.2d 264. If the movant satisfies its initial burden, “the nonmoving party then has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine

issue for trial and, if the nonmovant does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party." Id.

{¶ 11} With regard to the substantive issues, R.C. 2151.421 sets forth certain duties of reporting abuse or neglect and provides in pertinent part as follows:

{¶ 12} "(A)(1)(a) No person described in division (A)(1)(b) of this section who is acting in an official or professional capacity and knows, or has reasonable cause to suspect, based on facts that would cause a reasonable person in a similar position to suspect, that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child shall fail to immediately report that knowledge or reasonable cause to suspect to the entity or persons specified in this division. * * * [T]he person making the report shall make it to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. * * *

{¶ 13} "(b) Division (A)(1)(a) of this section applies to any person who is * * * [a] physician, including a hospital intern or resident; dentist; podiatrist; practitioner of a limited branch of medicine as specified in Section 4731.15 of the Revised Code; registered nurse; licensed practical nurse; visiting nurse; other health care professional; * * *

{¶ 14} "* * *

{¶ 15} "(B) Anyone who knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in similar circumstances to suspect, that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect of the child may report or cause reports to be made of that knowledge or reasonable cause to suspect to the entity or persons specified in this division. * * *

{¶ 16} "(G)(1)(a) Except as provided in division (H)(3) of this section, anyone or *any hospital*, institution, school, health department, or agency participating in the making of reports under division (A) of this section, *anyone or any* hospital**,** institution, school, health department, or agency participating in good faith in the making of reports under division (B) of this section, *and anyone participating in good faith in a judicial proceeding resulting from the reports, shall be immune from any civil or criminal liability for injury***,** *death, or loss to person or property that otherwise might be incurred or imposed as a result of the making of the reports or the participation in the judicial proceeding***.** (Emphasis added.)

{¶ 17} "* * *

{¶ 18} "(2) In any civil or criminal action or proceeding in which it is alleged and proved that participation in the making of a report under this section was not in

good faith or participation in a judicial proceeding resulting from a report made under this section was not in good faith, the court shall award the prevailing party reasonable attorney's fees and costs and, if a civil action or proceeding is voluntarily dismissed, may award reasonable attorney's fees and costs to the party against whom the civil action or proceeding is brought."

{¶ 19} In *Liedtke v. Carrington* (2001), 145 Ohio App.3d 396, 763 N.E.2d 213, this Court held that the professionals listed in R.C. 2151.421(A)(1)(b) have immunity under 2151.421(G)(1)(a) for their actions when making a report under R.C. 2151.421(A)(1)(b), and are not required to make the report to the proper authorities with good faith as the good-faith requirement is imposed only under R.C. 2151.421(B). Id., citing to *Surdel v. MetroHealth Med. Ctr*. (1999), 135 Ohio App.3d 141, 733 N.E.2d 281 ("Because these appellees were obligated to report their knowledge or suspicions under R.C. 2151.421(A)(1)(a), it follows that they are immune from liability for doing so by operation of R.C. 2151.421(G)(1)(a)."); and *Casbohm v. MetroHealth Med. Ctr*. (2000), 140 Ohio App.3d 58, 746 N.E.2d 661 ("R.C. 2151.421 does provide absolute immunity to medical professionals such as the appellees in the instant case who are asked to provide assistance to law enforcement agencies and social services providers.")

{¶ 20} The *Surdel* Court also explained that immunity under R.C. 2151.421(G)(1)(a) would also attach to the extent that the appellees participated in good faith in judicial proceedings resulting from the reports. *Surdel v. MetroHealth Med. Ctr.,* supra.

{¶ 21} In *Walters v. The Enrichment Ctr. of Wishing Well, Inc*. (1999), 133 Ohio App.3d 66, 73, 726 N.E.2d 1058, 1063, this court discussed the public policy rationale underlying the legislative grant of immunity found in R.C. 2151.421(G)(1)(a):

{¶ 22} "In mandating that those persons listed in R.C. 2151.421(A) report known or suspected physical or mental abuse or neglect, it is clear that [the legislature believed that] the societal benefits of preventing child abuse outweigh the individual harm which might arise from the filing of an occasional false report. The grant of immunity found in R.C. 2151.421(G)(1) for those persons reporting under the mandatory provisions of R.C. 2151.421(A) similarly promotes the public policy goal of protecting children from physical and mental abuse by ensuring that those persons who are required by law to report such abuse are not deterred from this duty by the daunting prospect of expensive and time-consuming litigation."

{¶ 23} In this matter, the undisputed facts demonstrate that nurse Delmonte is a mandatory reporter, so R.C. 2151.421(G)(1) provides immunity for any civil liability that might arise from the making of a report of suspected child abuse pursuant to the mandatory reporting obligations of R.C. 2151.421(A), regardless of the good faith of the complainant. The trial court therefore properly entered judgment for her as to all claims.

{¶ 24} The hospital and its police officers are also immune to the extent that these entities participated in good faith in the making of the report. R.C. 2151.421(G)(1). Lack of good faith is synonymous with bad faith. *Barney v.*

Univ. Hospitals (Dec. 17, 1998), Cuyahoga App. No. 74188. "'Bad faith' connotes a dishonest purpose, conscious wrongdoing, intent to mislead or deceive, or the breach of a known duty through some ulterior motive or ill-will." Id., quoting *Jackson v. Butler Cty. Bd. of Commrs.* (1991), 76 Ohio App.3d 448, 602 N.E.2d 363. The record indicates that the defendants participated in good faith in the making of the report. Moreover, there was no evidence that any of the defendants acted in bad faith, with a dishonest purpose, conscious wrongdoing, intent to mislead or deceive, or to breach of a known duty through some ulterior motive or ill-will. Defendants are immune from any civil liability arising out of the making of the report of suspected abuse in this case, and summary judgment was properly granted by the trial court.

{¶ 25} To the extent that judicial proceedings resulted from the reports, immunity under R.C. 2151.421(G)(1)(a) would also attach to the extent that defendants participated in good faith in judicial proceedings resulting from the reports. *Surdel v. MetroHealth Med. Ctr.,* supra.

{¶ 26} In this matter, we conclude that all of the claims asserted against the Clinic and its police officers arise in connection with their participation in the judicial proceedings that resulted from the report. That is, plaintiffs set forth claims for defamation, false imprisonment, malicious prosecution, false arrest, negligence, negligent infliction of emotional distress, and loss of consortium and all of these claims arise in connection with participation in the judicial proceedings that resulted from the report. In this instance, the record indicates that defendants

acted in good faith as the report was based upon the nurse's observations, and followed her efforts to remove Cecil Workman from the treatment room in order to facilitate treatment of the patient and to protect the other child. Plaintiffs offered no evidence to indicate that defendants participated in bad faith or dishonest purpose, conscious wrongdoing, intent to mislead or deceive, or the breach of a known duty through some ulterior motive or ill-will without good faith in the brief judicial proceedings that resulted from the report. Defendants were therefore entitled to immunity on plaintiffs' claims. The trial court properly granted defendants summary judgment on the claims for relief.

{¶ 27} Plaintiffs insist that there is no immunity since Delmonte and the other defendants failed to convey the report to the public children services agency or a municipal or county peace officer. This claim is without merit as the Clinic police are peace officers pursuant to R.C. 4973.17, and they in turn conveyed the report pertaining to abuse to the Cleveland Municipal Court Prosecutor. The trial court therefore properly found that defendants complied with the requirement that the report be made to a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred, as required by R.C. 2151.421(A) and R.C. 2151.421(G).

{¶ 28} In accordance with all of the foregoing, the first assignment of error is without merit.

{¶ 29} For their second assignment of error, plaintiffs argue that the trial court erred in awarding defendants summary judgment on the individual claims for

defamation, false arrest, false imprisonment, malicious prosecution, negligent infliction of emotional distress, and loss of consortium. Specifically, plaintiffs assert that defendants lacked probable cause to arrest Cecil Workman, detain him, and participate in the prosecution, thereby rendering the court's award of summary judgment to defendants erroneous with respect to the false arrest, false imprisonment, and malicious prosecution claims. Plaintiffs further assert that the fair comment privilege is not applicable, and that they sustained damages, thereby rendering the court's grant of summary judgment erroneous as to the defamation claim. Plaintiffs also maintain that Cecil Workman suffered severe emotional distress, thereby rendering the court's judgment erroneous as to the claim for negligent infliction of emotional distress.

{¶ 30} We have previously concluded, however, that all of the claims asserted against defendants arose in connection with either the report of abuse or in connection with participation in the judicial proceedings that resulted from the report. That is, plaintiffs' claims for defamation, false imprisonment, malicious prosecution, false arrest, negligence, negligent infliction of emotional distress, and loss of consortium, all arose in connection with participation in the judicial proceedings that resulted from the report.

{¶ 31} The record indicates that defendants acted in good faith because the report was based upon the nurse's observations, and followed her efforts to remove Cecil Workman from the treatment room in order to facilitate treatment of the patient and to protect the other child. Plaintiffs, however, offered no evidence

to indicate that defendants participated in the judicial proceedings that resulted from the report in bad faith, i.e., with a dishonest purpose, conscious wrongdoing, intent to mislead or deceive, or the breach of a known duty through some ulterior motive or ill-will. Therefore, the trial court properly granted defendants summary judgment on these claims. Accord *Miller v. Franklin Cty. Children Servs.* (May 22, 2001), Franklin App. No. 00AP-1375 (defendants were immune from liability pursuant to R.C. 2151.421(G) for defamation based upon abuse report where there were no allegations that defendants conducted the investigation of alleged sexual abuse in bad faith or with willful, reckless or wanton disregard of plaintiff's rights); *Rohskopf v. The Summit Therapy Ctr.* (Aug. 15, 2001), Wayne App. No. 00CA0090 (concluding that mandatory reporter is absolutely immune from liability for negligent infliction of emotional distress following report of abuse, and stating that a non-mandatory reporter is immune if he or she has a good faith basis for the report). Finally, as to the claim for loss of consortium, we note that in *Garofolo v. Fairview Park,* Cuyahoga App. Nos. 92283 and 93021, 2009-Ohio-6456, "[A] claim for loss of consortium is derivative in that the claim is dependent upon the defendant's having committed a legally cognizable tort upon the spouse who suffers bodily injury." *Bowen v. Kil-Kare, Inc*. (1992), 63 Ohio St.3d 84, 93, 585 N.E.2d 384. Inasmuch as we have determined that the trial court did not err in granting defendants' motion for summary judgment as to the other claims for relief, the trial court likewise properly entered judgment for defendants on the derivative claim for consortium.

Affirmed.

It is ordered that appellees recover from appellants 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.

ANN DYKE, JUDGE

SEAN C. GALLAGHER, A.J., and
MELODY J. STEWART, J., CONCUR