[Cite as *Bowman v. Downs*, 2017-Ohio-1287.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104880

TED BOWMAN

PLAINTIFF-APPELLANT

vs.

PATROLMAN JOHN DOWNS, #144, ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-16-863083

BEFORE: Jones, J., Stewart, P.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: April 6, 2017

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LARRY A. JONES, SR., J.:

{¶1} In this accelerated appeal,[1] we decide whether the trial court properly granted the motion for judgment on the pleadings filed by the defendants-appellees. For the reasons that follow, we find that it did and affirm its judgment.

{¶2} Ted Bowman, plaintiff-appellant, filed this action, pro se, against the city of North Olmsted and the following North Olmsted police officers: John Downs, Manny Roman, Angel Walling, and Oliver Wolcott.[2]

{¶3} In his complaint, Bowman alleged that on May 11, 2015, the police were dispatched to his North Olmsted home, where he resided with his then- girlfriend, Deborah Ness. Ness had an outstanding arrest warrant for failing to appear before the North Olmsted Mayor's Court. According to the complaint, both Bowman and Ness were "known to the North Olmsted Police Department due to Ness's numerous prior arrests and citations for offenses of domestic violence and disorderly conduct while intoxicated, as well as her repeated failure to attend court appearances arising from such incidents, and to Bowman's having been the victim or complainant with respect to a number of the offenses."

{¶4} Bowman alleged that when the police, Officers Downs and Roman, arrived

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[1]This appeal is on this court's accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. In accelerated appeals, this court generally renders a decision in a "brief and conclusionary form" consistent with App.R. 11.1(E).

[2]Bowman's complaint named an officer "Ollie"; in its answer, the defendants stated that he was incorrectly named and that his correct name was Oliver Wolcott.

on the day in question, Ness was in a "state of agitation and severe inebriation." The officers did not arrest Ness pursuant to the outstanding warrant; rather, they had her sign a personal recognizance bond form and gave her a new hearing date.

{¶5} After the officers had left, Ness called Bowman, who presumably had not been home during the encounter, and told him that the "county sheriffs and the Federal Bureau of Investigation had forcibly entered the house and seized some unspecified documents." At some point thereafter, Bowman arrived home and found Ness "highly intoxicated." Bowman saw the personal recognizance form, and questioned Ness about what she had previously told him. The complaint alleged that Ness then threatened Bowman's life. A physical altercation between the two ensued while they were in the kitchen, with Ness striking Bowman several times with a billy club. Bowman gained control of the billy club and struck Ness.

{¶6} Bowman alleged that after the altercation, Ness went to sleep on the living room couch and he took the dog for a walk. He considered calling the police, but decided against it because the police had "already failed to do their duty to arrest Ness on the warrant" and, therefore, he surmised that calling them would be of "little use."

{¶7} According to the complaint, after walking the dog, Bowman went upstairs to his bedroom to go to sleep, and fearful of another attack by Ness, barricaded himself in the room. Approximately one hour later, Bowman became aware that the police were at his house again; this time it was Officers Walling and Wolcott.

{¶8} Bowman went downstairs and found the officers in the kitchen, which had

been "rearranged and looked much less disheveled" than it looked after Ness and Bowman's physical altercation. Officer Walling stated that they found the billy club on the kitchen table and asked Bowman if he wanted to go to the hospital. Bowman declined to go to the hospital because he did not have insurance, but asked the officers if they would examine his injuries; the officers refused.

{¶9} The complaint alleged one claim on which relief was sought: negligence. The following was alleged in support of the claim: (1) that the police owed a "duty to exercise ordinary care under the circumstances"; (2) Officers Downs and Roman breached that duty by failing to arrest Ness; (3) injury to Bowman was "foreseeable within the scope of risk" created by Officers Downs and Romans; (4) that their failure to act was the "proximate cause" of injury to Bowman; and (5) that Bowman was further injured by Officers Walling and Wolcott's failure to "properly investigate and examine Bowman." In addition to alleging liability on the individual officers, Bowman also sought to hold the city liable for the officers' "tortious conduct" under the doctrine of respondent superior.

{¶10} The defendants filed an answer in which they denied the substantive allegations of the complaint and set forth several defenses, including political subdivision immunity. They also filed a motion for judgment on the pleadings based on immunity; Bowman opposed the motion. The trial court granted the defendants' motion, finding that under R.C. Chapter 2744 "all defendants are immune from claims posed by [Bowman]. The city of North Olmsted is not liable for the damages alleged in this case

pursuant to R.C. 2744.02(A)(1). Further, the defendant officers are immune per R.C. 2744.03(A)(6)." Bowman now appeals, raising the following sole assignment of error: "The trial court erred in granting appellees' motion for judgment on the pleadings."[3] We disagree.

{¶11} Rule 12(C) of the Ohio Rules of Civil Procedure governs motions for judgments on the pleadings and provides, "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." A motion for judgment on the pleadings is to be granted when, after viewing the allegations and reasonable inferences therefrom in the light most favorable to the nonmoving party, the moving party is entitled to judgment as a matter of law. *Brown v. Wood Cty. Bd. of Elections*, 79 Ohio App.3d 474, 477, 607 N.E.2d 848 (6th Dist.1992), citing *Peterson v. Teodosio*, 34 Ohio St.2d 161, 165-166, 297 N.E.2d 113 (1973). A motion for judgment on the pleadings is specifically intended for resolving questions of law. *Friends of Ferguson v. Ohio Elections Comm.*, 117 Ohio App.3d 332, 334, 690 N.E.2d 601 (10th Dist.1997). Appellate review of motions for judgment on the pleadings under Civ.R. 12(C) is de novo. *Fontbank, Inc. v. CompuServe, Inc.*, 138 Ohio App.3d 801, 807, 742 N.E.2d 674 (10th Dist.2000).

North Olmsted

{¶12} As mentioned, Bowman concedes that judgment in favor of North Olmsted

[3]Bowman concedes that the motion was properly granted as to the city of North Olmsted. His argument, therefore, relates to the individual officers.

was properly granted; we agree.

{¶13} Under R.C. Chapter 2744, different paradigms apply to determine the immunity of a political subdivision and its employees. Whether a political subdivision is entitled to immunity provided by R.C. Chapter 2744 involves a three-tiered process. *Colbert v. Cleveland*, 99 Ohio St.3d 215, 2003-Ohio-3319, 790 N.E.2d 781, ¶ 7, citing *Greene Cty. Agricultural Soc. v. Liming*, 89 Ohio St.3d 551, 556-557, 733 N.E.2d 1141 (2000).

{¶14} The first tier is the general rule of blanket immunity, which provides that a political subdivision is immune from liability incurred in performing either a governmental or proprietary function. *Colbert* at *id.*; R.C. 2744.02(A)(1). But that immunity is not absolute. R.C. 2744.02(B); *Cater v. Cleveland*, 83 Ohio St.3d 24, 28, 697 N.E.2d 610 (1998). The second tier requires a court to determine if any of the exceptions to immunity listed in R.C. 2744.02(B) apply to expose a political subdivision to liability. *Colbert* at ¶ 8. If any exception to immunity applies, then the third tier of the analysis requires a court to determine if any of the statutory defenses against liability apply. *Id.* at ¶ 9.

{¶15} The exceptions to the general grant of immunity that political subdivisions enjoy are as follows: (1) injuries caused by the negligent operation of a motor vehicle; (2) injuries caused by the negligent performance of a proprietary function; (3) injuries caused by the negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads; (4) injuries caused by negligence due to physical defects

within or on the grounds of buildings used for governmental functions; and (5) when liability is expressly imposed on a political subdivision by a section of the Revised Code. R.C. 2744.02(B). The only exception that could possibly apply in this case is the one relating to the performance of a proprietary function.

{¶16} Under R.C. 2744.02(G)(1)(a), if a function is a governmental function, then it is excluded from being a proprietary function. Under R.C. 2744.01(C)(2), the following are included as governmental functions: (1) the provision or nonprovison of police, fire, emergency medical, ambulance, and rescue services or protection; (2) the power to preserve the peace and to protect persons or property; and (3) the enforcement or nonperformance of any law.

{¶17} Thus, Bowman's claim that the defendants failed to arrest Ness and failed to take action regarding his alleged injuries related to governmental, not proprietary, functions. The city of North Olmsted was therefore entitled to immunity, and the trial court properly granted the motion for judgment on the pleadings in its favor.

The Officers Individually

{¶18} Under R.C. 2744.03(A)(6), employees of political subdivisions are immune from liability unless one of the following three exceptions apply: (1) the employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities; (2) the employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner; or (3) civil liability is expressly imposed on the employee by a section of the Revised Code.

{¶19} Bowman did not allege in his complaint that the officers' actions or omissions were outside the scope of their employment[4] or that civil liability was imposed on the officers by another provision in the Revised Code. Rather, he alleged that the officers were negligent. But R.C. 2744.03(A)(6) does not impose liability for alleged negligent acts of employees of a political subdivision. Instead, the acts or omissions have to have been committed with malicious purpose, in bad faith, or in a wanton or reckless manner. Bowman did not allege any of those in his complaint; it is only now, on appeal, that Bowman contends that the officers acted in a reckless or wanton manner.

{¶20} Aside from the lack of reckless or wanton manner allegations in Bowman's complaint, the factual allegations in the complaint did not support such a theory that would entitle Bowman to proceed. "A negligence claim is not converted to one of wanton or reckless conduct on a mere allegation in the complaint without evidence of a substantially greater risk than negligence." *Yonkings v. Piwinski*, 10th Dist. Franklin Nos. 11AP-07 and 11AP-09, 2011-Ohio-6232, ¶ 43. Wanton, willful and/or reckless conduct is conduct that is a degree greater than negligence. *Rankin v. Cuyahoga Cty. Dept. of Children and Family Servs.*, 118 Ohio St.3d 392, 2008-Ohio-2567, 889 N.E.2d 521, ¶ 37; *Wagner v. Heavlin*, 136 Ohio App.3d 719, 730-731, 737 N.E.2d 989 (7th Dist.2000).

{¶21} Specifically, wanton misconduct is

> the failure to exercise any care toward one to whom a duty of care is owed

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[4]Conversely, Bowman alleged that the city was liable for the officers' actions or omissions under the doctrine of respondeat superior, which only applies if an employee was working within the scope of his or her employment.

> when the failure occurs under circumstances for which the probability of harm is great and when the probability of harm is known to the tortfeasor.

Wagner at *id.* Willful conduct involves a more positive mental state than wanton misconduct and implies intent. *Id.* at 731. That intention relates to the conduct, not the result. *Id.* It is an intentional deviation from a clear duty or purposely doing wrongful acts with knowledge or appreciation of the likelihood of resulting injury. Reckless conduct is conduct that was committed knowing the facts or having reason to know the facts and which leads a reasonable person to know that his or her conduct will in all probability result in injury. *Rankin* at *id.* The standard for establishing wanton or reckless conduct is "high." *Gates v. Leonbruno*, 8th Dist. Cuyahoga No. 103738, 2016-Ohio-5627, ¶ 39.

{¶22} Upon review, the factual allegations in Bowman's complaint did not support any conduct on the part of the officers that would rise to the level of wanton, willful or reckless. Bowman was not home when Officers Downs and Roman went to the home, and the facts alleged did not demonstrate that these two specific officers had knowledge of Bowman and Ness's alleged volatile relationship so as to give rise to a foreseeability that injury would inure to Bowman when he returned home. Further, in regard to the police's second visit to the home, the alleged facts do not support a claim that Officers Wolcott and Walling should have expected a known or obvious risk of harm to Bowman because they allegedly refused to check his injuries. They offered to get him medical assistance, that is, hospital treatment, which he declined. These alleged facts do not constitute wanton, willful or reckless conduct.

{¶23} In light of the above, the officers were entitled to immunity and, therefore,

the trial court properly granted judgment on the pleadings in their favor. Bowman's sole assignment of error is overruled.

{¶24} Judgment affirmed.

It is ordered that appellees 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 Cuyahoga County Court of Common Pleas 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.

LARRY A. JONES, SR., JUDGE

MELODY J. STEWART, P.J., and
ANITA LASTER MAYS, J., CONCUR