

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Rick Barricklow, et al.

Court of Appeals No. L-25-00244

Appellants

Trial Court No. CI0202403974

v.

Sylvania Area Joint Recreation District

DECISION AND JUDGMENT

Appellee

Decided: September 4, 2026

* * * * *

Margaret G. Beck, for appellants.

Bryon S. Choka and Jennifer A. McHugh, for appellee.

* * * * *

SULEK, J.

{¶ 1} Appellants, Rick and Kati Barricklow and Benjamin and Amanda Milliron, appeal a judgment of the Lucas County Court of Common Pleas which (1) granted summary judgment in favor of appellee Sylvania Area Joint Recreation District (SAJRD) on their claims stemming from the installation and maintenance of pickleball courts at Veterans Memorial Park in Sylvania, Lucas County, Ohio, and (2) denied their motion to amend the complaint to add “State ex rel.” to the caption as required under R.C. 3767.03,

the nuisance abatement statute. For the following reasons, the judgment is affirmed in part, and reversed in part.

I. Facts and Procedural History

{¶ 2} At the request of a group of Sylvania residents, SAJRD investigated the feasibility of installing pickleball courts for Sylvania community residents. After securing partial funding through a grant, in 2018, SAJRD erected six pickleball courts at Veterans Memorial Park which the entity owns and operates. The Barricklows live approximately 160 feet from the courts and moved into the neighborhood in 2003. The Millirons live approximately 215 feet from the courts and moved into the neighborhood in 2019. Shortly after SAJRD opened the courts, the Barricklows complained about the “popping” noise caused by paddles hitting the plastic balls used to play the game. Later, the Millirons also complained about popping noises during play as well as loud shouting from the players. In response, SAJRD installed Acoustifence (a noise screen or barrier) around the courts, installed 40 arborvitae bushes, added additional signage restricting play time and reminding players to be courteous to neighbors, and eventually began locking the courts at the end of the day.

{¶ 3} In September 2024, appellants commenced this action claiming that SAJRD’s noise mitigation efforts were insufficient and that operation of the pickleball courts violated the City of Sylvania’s nuisance and noise ordinances. Appellants requested injunctive relief abating the nuisance under R.C. 3767.03, alleged that SAJRD’s operation of the pickleball courts created public and private nuisances, and alleged that SAJRD negligently erected and maintained the courts too close to private

residences causing appellants emotional distress. Appellants attached an acoustical engineer's noise evaluation to support their claims. In its answer, SAJRD asserted several affirmative defenses, including R.C. Chapter 2744 immunity.

{¶ 4} SAJRD moved for summary judgment on appellants' claims asserting that the operation of the pickleball courts is a governmental function for which it was immune under R.C. Chapter 2744 and no exceptions to immunity applied. SAJRD argued that appellants' claim for injunctive relief under R.C. 3767.03 should be dismissed because they failed to bring the action in the name of the State on the behalf of appellants and failed to file the minimum \$500 bond.

{¶ 5} Appellants moved to amend their complaint seeking leave to add "State of Ohio Ex Rel. Rick Barricklow" to the caption. Appellants claimed that SAJRD would not suffer any prejudice as the claims were already presented in the complaint and would remain unchanged. SAJRD opposed appellants' motion as an untimely effort to avoid dismissal of their claim and that it would be unfairly prejudiced by the delay and costs already incurred pursuing summary judgment.

{¶ 6} Appellants argued in opposition to SAJRD's summary judgment motion that the complaint should be amended to preserve their equitable nuisance claims and that, regardless, because SAJRD failed to address the claim of private nuisance, summary judgment was not appropriate. As to the remaining claims, appellants argued that issues of fact remained as to whether SAJRD's operation of the pickleball courts was a governmental or a proprietary function, for which immunity would not apply.

{¶ 7} Reviewing the merits of SAJRD’s summary judgment motion, the trial court first addressed and denied appellants’ motion for leave to amend their complaint. The court agreed with SAJRD’s contention that it would be unduly prejudiced by the amendment as it would expand appellants’ claims and delay the proceedings by requiring proof of injury to the general public which had yet to be produced. On this basis, the court found the injunctive relief claims moot.

{¶ 8} Analyzing SAJRD’s immunity defense, the trial court found that the operation of a pickleball court is a governmental function because it classifies as a “recreational facility” under R.C. 2744.01(C)(2)(u), and also falls under the section’s “playfield” classification. The court rejected appellants’ contention that SAJRD’s operation of the pickleball courts was a proprietary function even though nongovernmental entities operate similar facilities.

{¶ 9} The trial court also rejected appellants’ contention that SAJRD could not claim immunity because the pickleball courts violate local and municipal codes because, by its terms, the R.C. 2744.02(B)(5) exception applies only to violations of the Ohio Revised Code. Finally, even assuming that an exception applied, the court concluded that immunity would be reinstated because under R.C. 2744.03(A), the challenged conduct involved discretionary or judgment-based decisions and there was no evidence of malicious purpose or bad faith.

{¶ 10} After determining that the operation of the pickleball courts was a governmental function and that no immunity exceptions applied, the court granted SAJRD’s motion for summary judgment. This appeal followed

II. Assignments of Error

{¶ 11} Appellants raise the following two assignments of error:

Assignment of Error No. One: The trial court incorrectly determined that the operation of the pickleball courts is a governmental function.

Assignment of Error No. Two: The trial court abused its discretion by failing to allow Appellants to amend their complaint.

III. Analysis

A. Summary Judgment

{¶ 12} This court reviews the award of summary judgment de novo, without any deference to the trial court's reasoning. *Koler v. Grand Harbour Condo. Owners Assn.*, 2014-Ohio-1299, ¶ 5 (6th Dist.), citing *Doe v. Shaffer*, 90 Ohio St.3d 388, 390 (2000). Summary judgment should be upheld when there is no issue of material fact, the moving party is entitled to judgment as a matter of law, and when viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can only come to one conclusion that is adverse to the moving party. *Koler* at ¶ 5, quoting *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66 (1978); Civ.R. 56(C).

{¶ 13} Additionally, whether a political subdivision or its employees are statutorily immune under R.C. Chapter 2744 generally presents a question of law. *Nonprasit v. Ohio Teaching Fam. Assn.*, 2022-Ohio-3685, ¶ 27 (6th Dist.), quoting *Hoffman v. Gallia Cty. Sheriff's Office*, 2017-Ohio-9192, ¶ 38 (4th Dist.).

B. SAJRD’s operation of the pickleball courts is a governmental function with no applicable exceptions.

{¶ 14} SAJRD is a political subdivision which is statutorily defined as “a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state.” R.C. 2744.01(F); *Nonprasis* at ¶ 33-34. The Ohio legislature enacted the Political Subdivision Tort Liability Act, R.C. Chapter 2744,

“to protect political subdivisions from liability based upon discretionary judgments concerning the allocation of scarce resources; it is not intended to protect conduct which requires very little discretion or independent judgment. The law of immunity is designed to foster freedom and discretion in the development of public policy while still ensuring that implementation of political subdivision responsibilities is conducted in a reasonable manner.”

Boucher v. Cleveland, 2023-Ohio-1818, ¶ 47 (8th Dist.), quoting *Hall v. Ft. Frye Local School Dist. Bd. of Edn.*, 111 Ohio App.3d 690, 699 (4th Dist.1996).

{¶ 15} Ohio courts apply a three-tiered analysis in determining whether a political subdivision is entitled to immunity under R.C. Chapter 2744. *Nonprasis* at ¶ 30, quoting *Douglas v. Columbus City Schools Bd. of Edn.*, 2020-Ohio-1133, ¶ 16 (10th Dist.), quoting *Smith v. McBride*, 2011-Ohio-4674, ¶ 13.

{¶ 16} The first tier of the analysis provides a political subdivision with general grant of immunity from “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.” R.C. 2744.02(A)(1). “Governmental functions” relevantly include:

(u) The design, construction, reconstruction, renovation, repair, maintenance, and operation of any school athletic facility, school auditorium, or gymnasium or any recreational area or facility, including, but not limited to, any of the following:

(i) A park, playground, or playfield;

R.C. 2744.01(C)(2)(u)(i).

{¶ 17} If immunity is established under the first tier, the second tier provides five immunity exceptions. Here, appellants rely on the exception for the negligent performance of acts by a political subdivision’s employees “with respect to proprietary functions of the political subdivision.” R.C. 2744.02(B)(2). “Proprietary functions” are defined in R.C. 2744.01 as follows:

(G)(1) “Proprietary function” means a function of a political subdivision that is specified in division (G)(2) of this section or that satisfies both of the following:

(a) The function is not one described in division (C)(1)(a) or (b) of this section and is not one specified in division (C)(2) of this section;

(b) The function is one that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons.

(2) A “proprietary function” includes, but is not limited to, the following:

(a) The operation of a hospital by one or more political subdivisions;

(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;

(c) The establishment, maintenance, and operation of a utility, including, but not limited to, a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system;

- (d) The maintenance, destruction, operation, and upkeep of a sewer system;
- (e) The operation and control of a public stadium, auditorium, civic or social center, exhibition hall, arts and crafts center, band or orchestra, or off-street parking facility.

{¶ 18} Supporting its argument that SAJRD's operation of the pickleball courts was a propriety, not governmental function, appellants rely on the cases of *Greene Cty. Agricultural Soc. v. Liming*, 89 Ohio St.3d 551 (2000) and *Garrett v. Sandusky*, 68 Ohio St.3d 139 (6th Dist. 1994).

{¶ 19} In *Liming*, the Ohio Supreme Court examined distinctions between governmental and propriety functions in the context of a hog show at a county fair. After determining that the county agricultural society was a political subdivision, the Court looked to whether any of the exceptions to immunity applied. Concluding that the conducting of a livestock competition at a county fair by a county agricultural society is a proprietary function pursuant to R.C. Chapter 2744, the Court noted:

[E]ven though conducting a county fair may be an activity not customarily engaged in by nongovernmental persons, conducting a livestock competition is an activity customarily engaged in by nongovernmental persons. Any organization, whether private or public, can hold a competition of this type. The consideration that many such competitions are conducted within county fairs cannot change the fact that there is nothing inherently governmental about them. In this situation, educational value alone is not enough to convert what otherwise would not be a governmental function into something that is a governmental function. We see no reason to distinguish a livestock competition at a county fair from any other similar competition, such as a livestock competition held elsewhere than at a county fair, or a dog or cat show, or an art show, or a chili cook-off, or a beauty pageant, or a car show.

Id. at 560.

{¶ 20} In *Garrett*, the Court examined whether a city-owned and operated wave pool was immune from liability in a wrongful death action. The operation of a “swimming pool” is specifically defined as a governmental function; however, a “wave-pool” is not. The Court determined that a wave pool’s “wave activation device” transformed it from a swimming pool, an immunized governmental function, to “more akin to an amusement ride,” a proprietary function. *Id.* at 140.

{¶ 21} Conversely, SAJRD supports its claim that the operation of the pickleball courts constitutes a governmental function for which it is entitled to immunity with cases relating generally to the operation of parks or other recreational areas. For example, in *Mueller v. N. Canton*, 2012-Ohio-3561 (5th Dist.), the court determined that the operation of a public golf course is a governmental function for which immunity applies and in *Contreras v. Bettsville*, 2011-Ohio-4178 (3d Dist.), immunity applied to the operation of a public swimming area in a quarry. SAJRD also distinguishes the cases appellants cite, both of which “included activities with an income producing element.”

{¶ 22} As previously stated, “governmental functions” include “[t]he design, construction, reconstruction, renovation, repair, maintenance, and operation of... any recreational area or facility, *including, but not limited to*... [a] park, playground, or playfield.” (Emphasis added.) R.C. 2744.01(C)(2)(u)(i). “The statutory phrase ‘including, but not limited to’ means that the examples expressly given are ‘a *nonexhaustive* list of examples.’” (Emphasis sic.) *State v. Anderson*, 2014-Ohio-542, ¶ 45, quoting *State v. Muncie*, 91 Ohio St.3d 440, 448 (2001)

{¶ 23} Reviewing the parties’ arguments and the relevant statutory and case law, under the present facts SAJRD’s operation of the pickleball courts is a governmental function for which immunity attaches. Though the operation and maintenance of pickleball courts is not specifically enumerated as a governmental function, the courts are in a recreational area of a public park. They are akin to a playfield in that they are designed for the public to play the game of pickleball. And unlike *Liming*, there is no evidence SAJRD is organizing any competition on the courts that is traditionally engaged in by nongovernmental persons. Rather, the courts are free to any park visitor that wants to play pickleball. Unlike *Garrett*, pickleball requires only players, paddles and a net similar to traditional playfield activities. The fact that private entities operate similar pickleball courts for profit does not alter the nature of the courts at issue. Thus, SAJRD is entitled to immunity under R.C. Chapter 2744 as to appellants’ private nuisance and negligence claims.

C. Even if an exception applies, SAJRD is still entitled to immunity.

{¶ 24} Under the third tier, a political subdivision can revive its immunity by invoking various defenses under R.C. 2744.03. Here, SAJRD contends that even assuming that its operation of pickleball courts is a proprietary function, immunity would be reinstated because there is no evidence that the discretionary or judgment-based decisions of its employees were made “with malicious purpose, in bad faith, or in a wanton or reckless manner.” R.C. 2744.03(A)(3),(5).

{¶ 25} Although appellants alleged in their complaint that SAJRD negligently and recklessly allowed the conditions at the pickleball courts to continue, the record

demonstrates that SAJRD made multiple attempts to mitigate the noise emanating from game play. There is no evidence that any discretionary actions were undertaken in a wanton or reckless manner.

{¶ 26} Based on the foregoing, SAJRD’s operation of the pickleball courts is a governmental function and no exception to immunity exists. Thus, no issue of fact remains and the trial court properly granted summary judgment on appellants’ tort claims. Appellants’ first assignment of error is not well taken.

D. Amendment of Pleadings

{¶ 27} Appellants’ second assignment of error argues that the trial court abused its discretion by denying their Civ.R. 15(A) motion to amend their complaint to include “State of Ohio ex rel.” in the caption as required by the nuisance abatement statute, R.C. 3767.03. SAJRD counters that the court properly based its denial on the fact that the complaint had been pending for eight months and appellants filed the motion only after SAJRD requested dismissal of the claim in its summary judgment motion. SAJRD does not contend that amendment of the complaint would be futile. *See Mary Ann Lauer Living Revocable Trust v. McManus*, 2025-Ohio-5669, ¶ 53 (6th Dist.).

{¶ 28} Appellants’ argument implicates both Civ.R. 15(A), the procedural mechanism for adding a party, and because the public nuisance statute requires that the action be brought in the name of the state, Civ.R. 17(A), which requires an action be brought in the name of the real party in interest. These sections provide:

Civ.R. 15(A):

A party may amend its pleading once as a matter of course within twenty-eight days after serving it or, if the pleading is one to which a responsive pleading is required within twenty-eight days after service of a responsive pleading or twenty-eight days after service of a motion under Civ.R. 12(B), (E), or (F), whichever is earlier. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court shall freely give leave when justice so requires. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within fourteen days after service of the amended pleading, whichever is later.

Civ.R. 17(A):

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his name as such representative without joining with him the party for whose benefit the action is brought. *When a statute of this state so provides, an action for the use or benefit of another shall be brought in the name of this state. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest.* Such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest. (Emphasis added.)

{¶ 29} “A trial court’s denial of a motion for leave to amend a pleading will not be reversed absent an abuse of discretion.” *Leo v. Burge Wrecking, LLC*, 2017-Ohio-2690, ¶ 9 (6th Dist.), citing *State ex rel. Askew v. Goldhart*, 75 Ohio St.3d 608, 610 (1996). Likewise, decisions relating to the substitution of a party under Civ.R. 17(A), are reviewed for an abuse of discretion. *Fonce v. Kabinier*, 2023-Ohio-4027 ¶ 16 (11th Dist.). An abuse of discretion signifies that the trial court’s attitude was unreasonable,

arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

When applying an abuse of discretion standard, a reviewing court may not simply substitute its reasoning process for a countervailing one. *Shaw v. Access Ohio*, 2018-Ohio-2969, ¶ 38 (2d Dist.).

{¶ 30} “The ““language of Civ.R. 15(A) favors a liberal amendment policy and a motion for leave to amend should be granted absent a finding of bad faith, undue delay or undue prejudice to the opposing party.”” *Durig v. Youngstown*, 2025-Ohio-4719, ¶ 36, quoting *State ex rel. Vindicator Printing Co. v. Wolff*, 2012-Ohio-3328, ¶ 17, quoting *Hoover v. Sumlin*, 12 Ohio St.3d 1, 6, (1984). This embodies the tenet that cases be decided on their merits rather than pleading deficiencies. *Bethel Oil and Gas, LLC v. Redbird Dev., LLC*, 2024-Ohio-5285, ¶ 123 (4th Dist.), quoting *Peterson v. Teodosio*, 34 Ohio St.2d 161, 175 (1973). A trial court properly denies a motion for leave to amend the pleadings where the party opposing the motion demonstrates actual prejudice due to the delay in seeking the amendment. *Shavel v. Shavel*, 2023-Ohio-4876, ¶ 45 (11th Dist.); *Lundeen v. Graff*, 2015-Ohio-4462, ¶ 25 (10th Dist.).

{¶ 31} The ““spectre of prejudice”” is raised where a plaintiff requests leave to amend the complaint after a defendant has filed a dispositive motion. *Everhart v. Coshocton Cty. Mem. Hosp.*, 2024-Ohio-1671, ¶ 8, (10th Dist.), quoting *State ex rel. Hook-[N]-Haul, LLC v. Ohio Dept. of Pub. Safety*, 2023-Ohio-4432, ¶ 24 (10th Dist.), quoting *State ex rel. N. Ohio Chapter of Assoc. Builders & Contrs., Inc. v. Barberton City School Bd. of Edn.*, 2010-Ohio-1826, ¶ 28 (9th Dist.); *McCormick v. Credit Acceptance Corp.*, 2017-Ohio-5687, ¶ 15 (6th Dist.). Reason being that a party should not be

permitted to “bolster up their pleadings in answer to a motion for summary judgment.””
Brown v. FirstEnergy Corp., 2005-Ohio-712, ¶ 6 (9th Dist.), quoting *Johnson v. Norman Malone & Assoc., Inc.*, 1989 WL 154763, *5 (9th Dist. Dec. 20, 1989)

{¶ 32} Where, however, a party seeks to cure a pleading deficiency rather than expand upon its claims or add a new party defendant, it lessens the spectre of prejudice. *See Jordan v. Cuyahoga Metro. Hous. Auth.*, 2005-Ohio-2443 (8th Dist.) (court abused its discretion by denying leave to amend the complaint to cure pleading deficiencies); *Sidwell v. Allstate Fire and Cas. Ins. Co.*, 2021-Ohio-853 (8th Dist.) (the court abused its discretion by denying leave to amend where plaintiff sought to substitute the proper party and did not add any additional claims). Additionally, in cases where a party failed to institute an original action in the name of the state, courts frequently grant leave to amend the caption, even with pending dispositive positions. *See State ex rel. Thomas v. Wood Cty. Bd. of Elections*, 2024-Ohio-379 ¶ 20, citing *State ex rel. Rust v. Lucas Cty. Bd. of Elections*, 2003-Ohio-5463, ¶ 6.

{¶ 33} Under the particular facts and circumstances in this case, the trial court erred denying appellants’ motion for leave to amend. Appellants’ uncontroverted attestation that the error was inadvertent, the concept that leave to amend should be liberally granted, that Civ.R. 17(A) specifically allows for amendment, without dismissal, within a reasonable time following objection, that SAJRD’s prejudice claim is belied by the fact that the amendment adds no new claims, and that cases, whenever possible, should be decided on their merits, not pleading deficiencies all support this finding. Accordingly, appellants’ second assignment of error is well-taken.

IV. Conclusion

{¶ 34} Upon due consideration, the judgment of the Lucas County Court of Common Pleas is affirmed, in part, and reversed, in part. The trial court's summary judgment award on the basis of governmental immunity is affirmed. Because we reverse the court's denial of appellants' motion for leave to amend, we remand the matter for consideration on the merits of the claims filed pursuant to R.C. 3767.03. The parties are to equally share the costs of this appeal under App.R. 24.

Judgment affirmed, in part,
reversed, in part, and remanded.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.

Christine E. Mayle, J.

JUDGE

Myron C. Duhart, J.

JUDGE

Charles E. Sulek, J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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