[Cite as *Reid v. Cleveland Police Dept.*, 2016-Ohio-3466.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103781

DR. TOBIAS R. REID, PH.D.

PLAINTIFF-APPELLANT

vs.

CLEVELAND POLICE DEPARTMENT, ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-838140

BEFORE: Kilbane, P.J., McCormack, J., and Blackmon, J.

RELEASED AND JOURNALIZED: June 16, 2016

APPELLANT

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MARY EILEEN KILBANE, P.J.:

{¶1} Plaintiff-appellant, Tobias R. Reid ("Reid"), pro se, appeals from the trial court's decision granting summary judgment to defendants-appellees, the Cleveland Police Department ("CPD"), Sergeant Keith Larson ("Sergeant Larson"), and Sergeant Dale Moran ("Sergeant Moran") (collectively referred to as "defendants"), in Tobias's action for damages stemming from the seizure and subsequent sale of his vehicle. Having reviewed the record and the controlling case law, we reverse and remand.

{¶2} On July 11, 2014, Reid was charged with breaking and entering and theft, both of which carried forfeiture specifications regarding a 2001 Ford SUV, and possession of criminal tools. Reid's SUV was then "junked" on September 19, 2014, which was prior to the termination of the criminal proceedings and prior to the dismissal of the forfeiture specifications.

{¶3} On December 22, 2014, Reid entered a guilty plea to an amended count of petty theft, a first-degree misdemeanor. The remaining counts were dismissed, including the forfeiture specifications regarding the 2001 Ford SUV. Also on December 22, 2014, the trial court issued a $100 fine against Reid and "ordered that the Cleveland Police Department return to Reid the SUV that was seized as part of the investigation." *See State v. Reid*, 8th Dist. Cuyahoga No. 102536, 2015-Ohio-4185, ¶ 3-4 ("*Reid I*").

{¶4} In *Reid I,* Reid maintained that his guilty plea had to be vacated because the trial court's order regarding the return of his SUV was not met because the police department "junked" the vehicle prior to the court's disposition of the case. This court upheld the guilty plea, but noted as follows:

> If the police department did in fact scrap the vehicle without order of the court, the department violated R.C. 2981.11, which governs the safekeeping of property in custody of the police. However, this would not have voided Reid's plea, but would have entitled him to compensation for the value of the vehicle, that is, assuming he could prove ownership of the SUV. *See Kimmie v. Ohio Dept. Of Rehab. & Corr.*, Ct. of Cl. No. 2005-03849-AD, 2005-Ohio-4612, ¶ 6, citing *Berg v. Belmont Corr. Inst.*, Ct. of Cl. No. 97-09261-AD (1998) (a plaintiff "may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction.") If property is neither forfeited nor unclaimed, it should be returned to the defendant. *State v. Lenard,* 8th Dist. Cuyahoga Nos. 96975 and 97570, 2012-Ohio-1636, ¶ 81-83.

Id. at ¶ 11.

{¶5} On December 30, 2014, Reid filed this pro se complaint for damages against the CPD; Sergeant Larson, Director of the Cleveland Police Impound Unit ("impound unit"); and Sergeant Moran, a Second District Police Supervisor. Defendants

denied liability and moved for summary judgment.

{¶6} In their motion for summary judgment, defendants argued that the police department does not have the legal capacity to be sued. They also argue that they are immune from liability and entitled to judgment as a matter of law on the conversion claim. In support of their motion, defendants demonstrated that on August 5, 2014, the impound unit sent a certified letter to Reid advising him that his vehicle would be "disposed of on August 22, 2014, if it was not claimed." When Reid did not claim the vehicle by that date, the impound unit obtained a salvage title to the vehicle and then "disposed of it" on September 19, 2014. However, it is unclear in the record whether Reid was in jail at the time that the notice was served at his home.

{¶7} In opposition, Reid argued that defendants acted contrary to law by disposing of the vehicle while the forfeiture specifications in the criminal prosecution were still pending and had not yet been proven. He also argued that the defendants violated the trial court's sentencing order that "ordered that the Cleveland Police Department return to Reid the SUV that was seized as part of the investigation." Reid also argues that this court's prior opinion in *Reid I* supports his claim for damages.

{¶8} On October 28, 2015, the trial court determined that there were no genuine issues of material fact and that defendants are entitled to judgment as a matter of law.

{¶9} Reid now appeals, assigning the following error for our review.

Assignment of Error

The trial court erred in granting summary judgment [to defendants] Sgt.

> Keith Larson, Sgt. Dale Moran and Cleveland Police Department as [defendants] violated Ohio Revised Code 2981.11, which governs the safekeeping of property in the custody of police.

{¶10} In his sole assignment of error, Reid argues that the trial court erred in awarding defendants summary judgment because defendants did not follow proper procedures in "junking" his SUV. He also argued that despite defendants' claims that they are entitled to immunity herein, this court's opinion in *Reid I* supports his claim for damages.

Standard of Review

{¶11} A reviewing court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336, 671 N.E.2d 241; *Mitnaul v. Fairmount Presbyterian Church*, 149 Ohio App.3d 769, 2002-Ohio-5833, 778 N.E.2d 1093 (8th Dist.). Therefore, this court applies the same standard as the trial court, viewing the facts in the case in the light most favorable to the nonmoving party and resolving any doubt in favor of the nonmoving party. *Viock v. Stowe-Woodward Co.*, 13 Ohio App.3d 7, 12, 467 N.E.2d 1378 (6th Dist.1983).

{¶12} Pursuant to Civ.R. 56(C), summary judgment is proper if:

> (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 party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977).

Sovereign Immunity

{¶13} As an initial matter, with regard to defendants' assertion that a city police department is not sui juris, so it is not an entity that is capable of being sued, we note that where the CPD is named as a party, the real party in interest is the city of Cleveland. *Richardson v. Grady*, 8th Dist. Cuyahoga Nos. 77381 and 77403, 2000 Ohio App. LEXIS 5960 (Dec. 18, 2000), citing *Burgess v. Doe*, 116 Ohio App.3d 61, 686 N.E.2d 1141 (12th Dist.1996), *discretionary appeal not allowed*, 78 Ohio St.3d 1452, 677 N.E.2d 813 (1997).

{¶14} In *Colbert v. Cleveland*, 99 Ohio St.3d 215, 2003-Ohio-3319, 790 N.E.2d 781, the Ohio Supreme Court set forth a three-tier analysis in order to determine whether a political subdivision is entitled to sovereign immunity granted in Chapter 2744. First, R.C. 2744.02(A)(1) sets forth the general rule that a political subdivision is immune from tort liability for acts or omissions connected with governmental or proprietary functions. *Id*. at ¶ 7. Second, R.C. 2744.02(B) lists five exceptions to the general immunity granted to political subdivisions under R.C. 2744.02(A)(1). *Id*. at ¶ 8. Finally, R.C. 2744.03(A) sets forth several defenses that a political subdivision may assert if R.C. 2744.02(B) imposes liability. *Id.* at ¶ 9.

{¶15} In *Swanson v. Cleveland*, 8th Dist. Cuyahoga No. 89490, 2008-Ohio-1254, *GMAC v. Cleveland*, 8th Dist. Cuyahoga No. 93253, 2010-Ohio-79, and *Pavlik v. Cleveland*, 8th Dist. Cuyahoga No. 92176, 2009-Ohio-3073, this court considered claims

for damages for the wrongful disposition of vehicles. In these cases, this court applied the three-tier analysis and determined that sovereign immunity barred the plaintiffs' claims for damages.

{¶16} However, we recognize that the doctrine of the law of the case is a rule of practice that was promulgated in order to, inter alia, ensure consistency of results in a case and to avoid endless litigation by settling the issues. *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984). Under that doctrine, the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels. *Id*.

{¶17} In accordance with the foregoing, and in light of our duty to conduct a de novo review, this court is unable to conclude that defendants are entitled to judgment as a matter of law herein. Specifically, this court's prior proceedings directly pertained to the improper junking of Reid's SUV and upheld Reid's guilty plea while recognizing his right to compensation for his vehicle. Therefore, this court is unable to conclude that reasonable minds could only reach a conclusion that is adverse to Reid. Rather, we hold that reasonable minds could recognize Reid's right to compensation in light of the prior proceedings that upheld his guilty plea despite the failure of one of its material terms — the return of his SUV.

{¶18} In accordance with the foregoing, we conclude that Reid's sole assignment of error is well taken.

{¶19} Judgment is reversed and the matter is remanded for further proceedings

consistent with this opinion.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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.

MARY EILEEN KILBANE, PRESIDING JUDGE

TIM McCORMACK, J., and
PATRICIA A. BLACKMON, J., CONCUR