[Cite as *Newton v. Cleveland Law Dept.*, 2015-Ohio-1460.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102042

AUTHOR CHARLES D. NEWTON

PLAINTIFF-APPELLANT

vs.

CITY OF CLEVELAND LAW DEPT., ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-829173

BEFORE: Laster Mays, J., Celebrezze, A.J., and Kilbane, J.

RELEASED AND JOURNALIZED: April 16, 2015

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ANITA LASTER MAYS, J.:

{¶1} Plaintiff-appellant "Author" Charles D. Newton ("Newton"), proceeding pro se as he did in the trial court, appeals from the trial court's order that granted the Civ.R. 12(B)(6) motions to dismiss his complaint filed by defendants-appellees the city of Cleveland, former city of Cleveland Law Director Michael McGrath, and Cleveland Police Department Detectives James McPike and Jody Remington (hereinafter "the city appellees"), and Cuyahoga County's Prosecutor, Timothy McGinty, former Cuyahoga County Prosecutor William D. Mason, Cuyahoga County's Medical Examiner Dr. Thomas P. Gilson, and the Cuyahoga County Medical Examiner's Office's Administrator Hugh Shannon (hereinafter, "the county appellees"). The trial court thereby implicitly denied Newton's motion to amend his complaint.

{¶2} Newton sets forth one assignment of error, but raises numerous issues. He asserts that dismissal of his complaint was inappropriate on several grounds, and that the trial court abused its discretion in failing to permit him to amend his complaint.

{¶3} After a review of the record in this case, this court cannot agree that the trial court committed any error. Consequently, the trial court's order is affirmed.

{¶4} Newton filed his complaint against appellees on July 1, 2014. The caption states that it was a "complaint for: 1. Defamation[;] 2. Obstruction[;] 3. Fraud[;] 4. Negligence[; and] 5. Mental Anguish." Newton set forth an "introduction" to his complaint that stated in pertinent part as follows:

> 1. This action is for defamation per se, obstruction, fraud and negligence per se resulting in mental anguish involving the published [and

> pending] eBooks * * * written by Plaintiff Author Charles D. Newton. Defendants have engaged in defamation per se by fraudulent misrepresentation of the facts to intentionally discredit and hinder the Plaintiff's literary properties. Defendants have also been willfully negligent in their duties * * * [w]ith the intent to conceal an inept and failed investigation, to protect [their] reputation and careers * * * and cover-up a pivotal cold case that essentially should have prevented the murders [committed by Anthony Sowell]. These deliberately slanderous statements were issued to the local media * * * and later to author Steve Miller, * * * who published the defendants' libelous statements with international publishers * * * . * * * The Defendants' collective actions have adversely impacted the Plaintiff's * * * place * * * in the commercial literary market * * * , causing the Plaintiff's mental anguish. This court is humbly requested to reset the statutes pursuant to Ohio Discovery Rule * * * in lieu of new evidence discovered in [another author's] novel * * * [a]ctually discovered by Plaintiff December 2012. The evidence can be found in a photo taken by Cuyahoga County Coroner's office * * * of Sowell's victims' jewelry. Said photo includes unique ladies silver-grey embossed watch (physical evidence) belonging to Sowell survivor Vernice Crutcher June 2006. This watch was actually a gift [to Crutcher] purchased by the Plaintiff the spring of 2005. If discovery rules deemed not applicable please defer to statutes for obstruction, negligence and fraud * * * .

{¶5} Newton set forth a "statement of facts" that consisted of 96 paragraphs that presented the comprehensive details that underlay his "introduction," then set forth 11 "claims for relief." Five of them requested "injunctive" relief from the trial court. Newton wanted: (1) to inspect the jewelry removed from Sowell's residence, (2) the city of Cleveland to amend its charter to provide for independent review of police investigations, (3) another judge to preside in this case, (4) the Sowell jury to hear this case, and (5) "formal charges" to be presented against Sowell on behalf of his "victim" Vernice Crutcher.

{¶6} Newton additionally sought of the trial court to apply a two-year "Discovery Rule" to his "personal injury" claim, and to make the following findings: (1) appellees'

actions had defamed his "literary property," (2) appellees violated R.C. 2379.01[1] by their actions, (3) appellees' actions violated R.C. 2921.32[2] and thereby had prevented the "truth" of his writings from being "exposed," and (4) "negligently" and "purposefully" withheld evidence and failed to fulfil their "legal duties" in order to "impede and bring harm to Plaintiff's literary property."

{¶7} Finally, Newton asserted that appellees' actions, and their subsequent success in their careers after committing their "unlawful" actions, had caused him mental anguish and deprived him of all the commercial opportunities his "literary property" should have garnered.[3] Newton demanded "compensatory and punitive damages" against appellees "in the amount above the jurisdictional minimum of this Court."

{¶8} In response to the complaint, the city appellees and the county appellees separately filed Civ.R. 12(B)(6) motions to dismiss Newton's complaint. Although Newton filed a motion for leave to file an amended complaint "instanter," the trial court subsequently granted appellees' motions to dismiss.

{¶9} Newton presents the following assignment of error in his appeal.

> I. The trial court erred in allowing defendant's (sic) Motion to Dismiss.

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[1]There is no such statute.

[2]This statute makes obstruction of justice a criminal offense.

[3]Newton believed that one of these opportunities would have included a "cinematic production" based upon his writings.

{¶10} Newton asserts that his complaint and his amended complaint "as a whole," sufficiently "countered" appellees' arguments in support of their Civ.R. 12(B)(6) motions; therefore, the trial court erred in dismissing the claims he presented. He is incorrect.

{¶11} A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted tests the legal sufficiency of a claim. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs*., 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992). When deciding a Civ.R. 12(B)(6) motion, the court must take all of the factual allegations of the complaint as true, and decide whether the plaintiff has argued any set of facts that could support a claim for relief. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988); *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245, 327 N.E.2d 753 (1975), syllabus. This court reviews the trial court's decision de novo. *Hendrickson v. Haven Place, Inc.*, 8th Dist. Cuyahoga No. 100816, 2014-Ohio-3726, ¶ 12.

{¶12} In reviewing the trial court's decision, however, this court follows the rule set forth in *Meyers v. First Natl. Bank of Cincinnati*, 3 Ohio App.3d 209, 444 N.E.2d 412 (1st Dist.1981), that pro se civil litigants are bound by the same rules and procedures as those litigants who retain counsel. *Heller v. Ohio Dept. of Jobs & Family Servs*., 8th Dist. Cuyahoga No. 92965, 2010-Ohio-517, ¶ 18. They are not to be accorded greater rights and must accept the results of their own mistakes and errors. *Id.*

{¶13} Newton officially presented causes of action against appellees for defamation, fraud, obstruction, negligence, and mental anguish, all based upon the manner in which appellees either performed or neglected their "legal duties." Appellees' motions to dismiss claimed that R.C. Chapter 2744 provided them immunity from Newton's causes of action.

{¶14} With respect to the city law department and the county offices, R.C. Chapter 2744 establishes a three-tiered analysis for reviewing claims of political-subdivision immunity. *Colbert v. Cleveland*, 99 Ohio St.3d 215, 2003- Ohio-3319, 790 N.E.2d 781, ¶ 7. R.C. Chapter 2744 classifies the functions of political subdivisions as either governmental functions or proprietary functions. In the first tier of the analysis, the court determines if the allegedly tortious act stemmed from a governmental or proprietary function under R.C. 2744.02(A)(1) because "a political subdivision is *not* liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by *any act or omission of the political subdivision or an employee* of the political subdivision *in connection with a governmental* or proprietary *function*." (Emphasis added.) The operation of a police department, a prosecutor's office, and a county medical examiner's office are governmental functions; consequently, the city law department and the county offices were presumptively immune from Newton's claims. R.C. 2744.01(C)(1)(c), (C)(2)(a), (C)(2)(f), and (C)(2)(I); *Winkle v. Zettler Funeral Homes, Inc.*, 182 Ohio App.3d 195, 2009-Ohio-1724, 912 N.E.2d 151 (12th Dist.).

{¶15} In the second tier of the analysis, immunity is removed for any of five categories of claims under R.C. 2744.02(B)(1) through 2744.02(B)(5). Those categories are (1) the negligent operation of a motor vehicle by an employee with certain exceptions, (2) negligent acts by an employee engaged in a proprietary function, (3) the negligent failure to keep roads in good repair, (4) negligence that results in injury on a subdivision property used for a governmental function, and (5) "when *civil* liability is *expressly* imposed upon the political subdivision *by a section of the Revised Code* * * * ." (Emphasis added.) If immunity is removed under one or more of these subsections, only then is the third tier of the analysis utilized. *Cramer v. Auglaize Acres*, 113 Ohio St.3d 266, 2007-Ohio-1946, 865 N.E.2d 9.

{¶16} Clearly, none of the allegations in Newton's complaint against the city law department and the county offices involved any of the R.C. 2744.02(B) exceptions to immunity, thus precluding any need to consider the third tier of the analysis. Newton's complaint, therefore, failed to state claims against these appellees. *DiGiorgio v. Cleveland*, 8th Dist. Cuyahoga No. 95945, 2011-Ohio-5878, ¶ 32.

{¶17} A suit against an employee of a political subdivision in the employee's official capacity, moreover, is an action against the entity itself and the employees are entitled to the same immunity due the political subdivision. *Lambert v. Clancy*, 125 Ohio St.3d 231, 2010-Ohio-1483, 927 N.E.2d 585. Immunity is also extended to employees of political subdivisions who act in individual capacities. R.C. 2744.03(A)(6); *O'Toole v. Denihan*, 118 Ohio St.3d 374, 2008-Ohio-2574, 889 N.E.2d

505, ¶ 47; *Cramer* at ¶ 17. For claims against employees acting in an individual capacity, the three-tiered analysis used to determine whether a political subdivision is immune is not used. *Id.* Instead, R.C. 2744.03(A)(6) provides that an employee is personally immune from liability unless:

> (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; [or]
>
> (c) Civil liability is expressly imposed upon the employee by a section of the Revised Code.

{¶18} For the above purposes, allegations of negligence are insufficient to overcome the immunity granted to an employee of a political subdivision who acts within his or her official duties. *Fabrey v. McDonald Village Police Dept.*, 70 Ohio St.3d 351, 356, 639 N.E.2d 31 (1994). Newton did not specifically assert that any individual appellees acted toward him outside of the scope of their official positions. *Lambert*.

{¶19} Nevertheless, to the extent that Newton's complaint can be interpreted to allege that the city law director, the police officers, the county prosecutors, and the county medical examiner acted in their individual capacities and in wanton manner toward him,[4] the allegations he put forward were insufficient. The Ohio Supreme Court held in *Fabrey* that:

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[4]Newton lacked standing to make such allegations on either Vernice Crutcher's or anyone else's behalf. *Yeager v. Moody*, 7th Dist. Carroll No. 13 CA 54, 2014-Ohio-2931.

> The standard for showing wanton misconduct is * * * high. In *Hawkins v. Ivy* (1977), 50 Ohio St.2d 114, 4 O.O.3d 243, 363 N.E.2d 367, syllabus, we held that wanton misconduct was the failure to exercise any care whatsoever. In *Roszman v. Sammett* (1971), 26 Ohio St.2d 94, 96-97, 55 O.O.2d 165, 166, 269 N.E.2d 420, 422, we stated, "mere negligence is not converted into wanton misconduct unless the evidence establishes a disposition to perversity on the part of the tortfeasor." Such perversity must be under such conditions that the actor must be conscious that his conduct will in all probability result in injury. *Id.* at 97, 55 O.O.2d at 166, 269 N.E.2d at 423. In *Thompson v. McNeill* (1990), 53 Ohio St.3d 102, 559 N.E.2d 705, we employed the recklessness standard as enunciated in 2 Restatement of the Law 2d, Torts (1965), at 587, Section 500: "The actor's conduct is in reckless disregard of the safety of others if * * * such risk is substantially greater than that which is necessary to make his conduct negligent."

Id. at 355.

{¶20} At any event, the face of Newton's complaint demonstrated that his claims of defamation and "mental anguish" were barred by the applicable statutes of limitation. *Bradigan v. Strongsville City Schools*, 8th Dist. Cuyahoga No. 88606, 2007-Ohio-2773. All of the instances of alleged defamation causing him "mental anguish," for example, occurred at least two years before Newton filed his complaint. *Montgomery v. Ohio State Univ.*, 10th Dist. Franklin No. 11AP-1024, 2012-Ohio-5489, ¶ 13-16; *Breno v. Mentor*, 8th Dist. Cuyahoga No. 81861, 2003-Ohio-4051, ¶ 19-20. Newton evidenced his awareness of this shortcoming by requesting the trial court in his complaint to "reset" the statutes of limitation that applied to his causes of action.[5]

[5]Inasmuch as limitations of actions are established by the legislature, the trial court lacked authority to grant Newton's request.

{¶21} Additionally, to the extent that Newton claimed that individual employees of the city and the county obstructed justice in violation of R.C. 2921.32, this claim did not provide Newton with a private cause of action against them. *Pearson v. Warrensville Hts. City Schs.*, 8th Dist. Cuyahoga No. 88527, 2008-Ohio-1102.

{¶22} Newton further asserts that the trial court abused its discretion when it granted appellees' Civ.R. 12(B)(6) motions without permitting him to amend his complaint. This assertion lacks merit.

{¶23} Initially, it must be noted that Newton filed his "amended complaint" in contravention of Civ.R. 15(A), because he did not first seek leave of the trial court; he simply filed it "instanter." In addition, a review of Newton's amended complaint demonstrates that it neither constituted a proper pleading nor alleged anything of substance. *Hubbard v. Cleveland Metro. Sch. Dist.*, 8th Dist. Cuyahoga No. 98304, 2013-Ohio-1028. Because Newton's attempt to overcome appellees' Civ.R. 12(B)(6) motions was futile, the trial court committed no error. *Demmings v. Cuyahoga Cty.*, 8th Dist. Cuyahoga No. 88958, 2013-Ohio-499; *DiGiorgio v. Cleveland*, 8th Dist. Cuyahoga No. 95945, 2011-Ohio-5878, ¶ 33.

{¶24} Newton's assignment of error is overruled. The trial court's order is affirmed.

It is ordered that appellees 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.

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ANITA LASTER MAYS, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
MARY EILEEN KILBANE, J., CONCUR